

2 September 2015

The Commissioners
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001

Your ref: 57224
Contact officer: John Rouw
Contact phone: (03) 9290 1402

Dear Commissioner,

Re: Job Futures Ltd re-authorisation applications A91493 and A91494 – pre-decision conference

Thank you for your letter dated 13th August 2015 notifying of a conference to discuss the ACCC's 31 July 2015 draft determination. As discussed with your Mr John Rouw, I submit this letter to provide more complete information from the point of view of the Board of Bridging the Gap Inc.

Introduction: Who is Bridging the Gap and what is its interest in the above applications

Bridging the Gap has for 30 years, provided services to disadvantaged and disengaged people in the south of Perth, suburban areas and limited country areas of Western Australia. Bridging The Gap is a registered charity and deductible gift recipient. We raise money from various sources and all profits are ploughed back into helping the disabled, destitute and disenfranchised in our region.

Bridging the Gap has strong local community support and connections. Its board includes the current Mayor of the City of Mandurah, a retired TAFE Institute CEO and other eminent community members. In the past few years, the board of Bridging the Gap has included both the Mayor and Deputy Mayor of the City of Rockingham. Its charter requires it to seek a member of Rotary on its Board and other board members include local public accounting, banking, finance, Real Estate and community representatives. In its 30 year history, no board member has ever received payment for his or her work as a board member. Board members selflessly provide hundreds of hours of their high value expertise because they want to help those less fortunate than themselves.

Bridging the Gap has enjoyed strong community support from all sides of politics including the late Don Randall MHR and the current shadow Minister for Resources and Shadow Minister of State, the

Honourable Gary Gray MHR, both of whom have made representations for us in Canberra during the past 12 months.

In the past three years, we have had hosted visits to our premises from Deputy Prime Minister Julie Bishop MHR, Minister for the Environment Greg Hunt MHR, Minister Assisting the Minister for Immigration Senator Michaelia Cash and Western Australian Senator Dio Wang, all of whom have expressed their ongoing support for our work. Roger Cook MLA and Melissa Park MHR have both attended and supported BTG Activities in the past 12 months.

In the past year, Bridging the Gap has assisted over 5000 people into work and 230 people into work experience. We have an excellent track record and over a 17 year period were rated in the top 10 per cent of providers nationally for Job Services Australia. We were the only Perth-based agency awarded a five star rating from the Department of Education, Employment and Workplace Relations.

This profile is typical of Job Futures' members. Bridging the Gap became a member in the first year of Job Future's operations. Today, members are distributed throughout Australia and, on a daily basis, provide vital services in areas such as employment services, disability services, alcohol and drug rehabilitation, mental health services, prisoner rehabilitation, aged and community care, domestic violence support, indigenous employment and assistance, immigration and multicultural integration, de-radicalisation of youth and so on.

The key ingredient to the success of Job Futures' members is "feet on the ground". This network of Job Futures' members knows their community and its problems and provides services "on the ground" to solve them. Like Bridging the Gap, other member organisations of the Job Futures network have dedicated local staff and many volunteer board members donating their community, financial, marketing and other expertise with the aims of helping the disadvantaged, empowering people and building communities.

Bridging the Gap's performance history as Job Futures Subcontractor

In 2012 /13, Bridging the Gap's only subcontract work undertaken with Job Futures and rated by the Commonwealth was the Job Services Australia (JSA) contract. At the Job Futures' members, Chairs and CEOs conference in November 2013, Job Futures' General Manager, Operations tabled the following two graphs under the presentation heading, "How we are Travelling."

The two graphs indicate that:

- a) Job Futures Ltd was the highest-rated Job Services Australia provider as rated by the Commonwealth's Star Ratings System; and
- b) Bridging the Gap was the highest-rated provider of Job Futures' members anywhere in Australia shown under "Central and West Metro WA" in the graph below.

Putting these two graphs together suggests that Bridging the Gap was the best provider of Job Services in Australia as at September 2013.

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So successful was Bridging the Gap that Job Futures and the Commonwealth asked us to take over substantial additional JSA Employment Services business both in Central West and Dale regions which was not even tendered for. At the same time, Bridging the Gap was awarded and implemented a Disability Employment Services contract for both Central West and Dale by the Commonwealth through Job Futures. Combined, this additional business increased our workload by more than 80%.

As a result of our taking on this additional work, our ratings in both contracts dropped, in JSA from five stars to four stars and, a few months prior to the tender submission to three stars. As can be seen from the JSA graph above, three stars is by far the most common rating of any provider in the JSA network and should have been no impediment to winning the next round of tenders.

