



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

# 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

Report 64

October 2024



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Standing Committee on Social Issues

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of New South Wales**

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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

"October 2024"

Chair: Hon Dr Sarah Kaine



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## Terms of reference

1. That the Standing Committee on Social Issues inquire into and report on the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales, and in particular:
  - (a) the current state of procurement by New South Wales government agencies, in particular:
    - (i) the value of procurement, through whole of government or agency procurement arrangements
    - (ii) the policies, schemes and contracts of all categories that New South Wales government agencies procure, including labour
    - (iii) the number of whole of government procurement arrangements available to New South Wales government agencies
    - (iv) the application of the New South Wales Procurement Policy Framework and the devolved nature of the responsibilities and obligations of New South Wales government agencies under the framework
    - (v) the value/volume of New South Wales government agencies procurement undertaken outside of whole of government procurement arrangements
    - (vi) the accreditation program for goods and services procurement and construction procurement
  - (b) the effectiveness of whole of government and agency procurement arrangements, including standing offers, panels and prequalification schemes, in ensuring that suppliers and their subcontractors deliver value for money and comply with relevant policies and regulations, including labour laws, at the qualification, contract negotiation stage and contract management stages of procurement
  - (c) current capacity of procurement officials in government agencies to assess suppliers and ensure they, and their subcontractors deliver value for money and comply with relevant policies and regulation, including labour laws, at the qualification or contract stage and throughout the contract management stage
  - (d) any opportunities that may exist for co-regulation, and other incentives to improve labour market governance and enforcement through the procurement process to ensure the process delivers both value for money and social outcomes
  - (e) the evaluation criteria used in tenders and how they are weighted in making a decision to award a contract, in particular consideration of:
    - (i) local content
    - (ii) value for money
    - (iii) social, economic and labour market outcomes
    - (iv) environmental considerations, such as sustainable sourcing, energy efficiency and waste reduction
    - (v) innovation
    - (vi) subcontracting arrangements
  - (f) current approaches to transparency and accountability of procurement by New South Wales government agencies, in particular:

- (i) function and requirements of the New South Wales Government Procurement Board and the New South Wales Procurement Policy Framework
  - (ii) record keeping arrangements for procurement activities
  - (iii) Agency annual self-reports and outcome reports
- (g) the New South Wales Government's procurement practices, in particular its ability to:
- (i) prioritise local content, local manufacturing, and local jobs
  - (ii) improve opportunities for quality training and workforce participation
  - (iii) provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities
  - (iv) support local suppliers, and small and medium enterprises
- (h) procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally
- (i) any other related matters.
2. That the committee report by 11 October 2024.<sup>1</sup>

The terms of reference were referred to the committee by the Hon Courtney Houssos MLC, Minister for Finance, Minister for Natural Resources on 11 October 2023.<sup>2</sup>

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<sup>1</sup> On 14 March 2024, the committee resolved to extend the reporting date to 11 October 2024 (*Minutes*, NSW Legislative Council, 19 March 2024, p 982).

<sup>2</sup> *Minutes*, NSW Legislative Council, 12 October 2023, pp 583-584.

## Committee details

### Committee members

<b>Hon Dr Sarah Kaine MLC</b>	Australian Labor Party	<i>Chair</i>
<b>Ms Abigail Boyd MLC*</b>	The Greens	<i>Deputy Chair</i>
<b>Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>Hon Taylor Martin MLC</b>	Independent	
<b>Hon Rachel Merton MLC</b>	Liberal Party	
<b>Hon Bob Nanva MLC</b>	Australian Labor Party	
<b>Hon Emily Suvaal MLC</b>	Australian Labor Party	
<b>Hon Damien Tudehope MLC**</b>	Liberal Party	

\* Ms Abigail Boyd MLC substituted for Dr Amanda Cohn MLC from 11 October 2023 for the duration of the inquiry.

\*\* The Hon Damien Tudehope MLC substituted for the Hon Sarah Mitchell MLC from 19 December 2023 for the duration of the inquiry.

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## Chair's foreword

From the outset of this inquiry, the committee heard how government procurement can boost local manufacturing and job growth, in addition to contributing to the delivery of public services across the state. With approximately \$42 billion spent last year, and 130,000 suppliers of goods and services, it is clear that government procurement can also be harnessed to achieve social, environmental and sustainability outcomes.

In the committee's first report, we closely examined the procurement framework and associated processes, gaining a better understanding of the devolved structure and need for improvements in the understanding and application of 'value for money' in government procurement. Importantly, the committee made 4 findings and 9 recommendations, all of which were supported by the NSW Government.

Soon after our first report was tabled, the NSW Government began to implement some reforms, including the establishment of a Jobs First Commission to oversee the implementation and enforcement of local content measures. This new Commission and the prioritisation of local procurement, including an 'if not, why not' direction given by the Minister for Domestic Manufacturing and Government Procurement, will no doubt shape the way local industries and manufacturing are supported in New South Wales, in addition to facilitating greater innovation and employment.

For this final report, the committee held another 4 hearings, taking evidence from a diverse range of stakeholders including government agencies, industry professionals, trade unions, academics and owners and operators of businesses. Stakeholders supported the need for the procurement framework to prioritise local content, including through an increase to tender weightings. Stakeholders also highlighted to the committee how procurement processes can be used to achieve labour, social and environmental objectives. In this respect, I note that the committee has made a further 13 findings and 22 recommendations to the NSW Government.

One of the key issues considered by the committee was that current procurement practices do not enable transparency and procuring agencies may have difficulty determining if there is enough money in contracts to meet legal minimum obligations. The committee heard how this can lead to labour exploitation in high risk and vulnerable industries, with some businesses using low labour costs in a bid to win tenders on a lower price. To address this issue, the committee has made a recommendation that the NSW Government progressively work with industry stakeholders to determine baseline costs that take into consideration minimum labour standards, so that these can be removed from procurement assessments. Sitting alongside this work will be other important measures to prevent modern slavery in supply chains, including the work of the NSW Anti-slavery Commissioner which to date has been very encouraging. The committee understand the benefits of ensuring that modern slavery clauses are embedded in procurement contracts, according to industry risks, and has made a recommendation for these clauses to be mandated.

The committee also heard about the need for the NSW Government to enhance the approach to compliance and enforcement in agency-specific and whole of government procurement activities. While the committee is encouraged that the Jobs First Commission will monitor local content requirements, there is a need for further monitoring measures to complement its functions, including broader due diligence checks prior to awarding contracts. This must also be supported by post award compliance monitoring by government agencies, in order to verify that suppliers of goods and services, including construction companies, remain compliant with government procurement and legislative requirements and deliver on the scope of contracts. There must also be greater oversight to ensure that the procurement framework and associated processes are operating appropriately.

Another significant focus of this report was the ability for government procurement to achieve social and environmental sustainability outcomes and objectives, but that further work is required to realise the full potential of this. Stakeholders supported the need for the procurement framework and legislation to be strengthened in relation to these objectives, and the committee has agreed that this will be important in ensuring that government procurement can achieve social impact, meet environmental targets and support a circular economy.

I would like to thank all stakeholders who have contributed to this inquiry, both through submissions and evidence at hearings. I also thank members of this committee for their input and collaboration, and their commitment to ensuring that government procurement processes continue to reform and develop and meet intended objectives.

I look forward to the NSW Government's consideration of our further recommendations, and how these, along with the other important reforms announced by the Minister for Domestic Manufacturing and Government Procurement, will strengthen government procurement for the benefit of the people of NSW.

Thank you also to the secretariat for their ongoing work in supporting this important inquiry. I commend this report to the House.

Hon Dr Sarah Kaine MLC

**Committee Chair**

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## Findings

- Finding 1** 32  
That there is broad support across stakeholders for procurement measures that prioritise local content and support local businesses.
- Finding 2** 32  
That while Australia is party to a number of international trade agreements, these should not be seen as a barrier to local content provisions as other jurisdictions both in Australia and international are able to prioritise local content without breaching international obligations.
- Finding 3** 32  
That government procurement practices have a role in stabilising market demand to allow more surety for local businesses, empowering them to grow and innovate, providing benefits to the State economy.
- Finding 4** 33  
That while the modern slavery clauses developed by the NSW Anti-slavery Commissioner are currently issued as guidance, the guidance is likely to be treated at the auditable standard against which a modern slavery audit would be conducted.
- Finding 5** 35  
That certain industries that procuring government agencies engage with are at higher risk of modern slavery and non-compliance with labour laws, such as cleaning, security and hospitality.
- Finding 6** 35  
That current procurement practices do not enable transparency, particularly down supply chains, of suppliers providing government services, and it can be difficult for procuring agencies to determine if there is demonstrably enough money in contracts to meet legal minimum obligations.
- Finding 7** 36  
That post-award contract and supplier compliance checks are not carried out frequently or systematically by government procuring agencies.
- Finding 8** 57  
That the current procurement policies and legislation provide some direction to drive social, economic and environmental sustainability outcomes but require strengthening.
- Finding 9** 58  
That there is minimum post-award transparency, compliance and data to ensure that social enterprises named in the tender stage are engaged throughout the contract.
- Finding 10** 58  
That while the Aboriginal Procurement Policy has been successful in increasing the number of Aboriginal businesses that are now registered to provide goods and services, there is still more work to be done.

- Finding 11** 60  
That current government procurement processes do not adequately consider end of life and recycling of products, particularly in regards to bulk waste.
- Finding 12** 69  
That timely end user consultation is necessary to ensure that procured goods and services are accessible and fit for purpose.
- Finding 13** 69  
That procurement officers do not consistently understand or apply non-price considerations when assessing value for money in government procurement processes. Training is required for procurement officers and anyone with procurement responsibilities to ensure that non-price considerations are more effectively considered when assessing value for money and to ensure responsibility for risk management and progress monitoring is appropriately identified.

