

Submission
No 6

**INQUIRY INTO PROCUREMENT PRACTICES OF
GOVERNMENT AGENCIES IN NEW SOUTH WALES AND
ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE
PEOPLE OF NEW SOUTH WALES**

Organisation: National Disability Services

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NDS Submission in response to the New South Wales (NSW) Parliamentary Standing Committee on Social Issues:

Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

About National Disability Services

National Disability Services (NDS) is the peak body in NSW and Australia for non-government disability service organisations. NDS represents more than 300 NSW member organisations and over 1100 non-government service providers nationally. Collectively, NDS members operate several thousand services for Australians with all types of disability. NDS provides information and networking opportunities to its members and policy advice to State, Territory and Commonwealth governments. NDS members comprise of small, medium, and larger service providers across the full span of disability service types including open and supported employment. NDS is committed to improving the disability service system to ensure it better supports people with disability, their families, and carers, and contributes to building a more inclusive community.

Introduction

NDS appreciates the opportunity to provide a submission in response to the work of the NSW Parliamentary Standing Committee on Social Issues inquiry into the procurement practices of government agencies in NSW. This submission will focus on ways the NSW Government can enhance its government agencies' social procurement from organisations that employ people with disability (referred to in this submission as "supported employment services." Sound social procurement policies and practice by NSW government agencies will create significant economic and social benefit for jobseekers and employees with disability, as well as the people of NSW.

Executive summary of recommendations

NDS makes the following recommendations on Social Procurement by NSW government agencies for the NSW government:

1. **Investigate** if a similar **initiative** to the NSW BuyAbility Procurement Project can be established in 2024 to enable NDS, supported employment services and NSW government agencies to increase procurement from supported employment services.
2. **Run Expos** in partnership with NDS highlighting the goods and services offered by supported employment services.
3. **Publicly report** on an annual basis the total amount of goods and services that NSW Government agencies purchase from supported employment services.
4. **Implement an initiative** that enables supported employment services to investigate **demonstrate their commercial capacity and capability** in a consistent format that enables them more equitably compete for NSW government procurement opportunities.
5. **Review procurement practices** by NSW government agencies to ensure they are consistent, simplified, open to supported employment services in rural and regional areas and the value of contracts are indexed annually.

6. **Prioritise** in its procurement practices the provision of increased opportunities for supported employment services and identify a minimum purchasing amount of 10% of procurements by NSW government agencies.

Current NSW Government Social Procurement Policy – the NSW Government Procurement Policy Framework

The NSW government's policy framework currently states that, "The government uses procurement to support small and medium sized businesses, Aboriginal businesses, regional businesses, disability employment organisations and social enterprises."

On Supported Employment Services for people with disability (formerly known as Australian Disability Enterprises or ADEs) the framework states that NSW government Agencies (via an attendant exemption), "may purchase goods and services of any value from an approved disability employment organisation via a single written quote, even if there is a whole of government arrangement in place." This reference links to section 5 of the NSW Public Works and Procurement (PWP) Legislation, where a disability employment organisation is "a person or body (that) conducts a business a principal purpose of which is to provide employment to persons with a disability." A further definition identifies that ADEs are generally not for profit organisations providing supported employment opportunities to people with disability.

An additional "covered procurement" covers purchases of between \$680,000 to \$9.584 million from disability employment organisations.

In addition, the Framework also notes that Agencies "are **encouraged** to procure from *social enterprises* to support economic and social change for disadvantaged people. Social enterprises may be small businesses, SMEs (small medium enterprises), Aboriginal businesses or Australian Disability Enterprises, and if so, qualify for the purchasing preferences and initiatives under the SME (small medium enterprises) and Regional Procurement Policy, ICT/Digital SME Procurement Commitments, Aboriginal Procurement Policy or PWP Regulation."

The Buy NSW website contains important information on Australian Disability Enterprises, including how to identify them, the types of work they do, the procurement objectives that need to be considered when NSW Government agencies purchase from them and where to find the register of ADEs.

NDS notes that the Buy NSW website specifically identifies the BuyAbility website and Directory, which is an initiative administered by NDS. The BuyAbility Directory is a register of supported employment services formerly funded by the Department of Social Services to provide employment for jobseekers and employees with disability in ADEs. These organisations are registered NDS providers and apart from several local councils, they are not for profit providers. They are also eligible to use the Supported Employment Services Award 2020, which is a Modern Award identified in the Fair Work Act 2010 and subject to oversight by the Fair Work Commission.

