



# NSW GOVERNMENT RESPONSE

**Procurement practices of government agencies in New South Wales and  
its impact on the social development of the people of New South Wales  
Final Report**

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## INTRODUCTION

The NSW Government acknowledges the findings raised through the Inquiry's Final Report which focuses on local content and labour considerations, social procurement, environmental and sustainability outcomes.

The recommendations and proposed Government responses focused on improving the following outcomes across NSW Government procurement:

- Prioritising local procurement and supporting local, small businesses
- Preventing modern slavery and labour exploitation in high risk and vulnerable industries and improved transparency of supply chains
- Strengthening the procurement policy framework and government procurement processes to achieve labour, economic, social, environmental and sustainability objectives
- Enhancing procuring agency approaches to compliance and enforcement with procurement policies and directions
- Other recommendations relate to value for money, procurement officer skills and training, improvement of data collection and end user stakeholder consultation.

The NSW Government supports the majority of the recommendations and across Government, various initiatives have been implemented or are underway that addresses the Inquiry's findings.

These include procurement reform initiatives, election commitments relating to local and small businesses and recommendations from the Inquiry's First Report. These activities will work in parallel to effectively deliver on government priorities.

The NSW Government recognises the important role government procurement practices play in delivering on the Inquiry's recommendations. The NSW Government is committed to driving real change for local jobs, local suppliers, small businesses, social enterprises and Aboriginal businesses.

The NSW Government thanks the committee for its detailed examination of procurement of government agencies in NSW and its impact on the social development of the people of NSW.

## RESPONSE TO RECOMMENDATIONS

### RECOMMENDATION 1

That the NSW Government implement strategies, and leverage its procurement power and practices, to build, support and promote innovation by local businesses, particularly small businesses, to ensure they have the capacity and skills to participate in government procurement processes, including by:

- identifying opportunities for tenders to be broken down into smaller parts, to enable small businesses to partner with others for tender processes
- lifting awareness of existing supports for innovation in local businesses
- providing greater support for small businesses to develop capacity, skills and expertise to participate in government procurement opportunities.

#### Supported

The NSW Government supports leveraging its procurement and practices to help achieve outcomes for local and small businesses.

The NSW Government recognises that breaking down tenders into smaller parts can improve outcomes for local and small businesses, where applicable, alongside factors like value for money, efficiencies and costs achieved through economies of scale and coordination.

The NSW Government has implemented a series of measures to remove barriers for small-medium enterprises

The NSW Government increased the direct small-medium enterprises engagement threshold for goods and services procurement (excluding construction) from \$150,000 to \$250,000. This benefits local suppliers too as the majority of them are small-medium enterprises.

In addition, insurance and tendering requirements were eased for small-medium enterprises meaning agencies must only request proof of relevant insurance coverage at the time of contract award rather than when submitting a tender.

Other initiatives include: the Business Connect Program, Business Concierge Service, self-identification on buy NSW, the Industry Capability Network free procurement advice to NSW project owners and suppliers on major projects.

The NSW Government will work with the Small Business Bureau and Small Business Commission to improve awareness of existing support for local businesses; and identify further support initiatives for small businesses to develop their capability, skills and expertise to participate in government procurement opportunities.

## RECOMMENDATION 2

That the NSW Government consider using an 'adjusted price model' that takes into account direct expenditure of tendering organisations.

### **Noted**

In conjunction with recommendation 1 from the First Report, the NSW Government has committed to reviewing the definition of value for money and to developing a more robust approach to 'value for money'.

The NSW Government has also committed to enact a 30% tender evaluation criteria that captures local content, support local jobs including for apprentices and trainees, engages with local, small businesses and maintain ethical supply chains in the delivery of contracted goods and services to government.

The NSW Government will assess the feasibility of the adjusted cost model, how it interacts with the 30% tender evaluation criteria, and whether it could be utilised in government tendering processes.

### RECOMMENDATION 3

That the NSW Government mandate the use of modern slavery model tender clauses by procuring government agencies, to ensure the relevant clauses are inserted in all contracts phased in by order of industry risk.

