

T h e A u d i t o r - G e n e r a l

Audit Report No.7
Performance Audit

Management of the Implementation of the New Employment Services Market

Department of Employment, Education,
Training and Youth Affairs

A u s t r a l i a n N a t i o n a l A u d i t O f f i c e

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Canberra ACT
7 September 1998

Dear Madam President
Dear Mr Speaker

The Australian National Audit Office has undertaken a performance audit of the Department of Employment, Education, Training and Youth Affairs in accordance with the authority contained in the *Auditor-General Act 1997*. I present this report of this audit, and the accompanying brochure, to the Parliament. The report is titled *Management of the Implementation of the New Employment Services Market*.

Following its tabling in Parliament, the report will be placed on the Australian National Audit Office's Homepage - <http://www.anao.gov.au>.

Yours sincerely



P. J. Barrett
Auditor-General

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office. The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits and financial statement audits of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Contents

Abbreviations/Glossary	7
Summary and Recommendations	
Audit Summary	11
Introduction	11
Audit objective, focus and scope	13
Overall conclusion	14
Key Findings	16
Consistency of the administrative framework with government policy, legislation and directions	16
Employment services tender	16
Performance management	17
Managing the risk of market failure	17
Reducing the risk of unfair advantage	17
Transition arrangements - reducing the risks to customer service delivery	18
Project management	18
Recommendations	19
Audit Findings and Conclusions	23
1. Introduction	25
Background	25
Reasons for the audit	26
Audit objective, focus and scope	27
Audit approach	29
Audit criteria	29
Overview of key events	29
2. Consistency of the Administrative Framework with Government Policy, Legislation and Directions	33
Legal basis for the reforms	33
Consistency with government policy objectives	42
3. The Employment Services Tender	46
Introduction	46
Provision of information to potential bidders	46
Management of potential risks associated with the tender evaluation	51
Effectiveness of the tender evaluation process	58
Analysis of outcomes of the tender evaluation process	63
4. Performance Management	68
Introduction	68
KPIs	69
Performance incentives	76
Access to performance information	81

Standards of client service	82
Development of a performance monitoring strategy	85
Developin collaborative business relationships	86
5. Managing the Risk of Market Failure	92
Introduction	92
Assessment of the client service impact from service provider failure	97
Reducing the risk of service provider failure through tendering and contracting arrangements	98
6. Reducing the Risk of Unfair Advantage	101
Introduction	101
Establishing the public provider	102
Changes to CES responsibilities	103
Winding down LMPs	106
Protocol for access to information	107
Conclusion	108
7. Transitional Arrangements — Reducing the Risks to Customer Service Delivery	110
Introduction	110
Overall coordination of the transitional arrangements	111
Orderly wind-down of existing activities	111
Communications to assist stakeholders for maket start-up	112
Basis for Employment National's effective operations from 1 May 1998	113
Trials of new arrangements	115
Preparation of CES/EAA staff for the new environment	118
8. Project Management	132
Introduction	132
Executive overview and coordination	132
Project management for the establishment of the employment services market	137
Project management for the establishment of the PEPE	142
Appendices	
Appendix 1	
Description of services open for tender as reflected in the Request for Tender	151
Appendix 2	
Working Groups supporting the implementation of the employment services market at May 1997	155
Appendix 3	
Overview of The Tender Process	158
Appendix 4	
Business Planning for PEPE Ltd	171
Appendix 5	
Executive Level Committees	181
Appendix 6	
Bibliography	183
Index	184
Series Titles	187

Abbreviations/Glossary

ANAO	Australian National Audit Office
APS	Australian Public Service
CA	Certified agreement
Centrelink	Commonwealth Services Delivery Agency, an independent statutory authority in the Social Security portfolio with responsibility for the integrated service delivery of Commonwealth social welfare payments and services under purchaser/provider agreements
CES	Commonwealth Employment Service
CESAC	Commonwealth Employment Service Advisory Committee
CGC	Chief General Counsel
DEETYA	Department of Employment, Education, Training and Youth Affairs
DHFS	Department of Health and Family Services
DoFA	Department of Finance and Administration
DSS	Department of Social Security
EAA	Employment Assistance Australia
ELTSS	Entry Level Training Support Services, a service aimed at streamlining services to employers, apprentices and trainees
EN	Employment National Ltd - a Commonwealth owned corporation established on 4/8/97 to provide employment services (known as PEPE Ltd until 27/11/97)
ESA	<i>Employment Services Act 1994</i>
ESFF	Equipping Staff for the Future
ESRA	Employment Services Regulatory Authority
FLEX	Flexible Labour Exchange Service, a service aimed at getting eligible unemployed people into sustainable and on-going employment
FLEX 1	Labour exchange service component of FLEX
FLEX 2	Component of FLEX, assisting job seekers to improve their job search skills
FLEX 3	Component of FLEX, providing intensive assistance and support to help job seekers obtain and hold a job
Job Network	The name of the new employment services market introduced after the completion of the audit
KPIs	Key performance indicators
LMP	Labour market programmes
MAB/MIAC	Management Advisory Board/Management Improvement Advisory Committee

NEIS	New Enterprise Incentive Scheme, a service aimed at helping eligible unemployed people establish and run a viable small business
OGC	Office of General Counsel
PEPE Ltd	Public Employment Placement Enterprise Ltd, a Commonwealth owned corporation established to provide employment services (name changed subsequently to Employment National Ltd)
RFT	Request for tender
Service providers	are contracted by DEETYA to provide employment services to eligible job seekers and employers
TCSC	Transition Coordination Steering Committee
TSUs	Transitional Services Units

Summary and Recommendations

Audit Summary

Introduction

1. As part of the 1996 Budget, the Federal Government announced its intention to introduce reforms to labour market assistance. It foreshadowed replacing many of the existing arrangements, including the Commonwealth Employment Service (CES), Employment Assistance Australia (EAA), and the Employment Services Regulatory Authority (ESRA) with a competitive employment services market. A corporatised public provider would be established that would operate and compete on the same basis as competitors in the private and community sectors. The new market (known as Job Network following the completion of the audit) was intended to focus on outcomes with payment structures and incentives for contracted organisations to be largely linked to placing job seekers in work.

2. DEETYA faced significant challenges during the period leading up to the establishment of the market. DEETYA has reported that the employment reforms involved the most radical and comprehensive changes since the establishment of the CES more than fifty years ago. These extensive changes were often required by Government to be undertaken within a tight timeframe.

3. In line with the Government's announced framework, extensive public consultation was undertaken by DEETYA. After considering the results of the public consultations, DEETYA was given the task by Government to develop a tender for the following major service types:

- FLEX with the objective of placing eligible unemployed people into sustainable jobs, with the following linked service components relating to the level of assistance individual job seekers require to achieve job placements:
 - FLEX 1, providing a labour exchange service,
 - FLEX 2, assisting job seekers to improve their job search skills, and
 - FLEX 3, providing the most disadvantaged job seekers with additional, intensive assistance and support that they require to obtain and hold a job;
- New Enterprise Incentive Scheme (NEIS), with the objective of helping eligible unemployed people to establish and run a viable small business; and
- Entry Level Training Support Services (ELTSS), with the objective of streamlining services to employers, apprentices and trainees by providing a "one-stop" integrated support service.

4. The tender, with an estimated value of \$1.7 billion over the first 19 months tender period, is arguably the largest human services outsourcing tender undertaken in Australia. DEETYA released the tender on 4 August 1997, resulting in over 5000 bids from more than 1000 organisations across Australia to become service providers that eligible clients might choose. Tenders were assessed on a competitive basis with all service types, other than FLEX 3, open to price competition. Contracts have been awarded to over 300 organisations on the basis of providing service delivery from 1400 sites from 1 May 1998. Contracts focused on client outcomes and allowed flexible arrangements for service delivery, for example through sub-contracting with Departmental approval. DEETYA has also needed to establish arrangements to monitor and manage these contracts on an on-going basis.

5. At the same time, DEETYA was also required to establish the public provider, Employment National Ltd (formerly PEPE Ltd), as a government business enterprise within the Employment, Education, Training and Youth Affairs portfolio. CES/EAA staff and assets were to transfer to Employment National at a level commensurate with the business allocation that Employment National won in the tender round. Employment National, incorporated on 4 August 1997, was required to submit tenders for service delivery on the same basis as other tenderers.

6. In addition to arranging for the establishment of the new market and setting up Employment National, DEETYA had other major challenges to implement and manage during this period, including:

- maintaining current labour market programmes until the establishment of the new market;
- developing purchaser/provider arrangements with Centrelink, the Government's 'one stop shop' in the Social Security Portfolio, and the related transfer of staff and functions to Centrelink;
- establishing the remaining areas within DEETYA to undertake a policy and market management role; and
- implementing a number of other major government policy initiatives in respect of student assistance, schools, vocational education and training and higher education.

7. All this was occurring against a backdrop of downsizing with 2433 staff taking voluntary redundancy in August 1996 and a further round involving 131 staff in the next year. Approximately 3000 staff transferred to the interim Centrelink from DEETYA between May and July 1997. The staff remaining in the CES and EAA in mid 1997 faced an uncertain future with the possibility of work with Employment National being subject to final tender outcomes in early 1998.

8. The audit was given a high priority at the time by the ANAO due to the:
- significance of the reform, including the large money value of the tender;
 - complexity of the environment in which DEETYA was undertaking the reform; and
 - the audit's potential to further assist in improving efficiency and effectiveness of the contract management and of future tender processes both for these services and other APS functions.
9. On 25 August 1998, the Minister for Employment, Education, Training and Youth Affairs announced measures changing the eligibility of job seekers for placement under the new arrangements, and providing market development grants for Job Network agencies. Given that these changes have only just been announced, the administrative arrangements supporting these measures were not covered within the scope of the audit.

Audit objective, focus and scope

10. The objective of the audit was to determine the extent to which the new employment services market had been implemented efficiently and effectively. The audit mainly focused on the development and implementation of the tendering and contracting arrangements, the work undertaken by DEETYA to establish Employment National, and the transition from the ten labour market arrangements to the new employment services provision.

11. The scope of the audit addressed:

- consistency of the administrative framework with Government policy, legislation and directions;
- management of the tender exercise, in particular relating to the:
 - provision of potential tenderers with adequate information;
 - effective management of the risks associated with the tender evaluation; and
 - effective implementation of the tender evaluation process;
- performance management arrangements for the new market, focussing particularly on:
 - contractual provisions relating to key performance indicators and milestone profiles in each contract as well as DEETYA's access to performance information about each service provider and performance incentives provided;
 - requirements relating to the establishment and monitoring of service standards; and
 - arrangements to build collaborative business relationships with providers;

- measures undertaken by DEETYA to manage the risk of market failure through the use of appropriate tendering arrangements and contractual provisions;
- measures undertaken by DEETYA to reduce the risks of unfair advantage, particularly with respect to Employment National and those other organisations contracted to DEETYA at the time of the tender;
- management of the transition arrangements to the new market to reduce the risks to customer service delivery, focussing particularly on planning and its coordination of:
 - the wind-down of existing employment services activities;
 - communication with stakeholders on the new arrangements;
 - the basis to allow Employment National to operate effectively from 1 May 1998;
 - trialing new arrangements; and
 - preparing staff in the CES/EAA for the changes; and
- project management of the implementation, in particular:
 - oversight and coordination processes;
 - development and monitoring of project plans;
 - risk management of the establishment of the new market and preparatory work for Employment National; and
 - identification of project resources.

12. The audit examined the work of the Department in establishing Employment National to its incorporation on 4 August 1997. The audit also examined the tendering out and contracting for the new market, and the development and implementation of the transition arrangements up to the time of the tender announcement in early February 1998. The scope of the audit did not include an assessment of the operation or viability of Employment National or other service providers under both the original framework and the additional measures announced by the Minister on 25 August 1998, DEETYA's management of contracts to deliver employment services, nor the implementation of the new employment arrangements within Centrelink. These last two aspects of administration will be the subject of future audit coverage.

Overall conclusion

13. The ANAO considers that the implementation of the new employment services market has been managed effectively and efficiently in accordance with announced Government policy. This has been a very large and complex project, with the Department meeting the major

milestones within the timeframe set by the Government. The ANAO found that DEETYA effectively managed the potential risks associated with the tender evaluation process and established appropriate procedures that helped ensure that the evaluation process was implemented effectively. Within the Government’s policy framework, DEETYA put into effect adequate administrative arrangements to manage the major risks of the implementation, including those associated with:

- legal challenges, for example, as a result of implementing the reforms using existing legislation and administrative authority and from the tender process;
- market failure;
- unfair advantage to particular tenderers; and
- a significant decrease in customer service during the transition.

14. In relation to managing the performance of service providers, the ANAO found that DEETYA had established a sound initial framework for assessing provider performance, including client service standards. DEETYA will need to monitor closely the performance of providers in placing clients receiving intensive assistance into jobs.

15. The ANAO also found that DEETYA had followed key principles of good project management in undertaking the implementation of the new market arrangements.

16. The ANAO identified a range of good practice implemented by the Department and examples are highlighted throughout the report. The ANAO considers that other agencies implementing major program changes involving competitive tendering and contracting, could usefully draw on the lessons and experience referred to in this report.

17. Notwithstanding the above conclusions, the ANAO has identified opportunities for improvement for the future, as the Department builds its knowledge of, and ability to assess performance in, the new market. In order to bring these improvements to effect the ANAO has made a number of recommendations. The areas of management to which the particular recommendations relate are as follows.

Management Area	Recommendation No.
Current employment services contracts:	1, 5, 10
Future tender rounds:	2, 3, 4, 6, 7, 8, 9
Large projects in general:	11

(The recommendations are detailed on pages 19-21 of the Executive Summary.)

Key Findings

Consistency of the administrative framework with government policy, legislation and directions

18. The ANAO found that the administrative arrangements being established for the market were consistent with the Government's announced policy objectives, legislation and administrative directions. The ANAO considers the steps taken by DEETYA to minimise the risk of legal challenges arising from using existing legislation and administrative authority are adequate. The ANAO recognises that there is a range of performance indicators already developed for contract management. DEETYA's evaluation of contract performance will be more effective if it implements its plans to develop a more direct means of monitoring effectively the provision of a continuum of assistance to get eligible job seekers into work. Such monitoring would provide the basis to assist DEETYA in enforcing the contractual linkages between the services provided under the FLEX arrangements. The ANAO has made a recommendation in this regard.

Employment services tender

19. The ANAO found that DEETYA effectively managed the potential risks associated with the tender evaluation process and established procedures that helped to ensure that the evaluation process itself was implemented effectively.

20. The ANAO found that DEETYA provided adequate information to potential tenderers about the nature of the tender process and the contractual arrangements. However, there was scope for improvement in some aspects of information provision on which the ANAO has made recommendations. In particular:

- additional consultation could have been undertaken with potential tenderers on the provision of data that would have better assisted them to develop their bids; and
- publication of examples could have clarified concepts in the RFT, such as the relationship between the bid range at particular sites and the range for an overall regional bid.

Performance management

21. The ANAO considers the development work undertaken by DEETYA to date in establishing the framework for managing contractor performance to be broadly satisfactory. The ANAO has noted, however, that DEETYA could improve its use of key performance indicators (KPIs) by specifying a number of indicators more clearly; by establishing clear standards of performance for all KPIs; and by identifying the relative importance of the various indicators of outputs and outcomes.

22. The ANAO also found that the contractual incentives offered during the current tender period were consistent with an underlying principle of the service delivery changes whereby service providers are rewarded for achieving sustainable placement outcomes, especially for the longer term unemployed. As well, the ANAO found that DEETYA has taken appropriate steps to help ensure that clients receive a high standard of service and has developed a strategy for implementing its performance monitoring during the first tender round which should lead to useful and well-focused monitoring arrangements. DEETYA has also developed appropriate policies and procedures for building a collaborative business relationship with service providers. However, DEETYA will need to ensure that its contract management staff are appropriately trained in this aspect of their responsibilities.

Managing the risk of market failure

23. Every contracting out activity has some risk of adverse impact on customer service from the failure of service providers. The ANAO found that DEETYA had identified the most important aspects of these risks, and reflected them in appropriate advice to Government. The ANAO also found that DEETYA had sought to reduce the risks to service delivery through provider failure by setting appropriate tender conditions and contractual arrangements while working within the Government policy framework. The ANAO noted an opportunity to improve the process in the future through the provision of additional data in the tender documentation.

Reducing the risk of unfair advantage

24. The ANAO found that DEETYA has taken steps to reduce the risk of unfair advantage across potential tenderers through a range of measures, such as:

- separating the in-house bid team from the operations facing competition;
- transferring responsibilities from the CES to diminish possible biased behaviour by the CES to give a potential advantage to the public provider;

- ensuring procedures were in place to diminish the advantage with respect to Commonwealth assets being used by contracted LMP providers; and
- developing and issuing a protocol to assist in ensuring fair access to information across tenderers.

25. However, the ANAO considers that DEETYA would have benefited from the earlier development of the protocol and that, during its development, the administrative procedures required to support the protocol should have been considered to ensure that it was unambiguous, for example, with respect to data access. In addition, the interaction between the administration of the protocol and the administration of the relevant legislative requirements, for example, the *FOI Act 1982*, should have been clearly articulated.

Transition arrangements - reducing the risks to customer service delivery

26. The ANAO concluded that DEETYA has reduced the risk to service delivery throughout the transition by developing, and effectively implementing, plans and procedures for:

- the orderly wind-down of existing activities;
- developing adequate communication to inform stakeholders of the changes;
- developing a sound basis on which Employment National could operate effectively from 1 May 1998;
- trialing the new arrangements; and
- preparing staff in the CES/EAA for the new environment, while assisting them to continue service delivery until 30 April 1998.

Project management

27. The ANAO found that the project management for the implementation of the new employment services market, has been largely consistent with good practice. The ANAO also found that there is scope in the future for the Department to improve its costing practices for major projects, and has made a recommendation in this regard.

Recommendations

(Recommendations 1, 5 and 10 relate to management of the current employment services contracts. The ANAO considers therefore that DEETYA should give priority to these particular recommendations.)

Recommendation No.1
Para. 2.25

In order to improve the effectiveness of performance monitoring arrangements, the ANAO recommends that DEETYA develop, monitor and benchmark indicators that measure the performance of FLEX service providers in delivering the continuum of assistance to job seekers, as specified in the conditions of contract. DEETYA should also report on the results against these indicators, including on related targets and benchmarks, in their Annual Report.

DEETYA: Agreed.

Recommendation No.2
Para. 3.16

The ANAO recommends that in the context of the next tender round for the provision of employment services, DEETYA seeks feedback from potential tenderers on the usefulness of the statistical data it intends to include in its tender documentation to assist tenderers identify potential income flows.

DEETYA: Agreed.

Recommendation No.3
Para. 3.24

The ANAO recommends that in future tender rounds for the provision of employment services, DEETYA informs the market of:

- the restricted nature of the information available outside the RFT; and
- the reasons for the inclusion of clauses in government contracts that are not normally included in private sector contracts but which are needed to meet the specific requirements of government.

DEETYA: Agreed.

Recommendation No.4 Para. 3.26	<p>The ANAO recommends that, in the next tender round for the provision of employment services, DEETYA, in consultation with appropriate legal and probity advisers retained for this purpose, seeks feedback from potential tenderers on ways to clarify concepts within the RFT, for example through the use of published examples.</p> <p><i>DEETYA:</i> Agreed.</p>
Recommendation No.5 Para. 4.11	<p>The ANAO recommends that, to enhance the role of the KPIs as drivers of performance, DEETYA gives service providers clear guidance on how KPIs are to be measured by:</p> <ul style="list-style-type: none"> • clarifying the definition of ‘eligible population’ in relation to the Equity KPI; and • specifying how timeliness and efficiency of processing are to be measured for ELTSS. <p><i>DEETYA:</i> Agreed.</p>
Recommendation No.6 Para. 4.14	<p>The ANAO recommends that in relation to NEIS, for the next tender round, DEETYA includes a KPI that focuses on the timeliness of service provision by managing agents in bringing potential participants to a contract signing stage with DEETYA.</p> <p><i>DEETYA:</i> Agreed.</p>
Recommendation No.7 Para. 4.25	<p>The ANAO recommends that, in the next tender round, DEETYA includes specific targets for performance against the KPIs in the contracts.</p> <p><i>DEETYA:</i> Agreed.</p>
Recommendation No.8 Para. 4.27	<p>To ensure that DEETYA service requirements are clearly explained to service providers contracted as a result of the next tender round, the ANAO recommends that DEETYA inform contractors of the relative importance it intends to place on KPIs and other performance measures to assess contract performance.</p> <p><i>DEETYA:</i> Agreed.</p>

Recommendation No.9
Para. 4.55 The ANAO recommends that, for the next tender round for the provision of employment services, DEETYA includes additional provisions in contracts to:

- provide for reasonable notice to be given by DEETYA to providers in relation to the exercise of access rights;
- provide for DEETYA to comply with the provider's reasonable security procedures when exercising access rights;
- clarify that the requirement for access by DEETYA does not in any way reduce the provider's obligations to deliver services; and
- allow for providers to be granted extensions of time to deliver services under the contract if the exercise of access rights by DEETYA directly results in a delay in meeting obligations under the contract.

DEETYA: Agreed.

Recommendation No.10
Para. 4.89 The ANAO recommends DEETYA provides appropriate training to contract management staff to help ensure that they have the necessary contract management skills to develop and maintain collaborative business relationships with service providers in order to effectively manage and resolve contractual difficulties as they arise, recognising *both* the public and commercial interests involved.

DEETYA: Agreed.

Recommendation No.11
Para. 8.30 The ANAO recommends that in future major projects DEETYA prepares detailed initial budgets that include the cost of all resources to be used in the project and that actual costs incurrence, including labour cost, be monitored against the budget in order to assist effective project management and improve accountability.

DEETYA: Agreed.

Audit Findings and Conclusions

1. Introduction

This chapter describes the background to the audit and sets out its objectives, scope, focus, approach and criteria. In addition it overviews the key events leading to the new employment service arrangements.

Background

1.1 New arrangements for the delivery of employment services, now known collectively as Job Network, came into effect on 1 May 1998. The changes introduced were significant and involved the competitive tendering out of services worth approximately \$1.7 billion to a range of service providers, including private organisations, community organisations and a public provider - Employment National.

1.2 Under the new arrangements service providers will provide eligible jobseekers with the following service types (see Appendix 1 for more details):

- labour exchange services (FLEX 1);
- assistance for job seekers to improve job search skills (FLEX 2);
- intensive assistance and support to help job seekers obtain and hold a job (FLEX 3);
- the New Enterprise Incentive Scheme (NEIS) aimed at helping eligible unemployed people establish and run a viable small business; and
- Entry Level Training Support Services (ELTSS) aimed at streamlining services to employers, apprentices and trainees.

1.3 The following principles underlying the changes were outlined by the Government in August 1996 by Senator the Honorable Amanda Vanstone, then Minister for Employment, Education, Training and Youth Affairs.¹

- 1. The assistance provided to job seekers should be based on their individual needs and their capacity to benefit from it in terms of achieving a sustainable employment outcome.*
- 2. Providers should have access to flexible forms of assistance that fit the needs of job seekers.*

¹ *Reforming Employment Assistance - Helping Australians into Real Jobs*, Ministerial Statement pp. 12-13.

3. *The incentive framework should reward providers of labour market assistance primarily for placing job seekers in real jobs, with additional incentives for placing those most in need.*
4. *A competitive market for employment placement services should separate purchaser from providers and ensure that providers operate on the basis of competitive neutrality.*
5. *Conditions for payment of income support for unemployed people should be linked closely with active employment assistance measures.*
6. *Job seekers and employers should be able to receive high quality and streamlined service from agencies and providers with which they interact.*

1.4 On 25 August 1998, the Minister for Employment, Education, Training and Youth Affairs announced measures changing the eligibility of job seekers for placement under the new arrangements, and providing market development grants for Job Network agencies. Given that these changes have only just been announced, the administrative arrangements supporting these measures were not covered within the scope of the audit.

Reasons for the audit

1.5 As well as involving significant financial resources, the changes to the delivery arrangements for employment services also represent a significant extension of purchaser / provider and competitive tendering and contracting arrangements into the social services arena. The changes are the subject of a high level of public and political scrutiny.

1.6 The new arrangements required major changes to organisational responsibilities within DEETYA and created significant new challenges relating to:

- the development of an effective major tender process to give effect to the Government's policy;
- the establishment of a new public sector service provider to compete in the market; and
- the winding down of labour market programs that were to be subsumed under the new arrangements.

1.7 The changes also hold significant challenges for the future related to the increased requirements for effective ongoing contract management. For example, arrangements for the effective management of service provider performance and for accountability in the new arrangements will be crucial to the efficient and effective implementation of the Government's policy.

1.8 By examining these major changes the audit aims to provide insights that will assist in improving efficiency and effectiveness in future competitive tendering and contracting processes both for the services involved and for other APS functions. The audit complements other ANAO audit work that has examined purchaser/provider relationships in the social welfare field. For example, the ANAO recently reported on the implementation of new Commonwealth service delivery arrangements based on purchaser/provider relationships between Centrelink and DSS and DEETYA.² The ANAO is also currently auditing the efficiency and effectiveness of the planning and management of the transfer to, and implementation of, DHFS service delivery by Centrelink.

Audit objective, focus and scope

1.9 The objective of the audit was to determine the extent to which the new employment services arrangements have been implemented efficiently and effectively. The audit focused primarily on:

- the development and implementation of the tendering and contracting arrangements;
- developmental work to establish the public sector service provider; and
- the transition from the then labour market arrangements to the new employment services provision.

1.10 The audit scope encompassed:

- consistency of the administrative framework with Government policy, legislation and directions;
- management of the tender exercise, in particular relating to the:
 - provision of potential tenderers with adequate information;
 - effective management of the risks associated with the tender evaluation; and
 - effective implementation of the tender evaluation process;
- performance management arrangements for the new market, focussing particularly on:
 - contractual provisions relating to key performance indicators and milestone profiles in each contract, as well as DEETYA's access to performance information about each service provider and performance incentives provided;

² Audit Report No.18 1997-98, *Management of the Implementation of the Commonwealth Service Delivery Arrangements*.

- requirements relating to the establishment and monitoring of service standards; and
- arrangements to build collaborative business relationships with providers;
- measures undertaken by DEETYA to manage the risk of market failure through the use of appropriate tendering arrangements and contractual provisions;
- measures undertaken by DEETYA to reduce the risks of unfair advantage, particularly with respect to the public sector provider and those other organisations contracted to DEETYA at the time of the tender;
- management of the transition arrangements to the new market to reduce the risks to customer service delivery, focussing particularly on planning and coordination of:
 - the wind-down of existing employment services activities;
 - communication with stakeholders on the new arrangements;
 - the basis to allow Employment National to operate effectively from 1 May 1998;
 - trialing new arrangements; and
 - preparing staff in the CES/EAA for the changes; and
- project management of the implementation, in particular:
 - oversight and coordination processes;
 - development and monitoring of project plans;
 - risk management of the establishment of the new market and preparatory work for the public provider; and
 - identification of project resources.

1.11 The audit examined the work of the Department in establishing the public provider up to its incorporation on 4 August 1997. The audit also examined the tendering out and contracting for the new market, and the development and implementation of the transition arrangements up to the time of the announcement of the tender results in February 1998.

1.12 The scope of the audit did not include an assessment of the operation or viability of Employment National or other service providers under both the original framework and the additional measures announced by the Minister on 25 August 1998, DEETYA's management of contracts to deliver employment services, nor the implementation of the new employment arrangements within Centrelink. These last two aspects of administration will be the subject of future audit coverage.

Audit approach

1.13 The audit was based on interviews with key players and an analysis of relevant Government and departmental documents. The fieldwork for the audit took place between October 1997 and March 1998.

Audit criteria

1.14 Criteria for analysis are described within each chapter. Guidance on best practice in relation to tendering out and the establishment of a public in house bidder was obtained from a private sector consultant and from previous relevant ANAO audits and a range of other guidance documents listed in the Bibliography (see Appendix 6).

1.15 The audit was conducted in conformance with ANAO standards and cost approximately \$542 000.

Overview of key events

1.16 The key events associated with the new arrangements are shown in Table 1.1, as follows:

- Policy development was initiated in mid 1996 and refined through public consultation in the later half of 1996. A significant change in the policy implementation was announced in July 1997 following delays to the passage of the legislation to support the changes through the Senate.
- Prior to August 1997 the public was consulted and informed about the tender process through the issue of a tender information kit in December 1996 and an exposure draft RFT in May 1997 in particular. The tender was initially scheduled for May 1997 but was postponed as a result of the delays to the passage of legislation.
- Preparatory work for the public provider started in October 1996. This continued up to and beyond the incorporation of PEPE Ltd on 4 August 1997 and included business planning and the preparation of a tender bid.
- The transitional arrangements included Employment National Ltd, formerly PEPE Ltd, taking over the management of the CES and EAA on 1 December 1997 through to the start of the market operation on 1 May 1998.

Table 1.1
Key events

Date	Activity/Event
Policy development	
June 1996	Inter-departmental Committee on reform of labour market assistance
August 1996	<i>Reforming Employment Assistance - Helping Australians into Real Jobs</i> , Ministerial Statement
September 1996 - October 1996	Public consultations on Ministerial Statement
November 1996	<i>Reforming Employment Assistance - Helping Australians into Real Jobs</i> , Report on Public Consultations
December 1996	Government announces policy
December 1996	<i>Reform of Employment Services Bill 1996 and Reform of Employment Services (Consequential Provisions) Bill 1996</i> introduced to Parliament
July 1997	Government announces policy changes due to legislative package not passing through the Senate
Tender process: pre- submission stage	
December 1996	Tender Information Kit released
May 1997	Draft Exposure Request For Tender (RFT) released
July 1997	Public information sessions
Tender process: submission stage	
4 August 1997	RFT released
18-27 August 1997	Public tender briefing sessions
16 September 1997	Tender lodgement closes
Tender process: evaluation stage	
17 September 1997 - 29 January 1998	Consideration of tenders and choice of successful tenderers
Establishment of public provider	
October 1996	Public Employment Placement Enterprise (PEPE) Establishment Taskforce created
April 1997	Executive Chair designate appointed
4 August 1997	PEPE Ltd incorporated
28 November 1997	PEPE Ltd changes its name to Employment National Ltd
Transition to the new arrangements	
1 December 1997 to 30 April 1998	Employment National manages CES/EAA under contract from DEETYA
26 February 1998	Announcement of successful tenderers that accepted contracts
1 May 1998	Market operation commences Employment National commences trading in own right

1.17 These key events reflect the significant challenges facing DEETYA over the period. Change has been extensive and timetables for change required by Government were often tight and subject to variation. As DEETYA's 1997-98 Annual Report noted, the employment services reforms involved the most radical and comprehensive changes since the establishment of the CES more than fifty years ago.

1.18 In addition to actions relating to the key events identified in Table 1.1, DEETYA faced other major challenges during this period, including:

- maintaining current labour market programmes until the establishment of the new market;
- developing purchaser/provider arrangements with Centrelink, the Government's 'one stop shop' in the Social Security Portfolio, and the related transfer of staff and functions to Centrelink;
- establishing the remaining areas within DEETYA to undertake a policy and market management role; and
- implementing a number of other major government policy initiatives in respect of student assistance, schools, vocational education and training and higher education.

1.19 All this was occurring against a backdrop of downsizing with 2433 staff taking voluntary redundancy in August 1996 and a further round involving 131 staff in the next year. Approximately 3000 staff transferred to the interim Centrelink from DEETYA between May and July 1997. The staff remaining in the CES and EAA in mid 1997 faced an uncertain future with the possibility of work with Employment National being subject to final tender outcomes in early 1998.

1.20 Within DEETYA, responsibility for the overall implementation of the new employment services arrangements was assigned to the Employment and Purchasing Division. The Division's direct responsibility included the development of many of the policies and procedures associated with the new arrangements (the exception being the developments associated with Entry Level Training Support Services which was undertaken in another Division, but coordinated with the other service types within the Employment and Purchasing Division). The Division also had responsibility for the administration of the tender and the on-going administration of the contracts.

1.21 In October 1996, the then Secretary of DEETYA created a PEPE Establishment Taskforce within DEETYA to undertake initial developmental and preparatory work relating to the establishment of PEPE Ltd. The

Taskforce began operation on 8 October 1996 as a separate Division within DEETYA's National Office, reporting directly to the Secretary.

1.22 On 6 April 1997, DEETYA appointed an Executive Chair designate for a maximum period of four months with a parallel appointment as Chair of the Board for three years. As the PEPE was at that stage not yet incorporated, the Executive Chair designate was employed by means of a consultancy arrangement with DEETYA. The role of the Executive Chair designate included providing leadership and guidance for the PEPE Establishment Taskforce.

2. Consistency of the Administrative Framework with Government Policy, Legislation and Directions

This chapter explores the framework and administrative arrangements for the new employment services market in regard to its consistency with announced Government policy, legislation and directions. The ANAO concludes that DEETYA ensured such consistency for the new market, but notes that there will need to be adequate monitoring of the new arrangements to ensure that on-going operations remain consistent with such policies and related contractual obligations.

2.1 In order to assess whether the administrative framework is consistent with legislation and other Government directions, the audit team examined whether or not:

- there is a legal basis underpinning the reforms, given that the Government decided to implement the new employment services arrangements under existing legislation; and
- administrative arrangements being implemented are consistent with announced Government policy objectives and directions.

Legal basis for the reforms

Background

2.2 In order to support the implementation of the new employment service arrangements, the Government introduced a package of legislation to Parliament in December 1996, comprising:

- *Reform of Employment Services Bill 1996*, which provides for the delivery of employment services by employment placement enterprises contracted by DEETYA; and
- *Reform of Employment Services (Consequential Provisions) Bill 1996*, which includes the repeal of the *Employment Services Act (ESA) 1994* that established the case management system and government bodies with associated responsibilities and functions, including the Employment Services Regulatory Authority (ESRA), Employment Assistance Australia (EAA) and the Commonwealth Employment Service (CES).