Bridging the Gap’s relationship with, and dependence on, Job Futures Ltd

Funding for this type of community-based work is always uncertain and depends mainly on winning major national contracts from the Commonwealth. In recent years, to improve efficiency and economies of scale, the Commonwealth has moved to awarding national rather than local or state based contracts. It is almost impossible to win a national contract from Western Australia. We therefore see membership of a national network like Job Futures as vital to our ongoing operations and chances of success in delivering the WA portion of national contracts.

Our audited accounts for 2014/2015 show Bridging the Gap revenue sources as:

Commonwealth Contracts through Job Futures	80.5%
State Government Contracts	9.2%
Community Funded Projects	5.9%
Private Contracts and Projects	3.3%
Fundraising, Donations and Other Income	1.2%
Total	100%

Most of the local, community, state and charitable projects we undertake run at very small margins or a loss and overhead costs are subsidised by our larger Commonwealth contracts.

The Commonwealth Contracts

To explain the three contracts further and detail their overlapping timeframes:

Employment Services

The Job Services Australia / Employment Services contract where we performed so well, commenced on 1 July 2012 and finished on 30 June 2015. It was replaced by the Job Active Employment Services contract. The tender for Job Active was issued in mid 2014; submissions closed in December 2014; results were announced in April 2015 for implementation on 1 July 2015. Job Futures Ltd did not win the Job Active Tender in our area for us even though we had been named their best deliverer in Australia a year earlier.

Disability Employment Services

Disability Employment Services was a five-year contract commencing on 1 July 2013. It was due for review in March 2015 and should have terminated on 30 June 2018. Bridging the Gap acknowledges that its delivery under this contract was not highly rated. We were candid with Job Futures about this. As soon as the problem was recognised, we asked Job Futures for assistance, explaining that we were overloaded with additional work from Job Futures and the Commonwealth.

Bridging the Gap also provided justification for its performance to Job Futures for the Commonwealth's review. However, Job Futures did not submit exceptional circumstances justification on our behalf. In every other area in Australia, whenever exceptional circumstances justification was lodged, Job Futures' members retained their contract as a result. The Commonwealth's review resulted in Job Futures losing this contract in our area well before its 30 June 2018 expiry.

Australian Apprenticeship Support Network (AASN)

Though we were not privy to the detail on this contract the AASN tender opened about October 2014, closed about November 2014, must have been awarded about March /April 2015 and commenced delivery on 1 July 2015.

The release of the AASN Tender was a busy time for us. We were positioning ourselves for the new Employment Services tender; the Disability Services Tender was being reviewed; we were expanding our delivery by 80 % as required and improving our Disability Employment performance. At this time, unbeknown to us, our membership manager Job Futures Ltd was working on the AASN tender with Busy at Work to move into our traditional territory and work together in competition with us. Notably, Job Futures and Busy at Work share a board member Paul Miles, who was, at the same time, the CEO of Busy at Work and Chair of Job Futures Finance and Strategy Committee.

On 29 October 2014 we received a letter from Job Futures (Attachment A). Only selected facts were included in the letter and there was no mention of Busy at Work. On the face of it, this looked to be a typical national tender that we would encourage our national network or membership manager, Job Futures, to tender for, especially if it had members with some expertise in the area. We were reassured with the statement that it would "bring increased value to members." In ignorance of the facts that were omitted, our CEO replied saying words to the effect of: "Great, we didn't think we would win this tender on our own, but if you have some members with expertise and tender for and win it we would be delighted to deliver it in our region and we would assist you in any way we can." Bridging the Gap certainly had the expertise to deliver this contract locally though not the scale to win and deliver it nationally.

Against this background, Bridging the Gap is aggrieved by the following conduct on Job Futures' part:

- 1 The tender to the Commonwealth for AASN was not by Job Futures but their Queensland board member's organisation, Busy at Work.
- 2 Job Futures was the subcontractor to their board member's organisation, Busy at Work.
- 3 This inversion of the normal tenderer-subcontractor arrangement allowed Job Futures to circumvent the prohibitions in the existing ACCC Authorisation and the Members' Charter against direct competition with member entities.
- 4 The work, if won, was not to be subcontracted to Job Futures' WA members who clearly had the capability to deliver the contract (including Bridging the Gap).
- 5 Job Futures implemented the contract by helping Busy at Work (Queensland) open nine offices throughout Western Australia.
- 6 These nine Busy at Work offices were staffed by 25 newly hired Job Futures staff in WA.
- 7 Job Futures' hiring of these 25 staff coincided with Bridging the Gap's retrenchment of 75 staff due to the loss of the two Job Futures contracts then under tender or review.
- 8 Busy at Work was assisted to win this tender by being able to represent to the Commonwealth that its subcontractor, Job Futures Ltd, already had a presence in

Western Australia. In fact, Job Futures had no presence, offices or officers in Western Australia, just existing members delivering other sub contracts from the Commonwealth. Essentially, we contend that Queensland-based Busy at Work used Job Futures' WA members such as Bridging the Gap to misrepresent to the Commonwealth in the AASN tender that it had independently-sourced local representation. In fact, any such representation was not independently sourced: on the contrary, it was entirely provided by members (including Bridging the Gap).