#### Supported

The NSW Government supports the use of modern slavery model tender clauses by procuring government agencies, to ensure the relevant clauses are inserted in procurement from high-risk industries.

The Government will continue to be guided by the Anti-Slavery Commissioner to ensure these modern slavery clauses are used in all public procurement processes involving goods and services where heightened modern slavery due diligence is required, as identified by the Commissioner's Guidance and the Inherent Risk Identification Tool.

#### RECOMMENDATION 4

That the NSW Government ensure that the use of modern slavery model tender clauses by procuring government agencies are subject to relevant oversight to ensure their appropriate applications.

#### Supported

In conjunction with recommendation 3, the NSW Government supports that there should be relevant oversight to ensure modern slavery model tender clauses are appropriately applied.

The NSW Government will work with the NSW Anti-slavery Commissioner to determine where relevant oversight can be provided.

## RECOMMENDATION 5

That the NSW Government ensure procuring government agencies engage in due diligence and conduct compliance history checks prior to awarding a contract to a supplier. The compliance history checks should include the supplier's workplace health and safety record, compliance with minimum labour standards, modern slavery standards and other relevant legislation.

### Supported in principle

The NSW Government recognises that due diligence and compliance history checks prior to awarding a contract can be improved.

At present, the Procurement Policy Framework states that:

- agencies should conduct supplier due diligence in line with the value, nature and risk profile of procurement and contract primarily conducted during the sourcing stage
- agencies must require suppliers to comply with relevant standards of behaviour and use reasonable endeavours to be aware of any adverse findings against current or prospective suppliers including complying with the Supplier Code of Conduct, Public Works and Procurement Act 1912 and NSW Modern Slavery Act 2018.

Agencies must use best endeavours to identify adverse findings against suppliers and report such findings to the NSW Procurement Board.

Specific to modern slavery, the Procurement Policy Framework states that agencies should implement effective due diligence procedures aligned to the NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to ensure that goods and services procured by agencies are not the product of modern slavery.

NSW Government will work with the relevant bodies to develop appropriate due diligence guidance including checklists.



## RECOMMENDATION 6

That the NSW Government consider the adoption of industry codes or frameworks which promote supplier compliance with labour standards in industries characterised by vulnerable workforces.

### Supported in principle

The NSW Government will consider the adoption of industry codes/frameworks which promote supplier compliance with labour standards in industries with vulnerable workforces.

Section 27 (1) of the NSW Modern Slavery Act 2018 provides that the Commissioner “may develop, and make publicly available, codes of practice for the purpose of providing guidance in identifying modern slavery taking place within the supply chains of organisations and steps that can be taken to remediate or monitor identified risks”.

The NSW Government will work with the NSW Anti-slavery Commissioner to incorporate the existing provisions of the NSW Modern Slavery Act 2018 into the design of such industry codes or frameworks and ensure that there is no duplication/overlap with the codes referred to above; and/or that any other code interfaces effectively with this existing power. NSW Government will work with relevant bodies to consider the adoption of relevant industry codes as appropriate.

### RECOMMENDATION 7

That the NSW Government progressively:

- works with industry stakeholders to determine appropriate labour baseline costs that take into consideration minimum labour standards, and appropriate workloads to deliver on the scope of a contract, with an initial focus on high-risk industries identified by the Anti-slavery Commissioner,
- applies these labour baseline costs when procuring in those industries.

#### Supported in principle

The NSW Government supports implementing labour baseline costs in procurement for high-risk industries.

For goods and services with large domestic supply chains, developing labour baseline costs is an important measure to combat modern slavery and assist agencies in meeting NSW legal obligations.

The NSW Government will collaborate with the NSW Anti-slavery Commissioner and other stakeholder groups to identify relevant high-risk industries and establish baseline costs.

The NSW Government announced on 1 September 2024, the establishment of a debarment scheme that will define rules and processes to ban suppliers who engage in serious misconduct from doing business with the NSW Government.

## RECOMMENDATION 8

That the NSW Government consider establishing a complaints handling mechanism within the NSW Jobs First Commission.