2.3 After considering the legislative package, the Senate proposed a number of amendments to the legislation. Subsequent to receiving an analysis from the Department on the consistency of the amendments with

respect to Government policy objectives, the Government decided not to proceed with the legislative package³ but to implement the reforms using existing legislation and administrative authority.

2.4 In examining the implementation of the reforms using existing legislation and administrative authority as opposed to what would have occurred under the proposed legislation, the ANAO reviewed whether or not:

- DEETYA reduced the risk of a successful legal challenge to the new arrangements, by:
 - identifying and analysing the various options for reducing the risk by seeking expert advice internally and externally, including, for example, legal advice from the Attorney-General's Department, and ensuring that the RFT reflected that legal opinion; and
 - implementing adequate monitoring arrangements to ensure that on-going operations are consistent with that legal opinion; and
- the framework being implemented is consistent with Government directions and legislation regarding:
 - privacy objectives; and
 - administrative authority that binds the Commonwealth.

Reducing risk of successful legal challenges

Identifying and analysing the options for reducing legal risk

2.5 In developing the advice to Government regarding its ability to implement the reforms by administrative means, the Department developed contingency options to introduce the reforms, drawing on in-house legal expertise which included outposted officers from the Attorney-General's Department as well as input from the Office of General Counsel (OGC), Attorney-General's Department.

2.6 The contingency option favoured by DEETYA was to enter into contracts with service providers, similar to the approach already being used for the delivery of labour market programmes⁴ other than case management; this option most closely reflected the Government's policy objectives. As this approach was a contingency against the proposed legislation package not proceeding, DEETYA recognised that it needed to address the legislative conditions of the *ESA 1994*, an act that the

³ *Reform of Employment Services Bill 1996, and Reform of Employment Services (Consequential Provisions) Bill 1996.*

⁴ Labour market programmes, such as SkillShare, are assistance other than income support available to unemployed job seekers.

Government intended to repeal under the proposed legislative package. The ESA 1994 legislates on a range of matters that were proposed to change under the new arrangements, namely:

- the Act establishes the CES, EAA and ESRA and specifies their roles and functions in relation to the case management system which the Act sets up and regulates. (In particular, under the ESA, ESRA, rather than DEETYA, was the purchaser of contracted case management services and DEETYA through EAA was a provider of case management services); and
- as the Act defines and specifies the operation of the case management system, it limits Executive power to implement, unless in accordance with the Act, another case management system. In particular, if a new service were to be implemented with DEETYA as the purchaser, that service would need to be sufficiently different from case management to reduce the risk of a legal challenge.

2.7 The Department, through its legal experts, identified that the most practical way of minimising the operations of the CES, EAA and ESRA was to restrict or withdraw Parliamentary appropriations for their funding, with Departmental officers filling ESRA statutory positions to undertake minimal statutory requirements, for example, annual reporting. DEETYA consulted with and gained support from the OGC for this approach.

2.8 Under the new employment market framework, the Government intended to implement a service type known as “Employment Assistance”. This service type had a number of parallels with case management. To increase the differences between the new services and case management, DEETYA proposed, in developing advice to Government on an alternative to the specific legislation, merging the service types, Labour Exchange, Job Search Assistance, and the more intensive Employment Assistance, into a single service. DEETYA argued that such a merged service would provide greater differences to case management, as case management had not included a labour exchange service. Furthermore, DEETYA’s legal experts reasoned that case management was never intended to be a mechanism to deliver labour exchange to job seekers not requiring case management.

2.9 DEETYA’s legal experts developed a number of briefings for OGC’s consideration on the merged service proposal and on DEETYA’s further development of this proposal, namely Flexible Labour Exchange Service (FLEX), described as a continuum of assistance to get job seekers into work. In late May 1997, following a Ministerial request through DEETYA, the OGC advised the then Minister that the merged service proposal, as developed by DEETYA (including FLEX), would be constitutionally valid. This advice was provided on the basis of instructions and materials

contained, or referred to, in briefings and presented by DEETYA officers in conference.

2.10 The Government subsequently decided not to proceed with the specific legislation but to implement the new employment service arrangements using existing legislation and administrative authority.

2.11 DEETYA further developed FLEX into three distinct and linked services; namely, FLEX 1, FLEX 2, and FLEX 3, with the continuum of assistance provided to job seekers through a requirement that all FLEX providers deliver labour exchange services under FLEX 1. In particular, the RFT has a number of specific links between the three FLEX services, including:

- if a provider is allocated business for either FLEX 2 or FLEX 3, it will be allocated FLEX 1 places in proportion to its FLEX 2 or FLEX 3 allocations; and
- a condition of the draft contract⁵ for FLEX 3 service providers, is that “the Provider must provide FLEX 1 (as defined in Part B of this Contract) for all Eligible Job Seekers referred for FLEX 3 services”⁶

2.12 The Legal Group in DEETYA subsequently sought and gained confirmation from OGC that its previous legal advice still held for the description of FLEX within the RFT.

2.13 In examining the above events, the ANAO found the following in relation to the process of gaining a legal opinion on the approach that was subsequently adopted by Government as an alternative to proceeding with the specific legislation:

- Information considered by the ANAO as relevant to the consideration of the parallels between case management and a merged service which linked “Employment Assistance” and labour exchange, was not included in the brief for OGC to provide an opinion on the merged service option. The information considered relevant by the ANAO was an extract from the second reading speech for the *ESA 1994*, and a component of the Employment Services (Case Management Services) Determination, No.1 of 1995. (Other components of this second reading speech and Determination were included in the brief to highlight the differences and parallels respectively, between case management and the merged service option.) This information was in the public domain, was available and understood by DEETYA’s legal experts, and could have been

⁵ This condition is also included in the final contract.

⁶ Draft Contract - FLEX 3 Specific Conditions (sub-clause 2.2).

available to OGC if it had undertaken its own research on this issue. However, the Chief General Counsel's letter to the then Minister indicated that he relied upon the Department briefings rather than Attorney-General's Department's own research to draw his conclusion. The DEETYA Legal Group indicated to the ANAO that it had expected the OGC to conduct such research, if any, as was thought necessary.

The ANAO notes, however, that the briefing had been developed by DEETYA's legal experts, and therefore it was reasonable for OGC to have assumed that the briefing would include all relevant aspects for consideration. In addition, there was a short time-frame in which the OGC and CGC were expected to respond. The ANAO therefore concludes that there was a gap in communication between OGC and DEETYA which resulted in OGC not understanding DEETYA's expectations, and DEETYA having expectations of the work it assumed OGC could undertake in the time-frame.

- DEETYA sought and gained oral confirmation from OGC that their advice with respect to the merged service option still held for the proposed service types arrangements of FLEX 1, FLEX 2, and FLEX 3 prior to the release of the RFT. However, the DEETYA Legal Group sought written confirmation from the OGC on the final version of the RFT a week before its release.⁷ This confirmation was not sent by OGC until 6 August, two days after the RFT was released. The ANAO considers that, as the advice was critical in providing an assurance that the new arrangements would be likely to withstand a legal challenge, written confirmation should have been gained prior to the release of the RFT.

Conclusion - analysis of and identification of means to reduce the risk of successful legal challenges

2.14 The ANAO did not consider it necessary to attempt to make an assessment of the quality of the legal opinion provided by the OGC. There was a sufficient basis on which to conclude that, within the DEETYA Legal Group, there was comprehensive analysis of the legal risks associated with the implementation of the new employment services arrangements primarily by using administrative means, particularly regarding the impact of the continuation of the *ESA 1994*. The ANAO found that DEETYA had also identified the means by which these risks could be reduced in the

⁷ Subsequent to the sign off by the Probity Advisor, the Minister sought changes to the RFT to assist in ensuring client choice in the market. Amendments based on the Minister's decision were incorporated, and formed the version that went to print. The Attorney-General's Department was consulted separately on these amendments, which did not directly affect the linkages between FLEX 1 and FLEX 3 in the RFT.

design of the employment services arrangements. This analysis and identification were concentrated during the period which led to the decision by the Government not to proceed with proposed new legislation but rather to implement the reforms using existing legislation and administrative authority of the Executive Government.

2.15 The analysis was enhanced by consultation with the OGC on the issues identified by DEETYA Legal Group throughout the process, from early development of contingency options through to confirmation of advice for the finalisation of the RFT.

2.16 However, the ANAO found that DEETYA Legal Group did not fully communicate all the information considered by the ANAO as relevant for consideration by OGC, nor did it clarify with OGC the basis on which the OGC had prepared its advice. In addition, timely written confirmation was not sought from OGC. This indicates that there are areas that need particular care and awareness in relation to the process of gaining outside legal opinion. These areas should be noted by the Department in relation to future tender processes and by other agencies undertaking tendering and contracting arrangements.

Monitoring arrangements

2.17 In the previous section (paragraphs 2.5 to 2.16), it was noted that, in designing the new employment services, DEETYA had addressed the risks associated with implementing the new arrangements without the specific legislation proceeding to enactment, particularly by increasing the differences between the new service types and case management, as defined under *ESA 1994*. As part of the overall approach to managing these risks, the ANAO considers that the operation of the new arrangements should be consistent with their design. In particular, providers ought to deliver services that differ from case management by providing labour exchange (FLEX 1) services for their intensive employment assistance (FLEX 3) clients, a contractual condition for FLEX 3 service providers. The ANAO sought to establish that DEETYA has developed monitoring arrangements for this key condition of the contract aimed at assisting FLEX to operate as a continuum of assistance for job seekers.

2.18 The ANAO found no performance measures specified within the contract that would provide DEETYA with an indicator that FLEX 3 providers are indeed meeting this condition of the contract. Furthermore, there are some performance measures in the contract which, if considered in isolation, could provide a misleading indication of a service providers' performance with respect to this contract condition. Specifically, the key means of monitoring FLEX 1 and FLEX 3 service provision is by placements

of clients in jobs⁸. The example outlined below in Table 2.1 and the discussion in paragraph 2.19 illustrate that a FLEX 3 provider could possibly achieve high placement rates and still not meet the contract condition that links FLEX 1 with FLEX 3.

Table 2.1

Example of a process leading to a FLEX 3 outcome

Step 1:	a FLEX 3 client is referred to a FLEX 3 service provider
Step 2:	the FLEX 3 service provider provides FLEX 3 (intensive employment assistance) service
Step 3:	another FLEX 1 provider, identified through the NVDB, is successful in placing the particular FLEX 3 client in a job
Step 4:	the FLEX 1 provider at Step 3 receives a FLEX 1 payment
Step 5:	the FLEX 3 provider receives an interim outcome payment, and possibly a final outcome payment. This provider is recorded as having a client with a job placement outcome.

2.19 Furthermore, it is possible for a FLEX 3 provider to only provide labour exchange and achieve job placements for clients not referred for intensive employment assistance (that is, FLEX 3). For such a provider, FLEX 3 client placements may be achieved through labour exchange service delivery by another provider. Therefore, there is a risk that the provider will not link its services for its FLEX 3 clients and therefore not meet the related condition of contract.

2.20 There are, however, a number of other measures within the contract itself which together may provide DEETYA with some indirect indication that the FLEX 3 service provider is providing FLEX 1 services to their FLEX 3 clients as required by the contract. For example:

- the percentage of outcomes for specific groups (for example, young people, or Aboriginal and Torres Strait Islander peoples) is compared with the percentage of such groups referred for FLEX 3 services, and
- the percentage of job seekers who are satisfied with the quality of service provided (based on the assumption that FLEX 3 job seekers who do not receive labour exchange from their FLEX 3 provider will be dissatisfied with the quality of the service).

2.21 The risk of FLEX 3 providers of not meeting their contractual obligations is further reduced through the in-built incentives for these providers to give preference to providing labour exchange services to their FLEX 3 clients over other eligible job seekers: FLEX 3 providers receive

⁸ Chapter 4 examines performance measures in detail.

significantly greater fees from DEETYA for placing their FLEX 3 clients in jobs compared with other eligible clients.

2.22 As part of its planned review of key performance indicators and development of a monitoring framework (see paragraph 4.8 for details), DEETYA intends to develop a measure of FLEX 3 provider success in achieving job placements (or FLEX 1 outcomes) for their FLEX 3 clients. Such an indicator could be developed from the information held in DEETYA's administrative database. DEETYA plans for this indicator to be used for monitoring and for publication to assist clients choose a suitable provider.

Conclusion - monitoring arrangements

2.23 The ANAO considers the steps taken by DEETYA to minimise the risk of legal challenges arising from using existing legislation and administrative authority are adequate. The ANAO recognises that there is a range of performance indicators already developed for contract management. DEETYA's evaluation of contract performance will be more effective if it implements its plans to develop a more direct means of monitoring effectively the provision of a continuum of assistance to get eligible job seekers into work. The continuum of assistance is a key design feature of the service type FLEX, and it was this key feature which provided the basis for legal experts to conclude that the FLEX arrangements were constitutionally valid.

2.24 The ANAO has concluded that DEETYA's planned performance indicator to measure FLEX 3 provider success in achieving job placements (or FLEX 1 outcomes) for their FLEX 3 clients, will be an important development for monitoring the continuum of assistance to get eligible job seekers into work. Effective monitoring is assisted by setting performance targets or standards for the purposes of benchmarking performance and by reporting performance outcomes against relevant benchmarks. Therefore the ANAO considers that DEETYA needs to benchmark and report against the results of this performance indicator.

Recommendation No.1

2.25 In order to improve the effectiveness of performance monitoring arrangements, the ANAO recommends that DEETYA develop, monitor and benchmark indicators that measure the performance of FLEX service providers in delivering the continuum of assistance to job seekers, as specified in the conditions of contract. DEETYA should also report on the results against these indicators, including on related targets and benchmarks, in their Annual Report.

DEETYA response

2.26 Agreed.

Consistency with Government privacy directions and policies

2.27 The proposed package of new legislation would have extended the coverage of the *Privacy Act 1988* to include providers within the new employment services framework.

2.28 Given that the Government decided not to proceed with the proposed legislation, the only means by which the Government's privacy objectives could be achieved was through the contractual arrangements with providers. The ANAO sought to establish that DEETYA had consulted with the Privacy Commissioner on this issue and that the RFT and the final contract reflected the analysis and feedback provided by the Commissioner's Office.

2.29 The ANAO examined the correspondence between the Privacy Commissioner and the then Minister for EETYA and the Department, as well as the privacy protections within the contractual arrangements between the provider and DEETYA. The ANAO has concluded that the Privacy Commissioner was consulted on the issue of privacy protections within the contract; the contract reflects the Commissioner's comments; and, to the extent possible within contractual arrangements, the Commissioner is satisfied with the adequacy of the protections.

Administrative authority to bind the Commonwealth

2.30 The tender and subsequent contracts with providers represent a substantial financial commitment by the Commonwealth. Therefore the ANAO examined, for key decisions, whether the appropriate administrative authority was exercised. The particular aspects examined by the ANAO were whether:

- the officer issuing the RFT had the administrative authority to do so under his signature; and whether
- the Secretary of the Department had the administrative authority to make decisions on the tender applications and to approve contracts.

2.31 After examining the delegated duties of the officer issuing the RFT and the process followed, the ANAO has concluded that the office holder had the authority to bind the Commonwealth in the issuing of the tender documentation, given this office holder's responsibilities within the Department and the approval of the RFT by the Secretary and the then Minister.

2.32 The ANAO found that legal advice had been sought within DEETYA regarding the authorisation of the Secretary to make decisions on tender

applications and to approve contracts. The advice confirmed the Secretary's authorisation to undertake this function.

2.33 The ANAO therefore concludes that, based on the two aspects examined, appropriate administrative authority was exercised in the implementation of the new employment services market.

Consistency with government policy objectives

2.34 The ANAO examined the decision-making framework for the development of the tendering and contractual arrangements to assess whether this framework has supported the development of arrangements that are consistent with announced Government policy objectives. In particular, the ANAO sought to establish whether:

- DEETYA's internal decision-making processes assisted the achievement of consistency between the tendering and contractual arrangements and the Government policy objectives; and whether
- the Minister was briefed on key issues in the lead up to the Government's decision not to proceed with the specific legislation.

DEETYA's decision-making processes regarding the tendering and contractual arrangements

2.35 As outlined in Chapter 1 (paragraph 1.20), responsibility for the overall implementation of the new employment services market was assigned to one division within DEETYA, the Employment Purchasing Division.

2.36 Because of its pivotal responsibilities in the development of the employment services market, the ANAO examined the processes and structures within, or coordinated by, the Employment and Purchasing Division to establish the role it played in assisting an effective translation of Government policy objectives into tendering and contractual arrangements.

2.37 The ANAO identified two key internal mechanisms:

- *Branch Heads' Policy Meetings* (Branch Heads') and the projects of the associated working groups. Branch Heads', a committee made up of the Division and Branch Heads of the Employment and Purchasing Division, met frequently during the developmental stage of the tender process, and reconvened as the Tender Review Committee during the tender evaluation stage. Branch Heads' commissioned the working groups (see Appendix 2 for a full list) to develop 'think-pieces' or strategy papers for consideration. These papers covered the areas of development, evaluation and implementation of the tender process. The working groups that developed the concepts also had responsibility for

implementing the associated aspect of the tender. Branch Heads' considered the integration of projects across working groups.

- *Policy Clearing House with DSS/Centrelink.* Centrelink has an important role in the front end administration of the new market and in the implementation of the Government's policy objectives including, for example, assessment of job seekers and their referral to providers. In order to achieve the necessary integration, a Policy Clearing House was established between DSS/Centrelink and Employment and Purchasing Division. This committee and its associated working groups developed the micro-policy issues and procedures to assist the implementation of the new market. From DEETYA's perspective, the working groups and one of the Employment and Purchasing Division's branch heads, considered the linkages and integration with other developments in the market. These developments included implementation timeframes and the development of the RFT.

2.38 The work of the Branch Heads' Policy Meetings, including its interaction with the Policy Clearing House, provided a single organisational structure with defined responsibility, through which all developments relating to the tendering out process could be considered and integrated.

2.39 In order to establish that these decision-making frameworks resulted in tender and contract arrangements that reflected the policy objectives outlined in the Minister's August 1996 Statement, the ANAO examined the features of the tender documentation and contractual arrangements. (See paragraph 1.3 for the list of policy principles.)

2.40 Table 2.2 illustrates how Government objectives were taken into account in the market design. The ANAO did not identify any tender and service conditions which were inconsistent with the Government's policy objectives.

2.41 The Department also took account of the Government's policy objectives when providing advice on the amendments proposed by the Senate to the *Reform of Employment Services Bill (1996)*.

2.42 The ANAO has concluded that there was consistency between the tender and service conditions and the policy framework decided by the Government. As many of these tender and service conditions were developed through the Branch Heads' Policy Meetings, the ANAO considers that this organisational structure and its associated processes and structures, including the Policy Clearing House with DSS/Centrelink, was effective in providing these outputs.

Table 2.2**Illustration of consistency between tender and service conditions and Government policy principles**

Government Policy Principles Conditions	Examples from Tender and Service
<p>The assistance provided to job seekers should be based on their individual needs and their capacity to benefit from it in terms of achieving a sustainable employment outcome.</p>	<p>Assistance provided and paid for commensurate with client needs as identified through, for example, the Job Seeker Classification Instrument, an assessment tool to assist Centrelink staff select FLEX 3 clients by identifying the relative difficulty job seekers have in seeking employment.</p>
<p>Providers should have access to flexible forms of assistance that fit the needs of job seekers.</p>	<p>Within the terms and conditions of the contract, service providers are able to use a high degree of discretion in achieving outcomes for job seeker clients, for example through the use of sub-contracting with Departmental approval.</p>
<p>The incentive framework should reward providers of labour market assistance primarily for placing job seekers in real jobs, with additional incentives for placing those most in need.</p>	<p>Most payments to service providers are linked in some respect to substantial decreases in reliance on income support by the job seeker. For example, FLEX 1 payments are made to providers once an eligible job seeker is placed in a job recorded by the provider on the National Vacancy Data Base.</p>
<p>A competitive market for employment placement services should separate purchaser from providers and ensure that providers operate on the basis of competitive neutrality.</p>	<p>Competition promoted as follows:⁹</p> <ul style="list-style-type: none"> • competitive pricing for all services with the exception of service that delivers intensive assistance (FLEX 3); • limiting the market share held by any one provider within a region; • allowing client choice of service provider; • the market providing no guarantee of business, but rather the ability of a provider to be paid by government for service provision, if the client chooses that provider; • Employment National, the government-owned service provider, required to be assessed and meet the same conditions of contract as other tenderers; • separation of the service provider component of the portfolio (formerly CES and EAA) from the purchaser component; and • the appointment and role of a probity adviser (see Appendix 3).

⁹ See also Chapter 6, Reducing the Risks of Unfair Advantage.

Table 2.2 (cont)

Government Policy Principles Conditions	Examples from Tender and Service
Conditions for payment of income support for unemployed people should be linked closely with active employment assistance measures.	Service providers delivering intensive assistance (FLEX 3) will be required to negotiate an Activity Agreement with their clients. When approved, job seekers will need to comply with the Agreement for continued income support through the Newstart payment.
Job seekers and employers should be able to receive high quality and streamlined service from agencies and providers with which they interact.	Stream-lined service delivery for job seekers and employers is achieved through eg the integration of service delivery within Centrelink, and the one-stop shop concept for employers, trainees and apprenticeships through ELTSS providers.

Briefing of the Minister on implementing the reforms using existing legislation and administrative authority

2.43 The ANAO examined all the briefings to the Minister in the lead up to the Government's decision to implement the reforms using existing legislation and administrative authority. The ANAO found that the Minister had been briefed on the key risks, contingency options to reduce the risks, analysis of the Senate's amendments to the package of legislation with respect to Government policy, and significant legal issues associated with implementing the reforms using existing legislation and administrative authority.

2.44 The ANAO has concluded that the Minister was provided with comprehensive briefings on the key developments and risks in regard to legal issues leading up to the decision not to proceed with specific legislation but rather to implement the reforms using existing legislation and administrative authority.

Conclusion - consistency with Government policy objectives

2.45 Overall, the ANAO concluded that the decision-making framework, both through internal Departmental structures and through Ministerial briefing processes, ensured that the tendering and contractual arrangements were consistent with Government policy objectives.

3. The Employment Services Tender

This chapter examines the management of the employment service tender. It concludes that DEETYA provided adequate information to potential tenderers about the nature of the tender process and the contractual arrangements. However, additional consultation with potential tenderers could have improved aspects of the information provided to help tenderers develop bids. In addition, explanation of the tender through the use of examples may have added value. The ANAO found that DEETYA effectively managed the potential risks associated with the tender evaluation process and established procedures that helped to ensure that the evaluation was implemented effectively. Indicative sampling of tender outcomes suggests that the tender evaluation process was conducted effectively.

Introduction

3.1 The employment services tender was a major element in preparing for a successful employment services market. This chapter reviews the management of the tender exercise to assess whether DEETYA:

- provided potential bidders with adequate information;
- effectively managed risks associated with the tender evaluation; and
- effectively implemented the tender evaluation process.

3.2 In addition the chapter considers indicative samples of tender outcomes to assess whether they were in accordance with the RFT and DEETYA's tender evaluation procedures.

3.3 Together with Appendix 3 this chapter provides a case study of a major government tender exercise.

Provision of information to potential bidders

3.4 Prospective tenderers are more likely to submit a valid bid if they receive comprehensive information prior to the tender and in the RFT documents. The ANAO examined the information provided by DEETYA prior to, and during, the tender period.

The pre-tender submission stage (prior to 4 August 1997)

3.5 The ANAO found that DEETYA provided prospective tenderers with comprehensive information about the tender during this stage. In particular, it issued a tender information kit in December 1996 and an RFT exposure draft in May 1997. Ministerial media releases and an employment

services bulletin board on the internet provided additional information. The ANAO found that the information clearly foreshadowed the nature of the tender and the contents of the final RFT.

3.6 The Government decision not to proceed with the Reform of Employment Services legislative package, with consequent changes to the nature of the tender and the contents of the RFT, was made in July 1997 only one month before the release of the RFT. However, the ANAO found that media releases, special information sessions throughout Australia and information posted on the internet provided effective mechanisms for informing potential tenderers of the changes.

Tender submission stage (4 August 1997 to 16 September 1997)

3.7 During the tender submission stage DEETYA provided the RFT documentation to potential tenderers as well as a series of information sessions throughout Australia and an information hotline.

RFT documentation

3.8 The RFT provided comprehensive information relating to the tender processes and the contractual conditions. However, there are indications that the usefulness of regional labour market information provided in the RFT could have been improved.

3.9 The RFT included labour market statistics relating to job seeker profiles, case management outcomes and CES vacancies and placements in addition to qualitative information about each of the 29 regions. The information was not meant to be comprehensive but was intended to provide tenderers with an equal basis on which to prepare their bids. It was expected that potential providers would also have their own sources of information.

3.10 The ANAO considers that this statistical information assisted tenderers to assess the overall size of the market in each region. However, the ANAO notes that there were no consultations by DEETYA with potential providers on the type and detail of the statistical data which would be of value to them in developing their business budgets. For example, outlines of the statistical tables to be included in the RFT were not described in the Exposure Draft of the RFT. ANAO discussions with potential providers and their representatives revealed that the statistical regional labour market data was of limited value in developing business budgets.

3.11 The ANAO recognises that consultations with potential providers may have been time consuming, within a very tight time-frame for the development of the tender, and that the information provided by DEETYA needs to be restricted to that which is not commercially sensitive.

Nonetheless, the outcome from such consultations may well have provided DEETYA with a better basis on which to select information for inclusion in the RFT.

3.12 Based on its discussions with providers and the consultant to the audit the ANAO considers that statistics on the monthly number and rates of outcomes for particular job seeker profiles (on a regional basis or sub-regional basis if there is significant variation across the region) would have been of greater value to providers to assist them in estimating income flows. This is a significant volume of data which would have been costly to print in the RFT. Nevertheless, such data could have been made available electronically, for example via the Internet, if the cost of printed material were considered too significant.

Audit conclusion concerning RFT documentation

3.13 The ANAO concludes that the RFT contained adequate information to inform potential providers about the nature of the tender process and the contractual conditions. However, DEETYA could have improved the usefulness of the statistical information made available to tenderers at minimal cost through consultations prior to the release of the RFT.

3.14 The ANAO recognises that DEETYA was limited in its ability to consult with potential providers due to time constraints on its RFT development. Preparation of the documentation for the next tender round will not necessarily be subject to such tight time constraints. The ANAO considers that there would be value in DEETYA providing potential tenderers with the opportunity to provide it with feedback on the value of data it proposes to include in the tender documentation.

3.15 The ANAO recognises that current providers will have their own operational information relating to the first tender round. However, there may be potential new entrants to the market in the second round who would benefit from information provided in the RFT.

Recommendation No.2

3.16 The ANAO recommends that in the context of the next tender round for the provision of employment services, DEETYA seeks feedback from potential tenderers on the usefulness of the statistical data it intends to include in its tender documentation to assist tenderers identify potential income flows.

DEETYA response

3.17 Agreed. DEETYA agrees that it would be logical to test the statistical data to be contained in the Request for Tender for the next tender round with potential tenderers. DEETYA notes that in the first tender round,

potential tenderers had limited knowledge of the market which meant that consultation on this aspect of the Request for Tender would have been less effective.

Information sessions and information hotline

3.18 DEETYA provided information sessions and an information hotline to help explain the final RFT. A number of potential providers expressed dissatisfaction to the ANAO with these mechanisms. For example, some providers suggested that examples should have been provided in the information sessions to explain concepts within the RFT such as the relationship between the bid range at particular sites and the range for an overall regional bid.

3.19 The ANAO found that DEETYA's decision not to provide examples at these sessions was consistent with the 'Protocol for Dealing with Tenderers' Representations and Requests for Information'. This protocol was developed as part of the Department's Probity Plan 'to ensure that each tenderer is treated equitably and that no party receives an unfair advantage'. DEETYA's actions were in accordance with good tendering practice in providing to prospective tenderers only information that is consistent with the RFT. However, the ANAO considers that DEETYA could better inform the market in future tender rounds of the restricted nature of the information available through the hotline and from the information sessions.

3.20 The ANAO understands that DEETYA had considered the general issue of providing examples to assist bidders to conform with the RFT but rejected this approach on the grounds that it could limit the scope of responses by tenderers and potentially allow legal issues to arise if a bidder relied on the example.¹⁰ However, the ANAO considers that the provision of a range of examples, perhaps based on the 'dummy' tenders that were prepared for the tender simulations, could have indicated the diversity of possible responses, rather than unnecessarily limiting the scope of responses by bidders. The ANAO therefore considers that DEETYA, in consultation with its probity and legal advisers, should further consider the possible development of published examples to clarify difficult concepts in the next tender round.

3.21 During interviews with DEETYA officers and the Probity Adviser, the view was expressed that the low level of non-conformance by bidding organisations at the tender registration stage (44 bids were rejected out of

¹⁰ The ANAO notes that DEETYA had arranged access to legal and probity advice to ensure that legal liability was reduced in issues such as this.

1016 bids received) indicates that the market was well informed on the nature of the tender. The ANAO accepts this is a useful performance indicator for this issue but notes that the registration/conformance check only measured some aspects of bidder understanding. For example, some potential service providers expressed concern at the inclusion of a clause in the draft contract allowing the Commonwealth to terminate the contract with 14 days notice - a condition not normally included in private sector commercial contracts. The ANAO found that this is standard practice in Government contracts and allows the Commonwealth to deal with major public policy changes, brought about, for example, by a change of Government. The ANAO considers that DEETYA could better inform the market in future tender rounds of the reasons for the inclusion of this clause.

Conclusion concerning information sessions and information hotline

3.22 The ANAO concludes that DEETYA could have better informed potential tenderers of:

- the restricted nature of the information available through the hotline and from the information sessions; and
- the reasons for the inclusion of the 14-day termination clause in the draft contract.

3.23 The ANAO also concludes that there is scope to consider further the development of published examples to clarify difficult concepts in future tenders.

Recommendation No.3

3.24 The ANAO recommends that in future tender rounds for the provision of employment services DEETYA informs the market of:

- the restricted nature of the information available outside the RFT; and
- the reasons for the inclusion of clauses in government contracts that are not normally included in private sector contracts but which are needed to meet the specific requirements of government.

DEETYA response

3.25 Agreed. DEETYA will ensure that the Request for Tender for the next tender round will include general provisions which:

- note that in a commercial tendering environment there are probity requirements in relation to provision of information to tenderers; and
- indicate that the contract contains standard clauses contained in all Government contract which are necessary to protect the Commonwealth and to give the Commonwealth the flexibility to deal with the implications of a change of government policy.

Recommendation No.4

3.26 The ANAO recommends, that in the next tender round for the provision of employment services, DEETYA, in consultation with appropriate legal and probity advisers retained for this purpose, seeks feedback from potential tenderers on ways to clarify concepts within the RFT, for example through the use of published examples.

DEETYA response

3.27 Agreed. This option was considered and rejected in this tender round as a result of advice from DEETYA's probity and legal advisers. However DEETYA will again consider this option in the next tender round in conjunction with its then probity and legal advisers. DEETYA notes that as part of its post implementation work, it will be consulting with existing tenderers on the clarity of the RFT.

Management of potential risks associated with the tender evaluation

3.28 This section examines how DEETYA managed the major potential risks associated with the tender evaluation process described in Figure 3.1. Firstly, it considers DEETYA's general approach to reducing risks. Secondly, it considers some specific actions aimed at reducing risks associated with legal action in relation to the tender evaluation.

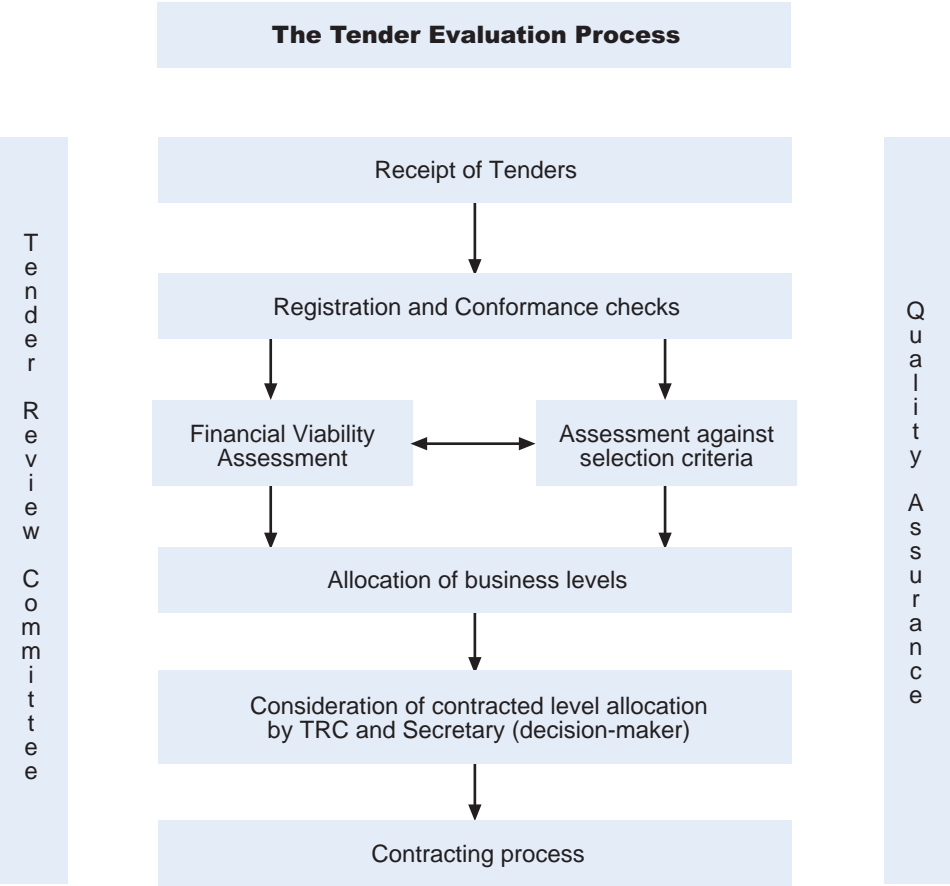
General strategies for managing risks

3.29 In conducting a large scale tendering exercise, a number of options exist for managing risk. One approach is to pilot the tender in a smaller geographical area. However, DEETYA rejected the use of piloting. A key consideration in this decision was the potential that such a pilot would reduce the morale of the staff working in other areas of the CES/EAA as, inevitably, the introduction of competition would lead to job losses in the CES/EAA in the region selected for the pilot.

