

Disability Employment Services

Program B - Invitation to Treat Information Paper

1. On 21 August 2009, the Government announced the final model for the new Disability Employment Services and details of the purchasing arrangements. See the [media release](#) from the Minister for Employment Participant, Senator Mark Arbib.
2. The new model replaces the existing four services with two demand driven programs:
 - **Program A** will provide services to job seekers with disability, injury or health condition who require the assistance of a disability employment service but are not expected to need long term support in the workplace.
 - **Program B** will be available to those job seekers with a permanent disability and who are likely to require more regular and long-term support in the workplace to retain their job.
3. Purchasing arrangements for the new Disability Employment Services were also announced including extending the proposed Program B Invitation to Treat (ITT) to all DEN Capped and Uncapped providers.
4. This information paper provides an overview of the ITT including details and examples of the method DEEWR will use to convert current DEN business levels into the Program B business shares in employment service areas (**ESAs**), for which DEN providers will be invited to make an offer.

Invitation to Treat

5. The objective of the ITT is to minimise disruption and uncertainty for participants and employers currently accessing services from DEN providers. The Disability Employment Services ITT gives all DEN providers the opportunity to offer to deliver Program B services under the Disability Employment Services Deed 2010–2012 without the need to tender.
6. Issuing an Invitation to Treat is in summary, “inviting an offer”. In this case an Invitation to Treat is a non-binding indication that DEEWR would be interested in each of the current DEN Capped and Uncapped providers making it an offer to deliver Program B services.
7. The contract for Program B will be substantially in the form of the draft Disability Employment Services Deed 2010-2012 at Appendix I of the Request for Tender for Disability Employment Services 2010-2012 (**the RFT**). Chapter 5 of the draft Disability Employment Services Deed 2010-2012 sets out the specific terms and conditions for Program B services.

Note: No contract (oral or otherwise) for the delivery of Program B services will exist until both the Commonwealth and the relevant provider execute an agreement which is in the same, or substantially in the same, form as the draft Disability Employment Services Deed 2010-2012 at Appendix I of the RFT.

ITT - Principles

8. Value for money is the underpinning principle that will guide the conduct of this ITT.

9. The three supporting principles of value for money are:

- maintaining diversity and competition,
- efficient, effective and ethical use of resources, and
- accountability and transparency.

The value for money principles are further supported for Program B by:

- diversity, including maintaining a mix of small, medium and large organisations,
- client choice,
- appropriate coverage,
- meeting the needs of specific client groups, and
- an assessment of the relative risk of each proposal, including the risk of disruption to job seekers and the impact that would have on job seekers.

10. There are some complexities in translating existing DEN provider market shares and caseloads to the new Program B arrangements including adopting new ESA boundaries. Providers should carefully consider the implications of accepting Program B business shares and in particular the implications of accepting small business shares noting:

- providers will be required to nominate sites (at a minimum an outreach site) in each ESA in which they are allocated a business share,
- providers will be required to manage each ESA business share (regardless of size and cost) as a separate caseload on the DEEWR IT system, and
- providers must accept all eligible job seekers referred to them in each ESA they are allocated a business share and keep diary appointments open.

11. DEEWR wishes to conduct the ITT process transparently and ensure overall results that will meet the best interests of participants. To achieve these dual aims DEEWR has:

- set out in this paper the processes and rules that DEEWR will apply in formulating ITT business shares; and
- provided for a two stage process, with an opportunity for providers to have input before ITT business shares are prepared.

12. Given the diversity of arrangements that are in place, mechanical rules alone will not suffice, and at some points in the process and in some circumstances DEEWR will need to exercise a level of discretion. Wherever there is a discretion to be exercised, including when formulating ITT business shares, considering provider offers and gap filling, DEEWR will take into account the principles set out in paragraph 9 above.

Business share

13. Implementation of the new Disability Employment Services will see the introduction of demand driven services. For DEN Capped providers this will mean a shift from an allocation of a fixed number of program places to business allocations based on business shares. DEN Uncapped providers have been operating with a business share model for some time and will be familiar with how it operates.

14. Put simply business share equates to a percentage proportion of eligible job seekers which are referred to Program B (participants) in an ESA. Direct registrations will not be counted towards business share.

15. Business share in the new Program B will be offered at the ESA level. Program B providers will be contracted to deliver Services to a proportion of eligible referred job seekers in an ESA. The actual number of referrals at any given time in an ESA will reflect the circumstances prevalent in that ESA.

16. Providers will only receive referrals in ESAs in which they have a contracted business share. Subject to the following note, providers will not be entitled to receive referrals of clients, or directly register clients, from any ESA where they do not have a contracted business share.

Note: In some circumstances participants are able to request a referral to a specialist provider from another ESA and, where DEEWR agrees, be referred to that provider.

