



Jobs and Skills Australia: A Golden Opportunity

Australian Council of Trade Unions response to the *Jobs and Skills Australia* Discussion Paper

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Contents

Introduction	1
Governance	2
The Status of Jobs and Skills Australia.....	2
The Status of the Tripartite Advisory Body	3
Make-up of the Tripartite Advisory Body.....	4
Potential Overlap Between the JSCs and the Advisory Body.....	5
Governance Issues in Summary	5
Apprentices and Trainees.....	6
Migration.....	7
Data Availability and Sources.....	9

Introduction

The Australian Council of Trade Unions (ACTU) is the peak trade union body in Australia, with 43 affiliated unions and states and regional trades and labour councils, representing approximately 2 million workers across the country who are engaged across a broad spectrum of industries and occupations in the public and private sectors. As the primary users of the skills and training system, workers have a keen interest in ensuring that Jobs and Skills Australia (JSA) is a bodyJobs which is designed to deliver on the needs of industry. This new body represents an opportunity to move away from the bureaucratic control of skills planning, industry forecasting, migration and other crucial elements of the skills system and towards a system in which the needs and knowledge of industry are central. We welcome the opportunity to provide feedback on the Government's current thinking.

The model outlined in the discussion paper fundamentally fails to deliver this need, instead falling back on a complex and bureaucratic structure that relegates industry expertise to an advisory role funnelled through a bureaucrat who will largely be beholden to the Department for day-to-day advice. **The proposed model for JSA is, for this reason alone, scarcely better than the National Skills Commission model which it is designed to replace.**

It is also the view of Australian unions that it is a critical imperative that JSA has an explicit role in the consideration of the role of migration in responding to the skills shortages identified by JSA. Industry expertise and a sound statistical basis must be the underpinnings of our skilled migration system, ensuring temporary migrant labour is used only where a genuine shortage is identified and as part of a suite of solutions to skills shortages.

In addition to our grave concerns regarding the governance model proposed and the need to explicitly include migration considerations as part of JSA, Australian unions also have a number of other concerns including the need to explicitly mention apprenticeships and traineeships as part of JSA's remit and, and concerns around data availability.

Governance

Australia is in desperate need of a skills system which can deliver skilled workers for the jobs we need now and in the future. This is particularly critical right now, with ongoing workforce crisis in future growth industries like aged care, energy, early childhood and education. The only way to ensure that this occurs, as decades of bitter experience has shown, is to place as few bureaucratic and systemic barriers as possible between the advice of industry and the Minister who ultimately makes the decisions.

Australian Unions have a number of concerns regarding the governance model laid out in the discussion paper. Fundamentally we are concerned that they will deliver a weak, departmentally-captured Jobs and Skills Australia which will result in the further alienation of industry expertise and advice from the oversight of the skills system. Our concerns with the suggested model are significant, far-reaching and relate to several aspect of the proposed model – as laid out below.

The Status of Jobs and Skills Australia

The discussion paper appears to, in the section on page 8, drop references to JSA as an ‘independent statutory authority’ going forward and instead refers to it as a ‘statutory authority’. While this may appear to be a minor distinction, it is the view of Australian unions that the independence of JSA is critical to its operation. JSA must operate independently from the Department of Employment and Workplace Relations (DEWR) to ensure that advice given and decisions taken by JSA are not unduly influenced by Departmental concerns. Departmental obstructionism has been a critical feature of the skills system for a number of years as the Department has sought to prosecute its own agenda regardless of the desires and needs of industry. If JSA is intended to represent a fresh opportunity to undertake analysis and reach conclusions based on data and industry feedback, it must be able to do so with independence. A JSA that is beholden to directives from the Department, or which is included in the Department’s oversight structure, is a fundamentally weakened body.

Beyond the decision to drop the independence of JSA, we note that the discussions paper outlines that the fully-established JSA will operate as ‘statutory body’ while “using staff and support from the Department” in order to minimise costs. While we fully appreciate the government’s fiscal position, we do not believe that this is an appropriate area to achieve savings. To constitute JSA as the paper proposes would be to create a perfect case study of departmental capture of body designed to provide ‘independent advice’.

JSA can never be independent when it is responsible to the Departmental structure and entirely staffed by Departmental staff. It would depend on the Department for resources, quality staff and infrastructure. The proposed commissioner would, aside from the advisory board which we will

discuss later in this submission, receive the bulk of their advice from the Department on a day-to-day basis and rely on the Department for research and analysis. This is the perfect recipe for the continued dominance of the bureaucracy over the skills agenda. **The proposal for the status of JSA as outlined in the paper has no meaningful difference from the situation as existed under the NSC arrangements and should not be considered adequate.**

The Status of the Tripartite Advisory Body

The Discussion Paper proposes the creation of a “tripartite advisory body” which would “seek insights from relevant stakeholders” but which crucially would “not make decisions” but would instead “Support Jobs and Skills Australia’s Commissioner” to develop a workplan and “provide feedback on terms of reference”. This body, if implemented as outlined in the paper, is a token inclusion of industry in this body in a role clearly designed to minimise as far as possible the actual impact that industry can have on JSA decision making. Relegating industry representatives to providing ‘input’ into a work plan and providing ‘feedback’ to terms of reference would, in the best-case scenario, ensure that industry can only have influence over the beginning of projects or lines of inquiry. This would ensure that industry has no say over final conclusions and no ability to provide meaningful context or feedback on those conclusions.