### Supported

The Public Works and Procurement Act (1912) Section 172 states that a function of the NSW Procurement Board is 'to investigate and deal with complaints about the procurement activities of government agencies'.

The NSW Government announced on 1 September 2024, the establishment of a debarment scheme that will define rules and processes to ban suppliers who engage in serious misconduct from doing business with the NSW Government

The NSW Jobs First Commission (upon establishment) will be administering the debarment scheme

For the first time, the NSW Government will have the power to exclude or impose lesser penalties, like suspension, to suppliers that engage in misconduct. The scheme will ensure that any debarment actions taken also apply to any subsequent 'phoenix' operations.

### RECOMMENDATION 9

That the NSW Government implement measures to enhance compliance and enforcement in procurement processes, to complement the role of the Jobs First Commission, with a particular focus on systematic post-award compliance checks, noting the role of the recently announced debarment scheme.

#### Supported

The NSW Government supports enhancing compliance and enforcement within procurement processes.

The Procurement Policy Framework states that agencies:

- should conduct supplier due diligence in line with the value, nature and risk profile of procurement and contract. Primarily conducted during sourcing stage, however, contract management also involves ongoing monitoring of supplier compliance with contractual, regulatory and other obligations as per ICAC's Supplier Due Diligence: A Guide for NSW Public Sector Agencies.
- must require suppliers to comply with relevant standards of behaviour and use reasonable endeavours to be aware of any adverse findings against current or prospective suppliers including complying with the Supplier Code of Conduct, Public Works and Procurement Act 1912 and NSW Modern Slavery Act 2018.

In addition, the NSW Government is implementing a supplier debarment scheme that will define rules and processes to ban suppliers who engage in serious misconduct from doing business with the NSW Government business.

The Jobs First Commissioner will be given compliance and enforcement powers to ensure all parties, including NSW agencies, adhere to the government's procurement rules and standards.

### RECOMMENDATION 10

That the NSW Government, potentially through the NSW Jobs First Commission, undertake mapping of the legal, regulatory and policy obligations that apply to procuring agencies, noting areas in which duplication or ambiguity might be reduced.

#### Supported

The NSW Government will review the legal, regulatory, and policy obligations for procuring agencies, aiming to reduce duplication and clarify ambiguities across legislation, policies, and regulations.

The Procurement Policy Framework currently offers a consolidated view of NSW Government procurement objectives, as well as whole-of-government legal, regulatory, and policy obligations, with clear guidance on whether requirements are mandatory or recommended.

### RECOMMENDATION 11

That the NSW Government amend the Public Works and Procurement Act 1912 (NSW), or consider other appropriate mechanisms, to include specific social procurement and environmental sustainability objectives for the NSW Procurement Board, or as determined following a mapping of current, legal regulatory and policy objectives.

#### Noted

The Government will access the appropriate mechanisms to elevate specific social procurement and environmental sustainability objectives into NSW government procurement practices.

## RECOMMENDATION 12

That the NSW Government strengthen the Procurement Policy Framework and associated policies to achieve social procurement outcomes, including by:

- setting specific targets for the procurement of social enterprises
- considering how certification schemes could be adopted to ensure the procurement of businesses that achieve social impact
- collaborating and consulting across relevant government agencies.

### Supported in principle

The NSW Government acknowledges the role of the Procurement Policy Framework in advancing economic, social, and sustainability outcomes by fostering a diverse supplier base that supports growth across the state.

The Procurement Policy Framework include a chapter on how procurement can be used to achieve economic development, social outcomes and sustainability objectives. By building a diverse supplier base, the government can support businesses of all types to grow and encourage economic development across the state.

The NSW Government supports measures to increase spend with social enterprises and will consult with relevant government agencies to identify what certification schemes are available for adoption and what potential targets could be established.

### RECOMMENDATION 13

That the NSW Government conduct post-award compliance to ensure that social enterprises named in the tendering stage are appropriately engaged throughout the contract not simply listed pre-tender.

#### Supported

The NSW Government supports conducting post-award compliance checks to ensure that social enterprises listed during the tender stage are actively engaged throughout the contract term, rather than merely being named at the pre-tender stage.