3.30 A second approach is to use a multi-stage process which could reduce the field of potential competitors through pre-qualification and thus reduce tendering costs for both parties. This is especially relevant in establishing new arrangements where many bidders are likely to be rejected and tendering costs for bidders are high. The Government rejected such an approach on the grounds that it may not necessarily reduce costs and on the basis that there was insufficient time available to implement such an approach.¹¹

¹¹ See Chapter 7 for a further discussion of this.

Figure 3.1
The tender evaluation process



(Adapted from a diagram developed by DEETYA)

3.31 DEETYA decided to adopt an approach based on:

- simulating the tender processes prior to ‘live’ operation as a major means of identifying and reducing risks;¹²
- comprehensive training for tender evaluation staff; and
- independent quality assurance.

¹² Additional information about the simulations is contained in Appendix 4.

Simulations

3.32 Simulation was a critical approach in DEETYA's successful testing of the tender processes and preparation for the tender. It enabled DEETYA to identify numerous concerns which could then be addressed and rectified prior to the actual tender.

3.33 In conducting these simulations DEETYA used dummy tenders prepared by DEETYA Divisions, the Department of Immigration and Multicultural Affairs and the Probity Adviser to the tender. The use of such dummy tenders in simulations significantly reduced risks by facilitating:

- the training of staff in evaluation processes using realistic bidding responses;
- refinement of assessment processes and understanding of potential difficulties in using the quality assessment criteria when applied to bids; and
- refinement of the RFT through internal and external feedback on possible interpretations of the various provisions in the RFT.

Training

3.34 In addition to the use of simulations, DEETYA implemented extensive training to enhance the effectiveness of the evaluations. Training was comprehensive, detailed and timely, the depth of treatment being tailored to the significance of the activity.

3.35 The training for the assessment of tenders against selection criteria is indicative of its effectiveness. The assessors received three separate stages of training, focusing on:

- knowledge of local labour market conditions, the RFT and tender process;
- probity issues, an introduction to the assessment tools, practice in assessing tenders, exploration of team dynamics issues; and
- immediately prior to the assessment stage, an update on assessment issues, an open forum, labour market briefings and on team leader/facilitator training.

3.36 DEETYA used the training to identify, improve and confirm staff competencies. This enabled DEETYA to select assessment team members for individual teams to ensure an appropriate mix of skills and experience. Outside expertise was also brought in to complement existing resources as necessary.

Quality assurance

3.37 DEETYA established comprehensive quality assurance procedures to ensure that the evaluation procedures that had been developed were followed and that there was an objective, consistent assessment of tenders.

3.38 In addition to internal quality assurance procedures, an independent quality assurance team was appointed comprising 15 observers from Commonwealth, State and private sector organisations under the direction of the Probity Adviser to the tender. The role of the team included:

- taking an overview of the whole of the tender process to ensure that linkages between each part were working and that failure in one part of the process did not impact adversely on other parts;
- detailed observation and analysis of each part of the tender process; and
- regular and ad hoc reporting to the tender Probity Adviser and the Tender Review Committee on the outcome of the team's analysis of the process.

3.39 DEETYA provided training for the team as well as a quality assurance manual that detailed significant issues in the overall process, such as:

- the key role of document management;
- communication flows (especially for consistency in procedures);
- the need for consistency of procedures with the RFT; and
- potential weaknesses and issues to be considered in observing each stage of the evaluation.

3.40 The team undertook sampling and analysis of the evaluation of tenders at each stage to ensure consistency and objectivity of decision making. For example, during the assessment against selection criteria phase it used a series of daily reports of assessments broken down by region by service and evaluation team to analyse trends, inconsistencies and best practices. This could be then be used to select tenders for further examination.

Other strategies

3.41 In addition to using simulations, training and quality assurance, DEETYA reduced risk through:

- consulting with other organisations undertaking tenders, for example Purchasing Australia and the Department of Defence, and with competitive contracting and tendering specialists in the then Department of Finance; and

- identifying gaps in expertise and addressing them at an early stage. For example, external assistance for the following major services was obtained:
 - probity advice;
 - editing of RFT for clarity;
 - printing / distribution / formatting of the RFT;
 - physical security at the tender evaluation site;
 - records management services, including document security;
 - specialist assistance with financial viability assessments; and
 - data processing for registration of tenders.

The required expertise in these services was not readily available in-house. External sourcing of these services provided a substantial benefit to the effective conduct of the tender. In particular, the probity expertise assisted in managing risks that are discussed in more detail in the following section.

Management of risks relating to legal liability in relation to the evaluation

3.42 Recent decisions of the Federal Court¹³ have provided cautions to tenderers concerning the need to manage the potential risk of legal liability. DoFA has pointed out that these cases

*... highlight the need for agencies to have practices which ensure that the tender process is properly structured and managed to provide procedural fairness for all tenderers, and to minimise the potential for legal liability ... The ability of tenderers to challenge a tender process is now an identifiable risk that must be managed.*¹⁴

3.43 The impact of a legal challenge to DEETYA's tender exercise could have been significant given the size of the tender and its high visibility in the community. The ANAO examined actions taken by DEETYA to manage the risk of a legal challenge. In particular, based on the decisions of the Federal Court, which highlight procedural fairness and consistency between the tender evaluation processes and the RFT as substantive issues, the ANAO assessed whether DEETYA:

- established effective mechanisms to ensure procedural fairness for bidders; and
- ensured that the tender evaluation process was consistent with the RFT.

¹³ Hughes Aircraft Systems International v Air Services Australia; J. S. McMillan Pty Limited, Pirie Printers Holdings Pty Limited and Imsep Pty Limited v Commonwealth of Australia;

¹⁴ Department of Finance and Administration 1997 *Fair Dealing in Tendering*, Commonwealth Procurement Circular 97/5, 27 November.

Procedural fairness

3.44 DEETYA appointed a firm of consultants in December 1996 to provide advice and quality assurance in relation to the tender, the aim being to ensure that the process met the highest standards of procurement. As part of their advice the consultants prepared a probity plan in February 1997 containing the probity principles and processes to be followed in the tender. Specifically the plan dealt with:

- probity briefings for all staff engaged in the tender exercise;
- a probity audit report at the end of each phase in the plan on whether the processes set down have been followed;
- security of documentation;
- access to tender documentation by potential tenderers;
- management of conflicts of interest;
- access to data and treatment of DEETYA staff;
- treatment of existing service providers; and
- qualifications and training of assessors.

3.45 A probity plan detailing the major activities for the tender and the associated probity issues, key probity steps and major probity milestones was also published with the RFT. The probity principles contained in the published probity plan included:

- ensuring integrity in all evaluation and selection processes;
- ensuring all applications are assessed objectively and consistently; and
- promoting defensibility of process.

3.46 The ANAO found that DEETYA had pursued these principles through:

- probity training for each DEETYA participant prior to their involvement in the tender evaluation. The training included a discussion of probity and how to ensure probity objectives were met using relevant recent examples. Each participant had the opportunity to declare conflicts of interest, with DEETYA personnel signing a conflict of interest undertaking and non-DEETYA personnel signing a deed of confidentiality. More advanced probity training, which examined the recent Federal Court decisions, was provided for assessors, supervisors and managers;
- extensive checking of evaluations including reassessment, adjudication and use of independent consultants to check financial viability assessments;

- extensive quality assurance activity on each component of the tender evaluation process. This provided rapid feedback to work teams and managers and was a significant means of managing risks; and
- detailed documentation of the evaluation process prior to the commencement of evaluation. The ANAO found that the documentation was comprehensive, detailed, logical and defensible. It included:
 - agenda and minutes of the Employment and Purchasing Division Branch Heads policy meetings and the Tender Review Committee;
 - training materials;
 - a ‘Tender Evaluation Operations Manual’;
 - business allocation guidelines;
 - quality assurance reports;
 - model questions and answers for hot-line operation and scripts for tender information sessions;
 - simulation documentation and reports; and
 - RFT documentation.

The Tender Evaluation Operations Manual was particularly comprehensive and provided clear procedures and guidelines. A sample of quality assurance reports and decisions of the Tender Review Committee, which made recommendations on actual bids, contained detailed reasons for recommendations and decisions.

3.47 In addition to probity advice, DEETYA had access to legal advice from the Department’s General Legal Counsel throughout the development and conduct of the tender.

Consistency of the tender evaluation with the RFT

3.48 The recent decisions of the Federal Court highlighted the need for consistency between the information in the RFT and the tender evaluation. The ANAO found a number of indications that the evaluation process was consistent with the RFT, for example:

- training provided by the Probity Adviser to all participants in the tender evaluation process emphasised the need to ensure consistency with the criteria in the RFT;
- the phasing of the tender evaluation process into discrete stages reflected the tender assessment process described in the RFT;
- the criteria and methodology used in the tender evaluation process were consistent with the RFT; and

- guidance for the operation of the quality assurance team required that any policy changes be scrutinised to ensure they were consistent with the RFT.

3.49 In addition, the ANAO found that training and preparation for the operation of the information hotline and the tender information briefing sessions following the release of the RFT emphasised that any information provided must be consistent with the RFT.

Audit conclusion concerning management of potential risks associated with the tender evaluation

3.50 The ANAO concluded that DEETYA had effectively managed risks associated with the tender evaluation by conducting detailed simulations to refine and prepare for the final process, implementing comprehensive training, establishing independent quality assurance and obtaining appropriate external expertise to assist with the process.

3.51 The ANAO also concluded that DEETYA had effectively reduced the risks associated with legal liability in the conduct of the tender evaluations by establishing procedures to help ensure procedural fairness and consistency with the RFT.

Effectiveness of the tender evaluation process

3.52 The objectives for the tender as set down in the RFT were to:

- ‘select viable providers with the capability to provide the services;
- provide clients with a choice of providers;
- encourage the development of a competitive, innovative and flexible employment and training services market by contracting a range of providers; and
- achieve value for money.’¹⁵

3.53 The ANAO examined the evaluation process to assess whether DEETYA had implemented satisfactory procedures to help ensure that these objectives would be achieved.

Selecting viable providers with the capability to provide the services

3.54 Assessment of the viability and capability of tenderers was central to the tender evaluation process described in Figure 3.1. Of particular relevance are the financial viability assessment and the assessment against selection criteria. The ANAO examined DEETYA’s procedures for these

¹⁵ Tendering Conditions and Draft Contract for Employment Services p. 2.

evaluation stages to assess whether they were appropriately designed and provided a sound framework for selecting viable providers with a capability to provide the services.

Financial viability assessment

3.55 DEETYA undertook detailed financial viability checks of bidders to assess financial capacity to deliver the service requirements and meet contractual obligations over the contract period. The results of these checks assisted in determining the degree of risk faced by DEETYA when contracting a particular tenderer. Bids from organisations assessed as not financially viable were set aside at this stage.

3.56 The checks involved examining data provided by the tenderer in response to the RFT, including:

- basic information concerning the business, for example details of principals and the size of business;
- past dealings with DEETYA and the Commonwealth of Australia;
- detailed financial statements;
- financial and business references (including guarantees from ultimate holding entities where applicable);
- relevant history including business failure, bankruptcies, Government investigation of the organisation, litigation or any significant change since the accounts provided with the bid were prepared; and
- projected cash flows as a result of a successful tender.

3.57 Further information gathering occurred through the checking of:

- internal databases containing evidence of past dealings with DEETYA, including, for example, data relating to past performance as a contracted case manager; and
- external databases, for example, to check credit ratings.

3.58 A proprietary computerised assessment product, or ‘financial indicators package’ was used as a significant element of the financial viability assessment process. This product, developed from a significant research base, was used to analyse a number of standard accounting ratios from the data requested from the applicant. This resulted in a score reflecting the financial viability of the business and additional qualitative comments where appropriate. The product was chosen by DEETYA after research into the availability and methodology of such tests.

3.59 Additional analysis of the qualitative information provided by the financial indicators package and the financial history provided by the bidder resulted in an initial assessment of financial viability.

3.60 A secondary analysis included an assessment of, for example, expected cash flows submitted in the bid. Cash flows were highlighted where the outcome rates were clearly significantly greater than the greater of DEETYA’s benchmarks or the organisation’s past performance. If the expected cash flow submitted by the bidder were unrealistic, this could be used as an input in assessing their financial viability.

3.61 The ANAO found that the financial viability assessment procedures were documented in detail and provided for a comprehensive, objective and defensible methodology. The procedures required that assessments be made by trained staff and checked by qualified accountants. In addition, certain assessments were required to be reviewed, for example all cases classified as failing the financial checks were reviewed by an independent assessor.

Assessment against selection criteria

3.62 This stage assessed tenders against selection criteria that were detailed in the RFT for each service. The criteria focused on assessing whether the tenderer had

- effective strategies to deliver the services;
- relevant expertise and /or experience; and
- suitable facilities and accessible services.

3.63 Table 3.1 shows the criteria used for the selection of FLEX service providers.

Table 3.1
FLEX selection criteria

Stage 1: Quality Assessment
Effective strategies to deliver FLEX in the labour market for which you are tendering
Expertise and /or experience relevant to the delivery of FLEX
Suitability of facilities and accessibility of services
Stage 2: Price Assessment (applies to price competitive categories only)
Competitiveness of price

3.64 The ANAO found that the assessment procedures were documented in detail and provided for a comprehensive, objective and defensible methodology. In addition, the process required assessment teams to include regional labour market experts. The results of the assessments were also subject to significant review activity, for example through reassessment and adjudication where necessary and by the Tender Review Committee and quality assurance processes.

Audit conclusion concerning selecting viable providers with the capability to provide the services

3.65 The ANAO notes that financial viability assessments are by nature valid only at the point in time at which they are conducted. Nevertheless, within these limitations, the ANAO concluded that the financial assessment procedures specified would provide a satisfactory degree of assurance as to the likely financial viability of providers.

3.66 The ANAO considers that the financial viability assessment is an example of better practice in providing for a rigorous and detailed assessment of financial viability on a large number of tenderers in a short time. At the time of the completion of the audit, the ANAO understands that the process is to be costed on a cost per entity basis following the completion of the tender process. The ANAO supports the costing as there are indications the process provides significant value for money.

3.67 The ANAO concluded that the procedures used for assessment were based on a comprehensive and defensible methodology and provided a sound framework for selecting providers.

Client choice, market development and value for money.

3.68 The tender evaluation process aimed to provide value for money which implies that the allocation of business levels stage in Figure 3.1 should take into account both the cost and the quality of the services being offered by providers. In addition, however, the tender objectives require certain minimum numbers of providers to be available. For example for FLEX it is expected that at least five providers would be available in each region, for NEIS at least two or three providers and for ELTSS between two and four providers. Further, for FLEX and NEIS it is not expected that any one provider would be allocated more than 50 per cent of the available business in any region. The RFT therefore allows DEETYA to select lower ranked tenderers (in terms of cost or quality of services) in order to achieve these additional requirements.

3.69 In addition to these coverage and provider diversity requirements, the RFT also allows for the selection of lower ranked tenderers in order to meet the need for specific specialist services for particular client groups.

3.70 The ANAO examined the FLEX business levels allocation procedures to assess whether they were consistent with these requirements.

3.71 DEETYA reduced the chances of a suitable FLEX tenderer being incorrectly classified as unsuitable by ensuring that tenders ranked as unsuitable in the quality and financial viability assessments were subject to checking processes. For example, all tenders classified as unsuitable on quality grounds were subject to an independent reassessment stage to check

the decision. In the financial viability assessment process DEETYA included checks of decisions to classify tenders as unsuitable, including assessment by an independent external consultant in more complex cases. These processes maximised the number of providers to whom business could be allocated.

3.72 The assessment stage resulted in a ranking of FLEX 3 providers based on assessment against quality criteria (see Table 3.1). For FLEX 3, cost was not an issue as the tender was based on a fixed price. For FLEX 1 and 2 services, however, where the tender was price competitive, the assessment stage assessed tenderers as either suitable or not suitable against the quality selection criteria, after which the suitable tenderers were ranked in terms of unit cost.

3.73 Value for money would be achieved by selecting FLEX 3 providers that are the highest ranked in terms of quality. For other FLEX services value for money would imply selecting the lowest unit cost providers from those that were ranked suitable on other criteria.

3.74 The ANAO found that the business allocation procedures for FLEX balanced the need for provider diversity, geographic and specialist coverage and value for money. In particular:

- the highest ranked quality FLEX 3 providers may not have been allocated work to their maximum capacity in order to ensure that a sufficient range of providers was available or to ensure that such a provider did not have more than 50 per cent of the market in a particular region; and
- in the case of FLEX 1 and 2 providers an initial process allocated the maximum possible business to the lowest price providers ranked as suitable. However, subsequent iterations addressing geographic and specialist coverage and the diversity criteria may have required higher priced providers to be allocated business at the expense of the lower priced bidders. However, once these other criteria were met, DEETYA allocated business in order to minimise costs.

Audit conclusion concerning client choice, market development and value for money.

3.75 The ANAO concludes that procedures for the allocation of business provided for a satisfactory compromise between the objectives of value for money, diversity of providers and geographic and specialist coverage.

Analysis of outcomes of the tender evaluation process

3.76 The ANAO analysed samples of tender outcomes to provide assurance that the outcomes were consistent with the tender evaluation process and the RFT. The scope of the analysis was limited to several indicative samples and did not constitute a probity check on the process. The samples are used to examine whether:

- outcomes reflected an assessment of a tenderer's previous expertise;
- business allocation decisions in one rural region and one metropolitan region were fully documented and justified;
- certain aspects of the assessment and allocation decisions were conducted effectively in relation to outcomes for a private sector provider, a small community sector provider and the public provider in a major metropolitan region; and
- the allocation of business in two country regions, both incorporating major regional centres, and one city region were consistent with the broad expectations of provider diversity specified in the RFT.

Assessment of expertise/experience

3.77 The assessment against selection criteria included a quality assessment criterion examining the expertise and/or experience of tenderers relevant to the delivery of the particular service types. The ANAO analysed outcomes from the tender and found that organisations currently funded to operate as providers of related labour market program or case management services were more likely to be successful than other tenderers. This is shown in Table 3.2.

Table 3.2

Relative success rates for currently funded and not currently funded tenderers

	Currently funded	Not currently funded	Total
Total tenderers	569	447	1016
Successful tenderers	243	63	306
Successful tenderers as a % of total tenderers	43	14	30

3.78 Table 3.2 shows that 43 per cent of currently funded tenderers were successful compared with only 14 per cent of tenderers who were not currently funded. Furthermore, across each service type, the proportion of providers contracted includes significantly more currently funded as opposed to not currently funded providers. This is illustrated in Table 3.3 below.

Table 3.3**Distribution of current and non-current service providers**

Service Type	Currently funded providers	Providers not currently funded	Currently funded providers as a percentage of total providers
FLEX 1	195	45	81
FLEX 2	96	21	82
FLEX 3	106	19	85
NEIS	58	6	91
ELTSS	42	17	71
TOTAL	243	63	79

Note: The above table does not include FLEX Project Contracting, which only involved a total of 5 providers across Australia. Current providers do not include Employment National or new providers whose key personnel have extensive experience with contracted organisations. In effect, this means that the final column gives a conservative estimation of the percentage of current providers.

3.79 Tables 3.2 and 3.3 indicate that DEETYA took into account previous experience and expertise when evaluating tenderers.

Justification of business allocation decisions

3.80 The ANAO examined the allocation of business for FLEX 1 in one rural region and one metropolitan region to obtain an indication as to whether the business allocations had been fully justified, documented and approved in accordance with the internal tender processes and the requirements of the RFT.

3.81 The ANAO found that detailed and comprehensive reports on proposed business allocations were prepared for consideration by the Tender Review Committee. The reports included:

- a detailed listing and description of options resulting from the allocation process;
- a justification of the proposed option in terms of value for money, provision of specialist services and geographical coverage; and
- financial viability comments on each tenderer.

3.82 The Tender Review Committee considered the FLEX 1 allocation for the bid regions and made recommendations to the Secretary together with a report including details similar to those included in the report to the Tender Review Committee. Issues addressed included the likely volume of business in a specific regional centre and associated outreach capability, lack of coverage in another sub-region, financial viability and the consequences of contracting various bidders. The Secretary's decision was

recorded and the Secretary subsequently signed a document authorising the allocations.

3.83 Subsequently, a small number of tenderers declined offers of business, resulting in two further rounds of re-allocation of business, following the process described above. Adequate geographical coverage was a key consideration in the detailed justification for each of these re-allocations.

Implementation of aspects of the tender assessment and allocation process

3.84 The ANAO examined tender processes that led to outcomes for three types of organisation (a private sector provider, a small community sector provider and the public provider) that had been allocated business in a major metropolitan region. Specifically, the ANAO examined whether:

- supporting documentation for financial viability checks was available;
- FLEX 3 assessments against selection criteria adequately considered the priority ranking for those criteria as required by the RFT;
- FLEX 1 assessments gave equal weighting to the non-price selection criteria as required by the RFT; and
- the price contracted for FLEX 1 was consistent with the tender applications and the RFT.

3.85 The ANAO found that:

- detailed documentation supporting decisions on financial viability checks was available for each organisation. These documents reflected the documented financial viability checking procedures, paragraphs 3.55-3.61;
- the aggregated score for FLEX 3 assessments for these organisations was based on specific weightings for each criterion which were consistent with the priority outlined in the RFT;
- FLEX 1 assessments gave equal weighting to the non-price selection criteria; and
- the price contracted for FLEX 1 was consistent with the tender applications and the RFT. In particular, tied FLEX 1 business was allocated at the highest non-specialist price offered in the region and the quantity allocated reflected the ratios for tied FLEX 1 business specified in the RFT.

Diversity

3.86 The ANAO examined whether the allocation of business was consistent with the broad expectations relating to the diversity of providers specified in the RFT.

3.87 The RFT noted that there was no fixed view on how many service providers would be contracted to provide the services in a particular region or major centre. In addition, it noted that the contracting of too many providers might jeopardise the financial viability of providers. Nevertheless, consistent with the desire for client choice, it included some broad expectations relating to the number of service providers and the allocation of business to those providers. These expectations are shown in Table 3.4.

Table 3.4

Broad expectations relating to business allocations

	Number of providers in each region	Percentage of business allocated to any one provider
FLEX	At least 5, substantially more in major metropolitan regions	It is not expected that any one provider would be allocated more than 50% of available business in any region, unless there is a need for wide geographic coverage and or there is a substantial price differential between bidders.
NEIS	At least 2 or 3	As for FLEX
ELTSS	Between 2 and 4	Not specified

3.88 These broad expectations gave DEETYA a degree of flexibility in contracting service providers. DEETYA also had the additional option of directing the Government service provider to undertake business on a fee for service basis where coverage was unsatisfactory.

3.89 The ANAO assessed whether these broad expectations were met in:

- two country regions, both of which incorporate major regional centres; and
- one city region.

3.90 The ANAO found that DEETYA had allocated business in each of the three regions examined in order to produce allocations that were consistent with the broad expectations identified in Table 3.4.

Conclusion - indicative analysis of outcomes of the tender process

3.91 The ANAO concluded that the samples analysed indicate that DEETYA:

- effectively assessed tenderers against the selection criteria related to previous experience;
- recorded detailed justifications of business allocation decisions;
- implemented certain aspects of the assessment and allocation procedures effectively; and
- satisfied broad diversity expectations set out in the RFT.

4. Performance Management

This chapter examines DEETYA's arrangements for managing the performance of individual service providers. The ANAO concludes that DEETYA could improve its use of key performance indicators (KPIs) by specifying a number more clearly; by establishing clear standards of performance for all KPIs; and by identifying the relative importance of the various indicators of outputs and outcomes. The ANAO found that the contractual incentives offered during the current tender period were consistent with the underlying principle of the service delivery changes whereby service providers are rewarded for achieving sustainable placement outcomes, especially for the longer term unemployed. The ANAO also found that DEETYA has taken appropriate steps to help ensure that clients receive a high standard of service and has developed a strategy for implementing its performance monitoring during the first tender round which should lead to useful and well-focused monitoring arrangements. DEETYA has also developed appropriate policies and procedures for building a collaborative business relationship with service providers. However, DEETYA will need to ensure that its contract management staff are appropriately trained in this aspect of their responsibilities.

Introduction

4.1 To help ensure that the Government achieves its objectives for the new employment services market DEETYA has a performance management strategy based on two main elements:

- building a productive and on-going collaborative business relationship with service providers to assist delivery of a quality service to clients; and
- monitoring all dimensions of the employment services market, including individual service providers, in respect of:
 - contractual compliance;
 - performance (efficiency and effectiveness of service provision);
 - quality; and
 - equity.

4.2 This chapter examines DEETYA's actions and plans to ensure that its performance management strategy is implemented effectively and efficiently. The chapter focuses on the management of individual provider performance and in particular on the following issues:

- DEETYA's specification of KPIs and performance standards for KPIs;

- the operation and impact of contractual performance incentives;
- contractual provisions for DEETYA's access to performance information about the service provider;
- the establishment and monitoring of required standards of client service;
- the development of a performance monitoring strategy for the first tender round; and
- DEETYA's processes to help ensure that its contract management strategy includes developing collaborative business relationships.

4.3 The chapter focuses on the management of individual service provider performance rather than on the market as a whole. The ANAO notes that the Government has approved an evaluation strategy for the new service delivery arrangements involving three reports:

- an implementation report in early 1999;
- a progress report by December 2000; and
- an effectiveness report by December 2001.

KPIs

4.4 The contract with employment service providers is the legal basis for DEETYA's management of provider performance. In developing its contractual arrangements DEETYA drew extensively on its Legal Group for advice in relation to legal issues. In addition, it obtained more general contracting expertise and advice from an external consultancy organisation with experience in competitive tendering and contracting.¹⁶

4.5 The contract provides a detailed description of the various services to be provided (see Appendix 1 for details). In addition, it identifies the client groups to be serviced, the location in which services are to be provided and quantitative limits on the number of clients to be serviced. The contract should clearly identify and adequately specify how performance will be measured and evaluated in relation to these services. Consequently the ANAO examined whether the contract had:

- clearly specified an appropriate range of KPIs; and
- specified standards of performance against those KPIs.

¹⁶ The ANAO notes that the Chairman of the Senate Finance and Public Administration References Committee into Contracting out of Government Services speaking at a Roundtable into APS contracting expertise in Canberra in October 1997 suggested that it could be useful for public sector organisations to enhance their understanding of the private sector contracting environment by engaging private sector consultants to assist in developing contracts.

Specification and coverage of KPIs

4.6 The ANAO examined whether the contract clearly and adequately specified KPIs for FLEX, ELTSS and NEIS.¹⁷ If performance measures are to serve as the basis for evaluation and subsequent rewards and sanctions, they need to be defined in sufficient detail to enable providers to understand and predict how their actions will impact upon the measures. If measures are ambiguous or vague, they provide little guidance for providers and can lead to disputes about what is adequate or inadequate performance.

4.7 Tables 4.1 to 4.4 show that the KPIs contained in the contract cover equity, quality, efficiency and effectiveness of service.

Table 4.1
KPIs that apply to all services

KPI	Main focus of indicator
Percentage share of outcomes achieved by specific groups of job seekers, including: <ul style="list-style-type: none">Aboriginal and Torres Strait Islander peoples;young people;sole parents;people with non-English speaking backgrounds;people with a disability;women;mature-aged job seekers; andlong-term unemployed; as compared to the proportion of clients: <ul style="list-style-type: none">from these groups referred for assistance in the case of FLEX 2 and FLEX 3; orin the eligible population in the case of FLEX 1, ELTSS and NEIS.	equity
Percentage of job seekers who are satisfied with the quality of service provided.	quality

¹⁷ Appendix 1 describes these services.

Table 4.2**Key Performance Indicators specific to FLEX services**

KPI	Main focus of indicator
For FLEX 1, 2 and 3	
• Percentage of job seekers placed in a job	effectiveness
• Percentage of job seekers still in employment 13 weeks and 26 weeks after being placed in a job	effectiveness
• Average quarterly reduction in allowance paid to job seekers referred to the Provider for each dollar paid to the Service Provider for FLEX	efficiency
For FLEX 2 and 3	
• Average time taken from referral to being placed in a job	efficiency

Table 4.3**Key Performance Indicators specific to ELTSS**

KPI	Main focus of indicator
Levels of increase in ELTSS Commencements and numbers in training by region and by Provider, against the industry/occupation profiles in the region	effectiveness
Percentages of apprentices and trainees successfully completing training or achieving specified competency levels	effectiveness
Timeliness and efficiency of processing by Region and Provider	efficiency
Levels of employer, apprentice and trainee satisfaction with the one-stop shop integrated service	quality

Table 4.4**Key Performance Indicators specific to NEIS**

KPI	Main focus of indicator
Number of actual Placements compared to the planned placements as identified in the Contract milestones	effectiveness
Percentage of Participants off income support 3 and 12 months after cessation of NEIS allowance, broken down by: (i) those where the business is still operating; and (ii) those in other employment or training	effectiveness
Percentage of Participants who withdrew during NEIS assistance and returned to income support	effectiveness
Number of additional jobs created within NEIS businesses 3 and 12 months after cessation of NEIS assistance	effectiveness

4.8 DEETYA followed good practice by developing these KPIs through workshops and consultations involving appropriate expertise from relevant policy, program and advisory areas within the Department. The Department also obtained relevant initial training in developing KPIs. DEETYA intends to review and develop the KPIs during the first tender period.

4.9 The ANAO considers that the specification and range of KPIs in the contract could have been improved by:

- clarifying the meaning of ‘eligible population’ in the equity indicator in Table 4.1. As it stands the KPI does not identify how the eligible population is to be established;
- specifying how timeliness and efficiency of processing are to be measured in relation to ELTSS in Table 4.3. The KPIs give no guidance on how these are to be measured; and
- adding a KPI that measures the time taken by managing agents to bring potential NEIS participants to a signing agreement stage with DEETYA. As they stand, the KPIs for NEIS address effectiveness but do not consider managing agent efficiency in bringing potential NEIS participants to the stage where they can effectively start business.

Audit conclusion concerning specification and coverage of KPIs

4.10 Given the newness of the market the ANAO concludes, except for the comments in the previous paragraph, that the contract contains a satisfactory specification and range of KPIs.

Recommendation No.5

4.11 The ANAO recommends that, to enhance the role of the KPIs as drivers of performance, DEETYA gives service providers clear guidance on how KPIs are to be measured by:

- clarifying the definition of ‘eligible population’ in relation to the Equity KPI; and
- specifying how timeliness and efficiency of processing are to be measured for ELTSS.

DEETYA response

4.12 Agreed. All Job Network Members will have access to KPI reports via the Internet. This will include information on each data item listed and how it is calculated, including the measure of ‘eligible clients’. In relation to ELTSS, DEETYA notes that this has been addressed in the Request for Tender (clause 3.7 of the Service Requirements) and in the Employment Services Contract 1998-99 (Part F 2.6).

ANAO comment

4.13 In relation to ELTSS, the references above give providers an indication of the requirements with regard to recording information, as well as activities that DEETYA will undertake to monitor provider performance. However, the issue raised by the ANAO is that the KPI requires clarification, that is, how will timeliness and efficiency be measured. The above references do not provide further clarification on this issue.

Recommendation No.6

4.14 The ANAO recommends that in relation to NEIS, for the next tender round, DEETYA includes a KPI that focuses on the timeliness of service provision by managing agents in bringing potential participants to a contract signing stage with DEETYA.

DEETYA response

4.15 Agreed.

Standards of performance against KPIs

4.16 Performance evaluation requires that a standard or target be set as a basis against which actual outcomes can be evaluated. It is important to state clearly any expectations for performance as a basis for regular evaluation and as the lynch-pin of accountability for performance. The ANAO examined the contract to assess whether it adequately identified expected performance levels in relation to the KPIs.

4.17 The ANAO found that expectations for performance had been specified in the following cases:

- the first KPI for NEIS in Table 4.4 reflects a comparison between actual placements and planned placements as specified in the contract milestones. The contract milestones for NEIS identify planned placements for each of the milestone periods ending 30 November 1998, 31 March 1999, 31 July 1999 and 30 November 1999;
- the FLEX 1 contract identifies the same milestone periods and specifies the following targets for each period:
 - a total contracted number of placements;
 - a number of placements for job seekers that have been at least six months unemployed or at risk of becoming long-term unemployed; and
 - a number of placements that are into full time permanent jobs.

These targets relate to equity and effectiveness in the provision of FLEX but do not directly correspond to the equity and effectiveness KPIs listed

in the contract. Consequently, it could be argued that these profiles introduce performance measures for FLEX 1 over and above those specified as KPIs.

4.18 Apart from these instances, the KPIs do not have associated specific performance targets. Rather, Clause 3.1 of the contract requires the provider to:

- perform the Services to a high standard;
- perform the Services at the times and in the manner detailed in this contract; and
- use its best endeavours to deliver the Services in a manner that achieves an optimum performance when measured against the KPIs.

4.19 The ANAO considers that the standards outlined in the first and third dot points do not give service providers clear guidance on what specific levels of achievement are expected in relation to each KPI. Other bodies have also expressed concern about this vagueness, for example:

- the Head of the PEPE Establishment Taskforce, in a written response to DEETYA on the RFT Exposure draft in May 1997, argued that DEETYA should define in the contract what it means by optimum performance;
- a private legal firm engaged to comment on the final draft of the RFT in July 1997 questioned whether ‘at a high standard’ was sufficiently objective and provided a suggestion of a more usual practice in specifying standards within a contract;
- in August 1997 a potential provider wrote to the Minister asking ‘what does ‘a high standard’ mean and what specific actions are required to satisfy this obligation’; and
- an expert contract consultant to DEETYA expressed concerns about the ability to apply sanctions where performance benchmarks were not available.