17. 100% of the Program B business share in each ESA will be allocated through this ITT and any subsequent gap filling.

18. It is a requirement of both the Request for Tender for Disability Employment Services and also this ITT that providers must maintain at least an outreach site in each ESA in which they are allocated a business share. Further where a provider is being considered for more than a small business share in an ESA, an outreach site alone may not be sufficient to maintain that business share. Please see the further discussion on this matter later in this paper.

19. Irrespective of the final business share awarded to a provider, existing DEN participants will, regardless of their location, generally transition to Program B with their current DEN provider. A provider's number of existing participants will have no impact on that provider's future business share or referrals. Exceptions to this may be where current DEN participants select an alternative provider on transition, where their current DEN provider chooses to exit the market or where the provider is located at an unreasonable distance from the participant.

Note: This is an exception to what will be the usual rule under Program B, that providers will not deliver services to participants resident outside their contracted ESA(s) (refer clause 79.3 of the Draft Disability Employment Services Deed 2010 - 2102).

20. The ITT process converts current DEN business into an initial business share of the new Program B. To do this, a point in time (30 June 2009) caseload is extracted from the DEEWR IT system. This caseload data is the basis for identifying the relative percentage proportion of DEN business each current DEN provider holds. This proportion is then used as the basis for calculating business shares in the new Program B.

Note: The 30 June 2009 caseload data is not necessarily indicative of future flows into Program B and DEEWR makes no representation as to the actual number of referrals a provider will receive. The number of referrals to a provider will depend on a number of factors, including the business share allocated to a provider in an ESA, and the number and characteristics of job seekers assessed as eligible for the new Disability Employment Services by JCAs.

Invitation to Treat Two Stage Process

21. The ITT process will be undertaken in two stages -

Stage 1 - The objective of this preparatory stage is to establish the ESAs to be included in each provider's Invitation to Treat.

Stage 2 - Stage 2 includes issuing the Invitations to Treat, responses back from providers, where necessary negotiations and finally issuing and executing Deeds.

22. The two stages each involve several steps –

Stage 1	Step 1	Initial business share is calculated based on DEN caseloads at 30 June 2009, new ESA boundaries and taking account of current contractual arrangements and the best interests of job seekers. DEEWR will send a letter to each current provider setting out the results of the initial business share calculation. At this stage the business share is expressed as a range.
	Step 2	Provider election of ESAs for consideration in the ITT, ESAs they do not wish to be included in their ITT, any proposals to consolidate small caseloads (5% or less) in ESAs where the provider does not have a current site and any ESAs not specified in the letter they believe should be included in their ITT.
	Step 3	Following consideration of each provider's responses, including taking account of value for money and the best interests of participants, DEEWR will calculate proposed business shares in each ESA for the new Program B, as and if appropriate.
Stage 2	Step 4	An Invitation to Treat letter is sent to each DEN provider.
	Step 5	Providers make an offer or indicate an intention not to make an offer for each ESA business share listed in the Invitation to Treat.
	Step 6	DEEWR considers offers which are within the parameters specified in the ITT taking account of value for money as set out in paragraph 9 above.
	Step 7	Where appropriate negotiations are conducted and where necessary gap filling is undertaken.
	Step 8	Final decisions are made and Deeds despatched.

Note: Every effort has been made to ensure current contact details for DEN providers in the DEEWR IT system are up to date. However, as a dynamic program at any point in time there are a number of changes including to contact details and contract variations being negotiated with the Department. Where contact details need to be corrected, providers should call the purchasing hotline on 1300 733 514 or email desitt@deewr.gov.au.

23. Consistent with the governance arrangements established for the Request for Tender for Disability Employment Services Program A, a committee of senior DEEWR officials will be formed to consider Stage 1 proposals (Step 3) and formal offers made in response to the Invitation to Treat (Step 6). The DEEWR Deputy Secretary, Employment will consider recommendations made by the committee and make final decisions. In making recommendations and final decisions the Committee and the delegate will take account of value for money outlined in paragraph 9 above, including the best interests of job seekers.

Step 1 – Initial business share calculation

24. DEN capped services are based on each provider managing a specific number of fixed places. DEN Uncapped providers manage services on the basis of a business share of referrals in individual ESAs. For the purpose of this ITT, DEN business levels - both DEN Capped and Uncapped - are defined as:

- all DEN Capped and Uncapped participants current at 30 June 2009 according to DEEWR IT system.

25. The point in time caseload (30 June 2009 data extract) is mapped to the new ESAs with reference to each provider's current DEN contractual arrangements.

26. In each ESA the total number of participants mapped to that ESA becomes the denominator for the ESA. Of those participants, the number of participants mapped to a provider becomes the numerator for that provider. This proportion is then used as the basis for business shares in the new Program B.

