

Ms Sandra Parker
Deputy Secretary
Department of Education, Employment and Workplace Relations
50 Marcus Clarke Street
Canberra ACT 2601

Dear Ms Parker,

I am writing to provide you with my findings and recommendations from the review of Job Services Australia (JSA) provider brokered claims.

My remit was to oversee the development of an audit action plan in consultation with the Audit Committee of the Department of Education, Employment and Workplace Relations (the department), consider whether changes to the JSA program were needed in relation to provider brokered (PBO) and provider assisted (PAO) claims and, if program changes were required, to oversee the development of program reform options.

I worked with the department between January and April 2012 in developing the methodology and modalities for the audit and in addressing issues that emerged. On 5 March 2012 Anthony Parsons and I briefed the department's Audit committee on the design and objectives of the audit. I also sought input from the peak industry bodies: the National Employment Services Association and Jobs Australia, and the Advisory Panel on Employment Services Administration and Accountability.

On 21 March 2012, I responded to a written request from the Minister for Employment Participation, the Hon Kate Ellis MP, for my views on whether current policy settings were contributing to perverse provider behaviour in claiming outcome payments. My advice to the Minister was that while the audit had not yet been completed it was clear from work to that point that some providers had claimed PBO fees where the requirements were not met or supported by the necessary documentary evidence. I advised that the evidence suggested that the problem was of sufficient magnitude to require a change in current policy settings.

On 29 March 2012 you wrote to JSA providers advising that the Government had decided to remove the differential payment rate between PBO and PAO and to put in its place a single outcome rate set at 110 per cent of the previous PAO rate.

I have attached my findings and recommendations for your consideration.

The department has further work to do in asking providers to show cause why claims should not be recovered and completing recovery action where appropriate. It will also need to review its policy, guidelines and diagnostics. I would be happy to provide further advice or clarification if required.

I have had strong support from the department in overseeing the review and believe that the department is well placed to take these recommendations forward.

Yours faithfully,

Robert Butterworth

Robert Butterworth

13 April 2012

Audit Process

I worked with the department between January and April 2012 in developing the methodology and modalities of the audit and in addressing issues that emerged in the process:

- In the first phase the department wrote to the providers in scope and asked them to check and verify the PBO claims they had made between July and December 2011.
- The second phase involved a detailed review of the documentary evidence obtained from providers and other information to assess the claims they had verified as correct.
- In the third phase, where possible the audit team contacted job seekers and employers where the documentary evidence did not provide a sufficient basis for assessment.

The first phase of the audit revealed a significant number of claims that did not meet the requirements and the data gathered in the subsequent phases confirmed there was a need to review the policy. In March I provided advice to the Minister that, based on preliminary results, the problem was of sufficient magnitude to require a change in policy settings.

On 29 March the department wrote to JSA providers advising that the Government had decided to remove the differential payment rate between PBO and PAO and to put in its place a single outcome rate set at 110 percent of the previous PAO rate.

The department has completed its audit and established provisional estimates of the number of claims that were invalid, contradicted or not supported, and unable to be determined.

The next step is for the department to initiate recovery action by:

- Recovering fees for the PBO fees acknowledged by providers as invalid.
- Asking providers to supply any further information on why claims that were contradicted or not supported by the evidence or by job seekers/employers should not be recovered.

The department is well placed to undertake this recovery process. The results of the audit will also inform the department's ongoing administration of JSA and its relationships with providers.

Do the audit results support the need for a policy response?

The audit found that a significant proportion of fees claimed for provider brokered outcomes (PBO) did not meet the verification requirements:

- Up to 40 per cent of the PBO claims did not meet the requirements or were not substantiated by the documentary evidence, job seeker or the employer.
- The rate for high claiming providers was up to 47 per cent.
- For the control group the rate was lower but of clear concern at up to 16 per cent.

These results confirm the need for the change in policy settings.

SUMMARY OF THE PROVISIONAL RESULTS OF THE SELF EXAMINATION AND AUDIT TEAM ASSESSMENT

	Number of claims in scope	Volunteered invalid claims (1)	Contradicted/ not supported (2) (3)	Confirmed by documentary evidence, job seeker or employer (2)	Unable to be determined (2)
High claim Providers	1633	288	474	557	314
Control Group	484	27	51	331	75
Total	2117	315	525	888	389

(1) Identified by the provider through the self audit phase

(2) Identified by the DEEWR audit team

(3) Contradicted or not supported by documentary evidence, other information, job seeker or employer

The figures reported above may change as providers will be given the opportunity to provide any further information on why contradicted or not supported claims should not be recovered. Nevertheless, it is clear that the rate of invalid claiming exceeds that which might be expected in a typical risk managed program administration environment.