Work is underway to introduce a risk and compliance management framework aimed at enhancing oversight of agency compliance with procurement policy and Procurement Board Directions. NSW Government will further consult with government agencies to determine the best way to integrate these checks into existing procurement processes.



#### RECOMMENDATION 14

That the NSW Government provide greater support for the procurement of Aboriginal businesses, including by:

- increasing training, support and skill development for Aboriginal businesses, in order to assist them with tendering processes
- improving reporting and accountability requirements for procuring agencies
- enhancing training to government procurement officials on relevant requirements.

#### Supported

The NSW Government supports the procurement of Aboriginal businesses through multiple avenues.

#### Training, support and skill development

Training Services NSW has established the Aboriginal Participation Fund to receive payments when a supplier does not meet contracted Aboriginal Participation requirements. The funds are used to target skills and capacity gaps, education and capability building programs for Aboriginal people and business to enable Aboriginal participation requirements are met for future government contracts.

In 2024, the NSW Government in partnership with Regional NSW hosted seven Gather & Grow events which included presentations on procurement opportunities within the NSW Government supply chain, and how to access tendering support services.

The NSW Government's Business Connect program supports Aboriginal Businesses in NSW and Aboriginal people looking to start a business in NSW.

#### Reporting and accountability requirements

The Aboriginal Procurement Policy (APP) is applicable to the procurement of goods, services and construction by all NSW Government agencies and includes specific targets for procurement with Aboriginal businesses.

Agencies are required to report on their addressable spend, actual spend, goods and services targets and actual contracts with Aboriginal businesses.

#### Training for government procurement officers

The NSW Government will continue to identify where tender training, support and skill development for Aboriginal businesses can be further supported.

### RECOMMENDATION 15

That the NSW Jobs First Commission consider the outcomes of the Aboriginal Procurement Policy Review and more broadly the role that procurement can play in Closing the Gap targets.

#### Supported

NSW Treasury works closely with Aboriginal Affairs NSW to support Closing the Gap targets, including Priority Reform 5: Employment, business growth and economic prosperity.

Once established the Jobs First Commission will work closely with the NSW Procurement Board to develop strategies to promote Closing the Gap targets.

### RECOMMENDATION 16

That the NSW Government use the Procurement Framework to incentivise the employment of people with a disability, including by:

- increasing training, support and skill development for disability enterprises, in order to assist them with tendering processes
- working with and assisting disability enterprises to transition to open employment settings in which minimum is paid to people with a disability
- improving reporting and accountability requirements for procuring agencies
- enhancing training to government procurement officials on relevant requirements.

#### Supported

Currently, the Public Works and Procurement Regulation 2019 allows NSW Government agencies to purchase goods and services of any value from an approved disability employment organisation with a single written quote and no limit on the maximum contract value, even if there is a whole of government arrangement in place.

Agencies can access BuyAbility, an initiative of National Disability Services that provides a list of verified Australian Disability Enterprises.

The NSW Government will work with Commonwealth Government as it implements the findings of the Disability Royal Commission including transition to open employment settings.

The NSW Government will continue to identify where tender training, support and skill development for Disability Enterprises can be further supported.

### RECOMMENDATION 17

That the NSW Government explore options for collaborative tendering within whole of government and agency-specific procurement arrangements, to achieve social procurement objectives, support social enterprises and small businesses, and encourage innovation.

#### Supported

The Procurement Policy Framework currently incorporates provisions designed to achieve social procurement outcomes and adherence to sustainability policies. However, the NSW Government also agrees that there needs to be a larger focus on outcomes and quality, particularly when considering whole of life costs, as they can often provide greater long-term value than prioritising price alone.

The NSW Government will continue to explore collaborative procurement opportunities that allow a broader pool of suppliers to participate, beyond those traditionally engaged as lead or head contractors. By enabling greater supplier diversity, it is intended to support small, medium, and local business and foster opportunities for innovation.

### RECOMMENDATION 18

That the NSW Government ensure that, at the outset of a procurement process, procuring agencies give consideration to the recycling of materials and goods, and end of use options, to support a circular economy.