## Recommendations

- Recommendation 1** **33**  
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.
- Recommendation 2** **33**  
That the NSW Government consider using an 'adjusted price model' that takes into account direct expenditure of tendering organisations.
- Recommendation 3** **33**  
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.
- Recommendation 4** **34**  
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.
- Recommendation 5** **34**  
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.
- Recommendation 6** **35**  
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.
- Recommendation 7** **35**  
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.

- Recommendation 8** 36  
That the NSW Government consider establishing a complaints handling mechanism within the NSW Jobs First Commission.
- Recommendation 9** 36  
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.
- Recommendation 10** 36  
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.
- Recommendation 11** 57  
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.
- Recommendation 12** 58  
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.
- Recommendation 13** 58  
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.
- Recommendation 14** 58  
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.
- Recommendation 15** 58  
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.

- Recommendation 16** **59**  
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.
- Recommendation 17** **60**  
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.
- Recommendation 18** **60**  
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.
- Recommendation 19** **60**  
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.
- Recommendation 20** **61**  
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.
- Recommendation 21** **69**  
That the NSW Government consider the need for government agencies to undertake timely end user consultation for the procurement of goods and services.
- Recommendation 22** **69**  
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.

## Conduct of inquiry

The terms of reference for the inquiry were referred to the committee by Hon Courtney Houssos MLC, Minister for Finance, Minister for Natural Resources, on 12 September 2023.

The committee received 64 submissions.

The committee held 2 hearings in April 2024, tabling its first report on 21 June 2024. The committee held a further 4 hearings in June and July 2024, to inform this further report.

Inquiry related documents are available on the committee's website, including submissions, hearing transcripts, tabled documents and answers to questions on notice.





# Chapter 1 Introduction

Given that the committee tabled its first report for this inquiry on 21 June 2024, this chapter provides a brief overview of the structure of the inquiry, before outlining the outcomes of the first report and the government's response to recommendations.

## Structure of the inquiry

- 1.1 This inquiry was established following a referral of the terms of reference to the committee by the Hon. Courtney Houssos MLC, Minister for Finance, Minister for Natural Resources and Minister for Domestic Manufacturing and Government Procurement.<sup>3</sup>
- 1.2 The terms of reference, shown on pages V-VI, required the committee to inquire into the procurement practices of government agencies New South Wales and its impact on the social development of the people of New South Wales.

## The committee's first report

- 1.3 Following a number of public hearings, the committee tabled its first report on 11 June 2024. The first report set out the legislative and policy framework for NSW government procurement, including obligations under the *Public Works and Procurement Act 1912*, the NSW Procurement Policy Framework and other procurement related policies, agreements and considerations. The first report also focused on:
  - the assessment of 'value for money' within procurements
  - tender and vendor engagement processes
  - monitoring of the compliance of vendors by accredited agencies
  - government procurement operating in a devolved structure.
- 1.4 The committee's first report included four findings and nine recommendations. Collectively, these addressed various issues related to the procurement framework and practices undertaken by government agencies, including concerns related to the decentralised approach and effectiveness of the NSW Procurement Board.
- 1.5 Key recommendations included in the committee's first report included the:
  - development of an independent and robust compliance and enforcement mechanism, with increased data monitoring capabilities, in order for the NSW Procurement Board to meet its obligations under the *Public Works and Procurement Act 1912*
  - a focus on expanding the definition of 'value for money', to assist agencies to interpret and apply the requirements to government procurement activities
  - development of measures to ensure feedback is provided to all parties involved in a competitive tender

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<sup>3</sup> *Minutes*, NSW Legislative Council, 12 October 2023, p 583.

- reduction of the threshold for disclosing government procurement contracts to \$100,000 at most, to ensure greater transparency over government contracts
- investigation of barriers to small-medium enterprises in government procurement opportunities, with the view to amending or removing inequitable requirements.

### **The NSW Government's response to the first report**

**1.6** The NSW Government responded to the committee's first report on 20 September 2024. In its response, the NSW Government advised that it supported all nine recommendations from the committee's first report. The government specifically noted its support for:

- improving agency compliance and assurance with procurement policies and directions
- reviewing government standard procurement contracts
- consulting with the NSW Information and Privacy Commission on reducing the contract disclosure threshold from \$150,000 to \$100,000
- modernising contract management by establishing minimum monitoring, retention and storage standards.<sup>4</sup>

**1.7** The NSW Government also noted that it is committed to making it easier for small to medium sized enterprises to participate in government procurement and that it would review the agency accreditation schemes for goods and services and construction procurement.<sup>5</sup>

**1.8** On 3 September 2024, the Minister for Domestic Manufacturing and Government Procurement, Minister for Industry and Trade and Minister for Skills, TAFE and Tertiary Education also announced a number of new measures to support jobs and businesses and encourage the development of local industries, removing barriers to local growth. Some of the key measures announced included:

- that there is a ministerial direction to the NSW Procurement Board to remove prohibition on local content rules, with agencies also mandated to engage with local suppliers before going to tender for projects worth more than \$7.5 million
- a more robust approach to 'value for money' will be applied to consider factors like supporting employment opportunities and developing regional economies
- that the NSW Government will legislate to create the Jobs First Commission to oversee the implementation and enforcement of local content measures, to help grow domestic industries and support jobs for local workers

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<sup>4</sup> Correspondence from The Hon Courtney Houssos MLC to the Clerk of the Parliaments, providing government response to the 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, 20 September 2024.

<sup>5</sup> Correspondence from The Hon Courtney Houssos MLC to the Clerk of the Parliaments, providing government response to the 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, 20 September 2024.

- there will be a Future Skills Guarantee with workforce targets, including that 20 per cent of the trades workforce on NSW Government construction or infrastructure contracts valued above \$7.5 million are apprentices
- there will be will an independent advisory board established to provide advice on government procurement policies and strategies
- a Jobs First Commissioner will be appointed conferred with 'name and shame' and other compliance and enforcement powers, to ensure rules and standards are followed by agencies.<sup>6</sup>

**1.9** Further, the NSW Government announced that it would enact a debarment scheme, with the power to exclude suppliers who engage in misconduct, including corrupt or fraudulent conduct of directors and senior managers. It will also extend this scheme to any subsequent 'phoenix' operations and incorporate supplier suspensions, depending on the seriousness of the conduct or any mitigating factors.<sup>7</sup>

### **The focus for the final report**

**1.10** Soon after the tabling of the first report, in June and July 2024, the committee held a further four public hearings for the inquiry. The purpose of these hearings was to focus on a range of other issues related to the procurement framework and practices of government agencies, including local content weightings and targets, and how government procurement could achieve social, economic, environmental and sustainable outcomes for the state. The following chapters examine these issues and make a number of further recommendations to ensure the procurement framework is operating effectively and achieving its intended aims.

<sup>6</sup> Media release, NSW Government, 'Supporting local jobs boosting local business with Jobs First Commission and 'if not, why not' government spending rules', 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>7</sup> Media release, NSW Government, 'Dodgy suppliers to be banned from NSW Government contracts', 1 September 2024, <https://www.nsw.gov.au/media-releases/dodgy-suppliers-to-be-banned-from-nsw-government-contracts#:~:text=For%20the%20first%20time%2C%20the,to%20comply%20with%20taxation%20laws>.



## Chapter 2 Local content and labour outcomes

This chapter focuses on the prioritisation of local labour, goods and services within the procurement framework in New South Wales, including through targets and weightings. It also considers initiatives that could support local businesses and manufacturers to innovate and engage in government procurement processes. The chapter then turns to how procurement processes and government contracts can promote compliance with labour standards and prevent modern slavery occurring in supply chains.

### Prioritisation of local content

- 2.1** The NSW Government has indicated its commitment to procurement reforms that prioritise local content, domestic manufacturing and local employment. This includes the establishment of a Jobs Commission to rebuild domestic manufacturing, and support for the growth of local industries and jobs, as well as increasing tender weightings to 30 per cent to capture local content, job creation, small business and ethical supply chains.<sup>8</sup>
- 2.2** As noted in chapter 1, a number of local content policy reforms were announced by the NSW Government on 3 September 2024, including that there is:
- a removal of the prohibition on local content rules, enabling agencies to consider local content and development opportunities when suppliers bid for government contracts
  - a ministerial direction that mandates that that agencies engage with local suppliers before going to tender for projects worth more than \$7.5 million.<sup>9</sup>

### Increasing tender weightings for local content

- 2.3** Throughout this inquiry, many stakeholders expressed their support for a greater focus on the procurement of local content. For example, Mr Mark Morey, Secretary, Unions NSW, noted his support for the NSW Government's plans to mandate local content in procurement contracts, stating:

Unions NSW believes there is a great value in a 'build and buy local' approach when it comes to government procurement. Such an approach contributes to the economic and social wellbeing of the very people whose taxes are funding these projects.<sup>10</sup>

- 2.4** Mr Chris Lamont, the NSW Small Business Commissioner, also highlighted the benefits of local content being used to build government assets, due to the obligation the government has to maintain the asset into the future.<sup>11</sup>

<sup>8</sup> Submission 40, NSW Government, pp 13-14.

<sup>9</sup> Media release, NSW Government, 'Supporting local jobs boosting local business with Jobs First Commission and 'if not, why noy' government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>10</sup> Evidence, Mr Mark Morey, Secretary, Unions NSW, 3 July 2024, p 10.