The fact that, under the model proposed, even this advice is funnelled through a commissioner over whom the advisory body has no influence, who can ignore industry expertise with absolutely no repercussions, renders this body effectively irrelevant. The advisory body does not even appear to have any input over the appointment of the Commissioner or any Deputy Commissioners. This is particularly concerning given the governance settings examined above which virtually ensure the capture of the Commissioner, and the entire JSA, by DEWR. The relegation of industry voices to a token advisory body is particularly concerning if, as seems logical and likely in the future, the Government later makes a decision to place responsibility for approving VET training products developed by the Jobs and Skills Councils (JSCs) with JSA. Even without assuming this decision will be made, the model suggested by the Discussion Paper fundamentally marginalises industry voices while ensuring that bureaucrats will again dominate discussions of skills needs, industry planning and skilled migration. Cementing this structure in place and then adding to it the ability for bureaucrats to once again delay and obstruct industry-designed training packages would be unacceptable.

Constituting JSA with the advisory body as proposed exposes us all to the critical risk that it will fail to deliver on the policy priorities that the Government has identified to address the challenges facing the skills system and specific industries such as health, education and energy. This is a risk not only because it creates the possibility of a largely toothless JSA being made responsible for delivering on these priorities, but because it squanders the opportunity to leverage the expertise and insights of industry. Sidelining industry risks poorly designed or

ineffectual measures being designed that have no relevance to the on the ground experience of employers and employees. Marginalising the voice of industry also reduces the ability of JSA to leverage its connections to industry with regards to the implementation of its work.

The discussions paper asks a number of times how industry stakeholders can be more fully engaged in the work of JSA. That this question is asked while the opportunity to place the views and concerns of those stakeholders at the centre of the body is not only ignored but squandered must lead us to question its sincerity.

It is the view of Australian unions that JSA should be constituted with a tripartite voting board with oversight of the agency and the Commissioner. This is the only way to ensure that the needs and expertise of industry, the only people who know what is needed on the ground in terms of skills and training, are the driving force behind JSA's decision-making. For the Government's agenda in areas such as skills & training and regional development to be delivered, this must be the case. The model as proposed utterly fails to deliver on this crucial outcome and degrades the great potential of JSA to the point where it once again represents an at-best marginal improvement over the NSC model implemented by the Coalition and creates a critical risk that the Government's priorities in a number of areas will not be delivered or will be delivered poorly – representing a clear threat to the national interest.

Make-up of the Tripartite Advisory Body

The Discussion Paper is largely silent on the make-up of the advisory body. The body is referred to as 'tripartite' on a number of occasions which is reassuring but the paper contains no details about the balance of the board and in fact seems to describe a board that moves beyond tripartism. Our understanding of a tripartite body is that it is composed of equal representation from unions, employers and government, with no other representatives included. The Discussion Paper outlines that the advisory body would include representatives from State and Territory Governments but also includes 'independent experts'. While numbers are never mentioned, the long list of people involved and the fact that it is likely each state and territory would likely be represented individually implies that industry representatives are unlikely to represent the plurality of members of the body.

It is critical that the board, as we argue it must be constituted, is not dominated by a combination of state government representatives and nominally independent experts. As outlined above, the domination of non-industry viewpoints has been a major issue in the skills space for a number of years. This has particularly involved the domination of bureaucrats at both the federal and state levels who have sought to pursue their own priorities, usually primarily arising from a desire to avoid spending money on VET, at the expense of the considered and widely-held views of industry stakeholders.

While we would like to give the Paper the benefit of the doubt and assume that despite a lack of true tripartism as well as information about balance of the body there will be a proper allocation of industry representatives to ensure at least balance with non-industry members, the decisions made regarding governance elsewhere in the paper do not encourage this optimism.

We strongly recommend that the Government commit to a truly tripartite board where industry and government are equally represented, and which does not include other representatives.