Example 1:

In ESA Yellow there are three providers, one is a contracted DEN Capped and Uncapped provider, the second a contracted DEN Uncapped provider and the third a Capped provider, each with a site in the ESA and none have contracted ESAs without sites. In Step 1 the current case load attributed for each provider was -

Provider Alpha – 25 Capped and 25 Uncapped

Provider Bravo – 30

Provider Charlie – 20

The total ESA business in this ESA is calculated at 100 (50+30+20) and this becomes the denominator for the ESA. Of those participants, the number of participants registered to each provider in the ESA (current caseload) becomes the numerator. Proportional DEN business shares are calculated for each provider –

Provider Alpha = current caseload/total ESA business = 50/100 = 50%

Provider Bravo = current caseload/total ESA business = 30/100 = 30%

Provider Charlie = current caseload/total ESA business = 20/100 = 20%

The proportion of total ESA business held by each provider in the ESA becomes the Program B business share range identified in the Stage 1 letter. Provider Alpha would be expressed as >50%, Provider Bravo as 26-50% and Provider Charlie as 10-25%.

27. Where providers have sites in each ESA they are currently contracted to deliver services in, those sites are mapped to the new ESA boundaries and the number of participants in each site is included in the denominator for that ESA and that provider's numerator for that ESA.

Note: Where a provider is currently contracted to deliver services to an ESA but there are no participants in the 30 June 2009 caseload data for that provider in that ESA, an initial business share cannot be calculated for that provider in that ESA.

New ESA boundaries

28. New ESA boundaries will be adopted for the new Disability Employment Services Programs A and B. The new ESA boundaries align more closely with the Statistical Local Area boundaries used by the Australian Bureau of Statistics (ABS). This will allow better correlation of DEEWR and ABS data for use in performance management and policy development work. In Example 1 above, the new ESAs match the currently contracted ESAs.

29. The new ESA boundaries are somewhat different to the former ESAs and as a result the current location of DEN services can move into a new ESA. For example, the new ESA boundaries may split a current ESA into two or more new ESAs. Where this occurs, each new ESA in which a provider's site will be located is included in the ITT.

30. Example 2 shows the result of a site moving from one ESA to another as a result of the mapping to new ESAs undertaken in Step 1.

Example 2

In ESA Blue there are two providers – each has two sites with 25 current participants at each site. Under the new ESA structure ESA Green takes some of the old ESA Blue.

Provider Lima – both sites remain in ESA Blue (50 participants)

Provider Foxtrot – one site remains in ESA Blue (25), but the second site is now within the boundary of ESA Green (25)

The denominator for ESA Blue is 75 – Provider Lima's 50 participants at its two sites in ESA Blue and Provider Foxtrot's 25 participants registered at the site that remains in ESA Blue.

The calculation of business share in ESA Blue is -

Provider Lima = current caseload/total ESA business = $50/75 = 66.66\%$

Provider Foxtrot = current caseload/total ESA business = $25/75 = 33.33\%$

The denominator for ESA Green will now include the 25 participants registered at Provider Foxtrot's site in the ESA. A business share in ESA Green will be calculated for Provider Foxtrot based on its current caseload of 25 participants divided by the total ESA business level in ESA Green.

Contracted ESAs with no registered site

31. Some DEN Capped providers currently have contracts to draw job seekers from current ESAs in which they have no registered site. Examples include services based in the central business districts but still convenient to job seekers from a number of surrounding ESAs or specialist providers to whom particular job seekers are prepared to travel.

32. In these circumstances the mapping of participants will not be based on where a current DEN provider's sites are located, but rather be based on the residential postcodes of participants registered with the provider at 30 June 2009 with reference to current DEN contractual arrangements. If a caseload contains participants from an ESA which the provider is not contracted to service, those participants will be mapped to their registered site in a contracted ESA.

33. In example 3, Provider Delta has a current DEN contract to provide services to a number of current ESAs in which they do not have sites. This provider's caseload has been mapped to the new ESAs on the basis of participant residential postcodes.

Example 3

Provider Delta has a DEN Capped contract for four ESAs – White, Purple, Red and Orange. There are 205 participants registered with Provider Delta at a single site located in ESA White.

A review of participant postcodes locates the case load of 205 as follows -

ESA White – 50
ESA Purple – 100
ESA Red – 50
ESA Orange – 5

Assuming there is one other DEN provider in each of the four ESAs with 100 participants in each, the total ESA business (denominator) for each ESA would be -

ESA White – 50 + 100 = 150
ESA Purple – 100 + 100 = 200
ESA Red – 50 + 100 = 150
ESA Orange – 5 + 100 = 105

In this example, a business share for Provider Delta will be calculated for ESAs – White, Purple, Red and Orange. Provider Delta's participants will be included in the denominator each of these ESAs.