<sup>11</sup> Evidence, Mr Chris Lamont, NSW Small Business Commissioner, NSW Small Business Commission, 2 April 2024, p 72.

**2.5** The benefit of procuring local content was also highlighted in relation to some industries. For example, the wine industry in New South Wales, where despite there being 1,000 grape growers and wine producers across the state, Mr Matthew Jessop, Executive Officer, New South Wales Wine Industry Association, noted that most Greater Sydney restaurants, bars and clubs are not major consumers of New South Wales wine. In fact, Mr Jessop noted:

Sydney wine lists comprise just 12 per cent New South Wales wines, on average, while 44 per cent are imported. South Australian and Victorian wines both feature more prominently in Sydney than New South Wales wines do.<sup>12</sup>

**2.6** Mr Jessop told the committee that the wine industry is ‘frustrated’ and ‘angered’ by the fact that local suppliers are not greater supported, stating:

While there are examples of New South Wales Government institutions, associated venues or events being highly supportive of local wines—like the ICC Sydney, New South Wales Parliament and New South Wales Government House—there are far too many examples of major State events and venues serving or being sponsored by Victorian, South Australian or New Zealand wines and businesses.<sup>13</sup>

**2.7** Mr Jessop called for the NSW Government to implement a policy which prioritised local wines for all government-owned, operated, leased and contracted venues in which the government was a sponsor. He noted that this approach would ‘provide significant support to a local wine industry that has been in operation for over 230 years’.<sup>14</sup>

**2.8** Similar to this, the Australian Steel Institute highlighted the loss of business investment, and local economic activity in NSW regions, as a result of fabricated steel being imported, as opposed to being locally sourced.<sup>15</sup>

**2.9** Several stakeholders provided evidence in relation to the proposed increase in local content tender weighting requirements within government procurement practices. For example, Mr Todd Pinkerton, Director of Campaigns and Strategy, Unions NSW, expressed support for the NSW Government’s commitment to a 30 per cent weighting on local content, stating that it ‘is a much needed step in terms of developing industry and directing procurement contracts and developing supply chain capacity across New South Wales’. For major state government contracts though, Unions NSW called for a 50 per cent weighting to be mandated.<sup>16</sup>

**2.10** Mr Pinkerton contended that ‘ambitious targets and weightings’ were necessary to ensure ‘we’re directing as much of the procurement money into New South Wales, and the Australian economy more broadly, for the benefit of New South Wales workers’.<sup>17</sup>

**2.11** The Construction Forestry Maritime Employees Union (CFMEU) - Manufacturing Division also supported the development of the weighting system for local content, contending that local

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<sup>12</sup> Evidence, Mr Matthew Jessop, Executive Officer, New South Wales Wine Industry Association, 26 June 2024, p 12.

<sup>13</sup> Evidence, Mr Jessop, 26 June 2024, p 12.

<sup>14</sup> Evidence, Mr Jessop, 26 June 2024, p 12.

<sup>15</sup> Submission 53, Australian Steel Institute, p 4.

<sup>16</sup> Evidence, Mr Todd Pinkerton, Unions NSW, 3 July 2024, p 11.

<sup>17</sup> Evidence, Mr Pinkerton, 3 July 2024, p 11.

content is ‘inadequately addressed’ in the current procurement framework. Reflecting on the approach other jurisdictions have taken to supporting local content through government procurement, the CFMEU - Manufacturing Division noted that the:

- Queensland Government has introduced a 'local benefits test' with a weighting of up to 30 per cent for all significant projects
- South Australian Government maintains an 'Employment Contribution Test' where a weighting of 15 to 20 per cent may be applied
- Northern Territory Government requires all tenders to include a 30 per cent minimum weight criteria for local content
- Victorian Government has implemented a Local Industry Development Plan which mandates a commitment to local content, requiring procuring agencies to include a 10 per cent weighting for local content.<sup>18</sup>

**2.12** Ms Alison Rudman, NSW District Secretary, CFMEU - Manufacturing Division, stated that weightings with respect to local content have ‘worked in other States ... so we're not being asked to reinvent the wheel here’.<sup>19</sup>

**2.13** Some accredited agencies discussed how existing enforceable procurement provisions currently affect the ability of agencies to prioritise local content. For example, Fire and Rescue NSW highlighted that the 'Enforceable Procurement Provision', designed to ensure that overseas companies are not disadvantaged when bidding for government tenders in NSW, includes an exemption for small to medium enterprises but ‘no such exemption for local content or local manufacturing which means there is no opportunity to prioritise local content for procurement over \$680,000’.<sup>20</sup>

**2.14** The NSW Department of Education also explained that for school infrastructure ‘[l]ocal content is specifically not required for parts and equipment, however many of the services and builders that are engaged are NSW or Australian based businesses’. It indicated that the NSW Procurement Board Direction relating to Enforceable Procurement Provisions ‘impacts the department’s ability to specifically request or engage only with Australian based or owned businesses’.<sup>21</sup>

**2.15** The committee notes that the Government’s Ministerial Direction has removed prohibitions on local content rules.<sup>22</sup>

<sup>18</sup> Submission 11, CFMEU (Manufacturing Division), p 17.

<sup>19</sup> Evidence, Ms Alison Rudman, NSW District Secretary, CFMEU (Manufacturing Division), 3 July 2024, p 4.

<sup>20</sup> Submission 40, NSW Government, Appendix B2 – Fire and Rescue NSW, p 10.

<sup>21</sup> Submission 40, NSW Government, Appendix B14 – NSW Department of Education/School Infrastructure, p 77.

<sup>22</sup> Media release, NSW Government, 'Supporting local jobs boosting local business with Jobs First Commission and 'if not, why noy' government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.



- 2.16** The committee also considered whether there would be any challenges or barriers experienced by certain industries, with the proposed increase in tender weightings for local content from 20 to 30 percent. Representatives from Infrastructure NSW were questioned about this, particularly in relation to construction procurement.
- 2.17** Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW, explained that he did not necessarily feel that an increase in local content requirements in construction procurement would create difficulty, stating that:
- ...in terms of construction procurement, quite a lot of trades, non-trades and other subcontracting and other activities in the construction projects are procured locally in any case.<sup>23</sup>
- 2.18** Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW, also added that for some of the significant projects underway, such as Powerhouse Parramatta, Sydney Fish Market, Penrith Stadium refurbishment and Barangaroo, some of the teams involved have 'quite large local content in terms of personnel and goods and services for delivery of those projects'.<sup>24</sup>
- 2.19** The Independent Commission Against Corruption highlighted that it may be difficult to adequately define the term 'local', questioning whether it would be based on, for example, the location of registered headquarters, owners, the workforce, the operating premise or on where tax is paid.<sup>25</sup>
- 2.20** Along these lines, Mr Lewis Rangott, Executive Director Corruption Prevention, NSW Independent Commission Against Corruption, advocated for a clearer definition for what it means to be 'local', stating:
- Does it [local] mean where your post-office box is? Does it mean where your employees are? Some reasonably objective way of measuring the thing you're trying to achieve, which is not an easily done thing, necessarily, but making it less objective than more objective is usually the way to go, if possible.<sup>26</sup>
- 2.21** The NSW Government's announcement in September indicated that the government will be implementing a local content policy that includes a 'minimum 30% weighting to NSW Government tenders worth more than \$7.5 million that captures local content, job creation, small business and ethical supply chains'. It also indicated that the government will be adopting two definitions of 'local' for procurement purposes:
- the definition of a 'local supplier' for the purposes of the 'If not, why not' direction is limited to New South Wales enterprises

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<sup>23</sup> Evidence, Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW, Evidence, 2 April 2024, p 20.

<sup>24</sup> Evidence, Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW, Evidence, 2 April 2024, p 20.

<sup>25</sup> Submission 18, NSW Independent Commission Against Corruption, pp 11-12.

<sup>26</sup> Evidence, Mr Lewis Rangott, NSW Independent Commission Against Corruption, 2 April 2024, p 69.

- the definition of 'local content' under the Jobs First Commission legislation will be any Australia or New Zealand-based enterprise.<sup>27</sup>

### **Impact on free trade obligations**

- 2.22** In the context of the NSW Government's reforms, including the proposed increase in tender weightings for local content, the committee also considered any impact on the state's free trade obligations.
- 2.23** Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, outlined to the committee the international procurement agreements Australia is a party to, including:
- the Australian and New Zealand Government Procurement Agreement
  - the World Trade Organisation Agreement on Government Procurement, and
  - nine free trade agreements, containing government procurement provisions.<sup>28</sup>
- 2.24** Some inquiry participants raised concerns in relation to whether the existing procurement framework was adequate in identifying opportunities within free trade obligations for local procurement. On this point, the CFMEU - Manufacturing Division contended that the framework is 'completely inadequate', noting that for procurement covered under the free trade agreements, the policy states that 'agencies must treat a supplier from the other country the same as a domestic supplier'.<sup>29</sup>
- 2.25** Ms Rudman, NSW Division Secretary, CFMEU - Manufacturing Division, explained that there are small to medium enterprise exemptions in Australia's trade policy, and agencies can treat a supplier from another country differently to a domestic supplier if the domestic supplier is a small to medium enterprise.<sup>30</sup>
- 2.26** The CFMEU - Manufacturing Division pointed to this issue being explored in the 2014 inquiry into Commonwealth Procurement, where 'the clear take out was that if Government procurement contracts can be awarded to a small to medium enterprise, the principle of non-discrimination does not apply'.<sup>31</sup>
- 2.27** The CFMEU - Manufacturing Division also contended that this interpretation of Australia's obligations is supported by the Department of Foreign Affairs and Trade interpretation who, upon Australia's entry into the World Trade Organisation's Government Procurement Agreement, commented that:

<sup>27</sup> Media release, NSW Government, 'Supporting local jobs boosting local business with Jobs First Commission and 'if not, why noy' government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>28</sup> Evidence, Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, 2 April 2024, p 3.