4.20 One implication of not specifying targets is that it becomes more difficult to reward good performance or penalise poor performance in relation to the KPIs. This consequence is reflected in the current contractual arrangements which, except for the NEIS instance mentioned above, do not directly link financial incentives and sanctions for the current tender to achievement against KPIs.¹⁸ The evaluation of performance against KPIs is considered further in Clause 19 of the contract which provides that:

- ‘DEETYA will monitor and measure the performance of the Provider’s contractual obligations by collecting performance data in accordance

¹⁸ Incentives are discussed in more detail in the following section.

with subclause 3.1(e) including data about the Provider's performance against the Key Performance Indicators at Item A9 of Schedule 1; and

- DEETYA will use that data, amongst other things, to measure the relative performance of all contractors for employment services in the Provider's Region. DEETYA reserves the right to use such measurements in assessing performance of potential service providers for future contracts.'

4.21 Thus DEETYA intends to evaluate a provider's performance against KPIs vis a vis the performance of competitors. However, additional uncertainties for the provider exist in this situation as the contract does not indicate the relative weights that will apply to the various KPIs and other measures of performance. This can cause even more confusion when it is recognised that improving performance on one KPI can cause performance on other KPIs to fall.

4.22 DEETYA had considered whether it could specify targets for a range of its KPIs but had concluded that there was a lack of a relevant history to properly inform the setting of such targets for the first round of tenders. A complicating factor was that regional differences would require different benchmarks in different regions. The ANAO notes, however, that the RFT suggested that indicative targets for the expected levels of performance on KPIs 'may be' developed to provide guidance to service providers. In addition, DEETYA has advised that it intends to explore possible models for developing specific standards of performance.

Audit conclusion concerning standards of performance against KPIs

4.23 The ANAO recognises that developing specific standards or targets of performance in the employment services market is a complex task and is made more difficult by the newness of the market. However, as specific expectations for performance against the majority of KPIs have not been set, DEETYA will not have a specific base against which to evaluate performance on those indicators.

4.24 As DEETYA has not indicated the relative importance of the various KPIs, current providers face uncertainty in predicting how their relative performance on KPIs vis a vis competitor performance will be used in assessments for future tenders.

Recommendation No.7

4.25 The ANAO recommends that, in the next tender round, DEETYA includes specific targets for performance against the KPIs in the contracts.

DEETYA response

4.26 Agreed.

Recommendation No.8

4.27 To ensure that DEETYA service requirements are clearly explained to service providers contracted as a result of the next tender round, the ANAO recommends that DEETYA inform contractors of the relative importance it intends to place on KPIs and other performance measures to assess contract performance.

DEETYA response

4.28 Agreed.

Performance incentives

4.29 The new service delivery arrangements are based on the assumption that market forces can provide a more effective and efficient delivery of employment services. A significant element of the market mechanism is driven by expectations of the risks and rewards associated with becoming a provider of employment services.

4.30 The Government's 1996 policy statement recognised that the payment schedules and incentive bonuses should drive the behaviour of providers when it stated that:

To support these reforms it is essential that payment arrangements provide incentives for EPEs to get real jobs for unemployed people¹⁹

4.31 The RFT confirmed this when it stated that one of the key principles underlying the changes is that the incentive framework will reward providers of labour market assistance primarily for placing job seekers in jobs and that there will be additional incentives for placing in jobs those who are most disadvantaged.

4.32 The ANAO examined the RFT and the final contract to assess whether the incentives for performance during the current tender period were clearly identified and whether they operated to drive performance towards the outcomes desired by the Government's policy. In doing this the ANAO recognises that the interplay of performance measurement, assessment and incentives is complex and that DEETYA intends to review and develop its current approach during the first tender round.

¹⁹ Minister for Employment, Education Training and Youth Affairs August 1996 p. 45.

4.33 The contract provides for financial and output rewards and sanctions during the current tender period for each of the five services. Each service is considered separately below.

FLEX 1

4.34 The following table shows the rewards and sanctions relating to FLEX 1.

Table 4.5

FLEX 1 rewards and sanctions

Rewards	Performance condition
Outcome payment equal to tender bid	Valid outcome.
Bonus of \$250 for outcomes for long term unemployed persons	Valid outcome.
Increases in contracted numbers for second and subsequent milestone periods	At DEETYA's discretion if the number of valid outcomes at the end of a milestone period exceeds the contracted number for that period by 10 per cent.
Increases in contracted number for current milestone periods.	By agreement with the provider if provider expects outcomes to exceed the current milestone period's contracted number by more than 10 per cent.
Sanctions	
Decreases in contracted numbers for the second and subsequent periods	At DEETYA's discretion if the number of valid outcomes at the end of a milestone period falls short of the contracted number for that period by 10 per cent.
Decreases in contracted number for current milestone periods.	By agreement with the provider.

4.35 In relation to FLEX 1 the incentive arrangements focus on outcomes with the placement of people into jobs. Payments are made for placements. In addition, contracted numbers can be increased or decreased if placement outcomes exceed or fall short of milestone period targets. Thus performance against the FLEX 1 milestone profile is a key determinant of future business levels and consequential potential increases or decreases in revenue during the contract period.

4.36 The ANAO notes, however, that under the contract, FLEX 1 providers can not be paid for outcomes for a particular milestone period that are in excess of the milestone profile for that period. This has the potential to act as a disincentive to achieving outcomes above milestone targets. The ANAO therefore supports DEETYA's intention to monitor closely actual performance during milestone periods to ensure that

milestones targets are increased where necessary during the period. The ANAO notes that the ability of DEETYA to increase a particular provider's profile rests in part on its ability to reduce the profiles for other providers. However, DEETYA may not unilaterally reduce a provider's profile unless it is operating at more than 10 per cent below its milestone target at the end of a milestone period. The ANAO considers that this restriction may hinder DEETYA's ability to increase contracted numbers during a milestone period.

FLEX 2

4.37 For FLEX 2 the major reward, the agreed tender fee, is obtained when a job search skills plan is signed by both an eligible job seeker and the provider. Payments are not tied to placement of jobseekers in jobs. However, the RFT states that DEETYA may seek to vary contracts upwards in cases where providers have reached their contract numbers and are achieving sustainable outcomes. To this extent there is an extra incentive to place people into sustainable jobs as it means that providers who reach the contracted number of job seekers to be placed under their contract may then be eligible to obtain additional business during the contract period.

FLEX 3

4.38 The rewards and fee structures for FLEX 3 are summarised in Table 4.6. FLEX 3.1, FLEX 3.2, FLEX 3.3 are the varying funding levels of FLEX 3 associated with increasing levels of disadvantage.

4.39 Table 4.6 shows that, apart from the up front fee, financial incentives are related to interim employment outcomes and that sustained outcomes provide additional revenue to the provider. The fee structure also provides higher up front fees and primary outcome incentives for finding jobs for those jobseekers who are classified as having a higher level of disadvantage as reflected in the FLEX funding level allocated by Centrelink.

ELTSS

4.40 ELTSS providers receive a fee depending upon the actual number of apprenticeships and traineeships serviced. Sixty per cent of the individual fee is received on commencement of an apprenticeship or traineeship; thirty per cent at the mid point; and ten per cent on successful completion. Thus, incentives are tied to placements of apprentices and trainees into training situations and to the support of those people through the period of their training.

Table 4.6
Rewards and sanctions for FLEX 3

Rewards	Performance condition	FLEX 3 funding level		
		FLEX 3.1 \$	FLEX 3.2 \$	FLEX 3.3 \$
Up front service fee	Agreement between provider and eligible job seeker to complete a draft activity agreement.	1500	2250	3000
Primary - interim outcome fees	After a job seeker has ceased his/her entitlement to the basic rate of NSA or YTA over 13 consecutive weeks because of earnings from paid work.	1500	2250	2200
Primary - final outcome fees	If the income support cessation or reduction because of earnings from paid work continues over a further 13 consecutive weeks.	1200	2200	3000
Secondary - Interim outcome fees	After a job seeker has significantly reduced his/her entitlement to the basic rate of NSA or YTA over 13 consecutive weeks because of earnings from paid work.	500	500	500
Secondary - final outcomes	If the income support cessation or reduction because of earnings from paid work continues over a further 13 consecutive weeks.	500	500	500

4.41 The contract provides for an estimated total number of training agreements. However, the RFT notes that if providers exceed their commencement targets the final amount paid may be more than the estimated total contract price. Conversely, the amount may be less because of wastage rates, variations in seasonal demand, or mid and completion payments falling outside the contract period. Thus there is no disincentive for exceeding commencement targets.

NEIS

4.42 NEIS fees are earned primarily when a prospective participant in the NEIS Scheme signs a NEIS Participant Agreement and commences NEIS business operations. At that point providers can claim 85 per cent of their fee. In addition 15 per cent of the NEIS fee is payable when, thirteen weeks after cessation of the NEIS Participant Agreement, a participant is not in receipt of unemployment allowances or other forms of qualifying DSS income support. Thus, financial rewards are tied primarily to placement of participants into a position where they are able to start business

operations under the NEIS Participant Agreement. Further financial incentives exist for the provider to support the participant throughout the Agreement and for at least thirteen weeks after the cessation of the Agreement.

4.43 DEETYA also has the ability to reward and penalise a provider for achieving 25 per cent above or below target placements for a particular milestone period, as reflected in one of the effectiveness KPIs for NEIS (see Table 4.4).

Overall conclusion relating to incentives

4.44 The ANAO concludes that the financial incentives for current performance were clearly identified for each service.

4.45 In relation to the outcomes that are rewarded by the incentives the ANAO notes that, except for the NEIS example noted above, the incentives are not tied directly to achievement against the equity, quality, effectiveness and efficiency KPIs identified in the contract (see Tables 4.1 to 4.4).

4.46 Nevertheless, the ANAO concludes that the incentives do reward providers for effectiveness in achieving placement outcomes, for example:

- FLEX1, FLEX 3, ELTSS and NEIS services providers are all rewarded primarily for achieving placement outcomes during the current tender period; and
- the incentive schemes offer additional rewards for FLEX 3, ELTSS and NEIS providers (and the possibility of additional rewards for FLEX 2 providers) associated with obtaining sustainable outcomes for their clients.²⁰

4.47 The incentives also drive behaviour that may lead to improved equity in the provision of services in that they offer bonus fees to FLEX 1 providers for placements of long term unemployed clients.²¹ In addition FLEX 3 providers receive additional rewards for placing job seekers who are classified as having a higher level of disadvantage as reflected in the FLEX funding level allocated by Centrelink.

4.48 Overall, the ANAO concludes that the incentives offered during the current tender period operate to reward service providers for achieving sustainable placement outcomes, especially for the longer term

²⁰ In addition the required milestone profiles for FLEX 1 providers described in paragraph 4.12 specify that a certain number of placements are to be into full-time permanent jobs.

²¹ In addition the required milestone profiles for FLEX 1 providers described in paragraph 4.12 specify that a certain number of placements is to be of job seekers who have been at least six-months unemployed or at risk of becoming long-term unemployed.

unemployed, and that this is consistent with the underlying policy aims for the market.

Access to performance information

4.49 This section examines whether DEETYA has included appropriate provisions in the contract to enable effective monitoring of provider performance.

4.50 To achieve an adequate level of control and performance monitoring of a contract, government agencies need to ensure sufficient access to relevant records and information. From an accountability viewpoint, it is critical that agencies look closely at the nature and level of information to be supplied under the contract and the level of access to contractors' records, information and assets they may require to monitor adequately the performance of the contract.

4.51 In consultation with its legal advisers the ANAO has developed model contract clauses dealing with access by agencies. The ANAO provided copies of these clauses to DEETYA in July 1997 for consideration in the development of the contract.

4.52 The ANAO found that the provisions contained in the contract provide DEETYA with extensive power to monitor provider performance. However, a comparison of the contract access provisions with the model access clauses reveals that DEETYA could have provided for additional elements relating to:

- the provision of reasonable notice and compliance with a contractor's security provisions by DEETYA when exercising rights of access to a provider's premises and records. These provide additional protection for a provider in relation to the potential for a purchaser to unreasonably gain access to premises and records; and
- the impact of DEETYA's monitoring requirements on the provision of services by the provider, providing some protection for both parties in relation to that impact.

4.53 The contract also states, in relation to clause 13 (dealing with confidential and personal information) that 'Contractors should note that the Commonwealth Auditor-General is given the power, by the *Audit Act 1901*, to obtain information from parties with whom DEETYA contracts'.

4.54 As part of its statutory duty to the Parliament, the ANAO may require access to records and information relating to contractor performance. Under the *Auditor-General Act 1997* the ANAO has broad powers of access to records and information held by third parties so long as any action is for the purposes of undertaking an Auditor-General

function. The ANAO considers that its own access to contract related records and information would generally be similar to that which should be specified by the contracting agency in order to fulfil its responsibility for competent performance management and administration of the contract.

Recommendation No.9

4.55 The ANAO recommends that, for the next tender round for the provision of employment services, DEETYA includes additional provisions in contracts to:

- provide for reasonable notice to be given by DEETYA to providers in relation to the exercise of access rights;
- provide for DEETYA to comply with the provider's reasonable security procedures when exercising access rights;
- clarify that the requirement for access by DEETYA does not in any way reduce the provider's obligations to deliver services; and
- allow for providers to be granted extensions of time to deliver services under the contract if the exercise of access rights by DEETYA directly results in a delay in meeting obligations under the contract.

DEETYA response

4.56 Agreed. The Contract for the next tender round will be drafted taking into consideration the Government's objectives for the Job Network. When drafting the contract for the next tender round DEETYA will have regard to the advice of the Government's legal advisers in determining appropriate access provisions. DEETYA notes that the Employment Services Contract 1998-99 contains access provisions which provide a balance between the rights of providers and those of the Commonwealth.

Standards of client service

4.57 DoFA's guide on competitive tendering and contracting²² states that a contract should reflect the standards outlined in agency service charters. The standards required of an external provider should be no less than those that would be expected were the service to be provided directly by the Commonwealth. Service charters, and hence the contract, should include:

- a clear statement of the standards of service that can be expected by clients;
- a clear statement of who is responsible if the service is not provided at the level promised; and
- details of a mechanism for dealing with complaints.

²² Department of Finance and Administration 1998 p. 18.

4.58 The ANAO examined whether DEETYA had established adequate arrangements to meet these requirements.

Code of Conduct and complaints mechanism

4.59 All employment service providers are bound by the contract to comply with an Employment Services Industry Code of Conduct that was developed after consultation through the Commonwealth Employment Service Advisory Committee (CESAC)²³ with a range of individuals and organisations that might be part of the new industry. The Code covers all services being tendered for and will apply for the first tender round. It will be revised as necessary in consultation with industry for future tenders.

4.60 In relation to standards of service the Code includes a framework that aims for the delivery of high quality employment services to all job seekers and employers. It does this by requiring service providers:

- to treat job seekers and employers with respect and dignity;
- to provide job seekers and employers with access to a complaints process;
- to treat job seekers and employers fairly and ethically; and
- to demonstrate professionalism and integrity; responsibility in advertising; and confidentiality.

4.61 Underlying these principles are approximately thirty commitments that describe actions designed to meet the principles.

4.62 In addition to being bound by the Code of Conduct service providers are required under the contract to:

- establish a complaints handling process including a complaints register;
- publicise details of the process to clients;
- refer the client to DEETYA for further investigation of the complaint if the client is dissatisfied with the provider's response to the complaint;
- assist DEETYA in the investigation of the complaint;
- advise DEETYA of its complaints process; and
- allow DEETYA access to the complaints register and other relevant information.

²³ Commonwealth Employment Service Advisory Committee 1997. The CESAC charter was to advise the National Director of the CES on the operations of the CES. Members were chosen from business and industry, the trade union movement, welfare organisations, and the vocational and training sector. Its objective was to bring a broader community perspective to the CES so that it becomes more attuned and responsive to existing and changing labour market needs.

Monitoring arrangements and sanctions for non-compliance

4.63 The ANAO examined processes for ensuring that the Code of Conduct and the complaints handling mechanisms are observed by the service providers. Codes of Conduct and complaints mechanisms by themselves may have little impact unless there is active monitoring of compliance together with the application of sanctions for non-compliance.

4.64 The ANAO found that DEETYA had established the following procedures for monitoring provider compliance with the Code and the complaints mechanism requirements:

- initial contract verification visits by contract management staff will include discussion of provider responsibilities under the Code of Conduct and for the establishment of complaints mechanisms;
- routine monitoring visits will examine the adequacy of the providers complaints handling procedures; whether the provider is aware of DEETYA's complaints processes; whether the Code of Conduct is displayed in the premises and whether staff members have a copy; and
- DEETYA will operate a complaints hotline to its own complaints officers who will investigate the complaint and take appropriate action. Draft guidelines for the operation of this complaints process contain detailed and comprehensive procedures for receiving, recording and investigating complaints. Where a particular provider is being complained about on a regular basis the guidelines provide for further investigation of that provider's service standards.

4.65 In relation to sanctions the Code states that it will be administered and monitored by DEETYA and that breaches of the Code will be drawn to the attention of individual organisations. The emphasis throughout the process is on negotiating with the provider to reach agreement on a course of remedial action. However, sanctions for continued breaches of the Code include:

- the conduct of a quality audit of the service provider by DEETYA;
- actions at the provider's expense (such as training for staff or changed operational procedures) as recommended by the quality audit; and
- cancellation of the contract for failure to accept recommendations of a quality audit or for continuous serious breaches.

4.66 The Government's response to the CESAC Report on a Code of Conduct for the Employment Services Industry stated that it would be looking at options to inform client choice where there is persistent poor performance in relation to the Code. The ANAO notes that DEETYA is currently examining what provider performance information it will publish

to assist clients in choosing between providers. The ANAO considers that information about the number and seriousness of substantiated complaints made against providers (information that is planned to be collected by DEETYA for internal management decision making) may provide additional useful information to inform client choice.

Audit conclusion concerning standards of service

4.67 The ANAO concludes that DEETYA has taken appropriate steps to help ensure that clients receive a high standard of service. These include:

- placing contractual obligations on service providers to comply with an Industry Code of Conduct and to establish a complaints handling process;
- creating a DEETYA based complaints mechanism; and
- monitoring provider compliance with the Code and complaints mechanism requirements and the application of sanctions for breaches.

Development of a performance monitoring strategy

4.68 The ANAO examined DEETYA's plans for developing and implementing its performance monitoring strategy during the first tender round.

4.69 DEETYA advised that it had developed a strategy paper for senior management consideration in March 1998. The ANAO examined the paper and found that it contained proposals for a fundamental analysis of DEETYA's information and monitoring strategy for the employment services market, including a consideration of the information needs of the various interested parties. The proposed strategy, which would be implemented throughout the period of the first contract, will:

- document existing information and monitoring practices within the Department, including systems developments, proposed data collections and reports, who proposes to use the data and existing and planned reporting arrangements; and
- consult with users and potential suppliers of data in order to identify information requirements. This will focus on:
 - contextual information about the labour market;
 - information about the performance of individual providers and the market;
 - information to meet the needs of service providers;
 - information to meet the needs of clients and employers; and
 - information to support decisions for the second round of tenders.

4.70 The proposed strategy included broad implementation plans identifying the timing of the various elements and giving priority to ensuring that information about provider and market performance is available from the start of the market on 1 May 1998. It also included regular consultation with all users to ensure that their needs are met.

4.71 The ANAO supports the proposed strategy and implementation plan. Implementation of the strategy should contribute to the development of useful well focused performance monitoring arrangements.

Developing collaborative business relationships

4.72 DEETYA's approach to performance management includes:

building a productive and on-going collaborative business relationship with service providers to assist delivery of quality service to clients²⁴

Such an approach, which is an essential element for a successful contractual arrangement, can be achieved in several ways. For example, MAB/MIAC describe a partnering approach to contractual arrangements as one in which cooperative working relationships are described in a separate agreement such as a partnering charter, or integrated into the structure of the principal contract.²⁵ DEETYA has not adopted such a formal partnering approach to its contractual arrangements. Rather it has adopted an approach that relies on:

- adopting a collaborative contract management style;
- providing contractors with relevant training and other resources to support their operations; and
- encouraging an environment in which information relating to best practice can be developed and shared among providers.

This section examines whether DEETYA has established appropriate processes to achieve this aims.

A collaborative contract management style

4.73 DoFA's Guide to competitive tendering and contracting states that where an activity is complex or has not have been previously subject to contracting a considerable effort needs to be made to develop and maintain good business relations. Building a cooperative relationship is seen by DoFA as essential to the successful performance of a contract as it enables more flexible and innovative solutions to issues as they arise and enables issues to

²⁴ RFT Service Requirements section 1.4.2.

²⁵ MAB/MIAC 1997 p. 104.

be resolved quickly and before they become long term problems.²⁶ In essence such a contract management style is constructive and non-adversarial.

4.74 The ANAO found that DEETYA has established policies and processes to implement such an approach, for example:

- in May 1997 the Secretary to DEETYA specified broad organisational responsibilities for the management of provider performance. This clarified who had responsibility in the Department for the various elements of performance monitoring, evaluation and fraud control for the new arrangements. The key roles allocated to the contracting Divisions included supporting a 'partnership' with the market;
- the RFT issued in August 1997 states that DEETYA recognises an effective and efficient market is most likely to emerge if it establishes an effective business relationship with each provider. It recognises that to achieve this it will be important to ensure that expectations on both sides are clearly understood and that problems and issues are quickly identified and resolved;
- DEETYA's Contract Management Handbook, which contains detailed policies and processes to guide contract management staff, includes guidance that stresses the importance of developing collaborative business relationships;
- DEETYA contract management staff will visit all providers within one month of the start of the market, the aim of the visit being to establish a cooperative working relationship and an understanding of the expectations of DEETYA and service providers in relation to services provided under the contract. The visit will also provide an opportunity for DEETYA to ensure the member's site managers understand the terms of the contract and the undertakings of their organisation in relation to the contract;
- DEETYA has established a communications protocol with each provider that will facilitate the development of collaborative business relationships. Each provider will have a contract manager as a primary point of contact for all matters relating to the contract, who will:
 - establish and maintain communication with the provider's main office and individual sites;
 - coordinate performance monitoring activities amongst site contacts;
 - facilitate communication between site contacts;
 - coordinate all activities of other areas of DEETYA which involve contact with providers;

²⁶ Department of Finance and Administration 1998 pp. 29-30.

- identify trends from performance monitoring activities in conjunction with site contact; and
- undertake problem solving activities.
- in addition to the contract manager a local contact person will be responsible for the day to day management of the contract at site level. This person will keep the contract manager informed of any issues and, in conjunction with the contract manager, will:
 - establish and maintain communication with individual site offices;
 - coordinate performance monitoring and compliance activities at site level;
 - coordinate all activities of other areas of DEETYA which involve site contact;
 - undertake problem solving activities;
 - communicate with providers at the site level;
 - accompany DEETYA Complaints Officers on site visits to verify complaints; and
 - facilitate problem resolution at the site level.

4.75 It is clear from the above that the role of the contract manager and the local contact person will be crucial in developing collaborative business relationships. Much will depend on their skills and abilities in communicating with service providers. The ANAO notes that DEETYA undertook a Regional Monitoring Team Pilot of labour market programs in the first half of 1997 to assess the applicability of mobile monitoring teams for the new employment services market. An interim report from the Pilot in June 1997 noted that the concept of developing a business partnership appeared to be lacking or non-existent in many of the contracting relationships examined at that time.

4.76 DEETYA has advised that some experienced ESRA contract management staff were recruited by DEETYA for the new market in late 1996 and that their input to the development of contract management processes and skills within DEETYA has been valuable. In addition, initial training for contract management staff has been conducted, particularly in relation to legal issues related to the contract. Future training, including the development of collaborative business relationships is also planned. However, in the light of the findings of the monitoring pilot and in view of the important role to be played by contract management staff in developing collaborative business relationships, the ANAO considers that training for such staff in those activities necessary to develop collaborative relationships with providers and in facilitating best practice would be a high priority for the Department.

Provider training and support resources

4.77 The provision of training and support to service providers, particularly in the early stages of a contract, provides an opportunity to develop collaborative business relationships as well as improve the ability of providers to understand and meet contractual requirements.

4.78 The ANAO found that DEETYA provided two day training courses for service providers throughout Australia between 26 March and 28 April 1998. The material covered included:

- legislation (overview of key issues);
- code of conduct;
- contract management arrangements (including roles and responsibilities, performance management, monitoring, payments and problem resolution);
- an introduction to information technology; and
- separate sessions on FLEX 1, FLEX 2, FLEX 3, NEIS and ELTSS.

4.79 As DEETYA contract management staff were involved in delivering these courses it gave them the opportunity to meet and develop links with the providers. To help prepare these staff to deliver the courses they attended four days of preparatory training in Canberra in March 1998.

4.80 In addition to this training DEETYA has produced a draft Service Provider Information Guide to assist providers. The draft was placed on the internet in March 1998 for comment by providers. It includes chapters on contract management, service standards, performance monitoring, payments and systems, the national vacancy data base and each of the services being provided.

4.81 In relation to assistance with information technology DEETYA advised successful tenderers in January 1998 that a range of training aids would be published on the internet including:

- general information bulletins;
- systems access information;
- employment services information bulletins;
- employment services job aids;
- frequently asked questions and answers;
- management information statistical reports;
- links to other relevant web pages; and
- an e-mail facility for customer feedback.

Practice improvement

4.82 The RFT states that DEETYA proposes to work with service providers to facilitate best practice studies and benchmarking activities as part of a process of continuous improvement in service delivery. The Service Provider Information Guide reinforces this commitment to work with service providers to encourage a process of continuous improvement. It states that DEETYA will facilitate practice improvement by identifying good and bad practice and encouraging service providers to respond positively to both.

4.83 Some possible strategies identified by DEETYA to achieve this are that the Department:

- will publish information about what works well to all providers based on its monitoring activities(subject to commercial-in-confidence considerations);
- may commission and publish benchmarking and best practice studies; and
- may provide comparative performance data to providers and job seekers to enable comparative assessment against national trends.

4.84 DEETYA has advised that additional ideas under consideration include:

- an internet home page dealing with best practice and practice improvement; and
- holding conferences for providers to discuss issues relating to best practice.

4.85 DEETYA's contract management handbook states that service providers will be actively encouraged to participate in networks to identify common issues and work towards solutions which are in the best interests of job seekers. DEETYA will also encourage employers, training providers, DEETYA and Centrelink staff, Area Consultative Committees, as well as appropriate community participants to participate in the networks. DEETYA aims to have established networks in each local labour market area by the end of 1998 and to ensure that service providers understand the value in establishing networks to promote information exchange and cooperation within a competitive environment.

Audit conclusion concerning developing collaborative business relationships

4.86 The ANAO concludes that DEETYA has established appropriate policies, plans and procedures for the development of a collaborative business relationship with service providers. These include:

- developing a collaborative contract management style;

- providing guidance material and initial training to providers; and
- facilitation of best practice.

4.87 The ANAO also concludes that the role of individual contract management staff will be crucial in all these activities. A collaborative business relationship will take time and resources to build. The strategy adopted for communication between contract management staff and providers will be a key tool in driving the development of the relationship. It will therefore be important for DEETYA to carefully manage the development and performance of contract management staff and service providers. In view of this and the findings of the Departmental study, reported in June 1997, that the concept of developing a business partnership appeared to be lacking or non-existent in many of the Department's contracting relationships examined at that time, the ANAO concludes that appropriate training for in developing collaborative business relationships should be a high priority.

4.88 The ANAO proposes to undertake an audit of DEETYA's management of employment service contracts in early to mid 1999.

Recommendation No.10

4.89 The ANAO recommends DEETYA provides appropriate training to contract management staff to help ensure that they have the necessary contract management skills to develop and maintain collaborative business relationships with service providers in order to effectively manage and resolve contractual difficulties as they arise, recognising *both* the public and commercial interests involved.

DEETYA response

4.90 Agreed. DEETYA has already commenced to implement the training referred to in the ANAO report. DEETYA's National Training Priorities 1998-99 Program consist of skills-based modules, several which are relevant to contract and performance management. In relation to Job Network, DEETYA has a multi-staged approach to training of contract management staff. Training in Job Network Performance Management has been conducted for the majority of contract management staff and continues to be available. DEETYA has introduced Job Network specific training/information sessions for contract management staff covering service requirements, payments, Information Technology, contracts and probity.

5. Managing the Risk of Market Failure

This chapter draws together the measures identified in the tendering process (Chapter 3) and contractual arrangements (Chapter 4) that were aimed at reducing the risk of failure by individual service providers and by the market as a whole. In the Ministerial Statement of August 1996, the Government acknowledged that the market arrangements would need time and effort to develop fully and the Statement outlined a contingency measure in the event of market failure of a service type across a region; namely the public provider (Employment National) was to provide a basic employment service. This was considered by the Government to be an option of last resort. Therefore, the ANAO assesses in this chapter how, within the policy framework set by Government, DEETYA managed the risk to service delivery of market failure. The ANAO found that DEETYA had largely reduced these risks through the administration of tendering arrangements and planned contractual arrangements.

Introduction

5.1 Every contracting out activity has some risk of adverse impact on customer service from the failure of service providers and ultimately of the market as a whole. Particular tendering and contractual arrangements can reduce the risk arising from market failure and of market failure itself. This chapter is set out as follows:

- in this introductory section, the ANAO describes:
 - why these arrangements need to be matched against market characteristics;
 - the market characteristics and tendering and contractual arrangements that were set by Government as part of its decision-making; and
 - what the ANAO assessed to establish the adequacy of the measures undertaken by DEETYA to manage the risk of market failure; and
- in the following two sections, the ANAO describes the outcome of its assessment of the adequacy of the measures undertaken by DEETYA to manage this risk.

Importance of matching the maturity of a market with tendering and contractual arrangements

5.2 A mature market has a range of suppliers or potential suppliers with extensive experience relevant to the service being contracted out. Such suppliers can draw upon a body of knowledge regarding costs, expected income flows and successful work practices in order to formulate tender bids. This knowledge will not necessarily be available at first to contractors in an immature market. The most efficient and effective contracting out projects have tendering conditions, particularly regarding financial risk distribution, and contract management arrangements that match the level of market maturity.

5.3 The following illustrates the consequences where tender conditions and contract management arrangements do not match the risks associated with an immature market:

- a high level of attrition amongst contractors during the contract period;
- dominance of the market by a small number of providers - particularly if there are some prepared to and able to sustain losses during an initial contract period in an attempt to gain market share;
- decrease in service quality if contractors need to “cut corners” in service delivery in order to survive financially, having gained business with a competitive price tender bid that is unsustainable; and
- resourcing for contract management by the Commonwealth greater than initial estimates, in that inexperienced contractors may require greater levels of assistance by the purchaser to remain viable in the initial contract period.

5.4 The tendering and contractual arrangements that work best for an immature market to minimise the consequences arising from mismatching the arrangements with the level of market maturity, include:

- financial viability assessment, to ensure that contractors have:
 - sufficient financial backing to overcome cashflow shortfalls; and
 - the financial capacity to expand their business to deliver the service required by the purchaser;
- financial risk sharing, for example, through:
 - fixed pricing;
 - guarantee of minimum income during the contract period;
 - a percentage of fees up front to providers assessed as being viable during the course of the contract; and/or
 - information within the RFT to assist tenderers in their budget development;

- tender assessments that take account of experience or expertise in a closely related field;
- contracting a number of providers, so that if one fails, there is minimal disruption to service delivery; and
- contract management that provides the purchaser with an early indication of contractor difficulty and gives assistance, such as advice, to such providers.

5.5 In contrast, if the market is mature, greater efficiencies may be gained from a different set of tendering and contractual arrangements; for example, if the tender price is fixed rather than competitive, the Commonwealth may over-estimate the cost required and pay more for contracts than with a competitive price tender.

5.6 To summarise, if tendering and contractual arrangements are set to match an immature market, they will assist market development. In a mature market, they will increase the efficiencies gained from contracting out.

Level of market maturity for the delivery of the new services

5.7 Overall, in announcing the new arrangements as part of the 1996 Budget, the Government recognised that the new employment services market would require development before it could be regarded as mature. How close a market of providers is to maturity, and its potential to develop quickly, varies between service types, as outlined below:

- FLEX 1. Up to 30 April 1998, the CES was the only job placement agency in Australia with an obligation to provide service to all registered job seekers free of charge to job seekers and employers. However, private sector job brokers have been operating in the Australian market on a long-term basis, usually specialising in particular market segments, and charging employers and/or job seekers for their services.
- FLEX 2. This is similar to services which DEETYA has previously delivered through outsourcing arrangements, such as the Job Clubs Programme, which contracted approximately 300 organisations in 1995-96. Organisations were generally selected to undertake the Programme following a fixed-price open tender process.
- FLEX 3. As outlined in Chapter 2, there are parallels between contracted case management and FLEX 3. Since late 1996, 321 organisations have been contracted by ESRA, following a fixed-price, open tender process. Information on good practice in case management has been made public by ESRA.

- NEIS. NEIS is similar to existing services which DEETYA has previously delivered through outsourcing arrangements. In 1996-97 NEIS, for example, was delivered through 140 local agents contracted through a fixed price open tender process.
- ELTSS. ELTSS is a new type of service to be outsourced. Previously undertaken by the CES, it will provide an integrated support service for apprentices, trainees and their employers (actual or potential). DEETYA has identified that there was a range of potential providers experienced in their own related field who could take on this service provision as an extra, rather than a core, function. These providers, each with an understanding of at least one industry segment and training arrangements, potentially included:
 - State/Territory government industrial relations agencies;
 - industry training advisory bodies at the national and state levels;
 - State/Territory training authorities;
 - group training companies;
 - TAFE colleges;
 - private training organisations; and
 - employer and industry associations.

5.8 To summarise, for FLEX 2, FLEX 3 and NEIS, there was a group of organisations with the experience of delivering a service with parallels to that required under the new arrangements. In addition, for FLEX 1 and ELTSS, there were organisations with experience in broadly related area. This would suggest that, while there is scope across all service types for the market of service providers to develop to maturity, the market of potential service providers was not totally immature. In addition, the market of FLEX 2, FLEX 3 and NEIS potential providers was relatively more mature when compared with that of FLEX 1 and NEIS. Therefore, the ANAO would consider that, in managing the risk of market failure, the extent to which the measures outlined in paragraph 5.4 would need to be implemented would vary across service types.