#### Supported

The NSW Government will continue to seek additional opportunities to support a circular economy and to develop guidance to assist agencies, where feasible.

The NSW Government's Circular Economy Policy, referenced in the Procurement Policy Framework, encourages agencies to consider the product lifecycle in their procurement needs analysis and specifications. This includes integrating circular economy principles to ensure that reuse, repurposing, recycling, and disposal of goods or assets are planned into the procurement process. Agencies are also encouraged to align any disposal or repurposing efforts with relevant environmental and waste management legislation, regulations, and policies.

### RECOMMENDATION 19

That the NSW Government consider introducing requirements for those who win NSW Government tenders to be subscribers of product responsibility and stewardship schemes, to assist government agencies to meet sustainability and environmental objectives.

#### Supported

The NSW Government will explore opportunities to encourage suppliers of procured goods to participate in relevant product stewardship schemes, where feasible.

The Government is committed to progressing towards a circular economy.

Product stewardship schemes are an important tool in this transition, offering benefits that range from facilitating recycling to promoting sustainable design, production, and disposal practices that reduce environmental and health impacts.

## RECOMMENDATION 20

That the NSW Government, in conjunction with the NSW Procurement Board, improve data monitoring and reporting in relation to the achievement of social procurement objectives, by:

- implementing key performance indicators to ensure social, sustainability and environmental outcomes are targeted, aligned to objectives, and government and agency leaders deliver on required expectations, and
- ensuring the NSW Procurement Board monitors the delivery of social outcomes through agency reporting obligations.

### Supported in principle

The NSW Government will work with the Procurement Board to enhance data monitoring and reporting for social, sustainability, and environmental procurement outcomes, refining key performance indicators and agency obligations.

Enhancements will include government-wide data standards, quality controls, and the integration of external sources. NSW Government will also continue to improve digital ecosystems to streamline processes, with artificial intelligence explored for procurement insights.

Other enhancements will include:

- **Environmental Focus:** The Department of Climate Change, Energy, the Environment and Water is developing guidelines to help agencies prioritise recycled content.
- **Efficient Procurement Data Capture:** Consideration of reporting requirements to be streamlined, with structured cadences to reduce resource impact on agencies.
- **buy NSW Transparency:** buy NSW, as the primary procurement data source, provides transparency with supplier registration, contract disclosure, and opportunities over \$150,000. Future integrations will enhance visibility into payments and contracts.
- **Modern Slavery Data:** This may include mandatory data collection through external data sources and buy NSW.

### RECOMMENDATION 21

That the NSW Government consider the need for government agencies to undertake timely end user consultation for the procurement of goods and services.

#### Supported

The NSW Government recognises the importance of timely end-user consultation in procuring goods and services to ensure they are accessible and fit for purpose. The Government will consider the need for agencies to undertake such consultations, including improving awareness by enhancing the training, skills, and resources of procurement officers to build capacity and expertise within the public sector.

The Government notes the committee's recommendation that further training and capacity-building are crucial for successfully implementing planned reforms and the report's recommendations. Training will focus on how procurement processes can support social, economic, environmental, and sustainability objectives, encouraging officers to consider non-price factors when assessing value for money.



## RECOMMENDATION 22

That the NSW Procurement Board enhance training, skills and resources provided to all procurement officers and anyone with procurement delegations, in order to:

- build capacity and procurement experience in the public sector
- ensure proper consideration is given to social, economic, environmental and sustainability objectives when assessments of value for money are being undertaken in procurement processes
- ensure accountability for management of risk and monitoring of procurement contracts.

### Supported

The NSW Government supports building procurement capability across agencies to ensure proper consideration is given to social, economic, environmental, and sustainability objectives when assessments of value for money are being undertaken in procurement processes.

In conjunction with the response to recommendation 9 in the first report by the committee, the NSW Government will, in consultation with key stakeholders, ensure procurement officers are to have capabilities to undertake sufficient due diligence functions and monitor compliance with the NSW Procurement Policy Framework. This will enable staff involved in procurement-related activities to consider and mitigate risk and apply non-price considerations when assessing value for money in government procurement processes.