<sup>29</sup> Submission 11, CFMEU (Manufacturing Division), p 15.

<sup>30</sup> Evidence, Ms Rudman, 3 July 2024, p 4.

<sup>31</sup> Submission 11, CFMEU (Manufacturing Division), p 15.

The GPA [Government Procurement Arrangement] provides the same flexibilities as our existing trade agreements in order to ensure governments can continue to support Australia's small and medium sized enterprises, which, of course, make up around 99 per cent of the number of all Australian businesses.<sup>32</sup>

- 2.28** In this context, the CFMEU - Manufacturing Division stated that as 'preferencing locally clearly benefits local SME's [small to medium enterprises] the barriers the development of a proper weighting system of local economic benefit are not offended by Australia's international obligations'.<sup>33</sup>
- 2.29** The Union called for a clarification of trade agreement exemptions within the NSW Government Procurement guidelines, to confirm that the agreements 'are not a barrier to developing a weighting system considering socio-economic benefits'.<sup>34</sup>
- 2.30** Similarly, Mr Christopher Day, Institute of Transport and Logistics Studies, University of Sydney, told the committee that '[n]othing that we've spoken about here would breach the WTO [world trade organisation's] rules...[and] the Commonwealth Government is already doing things that are trying to match what the United States is doing'.<sup>35</sup>
- 2.31** Indeed, Mr David Varcoe, NSW/ACT State Manager, Australian Steel Institute, referred to 'specific carve-outs in international trade agreements for SMEs [small to medium enterprises]'.<sup>36</sup> Mr Varcoe highlighted two examples of where he felt a preference to local content requirements was demonstrated, including in:
- Victoria (Australia) – where there is a policy requirement for steel supplied to be milled or manufactured locally
  - the United States of America – where there is a direct requirement for locally milled and sourced and fabricated steel... 'that is not in breach of their surely quite broad free trade and other requirements'.<sup>37</sup>

### **Establishment of a NSW Jobs First Commission**

- 2.32** The NSW Government announced in September 2024 that it will legislate to create a NSW Jobs First Commission to 'oversee the implementation and enforcement of local content measures'. It also announced that it will appoint a Jobs First Commissioner which would have compliance

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<sup>32</sup> *Hansard*, Commonwealth of Australia, 11 February 2019, p 7, [https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/094ad63a-edc8-497c-a7dc-f5acbcfa24a0/toc\\_pdf/Joint%20Standing%20Committee%20on%20Treaties\\_2019\\_02\\_11\\_6902\\_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/094ad63a-edc8-497c-a7dc-f5acbcfa24a0/0001%22](https://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/094ad63a-edc8-497c-a7dc-f5acbcfa24a0/toc_pdf/Joint%20Standing%20Committee%20on%20Treaties_2019_02_11_6902_Official.pdf;fileType=application%2Fpdf#search=%22committees/commjnt/094ad63a-edc8-497c-a7dc-f5acbcfa24a0/0001%22).

<sup>33</sup> Submission 11, CFMEU (Manufacturing Division), p 15.

<sup>34</sup> Submission 11, CFMEU (Manufacturing Division), p 5.

<sup>35</sup> Evidence, Dr Christopher Day, Institute of Transport and Logistics Studies, University of Sydney, 2 April 2024, p 64.

<sup>36</sup> Evidence, Mr David Varcoe, NSW/ACT State Manager, Australian Steel Institute, 26 June 2024, p 7.

<sup>37</sup> Evidence, Mr Varcoe, 26 June 2024, p 7.

and enforcement powers, particularly in relation to the new tender weightings rules and local content and skills requirements.<sup>38</sup>

**2.33** Inquiry participants provided evidence in relation to this proposal, including on the role of the Commission to rebuild manufacturing in local industries and create local employment opportunities.<sup>39</sup>

**2.34** Ms Sonya Campbell, Deputy Secretary, Commercial, NSW Treasury, outlined that the department had conducted some work into the establishment of the Jobs First Commission and were currently looking ‘at the model to establish that’, with a proposal to be considered through the 2024 Budget process.<sup>40</sup>

**2.35** Ms Campbell informed the committee of the proposed functions of the NSW Jobs First Commission, which are to:

- advocate for and promote New South Wales-based industries, particularly manufacturing
- increase use of local content in New South Wales Government procurement; identify skill gaps and leverage procurement to grow skilled workforce for strategic New South Wales industries
- track outcomes and quantify impact of the commission and procurement activities to grow New South Wales industry and employment; and
- monitor and enforce agency and supplier compliance with procurement policies and resulting contract commitments.<sup>41</sup>

**2.36** Mr Song Hong, Executive Director, NSW Procurement – Policy, Analytics and Advisory, NSW Treasury, added that once established, the Jobs First Commission would be responsible for implementation of the 30 per cent local content election commitment.<sup>42</sup> The committee was also informed that the Commission would develop a whole-of-government approach to ‘assessing local content, domestic manufacturing and local employment’.<sup>43</sup>

### **Building and innovating local capacity**

**2.37** The committee also considered opportunities to innovate, support and develop local businesses to engage in government procurement, particularly small and medium sized businesses. In this

<sup>38</sup> Media release, NSW Government, ‘Supporting local jobs boosting local business with Jobs First Commission and ‘if not, why noy’ government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>39</sup> Media release, NSW Government, ‘Supporting local jobs boosting local business with Jobs First Commission and ‘if not, why noy’ government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>40</sup> Evidence, Ms Campbell, 2 April 2024, p 3.

<sup>41</sup> Evidence, Ms Campbell, 2 April 2024, p 4.

<sup>42</sup> Evidence, Mr Song Hong, Executive Director, NSW Procurement – Policy, Analytics and Advisory NSW Treasury, 2 April 2024, p 4.

<sup>43</sup> Submission 40, NSW Government, p 14.

regard, the committee notes the government's response to one of the recommendations from the committee's first report, on investigating barriers to procurement opportunities for small and medium sized enterprises. The NSW Government supported this recommendation, noting it was committed to making it easier for small to medium businesses to participate in government procurement, including the easing of insurance and tendering requirements.<sup>44</sup>

- 2.38** The committee took evidence from inquiry participants that small businesses account for the majority of the business landscape in Australia. Ms Amanda Rose, Chief Executive Officer, Entrepreneurial Business Women Australia, highlighted that '[n]inety-seven per cent of businesses are small businesses and only 2.5 per cent are medium size'.<sup>45</sup>
- 2.39** The remaining portion are tier 1 contractors, who are typically larger contractors involved in major projects worth billions of dollars. Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors, explained that in civil construction 'tier 1 contractors...are wholly foreign owned in Australia'.<sup>46</sup>
- 2.40** Inquiry participants discussed a range of strategies to build local capacity, including the government's role in driving innovation and creating capital investment opportunities. Dr Jens Goennmann, Managing Director, Australian Manufacturing Growth Centre, emphasised to the committee that 'transformation or opportunity cannot be triggered by government procurement personnel, but rather...[it] has to come from you [the government]'.<sup>47</sup>
- 2.41** Dr Goennmann emphasised that government procurement is not 'just a means to an end but a means to a beginning for manufacturers', and an opportunity for business growth:
- Early procurement wins can be transformative for local manufacturers because, more than just income, the endorsement that comes with having the Government as a customer can be the difference between landing that larger international customer or securing the capital you need from an institution lender. More broadly, ongoing long-term procurement agreements give capable manufacturers the confidence to reinvest into their business, increase R&D activities, take on more staff or expand and diversify their capabilities because of the certainty of customer orders.<sup>48</sup>
- 2.42** Ms Mel Flanagan, Founder and Director, Nook Studios, also suggested that government contracts are 'the perfect way to fuel home-grown innovation and help local businesses and community organisations to survive, thrive and grow'.<sup>49</sup>

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<sup>44</sup> Correspondence from The Hon Courtney Houssos MLC to the Clerk of the Parliaments, providing government response to the 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, 20 September 2024.

<sup>45</sup> Evidence, Ms Amanda Rose, Chief Executive Officer, Entrepreneurial Business Women Australia, 25 June 2024, p 21.

<sup>46</sup> Evidence, Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors, 3 April 2024, p 35.

<sup>47</sup> Evidence, Dr Jens Goennemann, Managing Director, Australian Manufacturing Growth Centre, 26 June 2024, p 42.

<sup>48</sup> Evidence, Dr Goennemann, 26 June 2024, p 29.

<sup>49</sup> Evidence, Ms Mel Flanagan, Founder and Director, Nook Studios, 25 June 2024, p 18.