Tendering arrangements relevant to market maturity set by Government

5.9 Some of the key tendering conditions impacting on the level of financial risk sharing between purchaser and provider, were set by Government. These included:

- fixed price tendering for FLEX 3, and competitive price tendering for other service types;

- no guaranteed business levels for contractors. Winning tenders in the new market, does not guarantee a level of business for the provider. Rather, it gives the provider an opportunity to offer services on behalf of the Commonwealth. Clients have the ability to choose their preferred provider/s, with a number of providers contracted in any one region for a particular service type. The market share that a provider achieves is therefore based on the allocated business for which it is contracted as well as the success of a provider's marketing strategy to attract job seekers; and
- fees paid on outcomes only for FLEX 1, with a percentage of total fees paid on the commencement of each client for the other service types. In addition, for ELTSS and NEIS, a percentage of the total estimated contract is advanced to the provider.

5.10 Table 5.1 summaries the indicators of market maturity and of financial risk sharing for each service type as set by Government. Based on these factors alone, this table would suggest that the consequences outlined in paragraph 5.3, are most likely to occur for FLEX 1, relative to the other services, as it has the least financial risk sharing factors, and has an indicator of relative market immaturity. In contrast, the consequences outlined in paragraph 5.3 are least likely for FLEX 3.

Table 5.1

Service Type	Indicator of relative market maturity	Indicators of Financial Risk Sharing		
		Existence of similar service types	Fixed/ competitive fees	Guaranteed minimum income
FLEX 1	No	Competitive	No	No
FLEX 2	Yes	Competitive	No	Yes
FLEX 3	Yes	Fixed	No	Yes
NEIS	Yes	Competitive	No	Yes
ELTSS	No	Competitive	No	Yes

Assessment criteria and approach

5.11 Of the consequences outlined in paragraph 5.3, that of service provider attrition or failure has the potential to impact very significantly on client service delivery. Given its impact and taking into account the tendering arrangements set by Government for this implementation, the ANAO examined the following aspects of DEETYA's management of the

risk of service provider failure. This examination involved a review of whether or not DEETYA had:

- assessed the impact on client service delivery from service provider failure in developing its advice to Government on the tendering and contractual arrangements; and
- developed and implemented administratively tendering and contracting arrangements that reduced the risk to service delivery of provider failure.

5.12 These aspects are examined under separate headings below.

Assessment of the client service impact from service provider failure

5.13 The ANAO found that in developing its advice to Government on characteristics of the services types and their tendering and contractual arrangements, DEETYA took account of the impact of service provider failure for the two service types that were likely to face the greater and least risks of failure (FLEX 1 and FLEX 3), as follows:

- **FLEX 1.** FLEX 1 clients are expected to approach a provider if the client considers that the provider has one or more potentially suitable vacancies. The period over which the provider will serve an individual client is relatively short, and would typically involve assessment of the job seeker's competencies and, if identified as suitable, referral to the employer. If a FLEX 1 service provider fails, the impact on job seekers is relatively low, as job seekers, in the normal course of seeking employment, could approach a number of providers in the same region. Alternative service provision is therefore expected to be easily obtainable by job seekers; and
- **FLEX 3.** Providers are expected to deliver intensive assistance to FLEX 3 clients for up to 78 weeks. Considering that these clients are the most disadvantaged in the job market, the impact on these clients of losing their service provider through, for example, financial failure is likely to be significant.

5.14 The ANAO noted that DEETYA's advice to Government ensured that the service type with the greatest impact on clients resulting from service provider failure, had arrangements which reduced the risk of service provider failure (through, for example, a fixed price per service, and some up-front fees) when compared with that with the least impact.

Conclusion - assessment of the client service impact from service provider failure

5.15 The ANAO considers that DEETYA undertook the most essential elements of assessment of the impact on client service from service provider failure and appropriately reflected the impact of its assessment in advice to Government.

Reducing the risk of service provider failure through tendering and contracting arrangements

5.16 The ANAO assessed under separate headings below, whether DEETYA had implemented the following administrative arrangements to reduce the risk of service provider failure:

- undertaking financial viability assessments on tenderers;
- financial risk sharing through the provision of information within the RFT;
- taking account of the experience and expertise in related fields within the tender process;
- contracting a number of providers for service delivery; and
- developing contract management arrangements that provide DEETYA with early indications of difficulties facing service providers that have potential to lead to their failure.

Financial viability assessment

5.17 As outlined in Chapter 3 (paragraphs 3.55-3.61), DEETYA undertook detailed financial viability checks to assess financial capacity to deliver the service requirements and meet contractual obligations over the contract period. These included analysis of the information provided by the tenderer in response to the RFT, such as financial statements, analysis of indicators based on standard accounting ratios that predict financial viability, and checks of external databases, such as those of credit ratings.

5.18 The ANAO has concluded that, within the limitations of all financial viability assessments, this testing has assisted in providing a satisfactory degree of assurance as to the likely financial viability of providers, and thus reduces the risk of financial failure by service providers.

Financial risk sharing through the provision of information within the RFT

5.19 The ANAO sought to establish whether DEETYA had included data within the RFT to assist tenderers in their budget development to contribute to the sharing of financial risks between purchaser and provider. As Table 5.1 indicates that FLEX 1 had the least factors contributing to financial

risk sharing in the conditions set by Government, the ANAO focused particularly on the provision by DEETYA of such data for FLEX 1. The findings for the service types are as follows:

- FLEX 1. In Chapter 3, the ANAO identified that the data in the RFT was of limited value to service providers in estimating income flows for budget development. Data which could have been of value for this purpose was available to DEETYA for publication in the RFT. The ANAO has made a recommendation regarding consultation with potential providers on the provision of data for future tender rounds (see paragraphs 3.10-3.16).
- FLEX 2. Information was provided in the RFT on the indicative business levels for each region.
- FLEX 3. Case management outcome rates by duration were included in the RFT, providing tenderers with an opportunity to calculate indicative income flows.
- NEIS. Information was provided in the RFT on the indicative business levels for each region.
- ELTSS. Information that allowed tenderers to estimate overall potential income was included in the RFT, which when considered with the fixed commencement and finishing times of training courses gives an indication of income flows.

5.20 While a greater amount of data could have been provided to assist tenderers in the development of their budgets for FLEX 2 and for NEIS, of most importance is the provision of such data for FLEX 1 as this data is the only administrative factor that could contribute to financial risk sharing for this service type. (The other relevant factors were set by Government.) Recommendation No.2 with regard to this matter, should assist for the next tender round.

Experience/expertise assessment

5.21 Service providers are less likely to fail if they have had experience or expertise in a closely related field. In Chapter 3, the ANAO identified that DEETYA had included in the tender an assessment criterion based on relevant experience and/or expertise. The ANAO regards this criterion as a factor contributing to the outcome of the tender in which a large proportion of the contractors in the new market are already current suppliers of services to DEETYA or ESRA. This characteristic of the new market in itself will assist in reducing the risks of individual service provider failure, as a large proportion of service providers already have a business relationship with the DEETYA portfolio.

Contracting a number of providers for service delivery

5.22 One of the tender conditions, discussed in Chapter 3, was that of contracting more than one service provider for each service type, with an expectation of at least five for some service types in some regions. Contracting with more than one service provider, gives an alternative source of service delivery if a provider fails. Therefore the risk to service delivery is reduced.

5.23 The ANAO concluded that the business allocation process used in the tender evaluation project was consistent with the conditions of the RFT, with an indicative check indicating that the RFT conditions on the preferred number of providers was achieved (paragraphs 3.86-3.90).

Contract management

5.24 In Chapter 4, the ANAO examined the work DEETYA has undertaken to develop collaborative business relationships with service providers. The ANAO concluded that DEETYA has established appropriate policies, plans and procedures to underpin this type of contract management approach, and made a recommendation for developing the skills for such an approach amongst DEETYA contract managers (paragraphs 4.72-4.89). The ANAO considers that the implementation of collaborative business relationships between DEETYA and services providers will reduce the risks of service provider failure by, for example, alerting DEETYA staff to potential problems in contracted organisations through comprehensive monitoring arrangements and providing the opportunity for DEETYA to work with the providers to remedy the problems.

Conclusion - reducing the risk of service provider failure through tendering and contracting arrangements

5.25 The ANAO concluded that DEETYA sought to reduce the risks to service delivery from service provider failure through the administration of tendering arrangements and planned contractual arrangements, while working within the Government policy framework.

5.26 However, the ANAO also concluded that there was an opportunity to minimise further the risk of failure particularly for FLEX 1 service providers, by the provision of data in the RFT to assist providers in their budget development. The ANAO considers that DEETYA should facilitate this opportunity in the next tender round by obtaining feedback from potential tenderers on data provision. A recommendation to this effect was included in Chapter 3 (see paragraph 3.16).

6. Reducing the Risk of Unfair Advantage

This chapter examines the issues of unfair advantage particularly for the in-house bidder and those organisations currently contracted by DEETYA. The focus is how DEETYA reduced the risk of such an advantage occurring. Many of the issues discussed in this chapter, have been mentioned elsewhere, for example in Chapter 7, Transition Arrangements, and in Chapter 8, Project Management. However, given the importance of ensuring that no tenderer has an unfair advantage in the establishment of the competitive employment market, the ANAO considers that there is value in drawing together the arrangements that DEETYA implemented to minimise this risk in order to provide guidance for other organisations which are outsourcing functions.

Introduction

6.1 Issues of particular tenderers having, or being seen to have, an unfair advantage were central to the establishment of the new market. Chapter 3 discussed the role of the Probity Advisor in assisting probity in the tender process. In any major contracting out process, there are two groups of tenderers which could be perceived as having an unfair advantage; namely:

- the in-house bidder, as in-house bidders typically have a history of experience in conducting functions that are similar, if not identical to those that are being contracted out. They usually have detailed knowledge of past operations and performance information. In this case, the PEPE Establishment Taskforce and, following its incorporation, Employment National, could be regarded as the in-house bid team, as a proportion of staff from the CES/EAA were to transfer to Employment National, and Employment National was to buy assets from DEETYA that have been used by the CES/EAA; and
- tenderers which already have contracts with the purchaser, as these tenderers may have access to information and other assets not available to other tenderers. In the case of this tender, in 1996-97 over 4 000 organisations were contracted by DEETYA and ESRA to provide labour market programmes (LMPs) and case management respectively. Each of these organisations had the potential to tender for services under the new arrangements.

6.2 This chapter examines how DEETYA managed the risk, both real and perceived, of unfair advantage in an environment where a significant number of organisations, not the least being the public provider, could be perceived as having an unfair advantage in the tender process. The particular aspects which the ANAO examines are how DEETYA reduced the real and perceived risks of unfair advantage for particular tenderers:

- in the establishment of the government provider;
- by managing CES/EAA operations in such a way that it did not provide the government provider with any unfair advantage over service providers;
- by winding down labour market programmes in an equitable fashion; and
- by developing and implementing a protocol for responding to requests for information by potential providers, as part of the Probity Plan for the tender.

6.3 Each of these is discussed separately below.

Establishing the public provider

6.4 If operational areas being outsourced are given the opportunity to compete through an in-house bid, the in-house bid team will have real or perceived advantages if it is located in the operational area. Co-locating the bid team with the operational area ensures that the bid team has full and free access to:

- the existing information systems that supported the activities being outsourced; and
- the knowledge and experience of operational staff.

6.5 DEETYA recognised that the CES/EAA could be perceived as having particular competitive advantages when compared with other organisations submitting tender bids because it had access to information which its competitors did not. Such information included:

- a body of knowledge relating to some of the services that were to be contracted out, for example, for labour exchange or FLEX 1 (for which CES had been essentially a monopoly provider²⁷) and for more intensive employment assistance or FLEX 3 (for which EAA provided case management that complemented service delivery through case managers contracted by ESRA); and

²⁷ Up to 30 April 1998, the CES was the only job placement agency in Australia with an obligation to provide service to all registered job seekers free of charge to job seekers and employers.

- contract management responsibility for LMPs. In undertaking their normal operations, CES staff would have access to information about organisations which could potentially be competitors to Employment National.²⁸

6.6 There was a risk therefore that Employment National would be perceived as receiving an unfair advantage if it was co-located with the management of the CES/EAA. In order to reduce this risk, DEETYA decided, with Ministerial approval, that it would establish an initial separation between the PEPE Establishment Taskforce (set up in October 1996 to prepare the groundwork for the public provider) and the ongoing operations of the CES. During the transition period, therefore, the CES would be required to deliver service in line with its full responsibilities rather than just concentrating on those activities that would benefit its bid as the public provider.

6.7 The ANAO recognises that separate organisational structures alone will not necessarily reduce the level of unfair advantage. The controls and accountabilities within those structures are equally important. DEETYA ensured that senior management oversighted the interaction between the Taskforce and the CES/EAA and set parameters to control the flow of information between the two bodies. This management task was initially undertaken by the Secretary and then from 14 May 1997 by the CES Management Board, chaired by a Deputy Secretary from DEETYA with membership which included the Head of the PEPE Taskforce, the Executive Chair designate of PEPE Ltd and the newly appointed National Manager of the CES.

6.8 The ANAO found that senior management oversight allowed DEETYA to ensure that the Taskforce did not jeopardise the work of the CES/EAA, as well as ensuring that access to information by the Taskforce about potential competitors that was used for CES/EAA operations could be addressed.

Changes to CES responsibilities

6.9 Prior to the reforms, the CES was responsible for implementing or assisting in the implementation of a wide a range of employment services and labour market programmes; for example it:

- had an effective monopoly in respect to the provision of labour exchange (FLEX 1) as it was at the time the only job placement agency with an

²⁸ The ANAO notes that some of this same information may have also been available to CCMs through their contacts with the LMP providers to whom they referred clients.

obligation to provide service to registered job seekers free of charge to both job seekers and employers;

- referred clients to EAA (its own case manager) and CCMs under guidelines approved by DEETYA; and
- approved the placement of clients from EAA and CCMs into a wide range of LMPs, some of which were to be cashed out under the reforms and others which were to continue.

6.10 There was a risk therefore that the CES in undertaking this work could be perceived as being biased towards EAA, rather than CCMs, in order to provide an advantage for Employment National, the organisation most likely to employ former CES/EAA staff. DEETYA moved progressively to reorganise the responsibilities of new DEETYA and the CES. While reducing the risk of unfair advantage was generally not the driver behind these changes, it was a factor considered by DEETYA in designing the details of the changes. In the following sub-sections the ANAO examines the effectiveness of these changes in reducing the risk of unfair advantage.

Case management referrals

6.11 Up until May 1997 the CES had responsibility for referring clients for case management to either the CCMs or EAA. The issue of possible bias in the referral process was raised by a number of CCMs in discussions with the ANAO. The issue was also monitored and considered by ESRA. The ANAO found that DEETYA had monitored the ratio of referral of clients to CCMs and EAA from an early stage in the establishment of the market and successfully changed the referral procedures to redress an imbalance in early 1997.

6.12 The referral responsibility presented a potential conflict of interest for the CES. On 1 May 1997, the referral process for case management clients was transferred to DSS as an interim arrangement prior to assumption of the responsibility by Centrelink following its establishment on 1 July 1997. While this change was primarily to assist the staged implementation of Centrelink,²⁹ it ensured referrals were made by an independent body and so addressed the risk of possible perceptions of bias if the CES had continued to have such responsibility. The purchaser/provider arrangements between DEETYA and Centrelink specified that “Centrelink must adopt an even handed approach to referrals whereby one provider is not favoured over another”. Performance indicators and targets specified

²⁹ ANAO 1997, *Management of the Implementation of the New Commonwealth Services Delivery Arrangements - Centrelink*, Audit Report No.18 1997-98, AGPS Canberra.

in the agreement between DEETYA and Centrelink, allow DEETYA to monitor this condition.

LMP responsibilities

6.13 Prior to July 1997 the CES was responsible for approving CCM and EAA referrals of clients into LMPs. This created the potential for bias in favour of EAA clients, especially as the budgets for LMPs were limited in the wind-down to the new arrangements. For example, there was a risk that the CES could have favoured the placement into LMPs of an EAA client over a CCM client. In addition, the CES was responsible for contract management of organisations undertaking LMPs, many of which would be likely to tender for the new service contracts, and thereby potentially become Employment National competitors. There was a risk therefore that individual CES officers may be biased in their approach towards organisations contracted to undertake LMPs, for example, by not approving referrals of clients to organisations that he/she considered to be the greatest competitive threat to Employment National.

6.14 An important means by which DEETYA managed these risks was to transfer responsibility for LMPs to areas of DEETYA that were to become part of new DEETYA rather than Employment National under the new arrangements. For example, from 1 December 1997, when Employment National was contracted by DEETYA to manage the CES/EAA, Transitional Services Units (TSUs) were established in each DEETYA State Office (rather than the CES) to assume responsibility for managing all LMPs and to ensure the smooth wind-down of LMPs that were not continuing under the new arrangements.

6.15 From this time, CCMs and EAA could still refer clients to places on LMPs, but the TSUs, rather than the CES, approved the placement. Possible bias by the staff of the TSU in favour of EAA was minimised by the TSU staff not taking on the former role of CES staff of assessing the appropriateness of placements. Rather, placements were approved by the TSU automatically if LMP funding was available. (DEETYA recognised that there was a risk that case managers would recommend clients for inappropriate LMPs. As CCMs are paid a significant proportion of fees when they achieve outcomes for clients, DEETYA considered this risk to be low.) Thus, after 1 December 1997 the CES was no longer responsible for approving referrals to LMPs and the TSUs were not responsible for assessing the appropriateness of LMPs.

6.16 The ANAO concluded that the development and operation of the TSUs were important means by which DEETYA managed the risk of bias, and the perception of bias, in its operations previously undertaken by the

CES within the complex environment of transition to the competitive market.

Job Brokerage

6.17 A related initiative was taken on 1 December 1997 when CCMs were allowed to compete with the CES for employment placements through the Job Brokerage Programme. This ensured that case-managed clients would be able to seek job brokerage services from a range of organisations (rather than primarily the CES), including possibly their CCM,³⁰ to assist in achieving employment outcomes. This helped to minimise the impact of any possible bias by the CES against the placement of CCM clients.

Winding down LMPs

6.18 The risk of unfair advantage was also considered in the wind-down of LMPs. LMP providers, particularly SkillShare providers, had acquired considerable assets with Commonwealth monies in order to undertake programmes that were now to be wound down. Consequently, detailed guidelines for the disposal of these assets were developed. These guidelines, which used the SkillShare program as a model, were developed to ensure that the Commonwealth could maximise returns from the disposal of these assets while ensuring that no provider was advantaged or disadvantaged by the process. The strategy involved:

- gathering information on the assets;
- valuing the assets;
- varying the asset value according to condition and rates of depreciation; and
- gifting of assets valued at less than \$500, with assets of higher value offered for sale to the provider.

6.19 In the development of the guidelines, the Financial Audit Business Unit (FABU) of the ANAO was consulted on the methodology to be employed by DEETYA. FABU considered that the proposed approach by DEETYA was adequate to meet its objectives. Spot audits of assets held by providers have been conducted by DEETYA's National Office staff to verify the operation of the process.

³⁰ CCMs were not obliged to participate in the Job Brokerage Programme.

Protocol for access to information

6.20 DEETYA maintains a wide range of information relating to the employment services market including:

- job brokerage;
- case management;
- job seeker profiles;
- labour market programmes; and
- CES and EAA performance.

6.21 DEETYA's probity plan published in the final RFT and the RFT Exposure Draft shows 'access to DEETYA information' as a probity issue for phase 1 - November 1996 to July 1997. A key step in this period was to 'develop a protocol on DEETYA staff relationships with potential tenderers, including access to DEETYA information'.

6.22 This protocol was developed by DEETYA through a series of iterations in February and March 1997 and was eventually approved, following some clarification of issues, by the Minister May 1997. The final protocol as circulated within DEETYA in late May 1997 and included in the RFT issued on 4 August. The protocol is addressed to Ministers, Parliamentary Secretaries and their staff, staff of DEETYA and anyone else directly or indirectly involved in the tender process.

6.23 Until the protocol was developed, there was little guidance for DEETYA officers as to the provision of information to potential tenderers, including the PEPE Taskforce. In particular, this led to delays in allowing access to data by the Taskforce, that was subsequently provided in line with protocol. The uncertainty amongst DEETYA officers regarding the extent of the Taskforce's access to information prior to the protocol development that led to this delay, highlights the general need for agencies to develop such a protocol as early as possible.

6.24 The ANAO found many instances that indicated that the protocol was supported by strict administrative procedures. However, the administrative procedures regarding access to data which relates to more than one service provider could have been more rigorously defined. In particular, while the protocol allows for data relating to individual clients and providers to be available only to the provider to which the data relates, it is not clear on the treatment of data relating to more than one provider. For example, the PEPE Taskforce had the potential to access data on job

seekers which the CES had referred to CCMs and LMPs.³¹ The protocol does not clearly identify how this data should be regarded. It could be considered as:

- CES data about its own operations, which, if accessed by the Taskforce, would be in line with the protocol;
- data about the operations of organisations contracted to undertake case management and LMPs, which should only be available to these organisations; or
- data relating both to CES clients and the clients of CCMs and LMPs.

6.25 It should be noted that it is not possible to identify whether the Taskforce actually accessed this data, as DEETYA's information technology systems do not record this level of detail on access. In addition, it is also not possible to assess whether such data was used in the preparation of Employment National's tender bid, as this was outside the scope of the audit.

6.26 This instance has highlighted the need to address the administrative procedures in developing the protocol, to ensure that the protocol itself is not ambiguous.

6.27 Finally the ANAO notes that the protocol does not indicate how the access to information under the protocol interacts with rights under legislation, such as the FOI Act 1982. The ANAO found that several requests for information under FOI legislation were received by DEETYA during the period of the tender (4 August 1997 to 16 September 1997). This created some uncertainty within DEETYA concerning the impact of the protocol upon such requests. The ANAO found that DEETYA had sought legal advice on this issue upon receipt of requests, and had acted in accordance with that advice. In future tenders, in developing protocols on access to information, Commonwealth agencies should consider the interaction of the protocol with legislation at an early stage and include it in the protocol, to allow the development of appropriate procedures to guide staff in their dealings with tenderers.

Conclusion

6.28 The ANAO concluded that DEETYA has taken steps to reduce the risk of unfair advantage for potential tenders through a range of measures such as:

- separating the in-house bid team from the operations facing competition;

³¹ From 1 July 1997 approval for referrals to CCMs and EAA transferred to Centrelink.

- transferring responsibilities from the CES to diminish possible biased behaviour by the CES to give a potential advantage to the public provider;
- ensuring procedures were in place to diminish the advantage with respect to Commonwealth assets being used by contracted LMP providers; and
- developing and issuing a protocol to assist in ensuring fair access to information across tenderers.

6.29 However, the ANAO considers that the management of the protocol for access to information could have been enhanced through:

- earlier development of the protocol; and
- consideration of the administrative procedures required to support the protocol during its development to ensure that the protocol:
 - is unambiguous, for example, with respect to data access; and
 - clearly defines its interaction with relevant legislation, for example, the *FOI Act*.

6.30 The ANAO notes that in the next tender round, DEETYA will not need to address this full range of issues to reduce the risk of unfair advantage, as the CES/EAA functions will largely been wound down from 1 May 1998, and Employment National will have been operating independently from the Department for approximately two years, under similar contractual arrangements to other contracted organisations. The good practices and lessons from DEETYA's experience have been highlighted as a guide for future contracting-out exercises by the APS.

7. Transitional Arrangements — Reducing the Risks to Customer Service Delivery

This chapter examines issues associated with the management of the transition of existing employment services to the new arrangements to reduce the risks to customer service delivery. The ANAO found that DEETYA had in place structures and processes to facilitate the coordination of the transition arrangements. The effectiveness of some of these initiatives was diminished by the environment in which the transition was being implemented.

Introduction

7.1 Given the magnitude of the changes and the short time frame for implementation of the new arrangements, the ANAO considered that maintenance of customer service delivery at approximately the same level as previously (or consistent with the level expected under the new arrangements) to be a key risk in the implementation. The audit therefore examined:

- the coordination of the transitional arrangements; and
- the implementation plans and initiatives which:
 - allowed the orderly wind-down of existing employment services activities, while maintaining customer service delivery from organisations not contracted under the new arrangements;
 - provided communication with service providers, job seekers and employers for 1 May 1998 start-up;
 - provided Employment National with a sound basis to be able to operate effectively from 1 May 1998;
 - trialed the new arrangements; and
 - prepared the staff of the CES/EAA for the new environment while maintaining their motivation to continue service delivery.

7.2 The overall coordination of the transitional arrangements as well as the implementation plans and initiatives for the five aspects of the transition arrangements are discussed under separate headings below. The other main issue in the transition arrangements is that of training for service providers. This is discussed in Chapter 4, Performance Management.

Overall coordination of the transitional arrangements

7.3 The ANAO sought to establish that DEETYA had in place structures and processes to facilitate the coordination of the transition arrangements.

7.4 As is discussed in Chapter 8, a senior management committee, the Transition Management Steering Committee was established to oversee the transition to the new market from January 1998. This committee initiated a series workshops in the period leading up to the implementation of the market to coordinate activities such as information technology developments, human resource management issues, LMP and CES/EAA office wind-ups, and internal and external communication.

7.5 A database was developed as a management tool to provide an outline of the current status of each individual office, including staffing, lease arrangements, case management capacity, and contracts with Employment National and other providers in same location.

7.6 The ANAO concluded that DEETYA therefore had in place structures and processes which were likely to facilitate the coordination of the transition arrangements.

Orderly wind-down of existing activities

7.7 The ANAO sought to establish that the need for an orderly wind-down of existing activities, while maintaining service delivery, had been recognised by senior managers, planned for and that the plans were being implemented.

7.8 The ANAO found a range of evidence that DEETYA had managed existing activities in a way which supported an orderly wind-down. The following are provided as illustrations:

- Labour Market Programme (LMP) contractors. Contracts with LMP providers were extended or renewed to cover the period to 30 April 1998 (and beyond for providers of particular LMP services).

The management of the LMPs (including approvals for placements) and their wind-up was transferred to Transitional Service Units (TSUs) from CES Offices, with TSUs required to monitor closely the performance of LMP providers and implement contract conditions if performance was seen to drop below acceptable standards;

- CCM arrangements. A new board of ESRA, which comprised senior officers of DEETYA, was appointed to operate from 1 December 1997. This allowed the wind-up of ESRA and its work to be integrated into the overall transition to the new market. Contracts with CCMs were extended to 30 April 1998. As CCMs have a significant proportion of

payments linked to outcomes, they have an incentive to continue service delivery until the final day of their contract;

- tender considerations. In developing the tender approaches, a key consideration was the impact unsuccessful current providers would have on service delivery following the announcement of the successful tenderers for the new employment services. The following examples provide an indication of this consideration:
 - the decision to undertake a one-stage, rather than two-stage tender processes, as current providers may have been excluded from the tender at the first stage of a two-stage process, leaving a considerable period of time when these unsuccessful tenderers may not be motivated to continue service delivery at a high level; and
 - the short period of time between the tender announcement and the start-up of the new arrangements. This took account of the need for the successful providers to prepare themselves for the start-up date balanced against the period of time in which unsuccessful tenderers might decrease service delivery within existing contracts; and
- plans for the wind-up of individual CES/EAA offices. Tasks identified by the Transition Planning Workshop to ensure orderly wind-ups of these offices included:
 - closure checklist and process task;
 - records management, including collection contracts and storage; and
 - assets management, including the identification of assets to be transferred to Employment National and to Centrelink.

Conclusion - orderly wind-down of existing activities

7.9 The ANAO concluded that DEETYA has developed procedures and plans to assist the orderly wind-down of activities which will cease with the start of the new arrangements. These include managing the wind-down of:

- CES/EAA offices; and
- CCM and Labour Market Programme arrangements, with DEETYA making decisions and implementing approaches which took account of the impact of the tender outcome on the maintenance of service delivery until the start of the new arrangements.

Communications to assist stakeholders for market start-up

7.10 The ANAO sought to establish that communication with stakeholders for the start-up of the new arrangements was planned with a

comprehensive coverage of issues and targeting to particular stakeholder groups external to the Department.

7.11 The ANAO found that DEETYA had a number of initiatives in place to assist in communicating the changes to employers, job seekers, and the general public. For example:

- in August 1996, early developmental work had been undertaken on an overall approach to communicating the changes to stakeholders. This was a broad paper which covered the full period to the implementation; and
- as part of an overall external communication strategy DEETYA concentrated on four major strands of activities:
 - market research to inform the communication campaign;
 - the development and implementation of a mass media advertising campaign in line with the communication strategy;
 - a range of public relations activities; and
 - indigenous and ethnic communications campaigns.

Conclusion - communication to assist external stakeholders for market start-up

7.12 The ANAO has concluded that DEETYA has undertaken comprehensive planning in order to communicate with stakeholders. Account has also been taken of the communication needs of particular stakeholder groups in the lead up to the new market. The full implementation of its communications strategy will have assisted in maintaining customer service delivery during the transition.

7.13 The effectiveness of the communication strategy in preparing the market for the new arrangements was not assessed as it was not fully implemented until well after the finish of the audit field work.

Basis for Employment National's effective operations from 1 May 1998

7.14 The ANAO sought to identify that DEETYA had provided Employment National with a sound basis to be able to operate effectively from the first day of the new market by:

- implementing transitional arrangements that assisted the transfer of management responsibility for the CES/EAA Network (the Network) to Employment National; and
- ensuring that appropriate expertise was made available to the PEPE Establishment Taskforce.

Transitional arrangements for CES/EAA management

7.15 The ANAO identified the following transitional arrangements that would assist the transfer of management responsibility for the Network to Employment National:

- the establishment of a CES Management Board from mid-May 1997. The Board was chaired by a Deputy Secretary from DEETYA, with the CES National Manager, the PEPE (Employment National) Executive Chair designate, the Head of the PEPE Establishment Taskforce and other relevant Departmental staff, as members. Its terms of reference included establishing a set of guidelines to govern access by the PEPE senior management team to the CES during the transitional period and facilitate DEETYA's monitoring of the achievement of the Operational Plan;
- the appointment of the CES National Manager from mid-May 1997. With this appointment, a degree of separation between the Network and the rest of the Department was achieved, as a single line of accountability for the Network was established by the Manager reporting directly to the Secretary for the achievement of the CES/EAA Operational Plan; and
- the contracting of Employment National to provide the operational management of the CES/EAA from 1 December 1997 to 30 April 1998, under a purchaser/provider arrangement with DEETYA.

7.16 The ANAO considers the establishment of the CES Management Board, followed by the management under contract of the CES/EAA, allowed a graduated hand-over of management responsibility to Employment National. The initial arrangements, from mid-May 1997, gave Employment National input into decisions about the Network, whilst the contractual arrangements between DEETYA and Employment National gave Employment National management experience in the lead-up to the market. These arrangements will have assisted Employment National to operate effectively from day one of the new market.

Expertise for the PEPE Taskforce

7.17 The ANAO examined how DEETYA and the Taskforce ensured that appropriate expertise was available to the Taskforce in order for it to meet its objectives of preparing the groundwork for Employment National. The ANAO found that:

- DEETYA and the Taskforce identified and obtained an appropriate range of internal and external expertise to assist with the task of establishing Employment National;

- in relation to the major business consultancy, DEETYA and the Taskforce:
 - sought tenders from a wide range of potential providers;
 - specified relevant selection criteria;
 - assessed each tender bid in detail against each criterion;
 - ensured that the consultancy contract clearly identified a relevant range of business planning deliverables and a timetable for their delivery; and
 - established appropriate procedures to monitor the progress and quality of the consultancy outcomes; and
- the draft business plan produced by the consultancy adequately covered the essential elements required of such a business plan. The Taskforce recognised that the plan would only be able to be fully articulated after the results of the tender process were announced.

(Details of business planning undertaken in preparation for the operation of Employment National are at Appendix 4.)

7.18 The ANAO therefore considers that DEETYA ensured that the Taskforce had the expertise available to it to undertake the business planning required to carry out Employment National's operations, and thus provided Employment National with a sound basis on which to operate effectively from 1 May 1998.

Trials of new arrangements

7.19 The ANAO sought to identify if any trialing of the new initiatives had occurred as this is a key measure that will assist in reducing the risks to service delivery from full implementation over a short time-frame.

7.20 The ANAO found that two significant trials had been undertaken in the lead up to full implementation on 1 May 1998. These were developed by the Department at the request of the Minister to provide a transitional stage consistent with movement towards full implementation. These transitional arrangements, as announced by the Minister on 11 July 1997, included the following which could be regarded as trials of the new arrangements:

- management of the CES and EAA by the corporatised public provider (Employment National) from 1 December 1997 to 30 April 1998; and
- invitation to CCMs to provide labour exchange through the Job Brokerage Programme for a fixed contracted price per placement.

Management of the CES/EAA by Employment National

7.21 The contract between Employment National and DEETYA for the operational management of the CES/EAA was based on cost recovery for a management overlay and support. The sanction for significant under-performance against the conditions of the contract was its termination. The contract also provided DEETYA with a range of safeguards in terms of obligations on Employment National to comply with Departmental policies and Government legislation, such as privacy, occupational health and safety and equal employment opportunities. As well as the management experience gained through this contract (discussed in paragraph 7.16), Employment National had access to the Network and thereby had opportunities to develop relationships with staff and clients in the lead-up to the market.

7.22 The contract included a set of agreed performance measures and targets, with targets based on results achieved within the CES operational plan. To the end of February 1998 performance was regarded by DEETYA as satisfactory, because, for example, the CES had achieved 96 per cent of placement targets expected by this date.

Job Brokerage

7.23 Job Brokerage contracts were offered to existing CCMs. These contracts offered a fixed price payment for job placements outcomes achieved by the CCMs. The payments only related to job-seekers eligible under the new market, rather than the full range of job seekers served by the CES.

7.24 The contract conditions have close parallels with those required by FLEX 1 providers; for example:

- outcome payments capped in accordance with a standard profile;
- registration of vacancies on the National Vacancy Data Base;
- identifying job seeker eligibility through the Integrated Employment System and use of Job Seeker Card;
- requirement to adhere to the Information Privacy Principles; and
- client choice with respect to provider.