Provider Delta's business share in each ESA would be

ESA White = current caseload/total ESA business = 50/150 = 33.33%
ESA Purple = current caseload/total ESA business = 100/200 = 50%
ESA Red = current caseload/total ESA business = 50/150 = 33.33%
ESA Orange = current caseload/total ESA business = 5/105 = 4.7%

34. In this example, the small business share of 4.7% in ESA Orange is included in the Stage 1 letter as Provider Delta has a current contract for ESA Orange.

35. The ITT is intended to ensure stability for current participants and employers accessing services from DEN. It is not intended to be an opportunity for DEN providers to expand into new regions. Therefore, where a provider has a contract for a current ESA where it does not have a site and that current ESA becomes part of two or more new ESAs, a business share will be calculated in the new ESA in which most participants are located (according to the participant residential postcode review) or in the ESA closest to the provider's existing site. This postcode mapping will also determine the number of participants who will continue to be counted at the site. Where this is done, all participant numbers will be included in the initial business share calculation.

36. The decision on which of the two methods described above is used to develop the initial business share to be included in the Stage 1 letter will be made by DEEWR on the basis of value for money, including the best interests of job seekers. Stage 1, however, creates an opportunity for providers to make a case for changing the ESAs to be included in the ITT.

Example 4

Provider Sierra has a DEN capped contract to deliver services in ESAs Venus, Mars and Jupiter. Provider Sierra's current caseload is 150 and they are registered at Provider Sierra's site in ESA Venus. The new ESA boundaries mean that two new ESAs Saturn and Neptune now include small parts of the original ESA Jupiter. A review of participant postcodes shows that Provider Sierra's current caseload of 150 is located -

ESA Venus – 50
ESA Mars – 50
ESA Jupiter – 45
ESA Saturn – 3
ESA Neptune – 2

In this example there are providers in each of the ESAs with a combined caseload of 400 in each of the five ESAs. The total ESA business level for each ESA is -

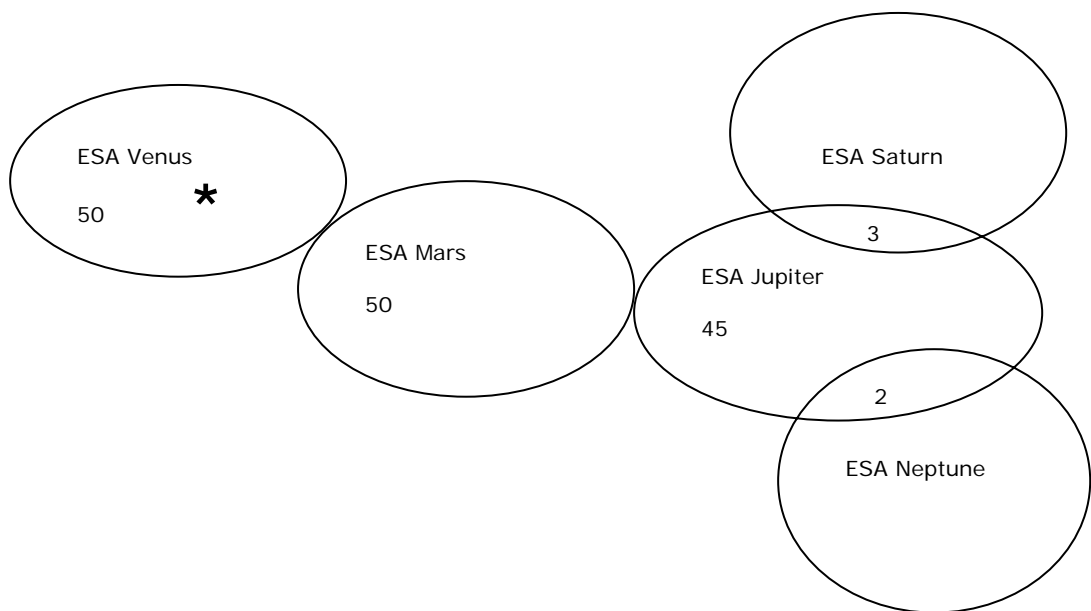
ESA Venus – $50 + 400 = 450$
ESA Mars – $50 + 400 = 450$
ESA Jupiter – $45 + 400 = 445$
ESA Saturn – $3 + 400 = 403$
ESA Neptune – $2 + 400 = 402$

In this example, the Stage 1 business share calculation will include -

ESA Venus = current caseload/total ESA business = $50/450 = 11.11\%$
ESA Mars = current caseload/total ESA business = $50/450 = 11.11\%$
ESA Jupiter = current caseload/total ESA business = $50/450 = 11.11\%$

37. Diagram 1 provides a representation of how the participant postcodes for Provider Sierra map to the five ESAs.

Diagram 1



38. In example 4 the Stage 1 initial business share calculation will not include a 0.74% business share in ESA Saturn or a 0.49% in ESA Neptune. The five participants have been counted in ESA Jupiter. In this example, as the small business shares are caused by changing ESA boundaries, the Stage 1 letter consolidates these to ESA Jupiter. Stage 1 however creates an opportunity for Provider Sierra to make a case for including ESAs Neptune and Saturn in the ITT.