**2.43** The committee was also informed of how initial government contracts can facilitate businesses, in particular small to medium enterprises, to attract further capital investment opportunities from other parties, aiding these businesses to establish, grow and innovate. For example, Ms Riordan, highlighted that there is a 'credibility that can actually come from having a government contract as a part of your overall customer base [that] helps to be able to go out to those capital markets and raise'.<sup>50</sup>

**2.44** Mr Brian Craighead, Member, Australian Manufacturing Growth Centre and Chief Executive Officer, Energy Renaissance, suggested government procurement can allow for more surety and growth for businesses:

We are swamped with demand. Everyone wants to move into this space, so we don't have a problem with people. We have a problem with having the offtake to hire those people. We want to hire every one of those 100 people. Everybody here will say, I suspect, the same thing. The longer the offtake guarantee is, then the faster you grow. This is all about offtake. What government can do—the break here is that you want three- or four-year long-term safe contracts. That will change your business. The moment we have a three-year offtake agreement of any sort, we'd be hiring more people and building more things. Those one in 100 become 10 or 20 in 100. I think this is a simple issue disguised as a complicated one, in that, really, what we're talking about here is not spending a dollar more but using procurement as a sword to slay this. [...] We are able to make things that nobody else can make in the world, and there's a really obvious answer to this: Get behind it, use procurement more cleverly. That's my take on this.<sup>51</sup>

**2.45** Mr Craighead suggested that if multi-year agreements backed by the NSW Government existed, it would enable capacity for capital raising and the hiring of required resources.<sup>52</sup>

**2.46** Dr Day explained to the committee that creating a local industry 'from scratch' requires a large level of capital investment and 'sustained periods of time'. He emphasised that procurement contracts need to be structured to:

...provide local manufacturers with sufficient and consistent order volumes which create an environment that supports long term skilled job creation, investment in R&D, expenditure on capital and equipment and export competitiveness.<sup>53</sup>

**2.47** In his submission, Dr Day added that: '...local manufacturers will choose to produce products domestically if they are provided with certainty and opportunities which enable them to confidently deepen their capital base'.<sup>54</sup>

**2.48** Dr Day also noted the approach taken in South Korea, who is bound by the same World Trade Organisation rules as Australia, where 'they've used significant State support to build their manufacturing sector'. Dr Day explained: 'They've substituted imports. They've turned their small and medium enterprise into these large global players and supply chains innovation'.<sup>55</sup>

<sup>50</sup> Evidence, Ms Kristi Riordan, Australian Manufacturing Growth Centre, 26 June 2024, p 38.

<sup>51</sup> Evidence, Mr Brian Craighead, Australian Manufacturing Growth Centre and Energy Renaissance, 26 June 2024, p 35.

<sup>52</sup> Evidence, Mr Craighead, 26 June 2024, p 40.

<sup>53</sup> Evidence, Dr Day, 2 April 2024, p 65.

<sup>54</sup> Submission 2, Dr Christopher Day, p 8.

<sup>55</sup> Evidence, Dr Day, 2 April 2024, p 64.

- 2.49** Ms Riordan also shared examples of government supported innovation in other jurisdictions such as South Korea, Singapore and New York City. Ms Riordan explained that in these jurisdictions, the governments took a more active role, ‘actively going out and seeking participation from the industry’. She noted that her company was actually sought out by governments, including international governments coming to visit her domestically in another country.<sup>56</sup>
- 2.50** Mr Dario Valenza, Member, Advanced Manufacturing Growth Centre and Founder, Carbonix, explained that there can be challenges associated with having expertise in the areas of procurement and innovating where like examples are not being compared. For example, Mr Valenza posed the question that:
- ...when you are replacing a helicopter with a drone or meat from a cow with a synthetic protein, you are actually not replacing like for like. How do you encourage that evaluation, judgement, testing and change the way you do things? Encouraging that and incentivising that is quite challenging because there’s a risk involved.<sup>57</sup>
- 2.51** A sense of urgency was imparted to the committee, with several inquiry participants suggesting that small and innovative businesses were either seeking opportunities or had been approached to operate their business in other jurisdictions. For example, the committee was told:
- there was an urgency 'because companies have a timeline under which they have to operate that's nowhere near as long as what administrations and governments can take to actually make change'<sup>58</sup>
  - the interactions with 'various mentoring programs, incubators and grants around New South Wales government...seems like investing in a startup is seen more as a cost'<sup>59</sup>
  - some small businesses are being sought out by governments in other jurisdictions.<sup>60</sup>
- 2.52** Mr Craighead suggested that the government could provide support to local industries through value-focused scoring criteria, including for local impact, publishing a list of truly Australian manufacturers and the NSW Government acting as a guarantor, including payment terms for small to medium enterprises.<sup>61</sup>
- 2.53** A further suggestion by Dr Christopher Day, Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney, was that 'public procurement would benefit from a framework which measures the value of benefits being generated for the domestic economy and compares this against the additional cost incurred'.<sup>62</sup>
- 2.54** Dr Day suggested a new approach to determining the benefits being generated for the domestic economy which go beyond broader economic benefits that 'rely on dollar estimates of non-price

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<sup>56</sup> Evidence, Ms Riordan, 26 June 2024, p 33.

<sup>57</sup> Evidence, Mr Dario Valenza, Member, Australian Manufacturing Growth Centre and Founder, Carbonix, 26 June 2024, p 38.

<sup>58</sup> Evidence, Ms Riordan, 26 June 2024, p 41.

<sup>59</sup> Evidence, Mr Valenza, 26 June 2024, p 42.

<sup>60</sup> Evidence, Ms Riordan, 26 June 2024, p 41.

<sup>61</sup> Evidence, Mr Craighead, 26 June 2024, p 37.

<sup>62</sup> Submission 2, Dr Christopher Day, p 2.

factors that can be readily challenged or discounted by budget constrained purchasing authorities', to instead look at broader financial benefits:

Unlike social, economic, and environmental benefits, broader financial benefits are 'effects which appear in accounts such as payroll, employee training expenses (including apprenticeships), expenditure on property, plant and equipment needed to fulfil a contract, investment in research and development to win and accomplish an order and exports generated from capability developed to fulfil a previous government purchase. The factors listed are in financial accounts (company books) and exist on paper at a level equivalent to cost and should therefore be treated accordingly in appraisal frameworks'. In essence, direct corporate expenditure of this type generates additional wealth for the economy and it is appropriate to deduct a portion of it from a bid's price.<sup>63</sup>

**2.55** The committee heard that the 'adjusted price' of a bid using Dr Day's proposed approach enables government's to understand which bid provides the best value for the economy after it has been adjusted to reflect 'the company spending in the economy that's additional' such as directly employing and developing staff, capital expenditure and research and development investment.<sup>64</sup>

**2.56** Dr Day gave an example to illustrate the point:

'... if we look at the company's actual financial statements, if they're building a train and they say, "We're going to employ 100 people on \$100,000 a year, whatever, for five years in order to complete this contract," they're going to take on 20 per cent of those as apprentices and they're going to fund them all to get a certificate IV in welding or something like that. Then they're going to have to build a new production facility or upgrade the existing one with new cranes and new robotic welding equipment that meets world standards to do that. We know that if we develop the technology in this platform, we might be able to potentially win an export contract because we pooled all this money into designing a train and we know that other cities around the world are looking for something quite similar. So I look at all these actual companies' spends in the economy and then adjust that for the price that it's costing them to do it in our local jurisdiction. Then I get my new, adjusted price and I compare this with, say, the cheapest foreign alternative that's available—which one comes out cheaper'.<sup>65</sup>

**2.57** When asked how such company spending would be assessed in a tender process, Mr Day agreed that information on company accounts would be needed:

Yes, you would ask them to send in the information of how they're planning to do it as part of a tender and use that to make the adjustment. You should be able to get pretty granular level information and bind that to the contract. If they don't fulfil what they've said they're going to do, you'd be able to be compensated for any deviations from that, unless they were negotiated.<sup>66</sup>

**2.58** Consistent with evidence canvassed in the committee's first report, some stakeholders also supported the creation of smaller contracts, or the splitting of larger contracts, to facilitate small

<sup>63</sup> Submission 2, Dr Christopher Day, pp 2-3.

<sup>64</sup> Evidence, Dr Day, 2 April 2024, p 60.

<sup>65</sup> Evidence, Dr Day, 2 April 2024, p 62.

<sup>66</sup> Evidence, Dr Day, 2 April 2024, p 63.



to medium enterprises to more actively participate in whole of government or agency-specific procurement activities.

- 2.59** Mr Crockford, Australian Owned Contractors, suggested that there was an opportunity for joint-venture opportunities between tier 1 and other smaller companies, in order for public money to be shared. He added that this would allow for locally owned businesses to use that experience to excel and grow their presence in Australia'.<sup>67</sup>
- 2.60** Australian Owned Contractors raised the importance of fostering this domestic ability, particularly in civil construction where as of 2020 there are no longer any locally owned Tier 1 civil construction companies.<sup>68</sup>
- 2.61** Similarly, Mr Sharif Deen, Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations, explained the challenges facing the Aboriginal business community, when there can be issues related to access to capital, the 'need for a certain level of underwriting' and certain insurance requirements. Noting that tier 1 organisations are more readily able to tender for government contracts, and that the size of work packages favour larger organisations, Mr Deen stated:
- ... a key element of feedback from community was the need to break down work packages into smaller sizes to make it possible for smaller organisations to tender directly and also the need for supports where there might be a consortium of Aboriginal businesses that could, potentially, group together but at the moment are not in a position to do so.<sup>69</sup>
- 2.62** Mr Yuseph Deen, Chief Executive Officer, NSW Aboriginal Land Council, explained to the committee that 'there aren't many, if any, tier 1 or tier 2 Aboriginal contractors out there for the large-scale contracts'.<sup>70</sup> Further evidence about how to improve procurement of Aboriginal businesses is covered in the next chapter.
- 2.63** Mr David Harding, Executive Director – Policy and Advocacy, Business NSW, stated that initiatives are required to allow government departments with the 'ability to retain risk where necessary and where it makes sense...to encourage smaller work packages to be brought to market where possible'.<sup>71</sup>
- 2.64** To facilitate the involvement of small to medium enterprises in government procurement, some stakeholders also highlighted the benefits associated with supporting local manufacturing of components for larger products or delivering a defined amount of a government project.
- 2.65** Mr David Varcoe, Australian Steel Institute, discussed the example of Orrcon, a manufacturer engaged in manufacturing pipes and tubes for renewable energy infrastructure.<sup>72</sup> Mr Varcoe noted that a pipe and tube mill facility was now being commissioned, noting:

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<sup>67</sup> Evidence, Mr Brent Crockford, Australian Owned Contractors, 3 April 2024, p 36.