Had our CEO known these facts, on receipt of the letter in Attachment A, he would have protested immediately at the breach of the members' charter, the circumvention of the original ACCC Authorisation and offered to tender for the AASN as subcontractor to Job Futures in the normal way that this membership based organisation works. Most certainly, he would not have agreed to facilitate the introduction of the Queensland based Member Directors' business to do the work Bridging the Gap could have and should have done.

Implications of Job Futures' conduct

Assisting the Queensland member to set up in WA and providing them with the staff for their offices probably means that any future work won from the Commonwealth for delivery in WA will go to Job Futures' own consortium and staff rather than their longstanding members in Western Australia.

The result of our losing the above contracts through the Commonwealth has meant that our projected revenue has dropped from \$8m to \$1.2m; our staffing has reduced from 90 to 12-15 and we have closed five of our seven offices.

We submit that Job Futures failed to disclose the commonality of board and senior executive membership between itself and Busy at Work contrary to its obligations in its Members' Charter to disclose all relevant conflicts of interest (see Charter clause 5). The CEO of Busy at Work, Mr Paul Miles was, at the time of both the AASN tender submission in October /November 2014 and right through to contract implementation in July 2015, also a Director of Job Futures and Chair of Job Futures' Finance and Strategy Committee.

We submit that this director's conflict of interest was not properly declared by Job Futures. See Attachment B dated 11 March 2015 which makes no mention of the AASN contract. This document was downloaded from the Job Futures website on 28 July 2015, four weeks after the contract had commenced. A new declaration including the AASN contract was posted, only after we had raised this conflict issue with Job Futures. Notably, Job Futures then backdated it 14 days from our last website access. See Attachment C.

Further, we submit that Job Futures obtained our CEO's written support for what it misrepresented to be a proposal to tender directly for delivery in WA of AASN services which would in the normal course of events be subcontracted to Bridging the Gap.

We invite the Commissioner to infer from these facts that:

- a) Job Futures intentionally abused its special statutory exemption in order to circumvent the prohibition against acting in direct competition with Job Futures' member organisations;

- b) Job Futures' conduct demonstrates a degree of bad faith which is inconsistent with the high degree of trust and confidence which the most vulnerable in our community and the taxpaying public have reposed in it; and
- c) the application for re-authorisation should be refused on this basis.

Effect of Job Futures conduct on Bridging the Gap and similar community organisations

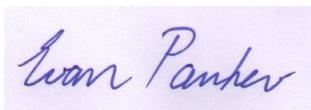
We consider it important for the future of dozens of Community Organisations across Australia that we resist what we see as a potentially Australia-wide takeover of a significant portion of the community-based, community-connected and "on the ground" deliverers and benefactors for the disadvantaged in our society. Further, we intend to ask the Commonwealth to review the granting of the AASN, Job Active and Disability Employment Services contracts and to help Bridging the Gap to pursue compensation for its losses caused by Job Futures' conduct in conjunction with Busy at Work.

The board of Bridging the Gap considers that, if this dispute is not settled in its favour, Bridging the Gap will lose future Commonwealth contracts to Busy at Work. This could amount to 80% of projected revenues and no contribution to overheads from the Commonwealth. The board expects that within a year or so, this will result in Bridging the Gap being unviable and going out of business or being taken over.

Likely takeover principals would be national or multinational organisations operating in the employment area or the existing partnership of Job Futures Ltd and its Queensland-based member, Busy at Work. Either way, the new owners are unlikely to have empathy for the local community, any local board members, any interest in reinvesting in local problems and solutions and they will transfer of all profits out of the State. Who will the local disenfranchised turn to then?

We contend that if the agreement funded by Busy at Work and staffed by Job Futures were to be rolled out throughout Australia, it will be the end of dozens of similar community-based organisations dedicated to building self-sufficiency in individuals through social inclusion, practical training and enhanced employment opportunities. This would defeat the fundamental purpose of the Authorisation that Job Futures is asking you to renew. That is why we oppose its renewal.

Yours sincerely,



Evan Parker
Chairman

Attachment A

Email from Job Futures Ltd CEO regarding AASN Contract dated 29 October 2014

Attachment B

Job Futures / CoAct Conflict of Interest Register Dated 11 March 2015.
Downloaded from the Internet on 28 July 2015

Attachment C

Job Futures / CoAct Conflict of Interest Register Dated 14 July 2015.
Downloaded from the Internet on 24 August 2015