

DISTINCTIVE OPTIONS SUBMISSION

to the

SENATE INQUIRY

into

The Administration and Purchasing of Disability Employment Services (DES) in Australia.

Distinctive Options is a community-governed not-for-profit disability service provider located in Melbourne's north-west and neighbouring semi-rural fringe. We provide DES from Broadmeadows, Melton South, Sunbury, St Albans and Bacchus Marsh. We have continuously provided 'open employment' services to people with disabilities ever since the Commonwealth first funded such programs.

Our submission is structured around the Terms of Reference of the Inquiry and focuses in greatest depth upon Term d):

a) The impact of tendering more than 80% of the current DES on the clients with disability and employers they support under the current contracts

At a most basic and possibly simplistic level there is an 'opportunity cost' in the implementation of the proposed tender. It will be dollar and time intensive in its implementation for both the purchaser and the bidders. The opportunity cost for bidders is the cost of preparing their bids as well as reduced performance while those bids are being developed. For the purchaser the cost is an allocation of financial and human resources that could alternatively have been used to deliver critical services to people with disabilities.

There is however a significant policy consideration at stake in the proposal to tender DES as well as the more generic Australian Job Services (AJS) already tendered. If the policy argument that the capacity to establish long term ongoing relationships between service providers and jobseekers is the fundamental, necessary and distinctive feature differentiating DES from Australian Job Services (AJS) – which by its very nature generally operates with discrete and short term 'incidents' of unemployment rather than unemployment that is significantly related to permanent and ongoing barriers or limitations as a result of disability – is accepted, then there is a strong case to remove from the equation any purchasing process that would jeopardise such established relationships with both clients having a disability and their employers. The specific corollary of this position is that competitive tendering is inappropriate for DES because it has significant potential to destroy already established relationships between service providers and jobseekers with a disability. Competitive tendering however could remain appropriate for AJS because in general there are more 'occasional and incidental' sets of circumstances related to the unemployment of jobseekers allocated to that Program.

b) The potential impact of losing experienced staff

The DES program and its precursors have created a specialist disability employment workforce with both considerable experience of working with jobseekers with a disability as well as a substantially different process by which most of those jobseekers are found employment. This situation together with the often **long term relationship established between the person with a disability and the DES provider** is the unique distinction that provides a rationale to maintain a clear 'point of difference'

between generic employment services and specialist disability employment service. An analogy can make this point more clearly. A jobseeker's disability is by definition an ongoing long term condition which may be managed so that its impact can often be ameliorated for extended periods but essentially the disability still remains in the background. There is no 'cure' for intellectual disability for example. As such the relationship between a service provider and a person with a long term disability can be viewed as similar to that of an ongoing long-term 'doctor-patient' relationship or a similar 'accountant-client' relationship. On the other hand a more generic service provider, dealing with jobseekers who do not have a disability as their significant long term barrier to employment, is more likely to be involved in 'one-off' instances of service provision with their jobseekers. In our analogy that generic 'relationship' is more akin to that between a customer and the plumber who has been hired to repair a leaking pipe. It is essentially incidental rather than long term and ongoing. This uniqueness in the relationship between a jobseeker with a disability and a DES provider has ramifications for the purchasing process that will be developed further in another section of this response

There is anecdotal evidence that a lack of experienced staff already exists in an industry already known for its high turnover. We have found this to be most observable in the activities of the National Panel of Assessors (NPA) where our staff have observed that a considerable number of the new 'players' on the Panel do not understand the working of the Supported Wages System (SWS) having only completed a 20 minutes module about it on ESS rather than the formal 3 day training (plus exams and homework) that used to occur in the past. Additionally we have encountered examples of newer panel members not understanding the sensitivities associated with workplace visits eg inexperienced young assessors wearing inappropriate/inadequate clothing to sites where there are significant OH&S risks. Such events could be avoided if membership to that Panel was only open to assessors who have demonstrable experience of working with people with disabilities as well as considerable experience in the labour market.

c) Whether competitive tendering of more than 80% of the market delivers the best value for money and is the most effective way in which to meet the stated objectives of :

- (i) Testing the market;**
- (ii) Allowing new 'players' into the market; and**
- (iii) Removing poor performers from the market**

Our argument, also made elsewhere in this submission, is that there are significant inadequacies in the performance management system that lead us to have grave misgivings about its use as the basis of a competitive tendering purchasing process.

There does however remain a need to ensure that inadequate and poorly performing service providers are NOT given an indefinite sinecure. Our view is that such an abuse could be prevented by the issuing of licences to operate DES. We have heard that such a system operates in the US state of Oklahoma but do not know the details. We do however have direct experience in the operation of such a system here in Victoria where, since the revision and subsequent enactment of our state's Disability legislation in 2006, our Adult Training and Support Service (ATSS) operates under licence from the Victorian Department of Human Services. A rigorous quality framework that measures relevant outcomes for service users by external auditors is a condition for maintaining ongoing registration as a service provider. Such a licensing mechanism would enable the entry of new 'players'.

The different 'probity' relationships that necessarily result from the use of competitive tendering as a purchasing process also have the effect of reducing the possibility of genuine 'partnerships' ever developing between service providers and DEEWR. Such partnerships, characterised by DEEWR contract managers auditing performance against appropriate Standards and transparent outcome measures, would provide a 'continuous improvement' benefit whereby service providers would have regular contact with and support from their contract managers and access to any early warning signs that need their attention.