<sup>68</sup> Submission 41, Australian Owned Contractors, p 4.

<sup>69</sup> Evidence, Mr Sharif Deen, Head of Secretariat, NSW Coalition of Peak Aboriginal Organisations, 25 June 2024, p 10.

<sup>70</sup> Evidence, Mr Yuseph Deen, NSW Aboriginal Land Council, 25 June 2024, p 11.

<sup>71</sup> Evidence, Mr David Harding, Executive Director – Policy and Advocacy, Business NSW, 2 April 2024, p 39.

<sup>72</sup> Evidence, Mr David Varcoe, Australian Steel Institute, 26 June 2024, p 2.

The justification for this mill includes the ability to supply specialised components for the manufacture of torque tubes for solar power tracking systems. This is a direct response to the local content requirements for solar that are included in the New South Wales renewable energy plan and comparable requirements for renewable energy infrastructure in Victoria.<sup>73</sup>

- 2.66** Moreover, Ms Jaana Quaintance-James, Chief Executive Officer, Australian Fashion Council, offered her view on this aspect, suggesting that consideration should be given to looking beyond whole procurement engagements which can be delivered locally, to assess what components can be locally manufactured.<sup>74</sup>

### Using procurement to uplift workforce training and education

- 2.67** Some inquiry participants shared their views on how the procurement of local suppliers and businesses can uplift the local workforce, through education opportunities, training and apprenticeships. In this context, the committee learned that the NSW Government has an Infrastructure Skills Legacy Program, which aims to 'address skills shortages and increase diversity in the construction sector'.<sup>75</sup>
- 2.68** The NSW Government also recently announced its support for a 'Future Skills Guarantee', including 20 per cent of the trades workforce being apprentices, on contraction or infrastructure projects above \$7.5 million.<sup>76</sup>
- 2.69** For high value procurement activities, NSW Treasury advised the committee that agency buyers are required to include additional criteria including support for small to medium enterprises and regional businesses employment and business opportunities for Aboriginal people apprenticeships and trainees on construction projects.<sup>77</sup>
- 2.70** The Australasian Railway Association also suggested that the government had a role to play by providing financial incentives and subsidies to companies that invest in training and development programs for their workforce. It discussed regional development initiatives and how these could be used to attract workers to regional areas, along with the role the industry could take in promoting career options for young and diverse people, including those interested in technology and engineering.<sup>78</sup>

<sup>73</sup> Evidence, Mr Varcoe, 26 June 2024, p 2.

<sup>74</sup> Evidence, Ms Jaana Quaintance-James, Chief Executive Officer, Australian Fashion Council, 26 June 2024, p 47.

<sup>75</sup> Submission 40, NSW Government, Appendix B9 – Health Infrastructure, p 52.

<sup>76</sup> Media release, NSW Government, 'Supporting local jobs boosting local business with Jobs First Commission and 'if not, why noy' government spending rules, 3 September 2024, <https://www.nsw.gov.au/media-releases/supporting-local-jobs-boosting-local-businesses-jobs-first-commission>.

<sup>77</sup> Answers to questions on notice, NSW Treasury, 13 May 2024, p 5.

<sup>78</sup> Submission 12, Australasian Railway Association, p 8.

- 2.71** The Australasian Railway Association contended that there could be collaboration with educational institutions, in order to develop training programs and apprenticeships that equip students with the skills needed for jobs in the rail manufacturing industry.<sup>79</sup>
- 2.72** The Australian Manufacturing Workers' Union highlighted in its submission that in order to use procurement practices to support local jobs, the NSW Government should 'ensure that the jobs created through projects are well-paid and secure, and that employers are investing in skills and training'.<sup>80</sup>
- 2.73** Dr Chris Wright discussed a recent initiative in Switzerland, entitled *Empirical Evidence on the Effectiveness of Social Public Procurement Policy: The Case of the Swiss Apprenticeship Training System*.<sup>81</sup> This initiative was focused on using public procurement policy to benefit firms that award apprenticeships and took advantage of vocational training and education opportunities.<sup>82</sup> Dr Wright suggested the study had found 'a tangible increase in the number of firms who train apprentices and create incentives for firms to offer training places'.<sup>83</sup>
- 2.74** In this context, Dr Wright outlined that if a similar approach was formed in Australia, or more specifically in New South Wales, it would have the potential to deliver more significant impacts in terms of the quality and the quantity of training increase[s] that would be provided'.<sup>84</sup>
- 2.75** Dr Day also highlighted that procurement practices to support local jobs should distinguish between the creation of jobs that are sustainable and create additional value, and those that would have already taken place in Australia, irrespective of contractual requirements.<sup>85</sup> Dr Day discussed the example of train maintenance, which regardless of whether trains are manufactured offshore or domestically, will likely be undertaken in Australia and would often be replacing jobs that already exist.<sup>86</sup>

## Opportunities to improve labour standards, compliance and enforcement

- 2.76** Another key theme for the inquiry was how government procurement processes could promote compliance with labour standards, minimise workforce exploitation and prevent modern slavery occurring in supply chains.

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<sup>79</sup> Submission 12, Australasian Railway Association, p 12.

<sup>80</sup> Submission 14, Australian Manufacturing Workers' Union, p 2.

<sup>81</sup> Answers to questions on notice, Dr Chris Wright, Associate Professor, Work and Organisational Studies, University of Sydney Business School and Dr Martijn Boersma Associate Professor, Work and Organisational Studies, University of Sydney Business School, received 17 July 2024, Attachment 1 – Mirjam Strupler Leiser and Stefan Wolter, 'Empirical Evidence on the Effectiveness of Social Public Procurement Policy: The Case of the Swiss Apprenticeship Training System' (2014), p 1.

<sup>82</sup> Evidence, Dr Chris Wright, Associate Professor, Work and Organisational Studies, University of Sydney Business School, 3 July 2024, p 49.

<sup>83</sup> Evidence, Dr Wright, 3 July 2024, p 49.

<sup>84</sup> Evidence, Dr Wright, 3 July 2024, p 49.

<sup>85</sup> Submission 2, Dr Christopher Day, p 4.

<sup>86</sup> Submission 2, Dr Christopher Day, p 4.

### Preventing modern slavery in supply chains

- 2.77** Stakeholders addressed how government procurement practices could prevent modern slavery occurring in supply chains. In this regard, the committee explored the role of the NSW Anti-slavery Commissioner, and how modern slavery considerations could be integrated within agency-specific and whole of government procurement activities.
- 2.78** Modern slavery was noted by the Office of the NSW Anti-slavery Commissioner as an umbrella term to define 'exploitative practices including forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting for labour services, the worst forms of child labour and forced marriage'.<sup>87</sup>
- 2.79** The committee noted that the Office of the NSW Anti-slavery Commissioner was recently formed, with the Anti-slavery Commissioner, Dr James Cockayne, commencing his term on 1 August 2022.<sup>88</sup> The Commissioner monitors the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery.<sup>89</sup>
- 2.80** General functions of the Anti-slavery Commissioner are subject to the provisions of the *Modern Slavery Act 2018*, and include:
- monitoring and reporting on the risks of modern slavery occurring in supply chains of government agencies
  - monitoring the effectiveness of legislation and governmental policies and action in combating modern slavery
  - making recommendations and providing advice, training, education and information to prevent, detect, investigate and prosecute modern slavery offences
  - raising community awareness of modern slavery
  - working with other persons and organisations to address modern slavery and provide support to victims.<sup>90</sup>
- 2.81** The powers of the NSW Anti-slavery Commissioner include naming non-complying agencies on a public register, making recommendations to the NSW Procurement Board, reporting to Parliament an evaluation of the response of relevant government agencies to the recommendations of the Commissioner, and making public statements or reports.<sup>91</sup>
- 2.82** Explaining how procurement processes can be harnessed to prevent modern slavery in supply chains, the Office of the NSW Anti-slavery Commissioner explained that 'well implemented anti-slavery commitments in public procurement will have significant positive impacts on the social development of the people of NSW'. Explaining the benefits of modern slavery being considered within public procurement, the Office outlined that:

<sup>87</sup> Submission 17, Office of the NSW Anti-slavery Commissioner, p 3.

<sup>88</sup> NSW Government, NSW Anti-slavery Commissioner, <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>.

<sup>89</sup> *Modern Slavery Act 2018*, s 25.

<sup>90</sup> *Modern Slavery Act 2018*, s 9.

<sup>91</sup> *Modern Slavery Act 2018*, s 9; Submission 17, Office of the NSW Anti-slavery Commissioner, p 12.

- anti-slavery commitments in public procurement protect the rights of people in the state who are at risk of modern slavery, including workers in high-risk industries or those who face disadvantage as a result of other factors like gender, race and migrant status
- social procurement measures can protect people from the economic and social costs, inefficiency and waste caused by market distortions related to labour exploitation, with modern slavery distorting markets, reducing productivity and competition and undercutting responsible business
- anti-slavery measures in procurement protect the interests of the government agencies that adopt them, creating commercial value by minimising reputational, regulatory and legal risks, among other factors.<sup>92</sup>

**2.83** The committee discussed with Dr Cockayne the Shared Implementation Framework, in effect since 1 January 2024, which includes guidance on the incorporation of modern slavery considerations and model clauses into the tender process and contracts. The Framework was developed by the Anti-slavery Commissioner in consultation with NSW government and other public entities.