7.25 In many respects, Job Brokerage provided a trial run of FLEX 1, limited to potential providers who were contracted for case management. In particular, Job Brokerage provided:

- one group of potential providers with an opportunity to develop their work processes, contacts with employers and profile amongst job seekers in a low risk environment³² prior to the market starting on 1 May 1998;
- DEETYA with an opportunity to trial its information technology and other systems prior to 1 May, during a period while there was a significant contingency for service delivery through the CES; and
- an opportunity to introduce greater choice for job seekers, as well as their continued access to the CES.

7.26 As described in Chapter 5 (paragraph 5.7), service delivery with some similarities to FLEX 2, FLEX 3 and NEIS has been funded previously through the EETYA portfolio, providing similar opportunities to those provided by the Job Brokerage trials, noting that these previous providers will not necessarily be those contracted under the new arrangements. The need for such opportunities for ELTSS is likely to be low, as most apprenticeship and trainee courses start at set times, giving contracted providers lead times to set up processes and develop communication links with client groups.

Conclusions - trials of new arrangements

7.27 The ANAO concludes that by introducing some trialing of the new initiatives through the management of the CES/EAA by Employment National and the implementation of the Job Brokerage program, DEETYA has assisted in reducing the risks to service delivery from full implementation over a short time-frame. The effectiveness of these measures in reducing the risks to customer service at market start-up was not assessed as the market commencement date occurred following the completion of the audit field work.

³² Risks for providers were decreased as the providers were offered a fixed rather than competitive price per outcome. The fixed price of \$250 was set at the upper end of a benchmarking study undertaken by consultants employed by DEETYA, which included the CES and other labour exchange organisations.

Preparation of CES/EAA staff for the new environment

7.28 In preparing CES/EAA staff for the implementation of the new market, the ANAO has recognised that DEETYA faced a challenging environment. These challenges included:

- a need for the CES/EAA to fully maintain customer service up until cob on Thursday, 30 April 1998;
- uncertainty for Employment National about the type, allocations and locations of business until the tenderer outcomes were announced at the end of February 1998. Added to this uncertainty was the possibility (which did not eventuate) that Employment National could have been required to deliver services on a 'community service obligation' basis if the market failed to deliver sufficient service capacity. Such a requirement was not expected to be known until close to the start of the market.

Consequently, individual CES/EAA staff did not have any certainty regarding their future employment by Employment National until close to the time of the market start-up;

- DEETYA's need to ensure probity and competitive neutrality, which limited the amount of information it could provide to the Taskforce and the CES/EAA staff; and
- during the implementation, changes to the implementation details, including the timeframe, in response to decisions by the Government, for example to implement the market using existing legislation and administrative authority.

7.29 The use of a cultural change process is an important means by which staff are prepared for large organisational changes,³³ such as the establishment of Employment National using CES/EAA staff. However, in addition to this, DEETYA had to motivate staff, many of whom were not required to transfer to Employment National, in order to ensure continued service delivery.

7.30 In respect to preparing staff for the new environment, the ANAO examined the following aspects of the work undertaken by DEETYA to prepare its staff for the transition through:

- the cultural change process in the lead up to the incorporation of the PEPE (recognising that such a process is the responsibility of

³³ DOFA 1998, *Competitive Tendering and Contracting - Guidance for Managers* p. 7 and p. 16. Canberra.

Employment National after incorporation, and therefore beyond the scope of this audit);

- developing relevant skills and attitudes amongst staff; and
- assisting staff motivation in service delivery in the period from the announcement of the tender outcomes to 30 April 1998.

7.31 The ANAO examined each of these aspects, discussed under separate headings below.

Cultural change process

7.32 The ANAO sought to identify that DEETYA's implementation work reflected the following elements of a cultural change process:

- employment of strategic leadership to provide the vision and drive for change;
- adoption of a consistent set of values for the transformed organisation, which are reflected in decision-making for the project implementation; and
- implementation of a well targeted information campaign aimed at informing and involving staff in the progress of the transformation.

Strategic leadership

7.33 As strategic leadership is required to provide the vision and drive for change, the ANAO sought to identify that there was an adequate level of ownership in and commitment to the project.

7.34 There are indications to suggest that there was a high potential for ownership in the development of Employment National in relevant areas of the Department; that is, the Taskforce and the CES/EAA network. For example:

- the Head of the Taskforce had significant input into the scope, identification of deliverables, selection of successful tenderers for PEPE consultancies, and on-going management of the consultancies let in order to establish PEPE Ltd on a commercial footing;
- most of the key staff working with the Taskforce were self-nominated and therefore likely to have a high level of commitment to developing PEPE Ltd. Under the direction of the Head of the Taskforce, this group of staff had a high degree of input into the establishment of the PEPE; and
- the potential for ownership in the process by Area managers was developed through the expectation that the Area Network Reference Groups would be chaired by their respective Area manager.

7.35 The achievement of a significant body of work to establish Employment National on a commercial basis is a key indicator that a high level of commitment and ownership amongst staff and managers in key areas in the Department was attained.

7.36 The value of a “champion” for the process drawn from the Executive of the new organisation in order to provide the project with the drive and vision of senior management, was illustrated in the cultural change process undertaken by DSS and DEETYA in implementing Centrelink.³⁴ However, as the Executive Chair designate for PEPE Ltd was not appointed until April 1997, in many respects Employment National lacked a “champion” during a crucial stage in its development. Upon appointment, the Executive Chair designate took a strong leadership role both in negotiations with DEETYA on Employment National and in providing direction to the work of the Taskforce (for example, on the development of PEPE specific training modules, see paragraph 7.57).

7.37 Notwithstanding the above, there are a number of indicators to suggest that senior managers in the Department, including the Taskforce, have aimed to provide strategic leadership to assist the Network in the transformation to Employment National. These are outlined below:

- throughout the change process senior managers in DEETYA (as well as the Executive Chair designate of Employment National when appointed) have communicated with the Network on the changes. This included a commitment by the then Secretary, prior to the 1996-97 Budget to open communication, which continued after the Budget announcement particularly through email, despite being targeted by some Network staff who reacted negatively to the Budget announcement. The issue of informing staff of the changes is discussed in more detail in paragraphs 7.44-7.48;
- commitment of significant departmental training resources to change staff attitudes and skills through the “Equipping Staff for the Future” project (see paragraphs 7.52-7.58);
- negotiations with other Commonwealth government agencies with networks of offices to provide job-swaps with their officers who were seeking voluntary redundancy, for those staff in the CES/EAA not required for transfer to Employment National or new DEETYA and unwilling to accept voluntary redundancy - a process aimed at increasing certainty for staff and thus assist morale. Agreement was reached with Centrelink based on these negotiations; and

³⁴ ANAO 1997, *Management of the Implementation of the New Commonwealth Services Delivery Arrangements - Centrelink* Audit Report No.18 1997-98, AGPS Canberra.

- increasing the sense of engagement and involvement of Network managers and staff in Employment National by the Taskforce involving them in particular preparatory tasks such as the evaluation of property, development of user requirements for Employment National Business User System, the development of tender bids, the development of business planning approaches and trial sites for the new work unit model.

7.38 However, there were a number of inherent difficulties beyond the control of the Department which had the potential to negate the positive impact of these strategic leadership actions. These inherent difficulties included:

- indications that staff felt that they were not provided with information on proposed changes prior to the 1996-97 Budget, even though Cabinet confidentiality requirements prevented the release of this information;
- the need for the Network to focus on their continuing work until the beginning of the contract period conflicted with the PEPE Establishment Taskforce's priority of preparing the Network for the transition; and
- uncertainty about job security for CES/EAA staff until tenders outcomes are announced, with limited job security for those CES/EAA staff not selected for work in Employment National, or in locations where Employment National has not been chosen to operate.

Conclusion - strategic leadership

7.39 The ANAO considers that the Departmental Executive, senior management and Taskforce managers provided leadership appropriate to their roles, including the vision and drive for change. However, inherent difficulties beyond DEETYA's control limited the scope and effectiveness of the leadership actions.

Values

7.40 The ANAO sought to identify a set of values to guide the work of the PEPE Establishment Taskforce, consistent with the values planned for Employment National in order to assist cultural change during the transition period.

7.41 Other than the guidelines which govern behaviour throughout the APS, the ANAO found that there was no documented set of values which shaped the work of the Taskforce. This was considered by the Taskforce to be the responsibility of the Chair and the Board of Employment National, once Employment National was incorporated. Nonetheless, the following are examples of work undertaken which will assist the development and

acceptance of an appropriate set of values for Employment National in the future:

- in the May edition of Network News, the Executive Chair designate indicated to the Network the type of organisation he wanted to aim for, its culture and ethos, including Employment National's focus as a commercial organisation, and maintaining and developing a reputation for quality service;
- a Business Planning Conference in July 1997, attended by regional managers from one of the divisions, included discussion on culture and values; and
- the generic cultural change program for "Equipping the Staff for the Future" (see paragraphs 7.52-7.58), was designed to confront existing values and attitudes. This approach has the advantage of making staff more open to new values once they are decided upon in PEPE Ltd.

Conclusion - values

7.42 While each of the above will be useful in laying the groundwork to develop and implement a consistent set of values suitable for the new corporation, the ANAO has concluded that they are not part of an overall plan to achieve this, but rather a loosely linked set of developments. The ANAO acknowledges that the development of such a plan is now the responsibility of Employment National rather than DEETYA.

Informing staff of the changes

7.43 In order to keep staff involved in the implementation of the changes to the Network, the ANAO sought to identify the implementation of a comprehensive, well-targeted information strategy, based on research and previous experience. It would include evaluation points and mechanisms to incorporate the outcomes of the evaluations into the implementation of the strategy.

7.44 The ANAO identified that a significant amount of information regarding Employment National and its development had been provided to staff through a variety of channels, such as satellite broadcasts and visits to the Network by executive managers, information provision by locally based PEPE Coordinators, and information bulletins.

7.45 With regard to informing the Network staff on the organisational changes, the ANAO noted the implementation of the following strategic elements:

- implementation of a dedicated Communications Team within the PEPE Establishment Taskforce;

- research into information needs of staff. The Communications Team conducted an internal staff communication survey which sought feedback from staff on the effectiveness of various communication channels and of the consultations to date.

Almost 1500 staff (approximately one-third of the Network staff) responded to the survey, which indicated in its results published in May 1997, that at the time of the survey, staff considered that information flows were slow, their content ambiguous, and lacked concrete facts, particularly with respect to their own futures;

- the development by the PEPE Establishment Taskforce of an Internal Communications Strategy, which provided details on, for example, the messages to be delivered to different internal target groups, methods of communication, coordination of communication activities; and
- the use of feedback mechanisms through, for example, PEPE Coordinators, meetings between staff and managers, and a staff telephone based National Change Helpline that had been established after the release of the 1996 Budget to provide information and to answer staff queries. These influenced the form and content of information to Network staff.

7.46 The ANAO noted the following in relation to a strategic approach to informing staff about the organisational changes:

- the communications survey was undertaken after the development of the communications strategy. The strategy was initially developed during the period when the Taskforce expected to have a very limited time-frame in which to prepare for the establishment of Employment National. Subsequent postponement of the overall implementation of the market, provided the Taskforce with an opportunity to undertake further developmental work for the strategy through collecting input through the survey. While the ANAO did not assess the overall effectiveness of the strategy in providing relevant information to staff, it considers that the initial level of effectiveness of the strategy may not have been maximised as it did not taken into account the results of the survey; and
- the implementation of the strategy was not negotiated with and agreed by the Departmental Executive. As the Taskforce initially expected that Employment National would take on the management of the CES and EAA from April 1997, it did not seek agreement on the strategy from the Departmental Executive. Rather, agreement was sought on a case-by-case basis as activities came up for implementation. This agreement was not given in every case. For example, the Departmental Executive did not agree to the distribution of some of the information to the

Network in the mode preferred by the Taskforce. In its decision-making, the Departmental Executive took into account the need for the Network to operate largely on a “business as usual” basis until the start of the competitive market. It resulted, however, in the Taskforce undertaking work that was not fully utilised.

7.47 Over time, the barriers to information flows were lifted as policy and administrative decisions were made which resolved some of the uncertainty regarding the implementation of the new arrangements.

Conclusion - informing staff of the changes

7.48 To conclude, the ANAO found that the Department, particularly through the Taskforce, put significant effort into providing information on Employment National developments to the Network. However, the environment in which Employment National was being established was prescribed by the need for the Taskforce to initially work within very short time-frames, and for DEETYA to continue service delivery by the CES/EAA. These largely unavoidable factors impacted on the effectiveness and the efficiency of the development and implementation of an information strategy. The ANAO considers therefore that the impact of information provision as a tool for cultural change is likely to have been somewhat diminished.

Conclusion - cultural change process

7.49 The ANAO has concluded that most of the key elements of a cultural change program had been considered and acted upon. However, the constraints of the environment in which Employment National was being developed has the potential to diminish the overall effectiveness of the process.

7.50 In order to be fully effective, the elements of a cultural change program should be integrated in such a way as to reinforce each other. The ANAO did not identify evidence of an integrated or coordinated approach to cultural change, but rather a loosely linked set of developments. However, the work that the Department undertook on cultural change in the lead up to incorporation, will provide Employment National with the basis on which it can build an integrated approach to cultural change.³⁵

³⁵ As this is a task for Employment National rather than DEETYA, it is outside the scope of the audit.

Developing relevant skills and attitudes amongst staff

7.51 The ANAO sought to establish that DEETYA had assisted Network staff prepare for the new environment by:

- identifying the skills and attitudes needed by staff for the transition through research and previous experience;
- developing and piloting a training program which meets the needs of staff; and
- implementing the training program.

7.52 The ANAO found that DEETYA had sought to develop the relevant training needs of staff for the new environment, through the implementation of the learning and development program, “Equipping Staff for the Future” (ESFF).

7.53 As an initial part of the program, DEETYA undertook qualitative research amongst staff and benchmarking studies to identify the staff skills, knowledge and attitudes essential to achieve the cultural change required for the new organisations, Employment National, Centrelink and new DEETYA.

7.54 Based on this research, DEETYA initiated, as part of the overall ESFF program, the development of generic training modules specifically to assist staff successfully make a transition to their new environments. ESFF program development and implementation was undertaken through a project team, guided by a senior management reference group. Both these structures comprised representatives of the PEPE Establishment Taskforce, as well as other relevant areas of DEETYA. The development of the training modules and their delivery was contracted out by the project team.

7.55 Upon development by the contractor, the generic modules were piloted. As these pilots indicated problems with the content and delivery of the modules, key DEETYA and Taskforce staff worked closely with the contractor to revise the modules. The modules were re-piloted successfully prior to their implementation.

7.56 By the end of March 1998, a significant proportion of the Network staff had attended the generic modules Creating Workplace Culture and Customer Focus, while a significant proportion of the supervising staff in the Network had attended the Developing Leadership workshops, the third generic module.

7.57 However, in examining the development and implementation of the ESFF program, the ANAO noted the following issue. In order to prepare the Network staff for the transition, DEETYA planned to develop and implement PEPE specific training modules, in addition to the generic

training modules as outlined above. In undertaking the development work for the PEPE specific training modules, the project team anticipated the business needs of Employment National because the Executive Chair designate of Employment National had not been appointed at that time. Upon his appointment, the Executive Chair designate considered the requirements of the Employment National and decided that he did not consider that the PEPE specific training modules would meet Employment National's needs. As a result, DEETYA stopped further development of these modules and renegotiated the contract with the consultant regarding this work. Nevertheless, at the time when work stopped on this development, DEETYA staff had invested considerable effort and also was required to pay the consultant approximately \$40 000 to reflect the work undertaken on the PEPE specific modules.

7.58 The ANAO notes that the Executive Chair designate, when appointed, understandably wanted to influence the culture of the CES/EAA in the lead up to Employment National, and that there were significant developments prior to his appointment that impacted on Employment National, many of which needed to be reassessed in the light of his views. The ANAO found that while a risk assessment underpinned the ESFF project development, it did not identify the impact of alternative views of the Executive Chair on the project implementation. Had this risk been identified, an alternative approach to managing the project to lessen the impact of this risk may have been adopted.

Conclusion - developing relevant skills and attitudes amongst staff

7.59 The ANAO has concluded that DEETYA has implemented a learning and development program with respect to the generic skills required to assist staff across the Department make the transition to their new environments.

7.60 However, the efficiency of the program may have been increased had a comprehensive risk assessment been undertaken in the planning stage that took account of the impact of the views of the Executive Chair designate, once he was appointed.

Assisting staff motivation in service delivery during CES/EAA wind-down

7.61 A key risk for the Department was the possible decrease in service delivery by staff of the CES/EAA in the transition period. In examining this issue the ANAO identified a number of techniques which have been

used across various industries to assist staff in an orderly transition to contracting-out a service. These include:

- having contractors take on existing staff, or give these staff preferential access to available positions. While such an arrangement may work where there are a limited number of contractors essentially taking over the management of a service, the Government intended that the new employment market introduce choice for job seekers (and therefore required a large number of service providers) and, implicitly, innovation in service delivery approaches. Imposing a condition of preferential staff selection would be difficult to achieve while meeting these Government objectives; and
- providing staff with a bonus or other reward for meeting service standards to the last day of business. While Certified Agreements or Australian Workplace Agreements provide such an opportunity, the costs to the Government of such expenditure would need to be considered against the benefits (for example, greater numbers of job seekers placed in work and therefore decreases in income support). Such an approach requires a relatively sophisticated industrial relations arrangement and monitoring, one which the ANAO recognises may not have been possible to negotiate at a time when negotiation of certified agreements on the current basis was a relatively new Government initiative.

7.62 As the Department did not implement the above approaches, the ANAO examined other work undertaken by DEETYA to assist in maintaining staff motivation, particularly in the two month period from the tender announcement to the closure of CES/EAA offices. The ANAO recognised that Employment National was undertaking the management role of the CES/EAA during this period. However, there are a number of factors which indicate that DEETYA itself should have been playing a major role in motivating staff in this period:

- CES/EAA staff are employees of DEETYA rather than Employment National;
- DEETYA is responsible for any staff that Employment National does not offer employment to; and
- DEETYA is accountable to Government for continued service delivery during the period, through a contractual arrangement with Employment National.

7.63 The work that DEETYA undertook on the elements of cultural change and on ESFF will contribute to motivating staff. DEETYA also undertook further work leading to the wind-up of the CES/EAA (and subsequent wind-up of the TSUs) with the potential to assist staff in the

period leading to the wind-up. The approaches fall under two broad, but interrelated headings: human resource management approaches and internal communication approaches.

7.64 These are separately outlined below.

Human Resource Management - Certified Agreement

7.65 By mid-March a certified agreement had been negotiated between DEETYA management and a staff elected team, and had been circulated to staff for consideration prior to voting on the agreement. The agreement covers CES/EAA network staff up until mid-1999 to allow for TSU wind-ups. It included specific provisions for:

- early, one-off pay increases which are available to staff either transferring to other agencies or leaving the APS through redundancy arrangements;
- staff bonuses for early voluntary redundancy nomination to come into effect once the staff member's job has finished (generally considered 30 April 1998, but could be as early as Easter 1998, 10-14 April, or as late as December 1998 for a small proportion of staff in TSUs;
- access to training or external redeployment to a nominated value for those staff excess to requirements and not choosing to nominate for voluntary redundancy, and
- payment in lieu of full retention period under certain conditions.

Human Resource Management - Career Transition Strategy

7.66 In early December 1997, a Career Transition Strategy was released to staff throughout the Network. The strategy included:

- the appointment of career transition officers in each state and the Northern Territory. Their role includes:
 - providing assistance to staff with career transition matters such as CV preparation, job applications, and the development of interviewing skills;
 - arranging training activities and information sessions aimed at improving the redeployment prospects of staff; and
 - managing the survey process (in which staff nominate their preference for voluntary redundancy, employment by Employment National or Centrelink, or other redeployment) and coordinating redeployment and redundancy arrangements;
- information sessions, including presentations by the APS Labour Market Adjustment Program on career transition matter, and by Comsuper on retrenchment benefits and options; and
- an intranet site, including self-help tools on financial planning.

Internal communication with Network staff

7.67 DEETYA underpinned its approach to internal communication with Network staff on the wind-down of the CES/EAA through the use of an approach to communication of major change recognised as being successful in Australian organisational settings.³⁶ This approach emphasised the need for face-to-face communication with written back-up material. The strategy recognised that at such times of change, particularly where some staff may consider the outcome not to be in line with their aspirations, staff need the facts rather than visions for the future.

7.68 The Strategy identified the key information required by the affected staff. This included:

- tender results overall;
- implications in specific localities - closure of CES offices and location of Employment National offices;
- financial entitlements;
- placement options; and
- the survey process by which staff could nominate their preferences for voluntary redundancy or various placement options.

7.69 The key information channels used to get the messages across are outlined below:

- at the same time as the announcement of the tender, the Secretary and other senior managers in DEETYA and Employment National made a satellite broadcast to staff outlining the impact on the Network and the options for staff;
- the broadcast was followed up by visits to offices by senior managers. Each State Manager was expected to visit (or sent a senior officer nominee in the case of larger States) to each CES/EAA office within 72 hours of the announcement, with instructions to deliver a similar, scripted message to staff;
- on the day of the announcement of the tender outcomes, staff were issued with an information kit, outlining their options, including:
 - information on the draft Certified Agreement;
 - information on the Employee Assistance Programme for personal counselling services;

³⁶ Larkin, T.J. and S. (1994), "Communicating Change", McGraw-Hill Inc, New York.

- information on the DEETYA / Agency (Centrelink) Placement Arrangements; and
- a list anticipated questions and answers;
- use of Departmental intranet facilities to provide information on, for example, financial planning;
- staff Help-line; and
- use of the internet to provide information about the new employment services market tender outcome.

7.70 By mid-March, DEETYA had identified that that the Intranet page had been “hit” a significant number of times. This provided one indication that staff were accessing information available for them to assist informed decisions. In addition, State Offices provided feedback to National Office that staff considered that their information needs had been addressed.

Recognition by management that performance will decrease

7.71 DEETYA management had an expectation that the CES/EAA performance would decrease throughout April. As part of managing this period, when there were clearly staff who would not want to continue to come to work, DEETYA introduced the option of providing voluntary redundancies to those staff who wished to leave at Easter 1998, where operational requirements could otherwise have been met. Furthermore, managers had been advised not to jeopardise the opportunities for staff to take up new positions by not releasing them when required.

7.72 While CES/EAA performance was expected to decrease somewhat, the momentum of service delivery was driven to a certain extent by the continuing flow of job seekers into the CES and employers seeking to fill vacancies via the CES. Furthermore, the introduction of the Job Brokerage program (see paragraphs 7.23-7.25) resulted in some service delivery for labour exchange outside the CES/EAA, providing a limited alternative to job seekers and employers.

Conclusion - service delivery during CES/EAA wind-down

7.73 The ANAO concluded that DEETYA had put considerable resources into reducing the negative impact of the changes on their own staff, and thereby assisting them to continue service delivery. These have included:

- financial provisions for staff within the new Certified Agreement, which take account of the wind-down of operations;
- assistance to staff in career transition; and
- internal communication with staff, based on a well researched approach.

7.74 To further assist staff motivation, the new Certified Agreement could have provided staff with some bonus or reward for meeting service standards to the last day of business. However, the ANAO recognises that Certified Agreements and Australian Workplace Agreements in their current form, are a new initiative for the APS, for which experience is developing in negotiation and monitoring. The ANAO considers that there may be an opportunity in the future to improve service delivery up to the final days of an organisation by the use of performance bonuses managed through the use of Certified Agreements or Australian Workplace Agreements. Such bonuses would need to take account of the overall costs and benefits to the Commonwealth.

8. Project Management

This chapter examines DEETYA's use of generally accepted project management techniques to ensure that plans for the establishment of the employment services market and the creation of public provider were well developed, coordinated and managed. The ANAO found that DEETYA's Executive effectively overviewed and coordinated the changes and that project planning and the management of potential risks was in accordance with better practice. The ANAO found that DEETYA could have improved its identification and monitoring of total project costs.

Introduction

8.1 The previous chapters in this report have demonstrated that DEETYA faced a range of complex management tasks associated with the new service delivery arrangements, for example the management of a major competitive tender (Chapter 3) and the management of transitional arrangements (Chapter 7). The need to deliver these changes within a short-time frame meant that good project management was particularly important for DEETYA. This chapter examines:

- the role of DEETYA's Executive in overseeing project management;
- project management for the establishment of the employment services market; and
- project management for the establishment of the PEPE.

Executive overview and coordination

8.2 In order to ensure coverage of all significant issues, timely implementation of plans and control and review of progress it is important that the Departmental Executive is closely involved with overseeing the process and that there is close coordination between the various parties to the change.

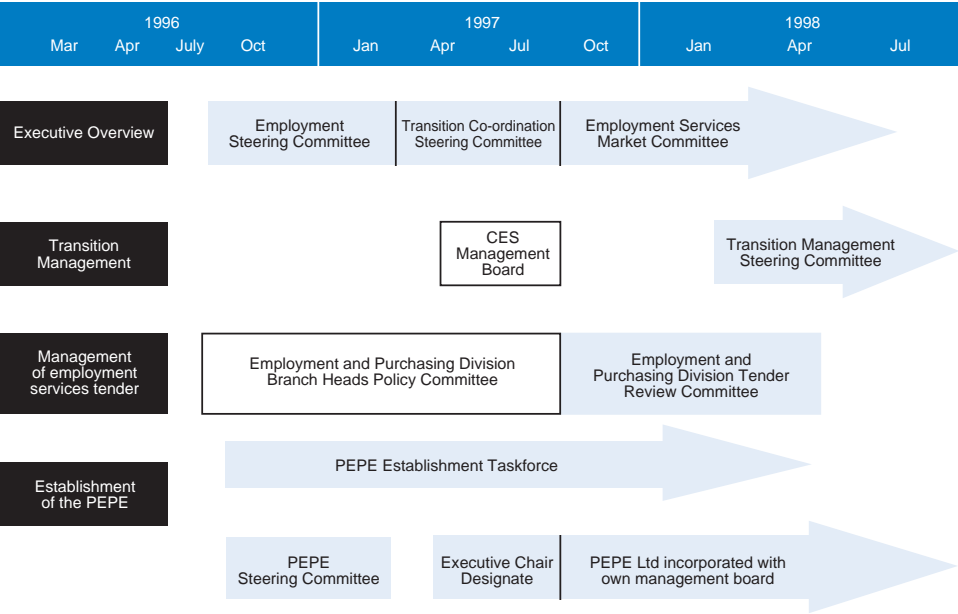
8.3 The ANAO found that DEETYA's Executive was actively and extensively involved in the overview and control of the employment services changes through membership on the three Executive overview committees identified in Figure 8.1.³⁷ DEETYA established a number of

³⁷ Details of membership and terms of reference for these committees are at Appendix 5.

arrangements to support and supplement these overview committees and to further ensure appropriate Executive level involvement. For example:

- In November 1996 a PEPE Steering Committee was established comprising the Secretary, two Deputy Secretaries, Heads of the Systems, Network Operations, Corporate Services and Legal and Review Divisions as well as the Head of the PEPE Establishment Taskforce. The Steering Committee was established to address issues relating to the Department’s progress towards the establishment of the PEPE. The Committee met in November 1996 and again in January 1997, the purpose of the second meeting being to provide an executive overview of the Department’s progress toward the establishment of the PEPE and to highlight major milestones to be achieved in the future.
- The Head of the PEPE Taskforce and the Executive Chair designate (up to 4 August 1997) were responsible directly to the Secretary of DEETYA. The ANAO found that both DEETYA Secretaries (Mr Hollway up to January 1997 and Mr Sedgwick after that time) had been directly involved in major decisions relating to the strategic planning of the PEPE Taskforce’s work.

Figure 8.1
Key Management Structures — August 1996 to April 1998



- On 14 May 1997 the Secretary of DEETYA announced the setting up of a CES Management Board to be chaired by a Deputy Secretary from DEETYA. Its membership included the CES National Manager, the PEPE Executive Chair designate, the Head of the PEPE Taskforce, and other relevant Departmental staff. Its terms of reference included establishing a set of guidelines to govern access by the PEPE senior management team to the CES during the transitional period from May 1997 to March 1998. The Board met in June and July and considered a range of issues relating to the interface between the PEPE and the CES.
- In January 1998 DEETYA established a Transition Management Steering Committee, comprising a Deputy Secretary and relevant Division Heads as a sub-committee of the Employment Services Market Committee to oversee the remaining transition to the new market.

8.4 Initial overarching plans to cover all aspects of the implementation of the changes were prepared by DEETYA and approved by the Minister in late 1996. As a result DEETYA identified a number of areas where it could improve its project planning at that time, including:

- development of a unified plan for DEETYA;
- development of a high level plan which feeds down to operational plans;
- improved communication at different levels of planning;
- improved skills in project planning concepts and software;
- clearer identification of responsible officers; and
- reduction of overlaps between plans.

8.5 DEETYA took steps to address these issues. By February 1997 the Transition Coordination Steering Committee (TCSC) had overview of seven summary project plans, each dealing with an aspect of the changes (see Table 8.1). These plans served as a basic reference document for meetings of the Committee where Division Heads reported against their particular plans on an exception basis.

Table 8.1
Project plans overviewed by the TCSC

Major project	Responsible Division Head
Transition - Old DEETYA to Service Delivery Agency	FAS Corporate Services
Transition - Old DEETYA to PEPE	FAS Corporate Services
Transition - Old DEETYA to new DEETYA	FAS Corporate Services
Entry Level Training Support Services	FAS Vocational Education and Training Division
Establishment of Employment Services Market	FAS Employment and Purchasing Division
Planning for PEPE operations and competition	FAS PEPE Taskforce
Student Assistance and Youth Servicing	FAS Youth, Student and Social Policy Division

8.6 The ANAO found that the TCSC and its successor the Employment Services Market Committee provided a review and problem solving function with respect to the employment services changes and assisted in the timely implementation of plans by providing a key point of communication with senior managers of the various project components. The Committees helped ensure that all significant issues were covered and that progress against the formal project plans was monitored. In addition they were supported by detailed agenda papers and minutes which gave effective accountability for decisions and actions through the recording of decisions and associated responsibilities.

8.7 In relation to Executive involvement in risk management the ANAO found that the TCSC and the Employment Services Market Committee included risk management as a standing agenda item for its meetings. Each Division Head was required to provide a risk assessment report to each meeting indicating progress and action needed to minimise risk. The reports were updated regularly and covered a comprehensive range of issues.

8.8 Further, in January 1998 the Committee commissioned a risk assessment from an external consultant to review and update the assessment of risks for the transition process including the identification of any risks not currently incorporated in the Project Status and Risk Reports. The external review was to focus on transitional management issues and was to be used to review and refine transition management strategies and plans for the implementation of the new service delivery arrangements. The ANAO found that the risk assessment analysed the identified risks in detail in terms of the probability that the event associated with the risk would eventuate and the magnitude of the impact of such an event. All the risks resulting in a rating of 'high' were then considered by

the Employment Services Market Committee in January 1998. The ANAO also found that the Post Tender Transition Plan prepared in January 1998 was accompanied by a detailed post-tender transition status and risk management report.

8.9 A major task to be coordinated by the Executive related to setting up the PEPE. This was also a new challenge for DEETYA as it involved setting up a major company structure within a Department that had traditionally not operated such organisational structures. Coordination of the work of the PEPE Establishment Taskforce with the rest of the Department in the period leading up to the incorporation of PEPE Ltd on 4 August 1997 also created some special challenges relating to the need to treat the in-house bidder on the same basis as other bidders. DoFA has stated, for example, that the Government's competitive neutrality policy requires that the tender process should not give an unfair advantage to either in-house or external bidders.³⁸ Thus the ability of the TCSC to coordinate the work of the Taskforce with other Departmental areas was constrained, not only by other priorities, but also by the need to ensure that commercially sensitive information relating to the PEPE's business plans was not available to Employment Purchasing Division. Conversely it needed to ensure that sensitive information about the tender process was not made available to the Taskforce.

8.10 Consequently, in the period leading up to the incorporation of the public provider on 4 August 1997, coordination of the Taskforce's activities with the rest of the Department took place largely outside of the TCSC forum. The ANAO found that subsequently there were delays in resolving a number of issues and concludes that more effective coordination would have been achieved had the Taskforce and Department established alternative processes for more regularly reviewing the integration of the Taskforce's plans and activities with those of related areas within the Department.

Conclusion concerning Executive overview and coordination

8.11 Apart from some delays in resolving issues for the PEPE Establishment Taskforce, the ANAO concludes that DEETYA instituted appropriate organisational arrangements to help ensure that the change process was overviewed by the Department's Executive and well coordinated across the Department. These arrangements included the use of high level coordinating committees with Executive level overview and control of project plans and associated risk management. The plans

³⁸ These issues are discussed further in Chapter 6.

summarised the required actions for the various Departmental areas that had responsibility for implementing the Government's changes.

Project management for the establishment of the employment services market

8.12 The ANAO examined how DEETYA implemented project management to establish the new market.

8.13 Effective project management involves a number of activities, for example:

- specification of project plans;
- management of potential risks to the project; and
- management of project costs

Each of these interrelated issues is considered below.

Specification of project plans

8.14 Each high level plan submitted to and reviewed by the TCSC and Employment Services Market Committee was supported by more detailed plans that were developed and monitored by relevant operational areas. The Employment and Purchasing Division was responsible for plans for establishing the new market including developing and implementing the employment services tender, developing contract management and provider support capabilities and processes and establishing a client complaints mechanism.

8.15 The ANAO examined whether DEETYA implemented effective project planning for the establishment of the market through the use of project plans that:

- divided complex projects into simpler, manageable sub-projects to allow the management of each sub-project to be tailored to the level of risk and uncertainty in the sub-project's environment;
- included a comprehensive range of tasks showing their interaction and boundaries and identifying those which were critical to advance the project;
- identified responsibilities for action;
- included time frames and deadlines; and
- were systematically updated for changes in the project's progress and environment.