39. In contrast, in Example 3 the small business share for Provider Delta is related to an ESA that maps to a contracted ESA so the small business share (4.7%) for ESA Orange is included in the Stage 1 letter. Both providers, however, have the opportunity in Stage 1 to make a case for the inclusion or exclusion of these small business shares.

STEP 2 – Provider election of ESAs for consideration in the ITT

40. This step is designed to ensure that the ITT letters include the appropriate ESAs and to provide an opportunity for providers to consider consolidating small business shares in ESAs in which they do not have a site, to identify ESAs they do not wish to be included in their ITT and, in some circumstances, to nominate additional ESAs they consider should be included.

Note: For the purposes of this step DEEWR considers business shares of 5% or less to be small.

41. Each provider will be sent the outcomes of the site and, where relevant, participant mapping to the new ESAs and the results of the initial business share calculation. This initial business share will be based on the DEEWR 30 June 2009 data extract and will be expressed as a range.

Note: this step provides an indicative business share only. The business share included in the ITT letters may be bigger or smaller depending on the outcome of this preparatory first stage.

42. Each provider will be required to advise DEEWR:

1. the ESAs they wish to receive an ITT for
2. any ESAs they are not interested in receiving an ITT (refer paragraph 43)
3. of any ESAs where there is not a site and the initial business share is 5% or less and they wish to consolidate participant numbers back to the site at which the participants are registered (refer paragraph 44), and
4. of any ESAs not specified in the letter, but related to currently contracted ESAs the provider considers should be included in their ITT (refer paragraph 45).

43. Where providers indicate they are not interested in receiving an ITT for a particular ESA any current participants on the provider's caseload at transition may remain with the provider. However for the purposes of calculating business shares the participant numbers in that provider's 30 June 2009 caseload will continue to be counted in the denominator for that ESA and that business share allocated through gap filling.

Example 5

Provider Luna has a DEN capped contract to deliver services in ESAs Venus, Mars and Jupiter. The Stage 1 business shares for Provider Luna are –

ESA Venus – Current caseload 50/total ESA business 100 = 50%

ESA Mars – Current caseload 33/total ESA business 100 = 33%

ESA Jupiter Current caseload 15/total ESA business 100 = 15%

In this example Provider Luna's response to the Stage 1 indicates that they do not wish to receive an ITT for ESA Jupiter.

The ITT letter to Provider Luna includes a business share in Venus based on a caseload of 50 and ESA Mars based on a caseload of 33. The 15% business share in ESA Jupiter will be allocated through gap filling.

While Provider Luna will continue to provide services to the 15 participants on their current caseload attributed to ESA Jupiter, the 15% business share in ESA Jupiter will be allocated through gap filling.

44. Proposals to consolidate small business shares are limited to caseloads in ESAs in which the provider does not have a site. Consolidation can only be back to the site at which the participants are registered. Proposals to consolidate a business share should not propose allocating participant numbers to a new ESA or a different site and no business share will be calculated at the ESA from which numbers are consolidated, however if a provider considers they have a strong case, Stage 1 creates an opportunity for them to make a case to do so.

45. In some circumstances providers may wish to identify ESAs they consider should be included in their ITT. Such proposals are limited to ESAs that have a geographical relationship to the currently contracted ESAs and the provider believes that their current service delivery model will be at risk without either an exchange of ESAs or the inclusion of an additional ESA.

46. Where providers wish to propose additional ESAs or exchanging ESAs they will need to establish, to DEEWR's satisfaction, how the proposed changes would be in the best interests of future participants on an ongoing basis. Providers must include:

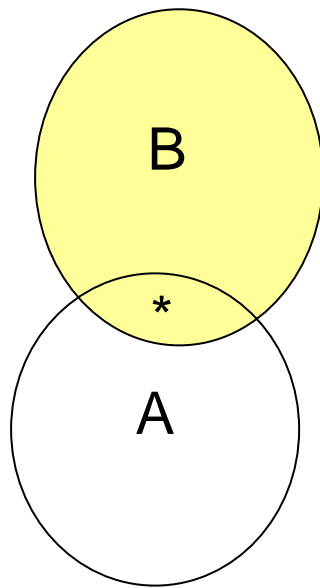
- proposed coverage,
- site arrangements, including number and type of site, and
- whether the provider proposes to offer specialist services and if so, details on the type of specialty (refer paragraphs 63 to 65).

47. Proposals must present supporting information succinctly, are limited to one page for each proposal and must be submitted on the form provided.