Potential Overlap Between the JSCs and the Advisory Body

The responsibilities attributed to the advisory body in the Discussion Paper appear to contain a number of tasks which are also intended to be undertaken by the JSCs. For example, the Paper indicates that the body would “seek insights from relevant stakeholders on specific skills, labour market and workforce issues as they emerge”. Liaising with industry stakeholders to gather this information and make recommendations regarding these issues is also listed as a critical role of the JSCs and will form a significant element of their work. Assigning this task to two bodies at once risks confusing and over-burdening industry stakeholders as they field simultaneous and similar requests. This is likely to result in lower engagement in this work which would be disastrous for its accuracy. This is particularly a concern given that the reason many smaller and medium-sized employers give for their lack of engagement in the skills system is a lack of time and resources and their perception of the complexity of the system. This double-up would also raise the possibility of conflicting advice being given by the JSC and advisory body – a situation which would create confusion and likely delay a meaningful response to emerging issues.

It is our recommendation that, if they do not implement the comprehensive changes outlined above to this body, the Government carefully consider tasks it asks the body to complete and how to avoid duplication of effort between the advisory body and the JSCs.

Governance Issues in Summary

The version of JSA outlined in the discussion paper is a disappointingly pale shadow of the body needed to fulfill the Government’s skills ambitions. Far from ensuring that the needs of industry and workers are met, JSA as outlined would codify and further cement bureaucratic dominance of the skills space and further alienate industry from the skills planning and migration system. If implemented as the Discussion Paper proposes JSA would represent an at-best incremental improvement over the NSC model, including many of the weaknesses of that model as well as importing weaknesses from the failed Australian Industry Skills Council. It would be a lost opportunity by the Government to build a functional and responsive skills system for Australia.

The ACTU submission to the initial bill establishing the interim body clearly lays out a model JSA which we believe is far superior to the one laid out in the Discussion Paper.¹

Apprentices and Trainees

Apprentices are crucial to the ongoing skilling of Australian workers. To build the jobs of the future we need to ensure that more workers have access to apprenticeship opportunities and that a robust system is in place to support apprentices. The apprenticeship model, a combination of in- classroom and on-the-job learning governed by a training contract has been an enduring one both in Australia and overseas. But the model is facing challenges. In the 12 months to March 2022 more apprentices cancelled their training contracts than completed their training. Over that period, cancellations outstripped completions by 25,000 – nearly 30%. The fact that, in the last fifteen years, the high point for apprenticeship completions was among those who began their apprenticeship in 2012. Of this cohort, 62% completed their course of training. That this represents the apotheosis of completions under the current system, where 1/3rd of apprentices still didn't complete their training is an indication of the breadth of the challenge we face.

It is the view of Australian unions that in light of the importance of apprentices and trainees² to our skills future and the challenges apprentices often face, JSA needs to be constituted with an explicit mandate to consider apprentices and their contribution to solving skills gaps. This should include examination of the causes of the current drops in apprentice completion rates as well as the ability to make recommendations regarding apprentice support and incentives. Consideration should also be given to having JSA work with industry stakeholders to identify priority sectors, both in regard to apprentices and more broadly, on which to initially focus its efforts. We also believe that there is a critical role for JSA to play in terms of monitoring government commitments in the apprenticeship space. This could include monitoring the overall compliance, and effect, of the Australian Skills Guarantee but also measurement of progress with regards to apprentice diversity targets – such as female apprentices and Aboriginal and Torres Strait Islander apprentices.

In addition to apprentices, JSA will need to be aware of the likely increased pressure on professional occupations – particularly with regard to entry-level occupations – and to have a clear role in addressing these needs. Current and future needs forecasts in university-educated

¹ <https://www.actu.org.au/media/1450110/d26-isa-interim-bill-actu-submission.pdf>

² 'Apprentices' used hereafter to refer to both apprentices and trainees for the sake of brevity

professions such as social workers and psychologists indicate that the JSA will need to deliver a focus on these areas in addition to one on apprentices.

Migration

Although JSA will take over the functions of the National Skills Commission (NSC), it should not adopt its flawed methodology for determining skill shortages. The NSC defines a skill shortage as *...when employers are unable to fill or have considerable difficulty filling vacancies for an occupation, or significant specialised skill needs within that occupation, at current levels of remuneration and conditions of employment, and in reasonably accessible locations.*³

Even the Productivity Commission has noted the deficiencies with this approach, noting:

*An overarching issue with this definition is that it presumes that supply should meet demand at any prevailing wage. This is in contradiction to the concept of an efficient labour market that allows offers of wages and conditions to adjust in order to attract workers...Indeed, skill shortages should be identified where employers have difficulties in hiring in the context of wage increases over time rather than 'at current levels'.*⁴

The NSC's methodology, where the primary measure of an occupational shortage is the ability of employers to fill vacancies, is likely to substantially overestimate skill shortages. Indeed, much of what employers are claiming as skill shortages may just be 'recruitment difficulties' which as Chris F. Wright notes,

*'may be the result of an employer offering uncompetitive wage rates and unattractive working conditions, rather than skill shortages that are experienced by all employers in the same sector.'*⁵