8.16 The ANAO found that the overall task of establishing the new market was divided into manageable sub-projects that allowed each sub-project to be managed in accordance with the level and significance of the

relevant risks. Further, the plans were updated regularly and officers took responsibility for ensuring that:

- plans were comprehensive;
- timetables for sub-project plans were consistent;
- there was no unnecessary duplication of activities;
- dependencies on the outcomes of sub-projects as inputs to other sub-projects were identified and reflected consistently throughout the plans. For example, a number of delays in the establishment of the market were quickly reflected in the timing of the plans;
- the outcomes of the plans were consistent with Government decisions; and
- in particular, the Employment and Purchasing Division Branch Heads Policy Meetings and the Tender Review Committee considered progress against plans frequently.

Audit conclusion concerning specification of project plans for the new market

8.17 The ANAO concluded that DEETYA satisfactorily met each of the project planning criteria described in paragraph 8.15 in relation to planning for the new market

Management of potential risk

8.18 An important element in project management is the management of risks. MAB/MIAC³⁹ recommends that organisations manage risk through processes that establish the context in which the risk occurs, identify the risks and then analyse, assess and prioritise the risks before implementing actions to treat the risks. Moreover, risk management should also take place continuously and be part of normal management decision making.

8.19 In line with this view, risk management is an underlying theme of much of this report and one which has been considered in several sections - see Table 8.2.

³⁹ MAB/MIAC 1996, *Guidelines for Managing Risk in the Australian Public Service*, Report No.22 AGPS, Canberra.

Table 8.2**Risk management issues considered elsewhere in this report**

Management of risks associated with:	Section of report
Legal challenges arising from using existing legislation and administrative authority to implement the changes	Chapter 2
The tender process	Chapter 3
Service provider failure	Chapter 5
Unfair advantage for particular tenderers	Chapter 6
The transition process	Chapter 7

8.20 Chapter 3 described in detail how DEETYA effectively managed potential risks relating to the tender process through the use of tender simulations, training, independent quality assurance and appropriate probity and legal advice. In addition to the specific tender related risk management actions described in Chapter 3 the ANAO found that, in relation to preparations for the new market generally:

- the Employment and Purchasing Division Branch Heads policy meetings identified, addressed and followed-up emerging risks quickly and at a high-level, as well as addressing longer term risk issues;
- working groups,⁴⁰ with wide representation from National Office and the Regional Employment Purchasing Units provided a range of policy and operational experience which helped to identify potential risks;
- detailed contingency plans were developed, for example in relation to possible changes flowing from the Government's decision not to proceed with the Reform of Employment Services legislative package; and
- in relation to specific services to be tendered DEETYA undertook detailed and comprehensive fraud risk assessments for each service to be provided under the new arrangements. In addition a "rogue practices" paper was prepared, on the basis of the knowledge of experienced State-based staff, which identified and assessed possible risks of fraudulent practices under the new arrangements.⁴¹

Audit conclusion concerning the management of potential risks

8.21 The ANAO concluded that risk management in relation to developing and implementing the market changes was in line with good practice and that the steps in the MAB/MIAC model or their equivalent had been completed for a comprehensive range of significant risks.

⁴⁰ Details of the groups are at Appendix 2.

⁴¹ DEETYA issued detailed instructions to staff concerning the treatment of corporate risk in June 1996 - *Corporate Risk - No Surprises 1996*, DEETYA, June 1996.

Management of project costs

8.22 In general, the ANAO considers that the resources for projects, including those associated with the outsourcing of government functions, should be identified. Where costs are being absorbed by agencies, the effects of the project on existing work programs should be analysed. Further, the ANAO considers the identification of overall resource costs in project planning to be good practice as it facilitates:

- informed decisions regarding whether to proceed with a project and the form the project will take;
- monitoring of project costs against approved estimates and the undertaking of remedial action if necessary; and
- analysis of resources used in the project to assist in the assessment of the success of the project and to inform future similar projects.

8.23 The expected resources required to conduct the tender exercise were significantly influenced by the expected number of bidders. Based on 1995-96 data prepared by DEETYA there was a total pool of 15 000 to 20 000 possible providers. 1300 responses were received to the 'Survey of Interest in Providing Employment Services' supplied with the Tender Information Kit in December 1996. In February 1997 DEETYA developed detailed estimates of the necessary staff resources for the tender evaluation based on receiving 5000 bids from 1500 organisations (where a bid represents a bid in respect of a service in a region). A contingency plan was developed based on stepped increases on the original estimate of 125-140 per cent, 140-180 per cent and over 180 per cent.

8.24 By 30 June 1997, DEETYA had revised this estimate to a possible 3000 organisations and 5000 bids based on the level of interest in the Exposure Draft RFT. The tender simulations had also allowed estimates for assessment time to be decreased. In the event, some 1016 organisations submitted bids, and 5343 bids from 971 organisations were accepted by DEETYA for evaluation. The number of bids, the primary determinant of required resources, was therefore close to the estimates of 30 June 1997.

8.25 In June 1997 DEETYA established an internal budget for 1997-98 of approximately \$12.9 million for the Employment and Purchasing Division, comprising \$5.6 million for salaries and \$7.3 million for administration, including various consultancies relating to the new arrangements. However, in the early stages of 1997-98 a detailed breakdown of the budget in relation to the tender exercise was not used to monitor and control cost incurrence. Moreover, the initial budget did not include the cost of resources to be obtained from other DEETYA Divisions, for example legal and IT services.

8.26 In October 1997 DEETYA commenced a detailed analysis of costs associated with establishing the new market. The analysis identified specific administrative costs, including costs of resources obtained from all areas within DEETYA. However, as processes for allocating labour costs to the tender exercise had not been established, DEETYA has been unable to accurately identify the total labour costs associated with the exercise. Whilst there are problems in relation to monitoring labour costs, regular monitoring of administrative costs against a detailed budget began in October 1997.

8.27 As the tender exercise is a significant item within the total budget for establishing the new service delivery arrangements, and as it is scheduled to be repeated in 1999 and thereafter, the ANAO supports work under way in DEETYA to use the resourcing information from the first tender round to assist in benchmarking and planning for future tender rounds. To maximise the value for benchmarking the cost analysis will need to include contributions made by all areas of the Department and exclude those costs that will not occur in future tender rounds, for example costs relating to the wind-down of the labour market programmes.

Audit conclusion concerning management of project costs

8.28 The ANAO concludes that DEETYA had accurately predicted the expected number of bids to be evaluated. However, the ANAO concludes that DEETYA's budgeting and monitoring of costs of the tender exercise had the following deficiencies:

- the initial 1997-98 budget for the tender exercise did not include costs associated with the use of resources from all areas of DEETYA;
- initially the Department did not monitor cost incurrence against a detailed project budget. Monitoring of administrative costs against budget did not occur until October 1997; and
- processes for directly recording labour costs for the tender exercise were not developed. Consequently DEETYA is unable to accurately identify labour costs incurred in the exercise.

8.29 The ANAO therefore, concludes that there is scope in the future for DEETYA to better identify and monitor costs in the planning and early phases of major projects in order to improve initial decision making, the assessment of progress against budgets and the evaluation of projects to inform similar projects in the future.

Recommendation No.11

8.30 The ANAO recommends that in future major projects DEETYA prepares detailed initial budgets that include the cost of all resources to be used in the project and that actual cost incurrence, including labour cost, be monitored against the budget in order to assist effective project management and improve accountability.

DEETYA response

8.31 Agreed.

Project management for the establishment of the PEPE

8.32 The PEPE Establishment Taskforce was created in October 1996 to take responsibility for preparing for the establishment of the new public provider and for developing a tender bid on behalf of the provider. The Taskforce continued to operate throughout 1997, providing support for the public provider up to and after its incorporation on 4 August 1997. This section of the audit concentrates on project management to support the work of the Taskforce up to 4 August 1997.

8.33 Using the same criteria as applied to the establishment of the employment services market, the ANAO examined whether DEETYA had implemented effective project management for the work of the Taskforce through the:

- specification of project plans;
- management of potential risks to the project; and
- management of project costs

Each of these interrelated issues is considered below.

Specification of project plans

8.34 The ANAO examined whether DEETYA implemented effective project planning through the use of project plans in accordance with the criteria listed at paragraph 8.15.

8.35 The ANAO found that the PEPE Establishment Taskforce developed a comprehensive and detailed set of project plans early in its existence. These plans were refined and in December 1996 became part of DEETYA's Departmental master plan for labour market assistance reforms. An examination of later revisions of the project plans indicates that they continued to address the range of issues identified in the initial plans.

8.36 The ANAO examined the initial project plans and found that they specified actions to be taken, who was responsible for taking those actions,

when they were to take place, and key milestones to be met. An examination of later revisions of plans in the period leading up to 4 August 1997 reveals that they continued to be specified in this way.

8.37 The ANAO examined a series of project plans prepared between October 1996 and June 1997 and found that they were kept under review and revised to reflect changes in the Taskforce's environment and priorities. The evidence also indicates that progress against individual plans was monitored on a regular basis. In particular, following the commissioning of a business planning consultancy in February 1997 arrangements were put in place for functional work groups to report weekly on progress against plans to bring issues to attention and allow plans to be updated. In addition, procedures were put in place for team leaders to meet jointly with the Taskforce leader and the lead consultant on a fortnightly basis to discuss issues spanning the various teams and to discuss progress generally.

Audit conclusion concerning specification of project plans

8.38 The ANAO found that DEETYA, during the period leading up to 4 August 1997 (the period examined by the audit), satisfactorily met each of the project planning criteria described in paragraph 8.15 in relation to the work of the PEPE Establishment Taskforce.

Management of potential risks

8.39 The ANAO examined whether DEETYA managed risks associated with the establishment of the PEPE in accordance with the guidelines developed by MAB/MIAC (see paragraph 8.18).

8.40 The ANAO found that:

- the Head of the PEPE Establishment Taskforce, in February 1997, identified potential risks relating to a range of issues and prepared a preliminary risk assessment report for the Secretary to DEETYA;
- in March 1997 the business planning consultants to the Taskforce provided an initial assessment of implementation risks with some discussion and brief indication of possible actions that might be taken; and
- the draft business plan prepared in July 1997 by the business planning consultants to the Taskforce identified some risks and recommended strategies to overcome those risks.

8.41 The ANAO found that DEETYA had taken steps to reduce or resolve the major risks identified. For example it commissioned a range of external

consultancies to the PEPE Taskforce to deal with risks associated with, for example:

- industrial relations issues;
- business planning (including service delivery strategies);
- information technology strategies;
- training;
- marketing strategies; and
- recruitment.⁴²

8.42 In addition to the above, DEETYA commissioned an external consultant to conduct a comprehensive risk assessment of the PEPE implementation. The first element of the assessment took place between April and July 1997 and included:

- identification of business objectives, strategic risk drivers and inherent risks;
- risk identification, risk analysis and ranking and presentation of detailed assessments; and
- identification of risk management action, and development of an overall assessment report.

8.43 The ANAO examined the risk assessment report and found that it was based on an analysis of documents and interviews with key players and that it identified a comprehensive range of risks. Each risk was analysed and ranked in terms of:

- the probability that the event giving rise to the risk would eventuate; and
- the magnitude of the impact of the event on the business.

8.44 This enabled the report to identify and prioritise the most significant risks as those which were more likely to occur and which would have a large impact on the business. The analysis also gave reasons to support the probability and impact rankings for each risk. Finally the assessment identified actions to be taken to deal with each risk.

Audit conclusion concerning management of potential risks

8.45 The ANAO concluded that risk management for the establishment of the PEPE was in line with good practice and that the steps in the MAB/MIAC model or their equivalent had been completed for a comprehensive range of significant risks.

⁴² These consultancies are discussed in more detail in Appendix 4.

Management of project costs

8.46 DEETYA's 1996-97 additional estimates appropriated \$5 million, advanced from DEETYA's 1997-98 running costs, to cover substantial up-front costs in establishing the public provider as a viable commercial entity. As a result the PEPE Taskforce was provided with a budget of approximately \$5 million for 1996-97.

8.47 Table 8.3 shows that the Taskforce expended approximately half of its \$5 million dollar budget during 1996-97 and that in 1997-98 DEETYA agreed to supplement the initial budget to bring total Taskforce expenditure from its establishment until 8 April 1998 to approximately \$6.9 million.

Table 8.3

PEPE Taskforce expenditure funded by DEETYA⁴³

	1996-97 (\$)	1997-98 (up to 8/4/98) (\$)
Taskforce salaries	868 348	1 855 878
Administrative costs (including consultancies to support the Taskforce)	1 467 712	2 742 536
Total	2 336 060	4 598 414*

(*) includes commitments of \$263 079

8.48 Table 8.3 refers to expenditure incurred directly from the Taskforce budget. In addition to this budget DEETYA provided significant additional support to the Taskforce from other Departmental budgets, including:

- DEETYA funded a range of corporate services (for example legal, information technology, finance and human resource management) to support the PEPE Taskforce;
- in October 1996 DEETYA appointed network-based PEPE Coordinators to assist the Taskforce on a full time basis. The nine Coordinators funded by DEETYA attended the first Coordinators workshop in November 1996 and by March 1997 14 Coordinators (mostly at the senior officer grade B/C level) were in place;⁴⁴
- DEETYA appointed and funded thirty PEPE tender bid managers and forty PEPE tender bid administrators in March 1997 to assist the Taskforce in preparing tender bids on behalf of the public provider; and

⁴³ Source: information provided by DEETYA Finance Branch.

⁴⁴ The duties of these people are described further in Appendix 4.

- several projects aimed at developing innovative business practices in the Network were funded by DEETYA National Office.

8.49 Following incorporation on 4 August 1997 DEETYA has identified and charged PEPE Ltd for some support services provided by the Department. The services include accommodation and utilities, accounts processing, payroll processing, salaries of Taskforce staff engaged in company activities (for example systems development) and corporate overheads.

8.50 The ANAO found that DEETYA had recorded many direct costs incurred by the PEPE Taskforce (see Table 8.3). However, DEETYA has not at this stage separately identified certain other costs funded by the Department to support the Taskforce, for example the corporate services support and the salaries of PEPE Coordinators mentioned above.

8.51 The ANAO recognises that the costs of some of the additional support provided to the Taskforce can only be estimated using indirect cost allocation processes and that the decision to allocate costs needs to take into account the costs and benefits from the allocation. However, some of the costs are directly traceable to the Taskforce, for example the salaries of PEPE coordinators and the contracted in legal advice.

8.52 DEETYA has advised that it will be determining the total cost of setting up the public provider following the completion of the set up phase. It has advised that as at February 1998 some CES staff time and support services were still being provided to the public provider, on a user charging basis where considered appropriate.

Audit conclusion concerning management of project costs

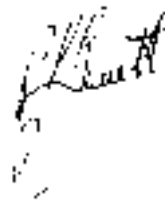
8.53 The ANAO found that DEETYA provided a budget for the establishment of the PEPE through the work of the PEPE Establishment Taskforce and that expenditure was monitored against that budget. The ANAO found no evidence to suggest that the Taskforce was seriously constrained by a shortage of financial resources.

8.54 In addition to the Taskforce costs DEETYA incurred other costs associated with establishing the PEPE. However, a total budgeted cost for all activities related to the establishment exercise was not separately identified at the start of the project.

8.55 The audit found that DEETYA had provided substantial financial support for the establishment of the public provider through:

- costs that have been funded as part of the Taskforce budget;
- costs that have been funded from other Departmental budgets; and
- costs that have been recovered from PEPE Ltd after its incorporation.

8.56 The ANAO supports the Department's intention, at the end of the set up phase, to determine the total costs incurred by DEETYA to set up the public provider. The ANAO considers that an estimate of the total costs would provide important information to allow a more informed evaluation of the Government's policy as well as providing information that would be useful in any similar programs undertaken in the future.



Canberra ACT
7 September 1998

P.J. Barrett
Auditor-General

Appendices

Appendix 1

Description of services open for tender as reflected in the Request for Tender

FLEX

1. The objective of FLEX is to get eligible unemployed people, particularly those most disadvantaged in the labour market, into sustainable jobs.
2. FLEX provides a continuum of assistance to get eligible job seekers into work and to help employers fill their job vacancies. On this basis, the service provides a clear focus on matching job seekers to jobs.
3. FLEX arrangements recognise that some job seekers need help before they can be successfully matched to a job. For some job seekers, FLEX provides a graduated service of improving job search skills, intensive job preparation, and job matching. It enables providers to develop job seekers' skills and attributes until they are ready to be matched to a job.
4. FLEX has three linked servicing streams: FLEX 1, FLEX 2, and FLEX 3, as well as Project Contracting.

FLEX 1

5. FLEX 1 provides labour exchange services. FLEX 1 services will include, but will not be limited to:
 - obtaining job vacancies from employers;
 - advertising vacancies on the NVDB;
 - matching job seeker skills and abilities against employer requirements;
 - referring job seekers to vacancies;
 - ensuring that appropriate job placements occur;
 - meeting employer recruitment needs;
 - meeting any contractual obligations to help the CSDA in job seeker compliance activity; and
 - helping people obtain apprenticeships and traineeships by establishing an effective relationship with ELTSS providers.

FLEX 2

6. The second servicing stream also provides FLEX 1; additionally, a payment is made to providers to help eligible job seekers referred by Centrelink to improve their job search skills. This part of the service is called FLEX 2.

7. FLEX 2 recognises that some job seekers are not immediately competitive in the labour market. They may have the skills but lack knowledge in presenting the skills and convincing employers to employ them. Other job seekers may simply not know how to approach an employer to ask about a job or how to present at an interview. FLEX 2 providers will help these job seekers to improve their job search skills and help to get them a job.

8. FLEX 2 helps eligible job seekers, referred by Centrelink, into employment through individually tailored assistance to:

- improve job seekers' job search skills;
- motivate job seekers to seek work; and
- expand job seekers' job search networks.

9. FLEX 2 must include supported practical job search activities focused on the needs of the individual job seeker. Course-based assistance, sharing features similar to the previous Job Clubs, may also be appropriate when such courses meet the needs of the individual job seeker. As well as the services described under FLEX 1, FLEX 2 will provide, but is not limited to, activities that include:

- assessing and identifying the individual needs and barriers faced by eligible job seekers;
- planning appropriate job search strategies to meet these needs and reduce or remove these barriers;
- providing job search assistance relevant to the individual needs of the eligible job seeker and the labour market;
- providing support and practical experience to eligible job seekers to look for employment; and
- fostering linkages with employers and other organisations to expand the job seeker's job search networks.

FLEX 3

10. The third servicing stream, FLEX 3, provides FLEX 1 and additional payments to help eligible job seekers who are most disadvantaged in the labour market. FLEX 3 provides these job seekers with the additional, intensive assistance and support they need to obtain and hold a job. In some cases, job seekers referred to FLEX 3 will lack self-confidence or esteem, have poor job-related skills or need additional help to become more attractive to employers. They may need counselling, personal development or training in literacy, numeracy or English as a second language. Under FLEX 3, organisations will work with these job seekers to prepare them for employment and provide FLEX 1 to get them a job.

11. Services offered under FLEX 3 recognise that some job seekers require intensive assistance and support to obtain and hold a job. The kinds of assistance that may be required before such job seekers are attractive to employers and can be successfully matched to sustainable jobs include:

- FLEX 1 services;
- personal development;
- vocational training;
- training in literacy, numeracy or English as a second language;
- job search techniques;
- work experience;
- paying any wage subsidies negotiated with employers; and
- post-placement support.

12. In the past, labour market programmes funded by DEETYA delivered these services. Under FLEX 3, providers are required to provide these kinds of activities, where required, to ensure job seekers meet the needs of employers.

Project Contracting

13. An additional service offered under FLEX is Project Contracting, which will ensure the supply of labour to harvest regions for selected crops. The service will be available to growers who need a large number of out-of-area workers to supplement the local labour supply so that crops can be satisfactorily harvested.

14. Project Contracting services will include, but will not be limited to:

- marketing of harvest work opportunities to regions with an appropriate supply of labour through various promotional strategies - including liaison with CSDA, use of Australian Job Search, and other networking arrangements;
- preparing appropriate promotional material;
- liaising with and supporting growers regarding their labour needs throughout the harvest season;
- providing information to job seekers about accommodation arrangements and other general conditions of employment for pickers;
- providing information to job seekers about transport into harvest regions;
- managing bulk harvest labour vacancies;

- input and maintenance of vacancies in the NVDB; and
- mobilising and allocating out-of-area labour to growers as needed.

New Enterprise Incentive Scheme (NEIS)

15. The objective of the New Enterprise Incentive Scheme (NEIS) is to help eligible unemployed people to establish and run viable new small businesses.

16. The provision of NEIS will include, but will not be limited to:

- attracting eligible job seekers;
- delivering the NEIS curriculum to a diverse range of prospective NEIS participants;
- assessing the commercial viability of new and recently established small businesses;
- ensuring effective support throughout the training, business planning and post placement support elements of NEIS; and
- attracting and providing suitable local mentors to support NEIS participants' needs.

Entry Level Training Support Services

17. The objective of Entry Level Training Support Services is to streamline services to employers, apprentices and trainees by providing a "one-stop" integrated support service. Streamlining will save time and effort for employers, apprentices and trainees, and is expected to lead to an increase in the number of apprenticeships and traineeships.

18. The provision of Entry Level Training Support Services will include, but will not be limited to:

- providing information to employers, apprentices and trainees about apprenticeships and traineeships;
- marketing and promoting apprenticeships and traineeships locally;
- administering apprenticeship and traineeship support services (including processing Commonwealth programme payments) to employers, apprentices and trainees;
- working with State and Territory Training Authorities to provide a one-stop, integrated service for employers, apprentices and trainees; and
- establishing an effective relationship with FLEX providers contracted by the Commonwealth, training providers, schools and other organisations to help people obtain apprenticeships and traineeships.

Appendix 2

Working Groups supporting the implementation of the employment services market at May 1997

Working Group	Sub-group
1. Project Management (comprising convenors and task leaders)	1.1 Information resource (communicate decisions, etc) 1.2 Scheduling 1.3 Task Linkages (Training, systems support, probity, quality assurance and simulation)
2. Communications	2.1 Release of RFT - Publicity 2.2 Information Lines 2.3 Media Management, including Ministerial Launch 2.4 The Internet Presence 2.5 Briefing Sessions <ul style="list-style-type: none"> 2.5.1 Questions and Answers 2.5.2 Responses to Exposure Draft 2.6 Employer and Community Marketing Campaign 2.7 Ongoing market communications
3. Request for Tender	3.1 Develop and Finalise RFT (Overview and Part A) 3.2 Regional Labour Market Information (Part B) 3.3 Service Provider Handbook (Part C) <ul style="list-style-type: none"> • Labour Exchange Services • Job Search Assistance • Employment Assistance • Entry Level Training Support Services • NEIS 3.4 Contract document (drafting and liaison with Legal Branch and consultants) 3.5 Application form (design, liaison, revisions) 3.6 Printing /Distribution
4. Fee for Service	4.1 Fee for Service Tender Process and RFT <ul style="list-style-type: none"> 4.1.1 Linkages to Main Market Assessment Process 4.2 FFS contracts and review arrangements <ul style="list-style-type: none"> 4.2.1 Fee for service monitoring processes
5. Payment Policy	5.1 Policy 5.2 Systems

Working Group	Sub-group
6. Tender Assessment	<ul style="list-style-type: none"> 6.1 Logistics and Management <ul style="list-style-type: none"> 6.1.1 HRM and Running Costs 6.2 Simulation 6.3 Receipt and registration 6.4 Conformance Check 6.5 Financial Viability 6.6 Assessment process policy <ul style="list-style-type: none"> 6.6.1 Selection criteria - Assessors guide 6.6.2 Past performance 6.6.3 Regional Labour Market Guide 6.7 Business allocations - including ranking reports <ul style="list-style-type: none"> 6.7.1 Indicative regional business allocation/budget management 6.8 Tender Review Committee 6.9 Pre-contract negotiation 6.10 Systems support 6.11 Quality Assurance of the Tender Process <ul style="list-style-type: none"> 6.11.1 Quality Assurance and Monitoring of the Assessment Process <ul style="list-style-type: none"> 6.11.1.1 Designing Procedures and Training 6.11.1.2 Independent Quality Assurance/Probity Adviser
7. Contracting	<ul style="list-style-type: none"> 7.1 Advice of outcomes (policy) 7.2 Complaints 7.3 Verification of premises 7.4 Sign contracts 7.5 Provider training and support (after contracts are signed - privacy, FOI and systems)
8. Management Issues in Contract Administration	<ul style="list-style-type: none"> 8.0.1 Core Group 8.0.1 Reference Group 8.1 Contract Variations Core Group 8.1 Contract Variations Reference Group 8.2 Monitoring 8.3 Contracts Management Core Group 8.3 Contracts Management Reference Group 8.4 Code of Conduct 8.5 Best Practice 8.6 Complaints and Review <ul style="list-style-type: none"> 8.6.1 Reviewable decisions 8.6.2 Customer awareness strategies

Working Group	Sub-group
9. Commonwealth Services Delivery Agency (Centrelink)	<ul style="list-style-type: none"> 9.1 Service Agreement 9.2 Monitoring 9.3 Local Liaison and Protocols 9.4 Instructions and Training
10. Systems	<ul style="list-style-type: none"> 10.1 General 10.2 National Vacancy Data Base <ul style="list-style-type: none"> 10.2.1 Management of 13 number vacancy line and other NVDB issues
11. Area Consultative Committees (ACCs)	<ul style="list-style-type: none"> 11.1 ACCs and Regional Employment Purchasing Units 11.2 ACCs and Employment Services Market 11.3 Regional employment strategies 1997/98
12. REPU roles responsibilities and structure	
13. LMP Transitional Issues	
14. Training	
15. Operational Guides for the New Market	
16. Probity	<ul style="list-style-type: none"> 16.1 Probity Issues <ul style="list-style-type: none"> 16.1.1 Probity Plan 16.1.2 Protocols 16.1.3 Training

Appendix 3

Overview of The Tender Process

Introduction

1. The appendix contains the following sections:
- main features of the tender
 - key dates
 - role of the Tender Review Committee
 - key stages in the tender evaluation and contracting process
 - simulations of the tender process
 - quality assurance
 - information provided to potential tenderers
 - logistics

Main features of the tender

2. Table A3.1 identifies the main features of this tender

Table A3.1
Main features of the tender

Services being tendered for	FLEX1 , 2 and 3, project contracting, ELTSS and NEIS ⁴⁵
Period for services to be provided	1 May 1997 to 30 November 1999
Estimated value of tender	FLEX1 \$250m FLEX 2 \$50m FLEX 3 \$1100m ELTSS \$110m NEIS \$122m
Number of bidding regions	29
Number of organisations submitting bids	1016
Tender bids accepted for evaluation	more than 5300 bids from 971 organisations (where a bid represents a bid in respect of a service in a region)
Number of successful organisations	306 comprising 153 private, 134 community and 19 government organisation (as at 26 February 1998)
Number of expected service sites	1404 (as at 26 February 1998)

⁴⁵ Details of the services are provided in Appendix 1.

Key dates

3. Table A3.2 lists the key dates and activities for the tender.

Table A3.2

Tender process - key dates

Date	Activity
Pre tender submission stage	
December 1996	Tender Information Kit released
December 1996	Probity Adviser appointed
May 1997	Draft Exposure RFT released
19-22 May 1997	Tender Simulation 1
16-17 June 1997	Tender Simulation 2
9-11 July 1997	Tender Simulation 3
July 1997	Public information sessions
Tender submission stage	
4 August 1997	RFT released
18-27 August 1997	Public tender briefing sessions
1-5 September 1997	Tender Simulation 4
16 September 1997	Tender lodgement closes
Tender evaluation stage	
17 September 1997	Tender Review Committee begins operation
17 Sep 1997 - end Jan 1998	Tender Evaluation
17 Sep - 22 September 1997	Conformance and registration check
23 Sep - late November 1997	Financial viability assessment
23 Sep - 24 October 1997	Quality Assessment
22 Oct - late November 1997	Reassessment
24 Oct - early December 1997	Adjudication
27 October - 23 December 1997	Contracted level (business) allocation
12 Nov - 10 December 1997	Consideration by Tender Review Committee
17 Nov - 15 December 1997	Meetings with Secretary (decision-maker)
28 November 1997	Advise tenderers pre-contract confirmation letter will arrive on 12 January
18-19 December 1997	Minister briefed
5 January 1998	Pre-contract confirmation letters to tenderers
12 January 1998	Tenderers receive letters
12-23 Jan 1998	Pre-contract confirmation
26-27 January 1998	Tender Review Committee considers recommendations
28-29 January 1998	Final Decision by Secretary on tenderers
Contracting stage	
30 January 1998	Minister briefed
Feb- April 1998	Undertake contracting process
1 May 1998	Contracts commence

Role of the Tender Review Committee

4. The Tender Review Committee was responsible for:

- the tender assessment process including ensuring that the best outcomes were achieved;
- making decisions about late, non-conforming, non-financially viable (and non-assessable) tenders on the basis of exception reports provided by supervisors;
- receiving and noting reports on receipting, rectification, conformance and late tender issues as well as regular reports on the progress of the assessment process and quality assurance checks;
- providing advice and guidance to teams on conformance, assessment and contracted levels allocation issues;
- recommending contracted levels allocations to the Secretary DEETYA;
- setting the parameters for pre-contract confirmation; and
- reporting back to the Secretary on recommendations following pre-contract confirmation.

5. Training was provided for members of the Tender Review Committee and its secretariat in relation to the role of the Committee in the tender evaluation process and to familiarise Committee members with probity and administrative law issues.

Key stages in the tender evaluation and contracting process

Receipt of Tenders (1 September 1997- 16 September 1997)

6. Tenders were received into a secure Registry in Canberra and logged into the Registry using bar codes which were included in the RFT. Late tenders were logged in and then subjected to consideration by the Tender Review Committee to decide whether they should be accepted. Advice of late tenders rejected was provided to tenderers as soon as the decision was made.

Registration and conformance checking (17 September 1997 - 22 September 1997)

7. Registration involved recording essential data and information from each tender on the Department's External Service Providers Management Information System (ESPMIS). The ESPMIS system produced bar codes to be used in tracking documentation. Conformance checking entailed six critical checks of each tender against the requirements contained in the RFT. Non conforming tenders were reviewed by the Tender Review Committee.

8. ESPMIS produced a standard acknowledgment letter containing details of the tender. Tenderers were thus given the opportunity to review the accuracy of DEETYA's data regarding their tenders. Disputes about the details of a tender were investigated and reviewed by a supervisor and if necessary referred to the Tender Review Committee.

9. A Special Conformance Unit was established to handle tenders with partial non-conformance which could be rectified by the tenderer.

Financial viability assessments (23 September 1997- late November 1997)

10. As a means of reducing risk to the Commonwealth DEETYA assessed a tenderer's financial viability through a series of checks based on information provided by the tenderer, Departmental information relating to past dealings with the tenderer and information on publicly available data bases.

11. Where the above analysis did not indicate that the organisation was financially viable in its own right, information on financial support from other organisations was analysed to help assess financial viability.

12. The overall assessment classified an entity as:

- financially viable. The assessment for some organisations was linked to particular levels of financial expansion capacity, ie the level of growth in business turnover possible without undue financial viability risks;
- not financially viable (the tender bid is then rejected); or
- not possible to determine as information supplied is incomplete - in this case, the information could be sought by DEETYA if there were insufficient other tenderers.

13. An external consultant then checked the results for technical accuracy with a second external consultant reassessing difficult cases. The documentation then underwent further checks such as for clarity and defensibility of wording and was subject to the overall quality assurance process for the tender.

Assessment against selection criteria (23 September 1997 - 24 October 1997)

14. The assessment stage was to gauge the suitability of the tender proposal compared to the Commonwealth's requirements contained in the RFT. The assessment considered the capability of the tenderer to deliver the proposed services. The tender assessment teams scored each tender against the relevant selection criteria and provided summary comments

justifying the score. The criteria for assessment were detailed in the RFT. For example for FLEX the criteria were:

Stage 1: Quality Assessment

Effective strategies to deliver FLEX in the labour market for which you are tendering;

Expertise and /or experience relevant to the delivery of FLEX; and

Suitability of facilities and accessibility of services.

Stage 2: Price Assessment (applies to price competitive categories only).

Competitiveness of price.

15. For FLEX 3, a score was determined as to how well the bidder met the criteria. For other services tenderers were assessed as suitable or unsuitable.

16. The assessment procedures required assessment team members to read and assess the whole tender individually, followed by a team discussion to reach agreement on an assessment for each criterion. Where agreement could not be reached a supervisor would mediate and possibly refer the tender to another assessment team. Referee's reports were considered where the bidder was not an existing provider.

17. Nearly forty teams comprising three DEETYA officers assessed tenders against the selection criteria for each service. The teams comprised at least one officer from National Office and up to two regional staff, at least one from the region being assessed. Team leaders/facilitators supported the assessment teams, facilitating the decision and making decisions on whether topic specialists should be consulted. These facilitators were nominated by their supervisors on the basis of their ability to undertake this role and were provided with relevant training.

Reassessment (22 October 1997- late November 1997)

18. Reassessment of tender bids occurred on:

- all tender bids assessed in the first 4 days;
- unsuccessful tenderers; and
- 10% chosen at random by the Quality Assurance Team.

19. There was additional training for reassessment which had been piloted through the tender simulations. No person could reassess a bid they had originally assessed. The team read the assessment and examined factual correctness and whether the assessment could be supported by the tender. Where the reassessment team disagreed with the initial assessment

they prepared separate comments and scores for consideration by the quality assurance team at the adjudication stage.

Adjudication (24 October 1997- early December 1997)

20. Adjudication was undertaken by a two person SES team with their determination being considered by the Tender Review Committee.

Contracted levels allocation (or business allocation) - (27 October - 23 December 1997)

21. Contracted levels allocations were undertaken by approximately 30 teams of three or four members including:

- a Regional Employment Purchasing Unit manager;
- a Regional Employment Purchasing Unit officer;
- a National Office officer; and
- an ELTSS specialist, for assistance with ELTSS issues.