Note: Where a proposal for change is based on the movement of their site to a new ESA their proposal will be limited to exchanging the ESA in which they are in practise predominately operating.

48. The following diagram demonstrates a situation in which a provider might wish to propose exchanging ESAs.

Diagram 2



Provider Magenta has a current contract in ESA A and they have a site on the northern border. That part of ESA A is now within the borders of ESA B. In the Step 1 letter has a business share calculated for Provider Magenta in ESA B.

Provider Magenta proposes that ESA B be exchanged for ESA A as they have established outreach services in many small towns in ESA A and an early intervention partnership with a school located in ESA A.

49. In considering proposals to exchange ESAs or include additional ESAs, DEEWR will take account of value for money principles set out in paragraph 9 above including the impact on services in each ESA affected by each proposal.

50. Except as specified in paragraph 46 providers are not required in Stage 1 to identify sites from which they propose to deliver services. In considering responses to this preparatory letter however, providers should be aware that providers in the new Program B will be required to establish a site in each ESA in which they are allocated a business share. The number and nature of sites will be taken into account by DEEWR in determining whether to accept an ITT offer and providers offering to deliver large business shares will be expected to maintain a level of site coverage commensurate with their level of business. Providers offering to deliver small business shares should also be aware that at a minimum, an outreach site must be provided in every contract ESA.

51. In notifying DEEWR of its preference providers should also ensure that they are aware of the consequences of their preferences, including:

- providers will be required to nominate sites (at a minimum an outreach site) in each ESA in which they are allocated a business share
- providers will be required to manage each ESA business share (regardless of size and cost) as a separate caseload on the DEEWR IT system
- providers must accept all eligible job seekers referred to them in each ESA they are allocated a business share
- providers will be required to have diary appointments open in each ESA in which they have been allocated a business share
- providers will not be able to directly register or receive referrals from ESAs in which they do not have a business share
- provider performance will be assessed at the ESA and site level
- performance assessments may be used to inform future purchasing arrangements
- a provider's ITT will not include ESAs the provider has notified DEEWR that they do not wish to receive one in Stage 1, and

- a provider's ITT will not include those ESAs where the provider has elected and DEEWR has agreed to consolidate small numbers of participants from that ESA to another ESA.

Note: Stage 1 is the last opportunity to clarify any differences between DEEWR records of contractual arrangements and any informal arrangements currently in place.

Note: Providers should also be aware that Stage 1 is the only opportunity to propose consolidating business shares. As each business share in an ESA is contingent upon all business shares in an ESA, once the ITT letters have been despatched the denominator in each ESA is set. ITT offers (Step 5) can only accept, reduce or hand back the proposed business share.

Note: The advice received by DEEWR in this step will assist DEEWR develop the ITT and DEEWR is not bound to accept proposals.

STEP 3 - Calculation of business share of the new Program B for inclusion in the ITT

52. Following consideration of responses to the preparatory letter, business share calculations will be adjusted to take account of any changes agreed by DEEWR.

53. Example 6 demonstrates the possible impact on the business shares contained in the ITT letters, where it has been agreed that a small caseload be consolidated.

Example 6

In ESA Yellow the initial business shares, based on the 30 June 2009 caseload were calculated as follows - there are three providers, one is a contracted DEN Uncapped provider, the second a contracted DEN Capped provider and the third a contracted DEN Uncapped and Capped provider. In Step 1 the current case load mapped for each provider was -

Provider Alpha – 25 Capped and 25 Uncapped
Provider Bravo – 30
Provider Charlie – 20

The total ESA business in this ESA was calculated at 100 (50+30+20) and this was used as the denominator for the ESA. Of those participants, the number of participants registered to each provider in the ESA (current caseload) became the numerator. Proportional DEN business shares were calculated for each provider –

Provider Alpha = current caseload/total ESA business = 50/100 = 50%
Provider Bravo = current caseload/total ESA business = 30/100 = 30%
Provider Charlie = current caseload/total ESA business = 20/100 = 20%

In its response to the preparatory letter Provider Charlie proposed that a small caseload of 5 participants in a neighbouring ESA in which they did not have a site, be consolidated to the site at which they are registered, in this example the site in ESA Yellow. Business shares for all providers in ESA Yellow are recalculated as follows –

Provider Alpha – 25 Capped and 25 Uncapped
Provider Bravo – 30
Provider Charlie – **25**

The total ESA business in this ESA is calculated at 105 (50+30+25) and this becomes the denominator for the ESA. Proportional DEN business shares are calculated for each provider as follows –

Provider Alpha = current caseload/total ESA business = 50/105 = 47.6%
Provider Bravo = current caseload/total ESA business = 30/105 = 28.5%
Provider Charlie = current caseload/total ESA business = 25/105 = 23.8%

54. In this example, each provider's business share is adjusted as the consolidated small caseload is included in the denominator for the ESA and the numerator for Provider Charlie.