The UK's Migration Advisory Committee (MAC) provides an example of a more rigorous methodology for determining labour market need and whether migration is the sensible response. MAC's methodology is based on analysing both 'top down' quantitative data including national statistics and surveys, and 'bottom up' qualitative sources including sectoral

³ National Skills Commission, 'Skills Priority List Methodology', <https://www.nationalskillscommission.gov.au/sites/default/files/2021-12/Skills%20> p. 5

⁴ Productivity Commission, '5-year Productivity Inquiry: A more productive labour market', interim report no. 6 October 2022, <https://www.pc.gov.au/inquiries/current/productivity/interim6-labour/productivity-interim6-labour.pdf> p. 14.

⁵ <https://www.smh.com.au/business/workplace/skills-crisis-can-be-solved-with-training-and-good-faith-bargaining-20220908-p5bgiz.html>

consultation with both unions and employers. MAC also considers a range of indicators to determine whether it is 'sensible' to fill the shortage by accessing migrant workers, including considering measures such as training local workers or raising wages and improving employment conditions to attract local workers.⁶

We propose that JSA adopt a robust methodology and a tripartite, industry-based approach to determine genuine skill shortages, rather than the current model which is based on individual employer demand. Industries – that is, employers and unions together – are best placed to identify labour market shortages, develop a plan for responding to the shortage over the short, medium and long term, which could include skilled migration and then to test the efficacy of the responses selected. If skill shortages are genuine, they would be present across an entire industry or section of the labour market – not just experienced by individual employers. JSA and tripartite industry council's role in labour migration

We propose JSCs adopt a similar 'top down' and 'bottom up' methodology, drawing on both JSA's expert workforce analysis and projections, and feedback from employers and unions in the industry to undertake planning for their industry sectors and how the skills gaps can be addressed, which could include skills training, offering improved wages and conditions to attract workers, and/or skilled migration.

One possible method that could be used to achieve this outcome would be for each JSC to form a number of truly tripartite migration sub-committees. These committees, made up of a single union representative, a single government representative and a single employer representative could, for the relevant industry or occupation, make unanimous recommendations to Government regarding migration needs for the relevant occupation. As a part of the JSC, these decisions would consider migration as one of a suite of solutions to skills shortages and would be able to make migration decisions in the context of the JSCs training goals and objectives.

If migration is identified as a sensible response – which should only be the case if employers in the industry have first tested offering improved wages and conditions - the migration sub-committee would set the number of places available for skilled migration, which would be reviewed quarterly, and would initiate industry-sponsorship of a cohort of migrant workers through the Department of Home Affairs.

Migrant workers would not be tied to any individual employer and would have the ability to move between employers and roles in the industry – thereby removing a key driver of exploitation by

⁶ Migration Advisory Committee, 'Identifying skilled occupations where migration can sensibly help to fill labour shortages', February 2008, https://www.compas.ox.ac.uk/wp-content/uploads/ER-2008-Need_Migrant_Labour_MAC.pdf, p. 30.

reducing the power imbalance between migrant workers and their employers, enabling workers to leave an employer if they are not being treated fairly. The migration sub-committee and the JSC would have oversight of which employers were engaging migrant workers, and employers wishing to engage migrant workers would have to meet particular obligations, including reporting to JSA regarding the migrant workers they are engaging and allowing the relevant union/s to conduct an on-arrival induction with migrant workers. Having these sub-committees as part of the larger JSC structure would also make monitoring and delivering services to migrants, such as ongoing training, easier for industry to coordinate.

Data Availability and Sources

As laid out in the Discussion Paper, JSA will have a number of research, analysis and planning responsibilities. We fully support the allocation of these responsibilities to JSA and believe they are critical to proper planning for skills development. It is important to note however that data availability and currency has long been an issue in the skills space. The great work done by the National Centre for Vocational Education Research in this area is often sadly undermined by significant lags in data or a lack of data granularity. Apprentice and trainee data in particular is often a number of years behind. This has already caused issues in planning in the past, for example during the pandemic when a lack of current apprentice data made it harder for Government to fully appreciate the impact of the economic slowdown on apprentice numbers until it was too late to act effectively. These data issues, and their impact on the ability of JSA to carry out its analysis and planning roles, should not be accepted as unavoidable. Government should take what action it can to improve the availability of skills and employment data to ensure JSA has access to the best material possible to inform its deliberations.

Additionally, it should be made explicit that when JSA is considering current and future skills and employment trends that consideration of factors beyond supply and demand for skilled labour should be considered. The impact of wages, workplace environments and workplace safety should all be included as areas of focus for JSA and their impact on skills shortages and trends need to be examined. The availability and uptake of ongoing learning and skills maintenance/refresher courses should also be considered.

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