Similarly we make the argument that the use of competitive tendering mechanisms as a purchasing process has very significant HRM impacts, particularly creating a level of staff uncertainty about ongoing employment that has the potential to exacerbate the significant high staff turnover that already characterises staffing within this sector.

d) Whether the DES Performance Framework provides the best means of assessing a providers ability to deliver services which meet the stated objectives of the Disability Services Act 1986 such as enabling services that are flexible and responsive to the needs and aspirations of people with disabilities, and encourage innovation in the provision of such services

There appears to be an evidence-based consensus that the current level of DES performance data lacks reliability and 'robustness'. The current star rating system is an improvement on its predecessor but both are still essentially based on a regression analysis model that seeks to measure actual versus expected results for a specific group of jobseekers with a specifically measured level of disability in a specific locality. The process requires there to be a significant correlation between the dependent and independent variables but, as any statistician will attest, a high positive correlation is not necessarily an indication of cause and effect eg alcohol consumption shows a high positive correlation with the number of teachers in a community but that does not mean that the presence of those teachers is necessarily the cause of the high consumption of alcohol in a community. The questions will forever remain about the extent to which the performance management system correctly identifies the significant variables that actually do impact on performance and about the validity of the assumptions made about which are the dependent and the independent variables in the analysis. Some evidence from the most recent DES star ratings backs up this concern. Here in the Melbourne Labour Market we were surprised to see that some larger providers had significantly difference star ratings across adjacent ESAs with populations that could be regarded as generally similar in profile. That would not be expected from agencies that operate with a well known and consistent service delivery model.

There is also another logical concern about the use of regression analysis in the DES Performance Framework. That concern is related to the effectiveness of statistical methods in events that are influenced by human behaviour compared to their effectiveness in random events such as coin tossing. Specifically there can be occasions where the economic concept of the 'fallacy of composition' comes into play eg if it is known that finding employment for ex-offenders with mental illness is the particular variable that has the greatest impact on improving an agency's performance under regression analysis (and such information is available in real time) then service providers will focus on that group to the expense of others and a different disability type will subsequently become the variable group whose placement into employment will have greatest impact on an agency's performance under the regression analysis framework. The very proposition that anyone can predict human behaviour and say that it is possible to accurately determine the result that should be obtained is worthy of challenge and that is the very assumption that underpins DEEWR's performance framework viz that performance is essentially measured by a comparison of actual results against expected results for a particular clientele in a particular location. Good public policy is

more easily achieved if it is evidence-based rather than speculative. Good public policy should aim to remove crystal ball gazing rather than enshrine it in a service system.

Additionally there is another crucial question that results from a performance management system involving the use of ratios as comparative measures. Either the numerator or denominator in such measures can be 'massaged' by those who know how to 'play the game' or alternatively service providers may do what is called, in educational circles, 'teach to the test'. The former practice creates ethical issues for service providers while the latter has the potential to 'corrupt' the overarching program objective of providing long-term sustainable employment for all people with disabilities not just those most easily placed. The use of inadequate measures in KPIs and their subsequent use as the basis upon which future contracts are awarded does have a significant capacity to create a set of perverse incentives for a service provider to do 'whatever it takes' to increase those performance measures whether or not it counteracts the stated public policy objectives of the DES program. While acknowledgement is given that improvements have been made there is not general acceptance by those working in DES that the KPIs are yet truly 'fit for purpose'.

Also of interest in this context is the consideration of the Performance Framework from an ETHICAL PERSPECTIVE. We argue that it is indeed unethical for anyone being assessed not to be advised of the performance requirements before they undertake the assessment task. There is a community expectation that the 'goalposts should not move once the game has commenced' and any performance framework based on either a 'forced' bell curve distribution of those being assessed or a measure using proximity to average performance (the previous and current star rating systems) can never be anything but a continual 'moving of the goalposts'. The only ethical assessment framework is one which has absolute, transparent and clear benchmarks which are known prior to the commencement of the task. The community would not accept a driver licensing scheme where success or failure was dependent on whether it was Formula 1 racing drivers or the residents of the local aged care facility that were being tested at a particular location in a particular period. Rightly the community expects that there be an assessment framework related to a known number of points being lost for each 'infringement' that occurs during the actual driving test.

e) The congruency of 3 year contracting periods with long term relationship based nature of Disability Employment Services – Employment Support Services program, and the impact of moving to 5 year contract periods as recommended in the 2009 Education, Employment and Workplace Relations References Committee report, DEEWR tender process to award employment services contract; and

The current cycle of relatively high frequency tendering preceded by reviews of the service system has produced significant improvements in the alignment of service funding and business rules with the two public policy objectives of the DES program (viz social inclusion and long term sustainable employment for people with disabilities) but this cycle has come at a considerable cost. That cost can be measured in terms of the reduced productivity of service providers in the final year of any contract period as their focus is directed towards gaining a renewal or increase of their business share. There is also a human cost in the unsettling effect upon staff about whether their employment will be ongoing. Additionally long term clients of a service provider face the possibility that their relationship with their service provider may be ended as a result of circumstances beyond their control.

The timing of the Federal budget cycle - together with the eight month extension of the former DEN program - resulted in a review and evaluation of the current DES Program being initiated a mere

nine months after its commencement. That was barely sufficient time to even 'bed down' the new program let alone fully evaluate it. Social Policy Analysts (eg Dr Brendan Long of NDS) have been suggesting at peak body conferences that, after just over two years of DES being operational, it is still not sufficiently 'mature' to enable an effective evaluation of its performance framework.

f) The timing of the tender process given the role of DES providers in implementing the Government's changes to the disability support pension