The Department of Communities and Justice has provided some funding as part of a 2-year industry development project for NDS to develop and promote the BuyAbility website to increase opportunities for social procurement and increase employment opportunities for people with disability. This work will commence in 2024.

NDS's work with the NSW Government on Social Procurement

NDS currently maintains a close working relationship with the following NSW government Agencies:

- NSW Treasury
- NSW Health
- Transport for NSW

In our work with NSW Treasury, we have assisted them to develop and update the relevant policies and guidelines as identified in the NSW Government Procurement Policy Framework and associated legislation. We appreciate the above Agencies cooperative efforts working with NDS and intend to maintain these positive relationships, as well as seeking to work with other NSW Government Agencies.

NDS has had more formal procurement arrangements with NSW government agencies in the past through the BuyAbility Procurement Initiative where NDS provided a contract management service for NSW Government agencies and supported employment services.

From 2013 to 2019, this initiative managed over 80 contracts for procurement from supported employment services by over 20 NSW government agencies, with total purchases of around \$17 million.

Recommendation:

1. NDS recommends the NSW government investigate if a similar **initiative** can be set up which enables NDS, supported employment services and NSW government agencies to work together to **identify procurement opportunities** that could be delivered by supported employment services and to more easily facilitate contractual arrangements.
2. NDS recommends that NSW government agencies work in partnership with NDS to **deliver Expos** that highlight the goods and services provided by supported employment services. NDS and the NSW government has run one such Expo previously in 2019, which was well received by the staff of the NSW government agencies and the supported employment services who attended it.

Evidence of the NSW Government's commitment to procurement from Supported Employment Services

NDS recently conducted its annual data collection exercise for supported employment services a part of our Industry Vision for Supported Employment, which is intended to guide these organisations through a period of significant sector reform from 2023 onwards.

In the financial year 2022-23, 10 supported employment services indicated that NSW Government agencies purchased their goods and services. The total amount of these purchases was \$1,391,956 for an average per organisation of \$139,196. By comparison, ten Victorian supported employment services reported a total Victorian Government agency purchasing amount of \$17,860,437 or \$1,786,044 per

organisation. While this may seem to be a significant difference, the figures are dependent on NDS members completing the survey who had sold their goods or services to NSW government agencies. It is likely that the true number of organisations in NSW and the total amount of procurements may have been significantly higher.

On a positive note, NDS has spoken with several of our members who have procurement arrangements in place with NSW government agencies. These member organisations have indicated that their dealings with NSW government agencies have been well managed and produced positive outcomes for the organisation, the employees with disability and the relevant agency. Procurement regulations that enable simplified purchasing arrangements from supported employment services have also been scrupulously observed. Many of these procurement arrangements have been automatically renewed once the original contracts had expired.

Recommendation:

3. To demonstrate its commitment to procurement from Supported Employment organisations, NDS recommends that the NSW government **publicly report** on an annual basis the total amount of goods and services that NSW Government agencies purchase from supported employment services. In future these figures should also be reported on an agency-by-agency basis.

The effectiveness of whole of government and agency procurement arrangements

NDS members have provided feedback noting that government agency procurement arrangements may be challenging for supported employment services as the arrangements are viewed as being primarily set up for larger corporates with the capacity to deliver large scale purchases by Government agencies. However, these arrangements may allow supported employment services to be engaged as a sub-contractor undertaking smaller elements of these purchases as a subcontractor in a supply chain.

NDS members have also noted that government agency purchases from supported employment services may often be smaller scale or short-term purchases that

prevent them scaling up their operations or employing more people with disability on a sustainable basis.

Consequently, the sector is keen to work with Government to ensure that larger scale procurement opportunities can be offered to supported employment services either individually or in consortia arrangements. Members have also observed that the larger the purchase, the more complex are the tender application and reporting requirements. Many NDS members do not have the capacity to meet these requirements or the resources to employ specialist staff to work on gaining and maintaining these contracts.

For example, in 2024, NDS members will be working with the Victorian Government and members that have gained large scale government procurement opportunities to:

- assess their capacity and capability and
- develop capability statements that can assist them to successfully seek Victorian Government procurement opportunities.