22. The allocation was undertaken separately for each region using a sophisticated spreadsheet program developed especially for the purpose and available to all team members. Allocations were completed without knowing the names of the tenderers.

23. The quality assessment process ranked all tender schedules; FLEX 3 being ranked on quality and other services by unit cost. These rankings for all services, were further subdivided by financial viability with those assessed as financially viable receiving first consideration. Where there were insufficient bidders assessed as financially viable, a pool of bidders could be drawn on, comprising those bidders where further action or documentation was required to determine financial viability. These bidders could be considered if further checks were undertaken or if additional provisions were included in the contract.

24. For FLEX the services in each region were allocated in the order FLEX 3, FLEX 2, FLEX 1 to deal with FLEX 1 allocations tied to FLEX 2 or FLEX 3 business. After FLEX 3 and FLEX 2 allocations were made, the number of tied allocations of FLEX 1 were determined automatically on the basis listed in the RFT of 1.4 placements for FLEX 3 allocations and 0.6 placements for FLEX 2. Untied FLEX 1 places were then allocated.

25. A number of options or iterations were prepared by the Contracted Levels Allocation Team and a preferred option chosen for recommendation to the Tender Review Committee. A detailed report was prepared for the Committee with discussion of the proposed allocation of business to tenderers in terms of diversity, geographic coverage of major centres, value for money and the provision of specialist services. Where a bidder could

not be offered their requested minimum capacity or could not provide suitable coverage a lower ranked bidder might be substituted.

26. The Tender Review Committee then presented a proposed allocation to the Secretary for decision. At this stage, an analysis of a single provider could be undertaken to examine the geographical spread of their proposed business across a number of bidding regions. The financial expansion capacity of the bidder to service this business could also be considered in the light of any relevant conclusions arising from the financial viability assessment.

27. A further allocation of business was undertaken in late December 1997 to implement a Government decision providing for additional places in some regions.

Pre-contract confirmation and contracting (January-April 1998)

28. Letters were sent to tenderers requiring them to confirm their availability in late January to consider offers of contract. Subsequent offers gave tenderers the opportunity to review the accuracy of DEETYA's data regarding their tenders. At this stage, discussions were held on contracted levels and other contract issues with some tenderers. Where proceedings did not result in an executed contract DEETYA considered other tenderers. In this case, the allocation procedures were repeated with the withdrawn bid excluded. This was repeated as many times as necessary to achieve a result. Unsuccessful tenderers were sent a detailed explanation of the decision.

Simulations

29. Four simulations of various aspects of the tender process were undertaken, providing for significant prior testing of processes and forming an important element of overall risk management. The outcomes of the simulations were reported to the Employment and Purchasing Division Branch Heads Policy Meetings where decisions on amendments to processes were made for subsequent implementation. They were observed and reported on by quality assurance officers.

Simulation 1

30. The simulation was held from 19-22 May 1997 and involved over 100 people from National Office and Regional Employment and Purchasing Units in the States and Territories. Over 50 mock tender bids were prepared covering the 5 services across 2 geographical regions. These were to reflect the range of potential providers and cover a number of possible probity, selection criteria and business allocation issues. The Probity Adviser was consulted on a range of issues prior to and during the simulation. A

comprehensive report on the simulation was prepared together with a set of detailed recommendations covering a wide range of issues relating to the evaluation process.

31. The Employment and Purchasing Division Branch Heads' Policy Meetings subsequently considered the outcome of the simulation and additional papers were prepared on specific issues such as registration and conformance. The Probity Adviser also provided a separate report to the Employment and Purchasing Division Branch Heads' Policy Meetings. While seeing the first simulation as a valuable learning exercise and recognising the commitment of DEETYA officers, the Probity Adviser identified 'significant problems which will require rectification before the actual assessment process begins'. Recommendations to enhance the process were also provided.

Simulation 2

32. Simulation 2 occurred on 16-17 June 1997. Major issues reported to the Employment and Purchasing Division Branch Heads' Policy Meetings as a result of the simulation included:

- re-examining training on assessment service requirements including roles and responsibilities;
- team dynamics; and
- the difficulties and time involved for assessors to make a decision,

Simulation 3

33. Simulation 3 occurred from 9-11 July 1997, covering contracted level allocation issues and proposed a number of technical refinements to the allocation process.

Simulation 4

34. Simulation 4 occurred from 1-3 September 1997 and 10 September 1997 with nearly 100 individuals directly involved. The simulation tested:

- records management (including receipt of tenders, file creation, file movement and tracking);
- security;
- logistics;
- IT equipment;
- registration and conformance;
- quality assurance;
- allocation of contracted levels;
- Tender Review Committee involvement;

- operation of ESPMIS; and
- reporting.

35. Planning for this simulation included:

- the appointment of three simulation managers, with other coordinators taking responsibility for individual elements;
- a planning meeting of key players held on 11 August 1997;
- the preparation of a detailed strategy paper for the simulation;
- preparation of 28 mock tenders with various characteristics and faults; and
- training for participants.

36. A general debriefing session followed the simulation and a detailed outcome report was prepared for the Employment and Purchasing Division Branch Heads' Policy Meeting. Individual outcome reports were prepared by the simulation coordinators on their area of responsibility and by the quality assurance team and DEETYA Internal Audit Branch. The simulation resulted in detailed recommendations for amendments to the tender processes.

Quality assurance

37. A 'core' quality assurance team of DEETYA staff and personnel from Employment and Purchasing Division's tender consultant undertook quality assurance prior to the tender evaluation process. It provided quality assurance for the simulations and prepared a Manual to guide quality assurance in the tender process.

38. For the tender process itself, a Quality Assurance Team was established comprising 15 independent observers from Commonwealth, State and private sector organisations under the direction of the Probity Adviser. These participants were chosen for their relevant skills and availability.

Information provided to potential tenderers

Tender information Kit

39. Released by DEETYA on 23 December 1996 the Kit comprised three information papers about the background to the tender, the tender process and the services to be provided. The paper on the tender process provided details of:

- key milestones;
- probity activity;

- conditions of the tender, including routine tendering arrangements, acceptance of terms and Australian Government requirements;
- contract requirements; and
- indicative selection criteria.

40. A 'Survey of Interest in Providing Employment Services' which could be filled out and returned to DEETYA was also included in the Kit. Comments were also sought from prospective tenderers on the information provided and how it could be improved. 1300 responses were received.

41. In association with the Kit DEETYA also operated an employment services telephone information line and initiated a round of 16 information sessions throughout Australia during February 1997. Around 2300 people attended these sessions representing at least 1600 organisations.

RFT Exposure Draft

42. In May 1997 DEETYA released an RFT exposure draft including:

- Overview of the Employment Services RFT;
- Tendering Conditions and Draft Contract for Employment Services;
- Service Requirements for the Employment Services RFT; and
- application form.

43. The second document gave detail on issues such as:

- probity;
- tender assessment process;
- financial viability; and
- conditions of tender.

44. Comments received on the Exposure Draft were summarised and taken into account in drafting of the final RFT.

The RFT

45. The RFT was released on 4 August 1997 in print form and on the internet. It was advertised nationally in major newspapers. Information sessions were held throughout Australia and there was a hotline available for queries. The hotline staff were supported by training and could refer to detailed model questions and answers, approved by the DEETYA Executive and the Probity Adviser.

46. The RFT documents are summarised briefly in Table A3.3

Table A3.3
RFT contents

Overview of the Employment Services Request for Tender;	<p>This document comprises brief descriptions of:</p> <ul style="list-style-type: none"> the RFT documentation; the nature of the Government reforms to employment and training services; the employment services being tendered for (FLEX 1,2,3 & Project Contracting, ELTSS and NEIS); the key organisations involved (DEETYA, Centrelink and employment services providers); probity principles and arrangements; the tender process, covering the underlying principles and assessment); and an explanation of performance management of employment services providers.
Tendering Conditions and Draft Contract for Employment Services;	<p>This document comprises descriptions of:</p> <ul style="list-style-type: none"> statements of limitation of liability by the Commonwealth for the information in the RFT; the probity arrangements including the appointment of a Probity Adviser and a copy of the Probity Plan; the labour market regions and tendering for sub-regions; the tender assessment process in detail; the business allocation process, including indications of expected provider numbers ; the processes of pre-contract confirmation and contracting; eligibility to become a service provider, including group tendering and sub-contracting conditions; financial viability requirements; tender conditions, including lodgement details, confidentiality of information, conflicts of interest; protocols on access to labour market information by prospective bidders and the Government provider (now trading as Employment National); discussion of tendering for specific client groups; legal requirements affecting tenderers; arrangements for the Government owned provider (Employment National) to undertake service provision where there is no suitable provider from the tender process; tendering requirements for each of the services, covering fees payable for outcomes and indicative business levels for each service for each bidding region; the arrangements for transition of case-managed job-seekers; the quality assessment selection criteria for each service (see paragraphs 5.1.82-5.1.83 for the FLEX criteria); and the draft contract.

Service Requirements for the Employment Services Request for Tender	<p>This document comprises descriptions of:</p> <ul style="list-style-type: none"> roles and responsibilities of key players including DEETYA, Centrelink, service providers and the Area Consultative Committees; job-seeker responsibilities to continue receiving assistance; performance management, including expectations of collaboration with service providers, performance monitoring, and performance indicators and evaluation; the Employment Services Industry Code of Conduct, to specify acceptable behaviour and practices and sanctions; complaints handling processes; financial administration including payment procedures; access to DEETYA information technology systems and training; expected information flows between DEETYA and service providers for each service; the National Vacancy Data Base, used to advertise job vacancies and how to lodge vacancies; Government and legal requirements, such as Freedom of Information Act and Privacy Act responsibilities; detailed descriptions of the service requirements and arrangements for each tendered service including conditions for payable outcomes; the Job-Seeker Classification Instrument used to assess eligibility for FLEX 3; and the Special Needs Assessment and Community Support Programme, to assist job-seekers not yet ready to benefit from FLEX.
Regional Labour Market Information	<p>This document comprises:</p> <ul style="list-style-type: none"> maps for each bidding region and labour market regional profiles covering industries and employers, job-seeker clients, government impacts and advisory bodies and opportunities for young people; and tables of labour market statistics for each region including number employed, unemployment statistics, unemployment allowees, CES vacancies and placement rates, training and apprenticeship commencements and skills shortages
application forms	<p>for individual or group tenders with schedules to be completed for each service, bar-coding to ensure accurate and efficient registration of tenders and electronic application forms on disks</p>

Employment Services Information Line

47. A hotline was established to enable prospective tenderers to raise queries with DEETYA following the release of the RFT on 4 August 1997. It continued until early October 1997. Rostered staff were provided with training prior to commencement, and were supported by topic experts. They were also provided with a detailed and comprehensive set of model questions and answers. Issues not covered in the model answers were to be referred to topic experts with a target of a 24 hour turnaround. Emphasis was placed on the need for consistency in responses and the need not to introduce information not present in the RFT.

Employment Services Bulletin Board

48. The RFT and model answers to complex queries were also available to tenderers with internet access at a special site within the DEETYA home page called the Employment Services Bulletin Board. The site was updated as necessary and complemented the information available on the DEETYA home page including Ministerial statements and media releases which may have been useful for prospective tenderers.

Logistics

49. Significant logistics requirements for the tender evaluation were addressed through the appointment of special logistics managers to oversee planning and operational aspects of the tender. The work included arrangements for:

- physical security, including personnel and building security. Stringent physical security requirements were implemented relating to the movement of documents and people within the building used for the tender evaluation;
- coordinating IT equipment and access;
- provision of office equipment; and
- occupational health and safety issues.

Appendix 4

Business Planning for PEPE Ltd

Introduction

1. Setting up a major company operation was a new challenge for DEETYA. Key events in the lead up to the incorporation of PEPE Ltd on 4 August 1997 were the establishment of the PEPE Establishment Taskforce (the Taskforce) in October 1996 and the appointment of the Executive Chair designate for the PEPE in April 1997.

2. This appendix sets out how DEETYA and the Taskforce ensured that appropriate expertise was made available to the Taskforce in order for it to meet its objectives of preparing the groundwork for PEPE Ltd, including the major task of developing a commercial business plan and associated tender bid. The appendix describes:

- the expertise obtained from within the Department;
- the expertise contracted in by way of consultancies; and
- the operation and management of the major business planning consultancy to the Taskforce.

Internal expertise

3. The Taskforce was set up in October 1996 under the leadership of a Departmental FAS who had extensive experience within DEETYA's employment services programs. Immediately prior to his move to the Taskforce he had been Head of the Department's Network Operations Division. He had also been involved in the policy development process leading up to the Government's employment reforms as well as the setting up and working with the Employment Services regulatory Authority.

4. Similarly the senior team leaders appointed to the Taskforce in October 1996 had relevant skills and considerable experience within DEETYA's employment programs. The Head of the Taskforce emphasised that the senior managers on the Taskforce were volunteers and that this reflected in their excellent commitment and motivation. He also advised that a significant proportion of the senior managers were likely to take up permanent positions with Employment National.

5. The Taskforce also had access to significant expertise within other areas of the Department. The Legal Group and the Finance Branch, for example, contributed substantially to the PEPE Ltd's budget arrangements, company incorporation process, Board appointments, governance arrangements and contract processes.

6. DEETYA also recognised that it would be important to obtain significant additional input from experienced personnel from within the Network. Indeed, in setting up the Taskforce the then Secretary of DEETYA stated that it would work in close cooperation with the Network. Consequently, in November 1996, DEETYA appointed PEPE Coordinators and Network Reference Groups to assist the Taskforce achieve its objectives.

7. The role of the Area based Coordinators included:

- acting as a liaison / communication point in Areas for the Taskforce;
- facilitating the work of Area Network Reference Groups set up to assist the development work of the Taskforce; and
- identifying strategies and good practice for possible implementation in the PEPE.

8. The job description for these full time Senior Officer C positions stated that the coordinators would be a vital point of contact within each Area to assist in the preparatory and developmental work needed, both nationally and at Area level, to implement the PEPE. Coordinators would be the contact point for PEPE activities at the Area / Regional level in the Department, representing the interests of the PEPE and liaising with key stakeholders, in particular Network staff and the National Office Taskforce in taking this work forward.

9. In November 1996 DEETYA also established Network Reference Groups to assist the work of the Taskforce. Normally to be chaired by the Area Manager, the Group would also include the PEPE Coordinators and six or seven other members who would collectively bring skills and expertise across the range of functional issues critical to the establishment of the PEPE. This could include skills and expertise in private sector business, the employment and training market, business process development, financial costing, infrastructure issues such as property and IT, HRM and communications and marketing.

10. Under the direction of the Area Manager and in conjunction with the Taskforce the Network Reference Groups were set up to:

- contribute to the development of cost frameworks for the Area including down to outlet level;
- provide advice on staff training and development needs;
- assist in the assessment of property holdings and their relevance for the Public Enterprise operations eg calibre, position, strategic location, business viability etc;

- undertake market analysis of local, regional and Area labour markets and assess the comparative advantage of CES/EAA in local labour markets;
- develop local marketing strategies;
- assist in the preparation of Public Enterprise tender bids;
- provide advice/information to the Taskforce on issues of particular concern to the Area;
- be a conduit for Area staff for communication to and from the Taskforce, implement a local communications strategy and actively promote cultural and work practice change in the Area
- participate in business process development for the Public Enterprise and foster innovation in service delivery; and
- represent the Taskforce in promoting/marketing the Public Enterprise to external clients and stakeholders.

External expertise

11. The Taskforce recognised that input would be required from private sector experts in various aspects of commercial business. Consequently it engaged a wide range of consulting advice to assist it with its business planning. Approximately \$700 000 or 31 per cent of the Taskforce 1996-97 expenditures were for external consultancies. As at the end of October 1997 DEETYA had agreed to the expenditure of approximately a further \$1.6 million on consultants for 1997-98.

12. The purposes of the major business consultancies are identified in Table A4.1.

Table A4.1**Classification of total Taskforce expenditure on consultancies**

Purpose	Total Taskforce consultancy expenditure (including commitments) as at 31 October 1997 \$	Percentage of total expenditure
Recruitment related		
Selection of PEPE Executive Chair, Board and Chief Executive Officer, General Managers for Finance and Human Resources	\$282 645	12.3
Consultancy services for the selection of PEPE 100 & Branch Managers	\$750 000	32.7
Marketing related		
Survey of employer and job seeker attitudes to the CES/EAA and the PEPE concept.	\$92 759	4.0
Qualitative market research to test various reactions to the PEPE concept.		
Creative design and development of corporate image	\$34 401	1.5
Design of PEPE logo	\$16 400	0.7
Business planning related		
Development of a costing framework and planning model for the PEPE	\$56 500	2.5
Development and preparation of the PEPE business plan, preparation of tender bid and development of financial accountability framework.	\$621 372	27.1
Review of Tender Documentation	\$26 400	1.2
Financial modeling expertise	\$27 750	1.2
Risk assessment of the establishment of the PEPE.	\$32 050	1.4
Information Technology related		
IT project manager	\$59 765	2.6
Development of an IT strategic direction for the Enterprise and an assessment of the functionality and cost of systems to be inherited from DEETYA	\$74 850	3.3
Human Resource Management related		
Interim HRM Manager	\$44 318	1.9
Development and implementation of a strategic IR framework leading to registration on an industrial relations agreement	\$43 100	1.8
Other		
Consultancy fees for Executive Chair designate	\$62 433	2.7
Building fitout services	\$20 000	0.9
Advice on CSS and PSS notional accounts	\$50 000	2.2
	\$2 294 743	100

Source: information provided by the PEPE Establishment Taskforce

13. Analysis of Table A4.1 reveals that the most significant Taskforce expenditures on consultancies were on recruitment and business planning reflecting the key objectives of the Taskforce. In particular:

- \$1 032 645 or 45 per cent was for services relating to recruitment of PEPE Ltd Board, senior management and over 1200 mainstream staff; and
- \$621 372 or 27 per cent of total expenditure was for a single major business planning consultancy awarded to Coopers and Lybrand in January 1997. The selection and operation of this consultancy is examined in more detail below.

14. In addition to these outlays Table A4.1 shows that the Taskforce sought expert advice on a range of other issues relating to marketing, business planning, information technology and human resource management.

15. In addition to the consultancies listed in Table A4.1 the Taskforce had access to other external expertise funded from other Departmental budgets, including:

- legal advice from a private firm of solicitors (for example in relation to due diligence requirements under Corporations law); and
- development by an Australian university of training courses for staff who might be employed by PEPE Ltd (discussed further in Chapter 7 in the context of transitional arrangements).

Operation and management of the major business planning consultancy

16. A major Taskforce objective was to prepare commercial business plans and associated tender bids on behalf of PEPE Ltd. Business planning involves a wide range of considerations such as financing, human resources, marketing strategies and information technology requirements.

17. The ANAO reviewed the various strategies adopted by the Taskforce to develop business plans and found that one significant element was the commissioning in January 1997 of a business planning consultancy at a cost of over \$600 000. Within DEETYA this consultancy was described as the ‘major business planning consultancy’. It was described in a Ministerial Briefing note by the Head of the Taskforce in January 1997 as ‘a major critical success factor in implementing PEPE Ltd’.

18. The ANAO considers that the use of consultants for business planning and other services was an appropriate way of obtaining skills not otherwise available to the Taskforce. Nevertheless, there is an associated risk in that the lack of these skills within the Taskforce may make it difficult

to judge the quality of the services provided by the consultant. To help overcome this it is important to have:

- a rigorous selection process;
- a contract that clearly specifies the required deliverables; and
- sound processes for managing the progress of the consultancy.⁴⁶

19. The ANAO examined these issues in relation to the major business planning consultancy. The ANAO also examined the business plan produced as a result of this consultancy.

Selection processes

20. The ANAO examined the selection process to assess whether DEETYA had:

- sought tenders from a wide range of potential providers;
- specified relevant selection criteria; and
- assessed each tender bid thoroughly against each criterion.

21. The ANAO found that DEETYA advertised the consultancy in the National Press in late November 1996. This followed approval by the Secretary of DEETYA of the terms of the RFT and advice to the Minister for EETYA that the Department intended to call for tenders in advance of legislation to establish the PEPE. DEETYA also directly invited eleven major accounting and consulting organisations to submit tenders. The tender period closed on 24 December 1996. Ten proposals were received, more than half being from major accounting or business consulting organisations. Table A4.2 lists the RFT selection criteria.

22. The ANAO found that the Taskforce, in conjunction with the Department, developed a set of detailed questions and requirements in relation to each of these criteria. Following an assessment of the bids against these criteria DEETYA requested three shortlisted tenderers to make bid presentations to an assessment panel that included the Secretary of DEETYA, the Head of the Taskforce, a senior executive from Australia Post and a member of the Minister's Office.

⁴⁶ The appointment of the Executive Chair designate in April 1997 would have provided additional direction and control over the commissioning and management of external commercial expertise.

Table A4.2

Major business planning consultancy - selection criteria

-
1. demonstrated experience, and capacity, in the development of:
 - Business Plans
 - Strategic models
 - Economic/commercial models
 - value delivery systems (human resource framework)
 - organisational models (management framework)
 - Tender documentation
 - Commercial financial frameworks including accountability frameworks.
 2. structure of the tender, particularly relevance of the proposed approach and program of work;
 3. relevant experience and qualifications of the consultants;
 4. capacity to deliver the required product within the timeframe, including availability of the nominated consultants within the timeframe specified in the Statement of Requirement;
 5. value for money, reflecting the technical merit of the proposals.
-

Specification of deliverables

23. The ANAO examined the specification of deliverables in the consultancy contract to assess whether they:

- covered a comprehensive range of outcomes; and
- identified a timetable for delivery.

24. The consultant commenced work on 31 January 1997. However, the contract for the consultancy was not signed until 4 April 1997 following extensive legal advice from DEETYA's Legal Branch on the terms of the contract and after negotiations with the contractor in relation to certain aspects of the contract.

25. The ANAO notes that the delays in signing the contract were due in part to the need for refinement in the specification of the consultancy deliverables and for clarification of the relative responsibilities of the consultant and the Commonwealth. The resulting contract called for three deliverables as described in Table A4.3.

Table A4.3

Major business planning consultancy - deliverables

1. Prepare a comprehensive three year business plan to provide the foundations for the establishment of the PEPE as a cost efficient and effective company. The plan must satisfy the needs of a Corporate Plan as specified in the Accountability and Ministerial Oversight Arrangements for Government Business Enterprises. It should comprise:
 - a strategic model;
 - an economic/commercial model;
 - a service delivery strategy and human resource framework;
 - an organisational model; and
 - a detailed implementation plan for the PEPE Business Plan.
 2. The production of the business plan should involve at least the following tasks:
 - analysis of the context in which PEPE will operate including assessment of Government policy, legal requirements, financial overview, reporting and performance structures, stakeholder requirements, current operations and corporate governance;
 - analysis of the employment services market, and any other relevant markets;
 - analysis and development of an appropriate corporate and organisational structure for PEPE taking into account the needs of a business operating a devolved Network;
 - analysis of the staffing needs, analysis of work unit models and development of a human resource framework for PEPE;
 - analysis of information technology needs and other system needs and information technology and system solutions to support PEPE's business needs;
 - analysis of infrastructure, asset and real property needs for PEPE's business.
 3. Develop and finalise PEPE's tender submission to DEETYA's request for tender to deliver employment services.
 4. Develop and produce a commercial financial framework (including an accountability framework) containing at least the following elements:
 - a revenue projection model;
 - a three way budget which includes forecasts of the opening and closing balance sheet, profit and loss statements and cash flow statements;
 - the control framework and documented strategic accounting policies;
 - a high level performance management framework identifying likely roles and responsibilities; and
 - an implementation plan for the financial accountability framework.
-

26. The contract identified delivery dates for each deliverable.

Management of the consultancy

27. The ANAO examined whether the Taskforce had managed the progress of the project to ensure timely delivery of outcomes to an appropriate quality. The ANAO found several indications that the consultancy was well managed by the Taskforce. For example the Taskforce:

- clearly recognised during the consultancy selection process that on going management of the consultancy through day to day project management and oversight by a steering committee (including the Taskforce leader and the lead consultant) would be of paramount importance to minimising consultancy risks;
- prepared detailed project plans for the various elements in the consultancy. The plans identified actions required, responsibility for actions and timeframes; and
- instituted a formal regular progress reporting system by the various work teams to ensure that that individual plans were updated and the Taskforce Executive were informed of overall progress.

28. The ANAO also found that the Head of the Taskforce was actively involved in evaluating the progress of the various elements of the consultancy and in making detailed suggestions for improvements.

Assessment of business plan

29. The audit team examined the summary 1997 PEPE Business Plan prepared by the consultants as at 22 July 1997.⁴⁷ The plan was structured around five key results areas, namely:

- customer satisfaction;
- marketing effectiveness;
- service delivery efficiency;
- people management; and
- financial performance, compliance and control.

30. For each of these areas the plan:

- identified key organisation objectives and listed a comprehensive range of relevant associated performance indicators;
- identified the major business risks and broad strategies to overcome those risks (the plan also noted that the Taskforce had commissioned a more comprehensive separate risk assessment from another consultant); and

⁴⁷ The ANAO did not assess the various more detailed documents prepared by the Consultant to support the summary business plan.

- described in detail various organisational strategies for achieving key objectives;

31. The plan also contained:

- forecasted financial statements (profit and loss, balance sheet and cash flow) for three years;
- a schedule of seventy five key outcomes to be achieved before the start of the employment services market; and
- a project plan to support the implementation.

Appendix 5

Executive Level Committees

Committee name and membership	Period of operation	Main responsibilities
<p>Employment Steering Committee.</p> <p>Membership: Secretary to DEETYA (chair), both Deputy Secretaries, First Assistant Secretaries of the following Divisions:</p> <ul style="list-style-type: none"> • Employment and purchasing; • VETS • Corporate Services • Network operations; • Systems; • Legal; and • the PEPE Taskforce. 	<p>August 1996 to January 1996</p>	<p>Overall coordination role in managing the implementation of the reforms, including:</p> <ul style="list-style-type: none"> • the establishment of the employment services market; • the establishment of the Public Employment Placement Enterprise; • aspects of the establishment of Centrelink relevant to DEETYA, including the transfer of functions and staff from DEETYA to the interim Centrelink; and • the design and implementation of a 'new DEETYA'.
<p>Transition Coordination Steering Committee.</p> <p>Membership: Secretary to DEETYA (chair), both Deputy Secretaries, First Assistant Secretaries of the following Divisions:</p> <ul style="list-style-type: none"> • Employment and Purchasing; • Vocational Education and Training; • Corporate Services • Network operations; • Systems; • Legal and Review; and • Youth, Students and Social Policy. <p>Assistant Secretaries of:</p> <ul style="list-style-type: none"> • Communications Branch; and • Transition Management group. 	<p>February 1997 to August 1997</p>	<p>Oversee the implementation of the employment services reforms, including:</p> <ul style="list-style-type: none"> • initiate the development of, and clear, employment services policy options for consideration by Ministers • set strategic directions for transition arrangements in relation to <ul style="list-style-type: none"> • the Services Delivery Agency • the PEPE • the new DEETYA; and • the establishment of the employment services market including entry level training arrangements. • ensure there is effective consultation and coordination between all relevant areas of the Department and between DEETYA and other agencies, on matters associated with the policy and implementation of the employment services reforms; • ensure the legislative and regulatory provisions reflect agreed policy and that administrative practice is fully consistent with these provisions; and ... • direct and monitor the employment reform transition to ensure efficient and effective operational management.'

Committee name and membership	Period of operation	Main responsibilities
<p>Employment Services Market Committee (ESMC)</p> <p>Membership: Secretary to DEETYA (chair), both Deputy Secretaries, First Assistant Secretaries of the following Divisions:</p> <ul style="list-style-type: none"> • Employment and Purchasing; • Vocational Education and Training; • Corporate Services • Operations and performance; • Systems; and • New DEETYA Task Force <p>Assistant Secretary Operations Branch</p>	<p>September 1997 onwards</p>	<ul style="list-style-type: none"> • set strategic directions for transition arrangements in relation to <ul style="list-style-type: none"> • the PEPE • the new DEETYA • disengagement from DEETYA of the CES/EAA; and • the establishment of the employment services market including entry level training arrangements. • ensure there is effective consultation and coordination between all relevant areas of the Department and between DEETYA and other agencies on matters associated with the policy and implementation of the employment services reforms; • ensure the legislative and regulatory provisions reflect agreed policy and that administrative practice is fully consistent with these provisions; and • direct and monitor the employment reform transition to ensure efficient and effective operational management

Appendix 6

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Index

A

accountability 21, 26, 73, 81, 114, 147, 174, 177-178
audit approach 29
audit criteria 29
audit focus 13, 27
Audit objective 13, 27

C

CES Management Board 103, 114, 134
Chief General Counsel (CGC) 7, 37
client service 15, 69, 94, 110, 113, 117-118
Code of Conduct 83-85, 89, 156, 169, 183
collaborative business relationships 13, 21, 28, 69, 86-91, 100
Commonwealth Employment Service Advisory Committee (CESAC) 7, 83-84, 183
contract management 13, 16-17, 21, 26, 40, 68, 96, 110, 112-113, 115-118, 120, 124, 126, 129, 132, 147
Contract Management Handbook 87, 90
contracted case managers (CCM) 103-106, 108, 111-112, 115-116
cultural change 118-122, 124-125, 127

E

ELTSS 7, 11, 20, 25, 45, 61, 64, 66, 70-73, 78, 80, 89, 95-96, 99, 117, 151, 158, 163, 168
Employment National
 see Public Employment Placement Enterprise
Employment Services Act (ESA) 1994 7, 33-38 83-84, 184

Employment service providers

access to performance information about providers 13, 27, 69, 81
contract management style 86-87, 90
performance incentives 13, 27, 69, 76
performance monitoring strategy 69, 85
standards of client service 69, 82
training and support 89, 156
employment services bulletin board 46, 170
Employment Services Regulatory Authority (ESRA) 7, 11, 33, 35, 88, 94, 99, 101-102, 104, 111
Equipping Staff for the Future (ESFF) 7, 120, 125-127
evaluation strategy 69

F

financial viability assessment 55-56, 58-62, 93, 98, 159, 161, 164
FLEX 7, 16, 19, 60-61, 66
FLEX 1: 7, 11, 25, 36-40, 44, 62, 64-65, 70-71, 73-74, 77, 80, 89, 94-100, 102-103, 116-117, 151-153, 163, 168
FLEX 2: 7, 11, 25, 36-37, 70-71, 78, 80, 89, 94-96, 99, 117, 151-152, 158, 163
FLEX 3: 7, 11-12, 25, 36-40, 44-45, 62, 65, 70, 78-80, 89, 94-97, 99, 102, 117, 151-153, 158, 162-163, 169

G

Government policy 12-14, 16-17, 27, 31, 33-34, 42, 44-50, 100, 178

I

information hotline 47, 49-50, 58
information sessions 30, 47, 49-50, 57, 91, 128, 159, 167

K

key events 25, 29-31, 171
 key performance indicators (KPIs) 7,
 13, 17, 20, 27, 40, 68-76, 80

L

Labour Market Programme (LMP) 7,
 18, 101, 103-106, 108-109, 111-112,
 157
 Legal issues
 Administrative authority to bind
 the Commonwealth 41
 Legal basis for the reforms 33
 Consistency with Government
 privacy directions 41
 Reducing the risk of successful legal
 challenges 34

M

market maturity 93-96

N

National Change Helpline 123
 NEIS 8, 11, 20, 25, 61, 64, 66, 70-74,
 79-80, 89, 95-96, 99, 117, 154-155,
 158, 168

O

Office of General Counsel (OGC) 8,
 34-38

P

PEPE Coordinators 122-123, 145-146,
 172
 PEPE Establishment Taskforce
 31- 32, 74, 101, 103, 107, 113-114,
 121-123, 125, 133-36, 142-146, 171,
 174, 181
 performance incentives 13, 27, 69, 76
 performance monitoring 17, 40, 68-69,
 81, 85-89, 169
Privacy Act 1988 41
 probity 20, 37, 44, 49-51, 53-57, 63, 91,
 101-102, 107, 118, 139, 155-157,
 159-160, 164-168
 probity adviser 20, 44, 49, 51, 53-54,
 57, 159, 164-168
 probity plan 49, 56, 102, 107, 157, 168

project costs 132, 137, 140-142,
 145-146
 Project management
 for the establishment of the
 employment services market 132,
 137
 for the establishment of the PEPE
 132, 142, 178
 Protocol for dealing with tenderers'
 representations and request for
 information 49, 107-109
 Public Employment Placement
 Enterprise (PEPE) - management
 of establishment
 access to information 18, 101-103,
 107-109
 business planning 29, 115, 143-144,
 171-180
 cultural change process 118-124,
 127
 developing employee skills and
 attitudes 119, 125-126
 expertise 171-175
 management of potential risks
 142-144
 overview and coordination by
 DEETYA Executive 102-103, 133,
 136
 project costs 173-175
 project planning 142-143
 reducing risk of unfair advantage
 102-103
 transitional management of CES/
 EAA 114, 116

Q

quality assurance 54, 56-58, 60, 139,
 155-156, 160-164, 166

R

reasons for the audit 13, 26
 Reform of Employment Services
 (Consequential Provisions) Bill
 1996 33-34, 43
 Reform of Employment Services Bill
 1996 30, 33-34

Risk management

- risks associated with preparations for the new market 138-139
- risks associated with the establishment of the PEPE 143-144
- risks associated with the tender evaluation 51-58
- market failure 17, 92-100
- risks of successful legal challenges to the new market 34-40
- risks of unfair advantage 17-18, 101-109
- risks to customer service delivery during the transition 18, 110-131

RFT exposure draft 46, 74, 107, 167

S

Service Provider Information Guide 89-90

T

Tender Evaluation Operations Manual 57

Tender evaluation process

- effectiveness 58-62
- outcomes 63-67
- overview 158-170

Tender Information Kit 29-30, 46, 140, 159, 166

Tender Review Committee 42, 54, 57, 60, 64, 138, 156, 158-161, 163-165

tender simulations 53, 164-166

Transition Management Steering Committee 111, 134

transitional arrangements 18, 110-131

Transitional Service Units (TSUs) 8, 105, 111

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