Step 4 – Invitation to Treat letters to DEN Providers

55. ITT letters will be emailed by DEEWR to each DEN provider, followed up some time later by a hardcopy version for the provider's records. The ITT letter will identify the maximum business share in each ESA the provider is invited to make an offer for and will set out the conditions and assumptions on which DEEWR has based that offer (eg. the level of generalist/specialist business).

56. The ITT letter will also include a form for the provider to complete to make an offer back to DEEWR.

Step 5 – Providers make an offer

57. Organisations included in the ITT will need to decide whether to make an offer for each ESA included in their invitation. If a decision not to make any offer for any ESA is made by the provider, the organisation concerned must notify DEEWR accordingly. If an offer is made, that offer must include –

- The business share the organisation proposes to take up. This can be up to the maximum identified in the invitation but cannot exceed the business share identified in invitation
- Details of proposed sites in each ESA, noting that at a minimum providers must nominate an outreach site for each ESA and there is an expectation that the offer will provide at least the same number of current DEN sites and locations if taking up the maximum business share.
- Whether or not the organisation wishes to be considered as a generalist, specialist or both
- Where the organisation does not intend to provide access to services to the whole ESA, detailed information on the geographical area the organisation wishes to cover.

Note: More detailed information including on the format provider offers will take will be available in the ITT letter.

58. The ITT will identify the maximum business share each provider is invited to make an offer for. Providers are, however, able to offer to take up a smaller business share or may also choose not to make an offer in particular ESAs at all.

59. As the business share for each ESA is set as a result of advice from providers in Step 2, there is no opportunity in this step to propose consolidating business shares.

Coverage

60. In the first instance, it will be assumed that each provider will cover the entire ESA in which they have been allocated business and will at least maintain existing sites. Providers who wish to limit their coverage of an ESA, for example those with small business shares, **must** include detailed information in their offer on the geographical area they wish to service within the ESA.

61. Providers should note that in some circumstances where a more limited geographical coverage is offered this may result in a reduction in the business share allocated to them. For example:

- A provider holding a 100% business share in an ESA who offers less than 100% coverage will be allocated a reduced business share to ensure all job seekers in the ESA have access to services.
- A provider who holds a significant proportion of the available business share and offers less than 100% coverage may be allocated a reduced business share depending on the proposed coverage, geography of the ESA and the location of job seekers.

62. Example 7 demonstrates possible changes to business share on the basis on inadequate coverage –

Example 7

Provider Delta has a current DEN capped contract to provide services in four ESAs, White, Purple, Red and Orange. Provider Delta has a site in ESA White only. The initial business share calculation for Provider Delta is explained in Example 3. Stage 1 did not result in any changes to Provider Delta's business shares so the ITT letter included the following

Provider Delta's business share in each ESA would be

ESA White = current caseload/total ESA business = 50/150 = 33.33%
ESA Purple = current caseload/total ESA business = 100/200 = 50%
ESA Red = current caseload/total ESA business = 50/150 = 33.33%
ESA Orange = current caseload/total ESA business = 50/150 = 33.33%

Provider Delta responds to the ITT with an offer to continue to maintain a full-time site in ESA White and identifies an outreach site in ESA Purple and part-time sites in ESAs Red and Orange. Taking account of value for money, DEEWR concludes that an outreach site will not offer sufficient access to job seekers in ESA Purple. DEEWR suggests that Provider Delta adjust the offer to include a full-time site in ESA Purple, or a reduced business to 20%. Following negotiations, a 20% business share in ESA is allocated to Provider Delta.

Specialist providers

63. A specialist provider delivers services to a group of eligible job seekers with specific needs. Specialist client groups can be defined by job seeker characteristics such as disability type. Providers who receive an ITT are able to identify themselves as a specialist provider. Providers who want a specialisation can offer to:

- Convert their entire ITT business share to a particular 'specialist only' category, or
- Convert a part of their ITT business share to 'specialist only' and maintain the remainder as 'generalist' business.

64. Only job seekers meeting the characteristics specified will be referred to a specialist provider and not all such job seekers will necessarily chose a specialist provider. DEEWR makes no guarantee of the number of referrals. Organisations considering nominating as a specialist should also note that specialists will not be able to directly register participants who do not meet the definition of their specialty.

65. Potential specialist providers should note that if their offer is to be only a specialist, DEEWR may reduce the proposed maximum business share to be commensurate with the proportion of participants in the provider's 30 June 2009 caseload whose characteristics meet the proposed specialty. This may be necessary to ensure sufficient business share is available for the balance of job seekers in the ESA.

Example 8

In ESA Pink, there are two providers each with 50 participants. In this example, the ESA total business/denominator for ESA Pink would be 100. Both providers are invited to make an offer for a business share of up to 50%.