Recommendation:

4. NDS recommends that the NSW government consider a **similar initiative** with supported employment services in NSW. NDS would be able to offer online workshops through our monthly member Communities of Practice, which could also be recorded, and complementary resources developed.

Such an initiative could also assist supported employment services to demonstrate that they deliver value for money, important social outcomes and comply with relevant policies and regulation, at the qualification or contract stage and throughout the contract management stage.

5. **Review procurement practices** by NSW government agencies to ensure they are consistent, simplified, open to supported employment services in rural and regional areas and the value of contracts are indexed annually.

NDS recommends that the following practices, which have been identified by members across the country (and which may or may not be relevant in NSW or practised by NSW government agencies) should be avoided and if present, rectified:

- Weighting of tenders and procurement opportunities to larger corporations

- Concentration of purchasing opportunities in major urban centres
- Infrequent refreshing or restricted access to provider panels
- Complex compliance laden application documentation and contracts which may also be subject to unexpected changes.
- Contracts not allowing for CPI or wage increases.

The evaluation criteria used in tenders and how they are weighted in deciding to award a contract

NDS members have expressed a clear preference for government agency purchasing arrangements that consider social, economic, and labour market outcomes and subcontracting arrangements that require or easily facilitate their participation in larger government agency purchases.

In addition, members have noted that there are often insufficient requirements or reporting obligations in place to ensure that proper approaches have been made by organisations granted tenders to social or supported employment services that ensure the latter are provided with sufficient or realistic opportunity to be engaged as sub-contractors.

Current approaches to transparency and accountability of procurement by New South Wales government agencies

As initially noted above, NDS recommends that NSW government agencies should be required to maintain record keeping arrangements for procurement activities from supported employment services and that these purchase amounts be identified in agency annual self-reports and outcome reports.

The New South Wales Government's procurement practices

NDS advocacy is supported by Divisional Committee members elected from the membership base. In 2023 as part of the NSW NDS election platform the NSW

Divisional Committee was strongly of the view that the Government should improve the employment and economic participation opportunities for people with disability through targeted NSW government procurement with supported employment providers.

Recommendation

6. NDS recommends that the NSW government **prioritise** in its procurement practices the provision of **increased opportunities for supported employment services**, who are local suppliers and the majority of which are small and medium enterprises. We also recommend that the NSW government consider where practical, a set rate of purchasing from supported employment services by NSW government agencies, starting at 10% and increasing over time.

Procurement best practice that encourages ethical conduct and promotes social development

Currently, the various states and territories in Australia do not have any kind of uniform commitment to social procurement. In several instances, policies, procedures, and legislation are vague, opaque, and clearly lacking in any kind of practical guidance or regulatory requirements for government agencies. Following the recent Disability Royal Commission NDS has recommended that the Commonwealth government develop a social procurement policy and framework where government takes a leading role and increases its purchasing from the social and supported employment services sector.

In December 2023, the Federal [Parliamentary Select Committee Report on the operation of the Workforce Australia Employment Services System](#) released its report with 75 recommendations. The report recommended significantly increasing social procurement activities which will assist more long-term unemployed and disadvantaged people (including people with disability) into employment.

NDS appreciates the clear commitment of the NSW government and its agencies to Social Procurement. We encourage the NSW government to build on this strong commitment, updating and enhancing policies and legislation that would enable the

NSW government to demonstrate procurement best practice that encourages ethical conduct, and which promotes social development in other jurisdictions, both nationally and internationally.

NDS will be updating its BuyAbility Social and Economic Impact Tool in 2024. The Tool measures the social and economic impact of supported employment services on the Australian economy and society. Several NDS members who have contractual arrangements with NSW government agencies have provided reports enabling the agencies to demonstrate the economic and social impacts generated by these procurements.

Conclusion

NDS appreciates the efforts of NSW government agencies to procure goods and services from supported employment services and notes that these arrangements have produced positive outcomes for all parties concerned, especially employees with disability.

NDS will continue our productive work with various NSW government agencies to strengthen their commitment to procurement practices that produce positive impacts for the people of NSW, especially jobseekers and employees with disability and their families and carers.

We look forward to the release of the Standing Committee's report on the results of its inquiry.

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