**2.84** Dr Cockayne, NSW Anti-slavery Commissioner, explained: 'We provide model tender clauses at different levels of modern slavery risk, explaining the kinds of issues that should be addressed and even providing draft language on the types of ways to include this in their tender documents'.<sup>93</sup>

**2.85** The committee was informed that two versions of the GRS Model Tender Clauses have been developed, a heightened version for procurements with heightened modern slavery risks and a streamlined version for other procurements. The clauses supplement existing clauses within relevant tender documents and can be adjusted where required.<sup>94</sup>

**2.86** In terms of whether agencies are mandated to incorporate these model clauses, Dr Cockayne outlined that they are 'guidance', although the Commissioner explained that the previous Auditor-General has indicated that the Audit Office would likely treat that guidance as 'the auditable standard against which the modern slavery audit would be conducted'.<sup>95</sup>

**2.87** The Commissioner acknowledged, though, the absence of a formal direction in relation to agencies using the model clauses:

What is missing at this stage... is a formal direction from the Procurement Board, which will formally require those under its jurisdiction to implement. I would say two things about that. The first is that we have a very positive, productive ongoing discussion with the Procurement Board. I'm confident that, in time, essentially through a process of co-regulatory design, we will have the Procurement Board direction in place...

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<sup>92</sup> Submission 17, Office of the NSW Anti-slavery Commissioner, p 4.

<sup>93</sup> Evidence, Dr James Cockayne, NSW Anti-slavery Commissioner, 3 July 2024, p 61.

<sup>94</sup> Submission 17, Office of the NSW Anti-Slavery Commissioner, p 11.

<sup>95</sup> Evidence, Dr Cockayne, 3 July 2024, p 58.

The guidance itself says that in areas of high modern slavery risk, there's an expectation that covered agencies will use the clauses. The last thing I'd say is that government agencies are using the guidance. They're already implementing it. They're not waiting to be told they have to. We know for a fact that many of the largest government agencies, and many of the smaller government agencies, are already implementing this framework into their practice. <sup>96</sup>

- 2.88** The Commissioner noted that most buyers will take 'reasonable steps' by imposing expectations on suppliers, but its 'actually supplier capability that's quite critical here in order to achieve the social outcome we're looking for'.<sup>97</sup> Dr Cockayne cautioned that 'if the expectations that are imposed through procurement practices are too onerous, the danger is that that becomes a de factor barrier to entry for SMEs [small to medium enterprises]'.<sup>98</sup>
- 2.89** The committee also considered evidence from the Office of the NSW Anti-slavery Commissioner in relation to measures which could ensure transparency, accountability and oversight in relation to anti-slavery measures.
- 2.90** While the Commissioner, Procurement Board and Auditor General have a range of functions to ensure that goods and services procured by government agencies are not the product of modern slavery, some resourcing implications were outlined, including that:
- the establishment of a centralised reporting pool and dataset would be beneficial for the NSW Government
  - the Commissioner's monitoring functions under the *Modern Slavery Act 2018* (NSW) need to be fully financed.<sup>99</sup>

### **Ensuring compliance with labour standards**

- 2.91** In the context of the NSW Government being a significant procurer of products and services, Unions NSW emphasised in its submission that the government should ensure there is a 'robust framework' within the procurement policy which ensures labour requirements and community expectations are met. It stated that:

In indirectly hiring workers, taxpayers of NSW would expect the NSW Government not to engage labour hire companies with a history of wage theft, poor work health and safety standards, who engage in modern slavery, whose workforce is made of insecure workers, or refuse to recognise the rights of workers to freedom of association'.<sup>100</sup>

- 2.92** The Committee heard from Mr Jack Ayoub, Organiser, Australian Workers Union (NSW Branch), that while there are laws in place that need to be adhered to in regards to minimum labour

<sup>96</sup> Evidence, Dr Cockayne, 3 July 2024, p 58.

<sup>97</sup> Evidence, Dr Cockayne, 3 July 2024, p 58.

<sup>98</sup> Evidence, Dr Cockayne, 3 July 2024, p 58.

<sup>99</sup> Submission 17, Office of the NSW Anti-slavery Commissioner, p 14.

<sup>100</sup> Submission 63, Unions NSW, p 17.

standards, the NSW Government should take responsibility to ensure that those laws are being adhered to prior to engaging suppliers.<sup>101</sup>

**2.93** In addition, since 1 July 2022, more than 400 public buyers, including all NSW Government departments, local councils, and some universities, have had obligations to take reasonable steps to ensure they do not procure products of modern slavery, and/or to report on their efforts to tackle these modern slavery risks.<sup>102</sup>

**2.94** The submission of the Office of the NSW Anti-Slavery Commissioner highlighted the relationship between procurement policies that address modern slavery and ensuring that workers engaged in local value chains are engaged in accordance with labour protections and protected against other forms of exploitation.<sup>103</sup>

**2.95** The Office of the NSW Anti-Slavery Commissioner also indicated that certain goods and services procured by the NSW Government have a heightened risk of modern slavery including cleaning services, security, information and communications technology, and food and agricultural products.<sup>104</sup>

**2.96** The committee heard about poor wage compliance in the hospitality, security and cleaning sectors from other witnesses that noted that contract prices can place pressure on the ability of businesses to meet wage standards. Mr Morey, Unions NSW, noted that some businesses that do not pay staff correctly are 'driven to cut corners', due to the competitive nature of contracting.<sup>105</sup> Mr Morey added that in the hospitality sector, there is a practice of 'not paying the correct wages, cash in hand...[and that's] where you see exploitation of workers'.<sup>106</sup>

**2.97** In relation to the cleaning industry, Ms Mel Gatfield, NSW Secretary and National Director – Food and Beverage, United Workers Union, reinforced this point, suggesting that the bottom line, or cheapest tender drives this practice, stating that:

The experience that we've had of private contracting in cleaning is that it's a race to the bottom. The contracts are done on cost and it's a minimum amount that people will tender for, and how that plays out is what cleaners are expected to do in the time that they have.<sup>107</sup>

**2.98** In its submission, the United Workers Union highlighted the risks associated with labour non-compliance, which are unique to both the security and cleaning industries. In particular, it noted that there is:

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<sup>101</sup> Evidence, Mr Jack Ayoub, Organiser Australian Workers Union (NSW Branch), 26 June 2024, pp 7-8.

<sup>102</sup> NSW Anti-slavery Commissioner's Annual Report Financial Year 2022-2023, [https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/Foundations\\_for\\_Growth,\\_NSW\\_Anti-slavery\\_Commissioner%e2%80%99s\\_Annual\\_Report\\_2022\\_%e2%80%93\\_2023.pdf](https://dcj.nsw.gov.au/documents/legal-and-justice/anti-slavery-commissioner/Foundations_for_Growth,_NSW_Anti-slavery_Commissioner%e2%80%99s_Annual_Report_2022_%e2%80%93_2023.pdf)

<sup>103</sup> Submission 17, Office of the NSW Anti-Slavery Commissioner, p 15.

<sup>104</sup> Submission 17, Office of the NSW Anti-Slavery Commissioner, p 6.

<sup>105</sup> Evidence, Mr Morey, 3 July 2024, p 13.

<sup>106</sup> Evidence, Mr Morey, 3 July 2024, p 13.

<sup>107</sup> Evidence, Ms Mel Gatfield, NSW Secretary and National Director – Food and Beverage, United Workers Union, 3 July 2024, p 34.

- separation of oversight accountability between stakeholders (building owners, contract manager and employers)
- vulnerable workforces and the use of casual labour and subcontracting
- commercial price competition
- minimisation of labour costs.<sup>108</sup>

**2.99** The Union highlighted that labour is a dominant cost in a service contract and companies will bid to remain competitive, and tendering companies will base a bid on factoring in lowest wages.<sup>109</sup>

**2.100** To ensure undercutting of legal wages and conditions is not the basis of winning tenders on price, the United Workers Union explained that for contracts of labour dependent services (such as cleaning and security) it is essential, prior to awarding any contracts, that procuring entities calculate the minimum legal labour costs required to deliver the scope of the contract. The Union noted that: 'Contracts should not be awarded to vendors that bid prices below this amount (considering also the markup on top of labour for contract management, other on-costs and profit)'.<sup>110</sup>

**2.101** In terms of the cleaning industry, the committee received evidence about the Cleaning Accountability Framework, a multi-stakeholder initiative that brings together the various stakeholders in the cleaning supply chain including cleaning contractors, building managers, property owners and investors, the union and other industry stakeholders, to ensure compliance with minimum labour standards for cleaners.

**2.102** Mr Aaron Jones, Political Coordinator at the United Workers Union, noted that this framework helps a building manager or owner who is procuring services to know whether a tenderer is complying with workers entitlements and other obligations under the awards.<sup>111</sup>

**2.103** In its response to supplementary questions, the Union explained how the Cleaning Accountability Framework's Pricing Schedule works to calculate a labour baseline cost based on the intended work patterns, the total aggregate hours per the contract specifications and the inclusive hourly legal minimum labour costs:

The Cleaning Accountability Framework's Pricing Schedule is designed to perform this function for entities procuring commercial cleaning services. Property owners or procurers of cleaning services must complete the CAF Pricing Schedule to demonstrate that their labour costs and on costs are sufficient to meet their obligations (under workplace, tax and super laws), and that the contract price meets or exceeds minimum industry benchmarks. The CAF Pricing Schedule also requires contractors to provide a breakdown of contract hours, so that they can demonstrate there are sufficient hours in the contract to ensure cleaners have fair and safe workloads, and that productivity rates fall within reasonable industry benchmarks.<sup>112</sup>

<sup>108</sup> Submission 38, United Workers Union, p 7.