Provider Echo nominates to be a generalist and Provider Tango offers to take up business share as a specialist only. Half of provider Tango's participants meet the proposed specialty.

Provider Echo's offer for a 50% business share in Program B is accepted.

Following discussion with DEEWR, Provider Tango is allocated a 25% share.

The remaining 25% business share is allocated by DEEWR through gap filling. (See section on gap filling below).

Step 6 – DEEWR considers offers

66. In considering offers DEEWR will take into account value for money principles set out in paragraph 9 including the best interests of job seekers.

Step 7 – Negotiations

67. Where necessary, for example DEEWR is concerned that sufficient coverage, choice or diversity has not been generated by the ITT offers, it may initiate negotiations with individual providers.

68. Example 8 above demonstrates a situation where DEEWR considered that quarantining 50% business for specialist services was not in the best interests of job seekers in the ESA and negotiations resulted in a reduced business share for Provider Tango.

69. DEEWR is not bound to accept offers and may, at its absolute discretion, reject offers that do not meet the value for money objectives.

Gap Filling

70. It is intended that the ITT account for 100% of the business share in each ESA across Australia. The ITT negotiation process, including where providers offer to take on a smaller business share or no business share, may result in some residual business shares.

71. DEEWR will allocate any residual business through a gap filling process.

Step 8 – Final Decisions and dispatch of Deeds

72. The delegate, the Deputy Secretary, Employment will make the final decisions having regard to value for money, including the best interests of job seekers. Following the Delegate's final decisions, all providers will be notified of the final outcome and it is expected that Deeds will be dispatched in early December 2009.

Note: While every effort will be made to conclude all negotiations in time to meet the 9 December deadline, some elements of gap filling may not be concluded by that time. In these circumstances, any additional business shares may be included as contract variations.

73. Providers will be expected to sign and return the Deeds prior to Christmas 2009.

Financial Viability

74. A financial viability assessment will be undertaken on all providers making an offer as a result of the ITT. A Financial and Credentials Information Form will be sent to all providers in Step 1 and must be returned with the responses (Step 2).

75. The objective of the financial viability process is to determine, on the basis of information provided with the offer:

- whether the provider may be considered financially viable to meet the service requirements of the ITT, and
- whether there are any circumstances that may adversely affect the provider's ability to meet its contractual obligations to supply services for at least the Deed period.

76. Financial viability assessments are used to minimise risk to the Australian Government. They are not used to measure the profitability of an organisation or its potential for success in the Disability Employment Services market.

Note: Providers who submit a response to the Request for Tender for Disability Employment Services 2010-2012 are not required to resubmit this information unless there has been a change to the information submitted.

Late Responses

77. The closing date for Stage 1 responses and Stage 2 offers will be specified in the letters sent to providers. Providers should note that any responses for offers received after the closing date and time may, at DEEWR's discretion, not be considered. A late response to Stage 1 letters may mean that the views expressed are not taken into account by DEEWR in the subsequent ITT letter. Late ITT offers may mean that a provider will not be allocated any business in Program B.

Novations and other changes during the ITT process

78. Under the Employment Services Funding Deed 2006-2009, providers must obtain DEEWR's consent to novations, the assignment of rights, Changes in Control and changes in the composition of a Consortium or partnership (refer clauses 32 and 43 of the current Deed). Such requests from providers during the period up to execution of new Deeds should be submitted to DEEWR in accordance with current contract management arrangements.

79. DEEWR will consider these requests according to usual processes, with a strong focus on the overall aim of achieving stability for job seekers. (Note: all capitalised terms in this paragraph have the same meaning as in the Employment Services Funding Deed 2006-2009).

Communications

80. Consistent with arrangements for the Request for Tender for Disability Employment Services Program A, all questions relating to this ITT for Disability Employment Services Program B should be directed to the Employment Services Purchasing Hotlines on 1300 733 514 or via email to desitt@deewr.gov.au.

81. The Hotline is unable to provide advice on how DEN providers should develop their responses to Stage 1 or offers to DEEWR in Stage 2. DEN Providers should make their own independent assessment and investigations, and obtain their own legal,

business and other professional advice on and in relation to the, ITT and its requirements.

Probity

82. DEEWR is committed to ensuring that the ITT process is open and fair. To do this it is important that the process is transparent and subject to appropriate scrutiny and that all procedures published by DEEWR are followed. DEEWR has engaged an independent, external Probity Advisory, the Probity Advisor is:

Luke de Jong – Special Counsel
Clayton Utz
Telephone +61 2 6279 4050
Fax +61 2 6279 4099
Email ldejong@claytonutz.com

83. The role of the Probity Advisor is to advise DEEWR on the probity and integrity of the ITT process. The Probity Advisor may be contacted directly about the integrity of the ITT process.