The Department has prepared a detailed report on the methodology and results of the audit which should be read in conjunction with these recommendations.

Recommendation 1: Remove the PBO fee as an element of JSA.

Removing the PBO fee will change the fee structure but other elements of JSA will continue to provide an incentive for providers to engage employers.

The fee structure and performance ratings will continue to provide a clear focus on outcomes and a significant incentive for providers to target job placements. The department has researched the effectiveness of brokered outcome fees and has concluded that, on current evidence, the PBO fee alone has been insufficient to continuously improve employer engagement¹.

What recovery and legal action is required?

DEEWR has an obligation to ensure that public monies are spent efficiently, economically, effectively and ethically. Under the JSA deed and associated documents governing its contracted relationship with providers DEEWR has the right to recover fees paid in circumstances where they are not due or supported by the required evidence. DEEWR should therefore take action to recover fees where the provider has indicated the outcome was not brokered; where the claim did not meet the requirements; where it was not substantiated by the job seeker or the employer; or where further compelling evidence is not offered by the providers.

The audit team identified patterns of claiming among a small number of providers which appear to indicate an intention to create the basis for a false claim. These instances should be further investigated by DEEWR fraud investigators to ascertain if any further action should be taken.

¹ Draft report of *Employer Servicing in Job Services Australia: Evaluation of Job Services Australia, 2009-2012*

DEEWR has also reserved rights under the deed to apply certain sanctions against providers that are not fulfilling their contractual requirements. These sanctions could also be considered in appropriate circumstances.

Recommendation 2: DEEWR take action to recover PBO fees where the provider has indicated the outcome was not brokered; where the claim did not meet the requirements; or where it was not substantiated by the job seeker or the employer (subject to no further evidence being available from the provider).

Recommendation 3: DEEWR consider follow up action against providers where sufficient evidence exists to support an allegation of potential fraud.

Recommendation 4: DEEWR consider whether further contract sanctions are required against individual providers.

What further audit or risk management activity is required?

This audit covered around 5 per cent of PBO claims between 1 July and 31 December 2011 and found a significant incidence of poor administration, claims that could not be confirmed, claims that were not supported by appropriate evidence, and claims that were contradicted by jobseekers or employers. Although providers in the audit were selected because they had a higher PBO claiming rate, it is almost certain that other providers who were not audited will have similar patterns of behaviour, though perhaps on a smaller scale. The most cost effective response at this point is for DEEWR to write to all providers who were not examined in the initial audit in the same terms used in the audit asking them to self-validate their PBO claims.

Recommendation 5: DEEWR write to all JSA providers that were not subject to the audit and ask them to verify their claims from 1 July 2011 with the Department developing appropriate checks, consistent with the principles used in the initial PBO audit.

The audit was focused on PBO claims and did not examine other areas of provider behaviour in any detail. In light of the findings it would be prudent for DEEWR to review its existing risk management plan to ensure that other areas of vulnerability are also examined.

Recommendation 6: DEEWR undertake a strategic risk assessment of JSA program elements and review its risk management plan to ensure that all high risk areas are being addressed.

Are existing program settings clear and adequate?

The criteria for PAO and PBO payments were examined in some detail by DEEWR in the lead up to the review. This examination and the findings of the audit revealed that changes to the control framework have been made in the past without thoroughly testing them to ensure that the requirements are clear and that the evidence required to support the claim is tangible and measurable.

Recommendation 7: DEEWR assess new and existing contractual requirements to ensure that they are practical, tangible and measurable, and that compliance can be readily assessed both by providers and the department in a cost effective way.

Are additional diagnostic tools required?

DEEWR has access to a great deal of information about jobseekers and providers. It also has powerful analytical tools to document the activities and claiming history of providers. The data is readily available to those charged with ensuring system integrity and is used to monitor performance.

However, the existing diagnostic tools could be strengthened by a more strategic approach. This would ensure that senior managers have regular access to information on emerging trends at the system or strategic level. An important focus should be to gauge the extent to which providers individually or as a whole are deviating from expected patterns.

Recommendation 8: DEEWR further develop strategic diagnostic tools that will allow trends in provider claims to be detected in a timely manner and include indicators to flag providers whose claiming patterns are departing from expected patterns.

What can the department do to improve the administrative standards applied by providers?

The audit revealed weaknesses in the administrative standards of some providers. Some struggled to provide timely verification of their claims and others were unable to produce the required documentation. This suggests that there is a need to improve the general standards of governance within providers. The department's purchasing processes could provide an opportunity to improve provider governance standards.

Recommendation 9: DEEWR consider building on the current assessment of management and governance as an element of the tender process to include consideration of further internal audit and quality assurance safeguards by providers.