<sup>109</sup> Submission 38, United Workers Union, p 4.

<sup>110</sup> Answers to supplementary questions, United Workers Union, 30 July 2024, p 1.

<sup>111</sup> Evidence, Mr Aaron Jones, Political Coordinator, United Workers Union, 3 July 2024, p 32.

<sup>112</sup> Answers to supplementary questions, United Workers Union, 30 July 2024, p 1.



- 2.104** Explaining that frameworks like this can be a tool to promote accountability, Mr Jones outlined how the tender should meet the standards, such that 'if you're receiving bids from a company that are less than that, then something is wrong'.<sup>113</sup> Ms Gatfield highlighted that beyond non-compliance with labour standards, bids below those recommended by the pricing schedule could also indicate that tenderers are not delivering on the scope of the contract such that 'you are not going to get what you are paying for'.<sup>114</sup>
- 2.105** The Union stressed that this tool is 'transformative', and able to provide transparency of wages and overheads, hours worked and productivity rates, enabling a fair and consistent assessment of tenders.<sup>115</sup>
- 2.106** Various recommendations were put forward to remedy these types of issues including:
- indexation noted as a contractual provision, allowing for the employer to provide a wage increase<sup>116</sup>
  - removing wages out of competition in the procurement process, so there's less competitive pressure on tenderers to cut corners<sup>117</sup>
  - the implementation of mechanisms to ensure workers are represented in their workplace.<sup>118</sup>

### **Undercutting and price variations in contracting**

- 2.107** Some inquiry participants commented on the difficulties faced as a direct result of 'undercutting' by tenderers, and the ability of some businesses to use contract variations to secure further opportunities or attain greater profit.
- 2.108** Ms Flanagan, Nook Studios, described how her business has 'been undercut by hundreds of thousands of dollars because other organisations know how to get a variation'.<sup>119</sup>
- 2.109** Mr Morey, Unions NSW, told the committee that the New South Wales Government was 'allowing bad employers to win contracts by undercutting the costs of companies'.<sup>120</sup>
- 2.110** Ms Kylie Flament, Chief Executive Officer, Social Enterprise Council NSW and ACT, outlined how she had been alerted to poor contracting behaviour by a competitor in a previous role she was in:

... we were encouraged by someone who had been in the industry for a long time that if we wanted to win government contracts, we needed to put in a quote or a tender submission at less than what it cost us to deliver on and then find sneaky ways to

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<sup>113</sup> Evidence, Mr Jones, United Workers Union, 3 July 2024, p 32.

<sup>114</sup> Evidence, Ms Gatfield, 3 July 2024, p 33.

<sup>115</sup> Answers to supplementary questions, United Workers Union, 30 July 2024, p 1.

<sup>116</sup> Evidence, Mr Jones, United Workers Union, 3 July 2024, p 35.

<sup>117</sup> Evidence, Mr Morey, 3 July 2024, p 13.

<sup>118</sup> Evidence, Dr Wright, 3 July 2024, p 48.

<sup>119</sup> Evidence, Ms Flanagan, 25 June 2024, p 28.

<sup>120</sup> Evidence, Mr Morey, 3 July 2024, p 10.

increase the price on anything not included in the contract. For example, if it was for general garden maintenance and lawn mowing, they said, "You're the main contractor on site, so when they need a new garden bed done just charge them three or four times the price."<sup>121</sup>

- 2.111** Highlighting the impacts of this type of behaviour, the Transport Workers' Union of NSW, suggested that as a direct result competitive tendering in contracted public transport, 'the quality and safety of the service will inevitably degrade as private bus operators put profits before people'.<sup>122</sup>

### Verification and compliance schemes

- 2.112** In the context of aiming to ensure that contractors are complying with labour standards and other obligations, the committee considered various approaches to enforcement and compliance monitoring in procurement processes, including measures applied in other jurisdictions in Australia.
- 2.113** The committee noted the ACT Government's Procurement (Secure Local Jobs Code), which commenced in September 2020.<sup>123</sup> This requires contractors and subcontractors (unless otherwise excluded) to maintain certification for certain procurement activities of any value in the construction, cleaning, security and traffic management industries. Under the code, a business will need a 'Code Certificate' before they quote, with this confirming the business meets the standards in the code.<sup>124</sup>
- 2.114** Similarly, Victoria has a Jobs Code which came into effect for applicable government agencies on 1 December 2022. This Code aims to ensure that suppliers tendering for threshold procurement contracts or high value procurements contracts are treating workers fairly, such that any business tendering for contracts of this nature must provide a pre-assessment certificate as a pre-condition to eligibility.<sup>125</sup>
- 2.115** Unions NSW called for the NSW Government to implement a Secure Local Jobs Code for procurement, suggesting this would assist in maintaining labour standards. It was of the view that the ACT's code 'is the most effective model'.<sup>126</sup>
- 2.116** Emphasising the importance of labour standards being included in government contracts, the United Workers Union stated that should the NSW Government adopt a version of a 'Local, Fair and Secure Jobs Code', it is 'essential that compliance with the code be specifically written

<sup>121</sup> Evidence, Ms Kylie Flament, Social Enterprise Council NSW and ACT, 25 June 2024, p 3.

<sup>122</sup> Submission 29, Transport Workers' Union of NSW, p 5.

<sup>123</sup> ACT Government, *Government Procurement (Secure Local Jobs) Code 2020*, <https://legislation.act.gov.au/di/2020-278/>.

<sup>124</sup> ACT Government, Procurement ACT – *Secure Local Jobs*, <https://www.procurement.act.gov.au/secure-local-jobs/business>.

<sup>125</sup> Victorian Government, *Fair Jobs Code* (January 2023), <https://content.vic.gov.au/sites/default/files/2023-04/Fair-Jobs-Code-January-2023.pdf>.

<sup>126</sup> Submission 63, Unions NSW, p 17.

into the contracts including the means for investigating non-compliance and resulting enforcement and penalties'.<sup>127</sup>

**2.117** When questioned as to how this may operate, Mr Morey, Unions NSW, suggested that under the code, where there is a breach, the supplier organisation would 'lose a point and your points decrease, much like your licence'.<sup>128</sup>

**2.118** Some stakeholders advocated for a 'two gate' tendering model to be established, similar to the approaches taken in the ACT and Victoria. The Australian Workers Union explained how this model would operate:

The system would require all vendors to demonstrate a commitment to quality, secure employment as a precondition of tender participation. This would be prescribed as a threshold requirement. Once satisfied, suppliers would compete not only on upfront price, but against other key objectives of procurement policy, in the second stage of the process.<sup>129</sup>

**2.119** Expanding on the operation of a two gate system, the Australian Workers' Union set out each step in both their submission and evidence:

- Step 1 – the need for suppliers to obtain a certificate which would verify the meeting of certain employment conditions and labour standards, such as the existence of an enterprise agreement, the supplier being committed to engage staff on a permanent basis where practicable, and previous compliance with work, health and safety, industrial and other legal obligations.
- Step 2 – the supplier being required to submit an Industry Participation Plan, which would address the bid's commitment to local job creation and economic development, as well as local content, as well as providing a bid on price, which would address whole-of-life costs to the purchasing government agency, as opposed to upfront costs only.<sup>130</sup>

**2.120** Other enforcement or compliance initiatives suggested by inquiry participants included:

- the establishment of a Local Jobs First Commissioner, who could manage the certification, 'including periodic audits and managing any complaints that may arise about the company's continued performance against its initial evaluation'<sup>131</sup>
- the use of debarment schemes, such as those in Western Australia and some international jurisdictions, which debar suppliers that have engaged in misconduct or adverse practices.<sup>132</sup>

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<sup>127</sup> Submission 38, United Workers Union, p 12.

<sup>128</sup> Evidence, Mr Morey, 3 July 2024, p 10.

<sup>129</sup> Submission 57, Australian Workers' Union, p 4.

<sup>130</sup> Submission 57, Australian Workers' Union, pp 4-5, Evidence, Mr Ayoub, 26 June 2024, p 3.

<sup>131</sup> Submission 14, Australian Manufacturing Workers' Union, p 3.

<sup>132</sup> Submission 38, United Workers Union, p 12, Submission 57, Australia Workers' Union, p 4, Submission 18, NSW Independent Commission Against Corruption, p 10.

**2.121** On 1 September 2024 the NSW Government announced procurement reforms to establish a debarment regime to ban suppliers who engage in serious misconduct or abuse of trust from doing business with the NSW Government.<sup>133</sup>

**2.122** Another suggestion put forward was the establishment of a system that allowed for third party agencies to report back to government on any instances in which breaches of work standard or conditions was found in supply chains. On this point, Mr Igor Nossar and Mr Luigi Amorasano stated that:

This 'report back' mechanism will also create a powerful commercial incentive for each supplier to proactively increase cooperation with these contractually empowered third party agencies in jointly creating the necessary "culture of compliance" throughout each respective supply chain performing this procurement work.<sup>134</sup>

**2.123** In evidence to the committee, Mr Nossar noted this to be 'a tried and tested model in the area of textile, clothing and footwear [industry]'.<sup>135</sup> Explaining it in more detail, Mr Nossar outlined that this model has three elements to it:

- the ability for government procurers to track the flow of their work through the various layers of supply chains
- a capability to crosscheck the information that's derived from tracking the flow of work in order to ensure its accuracy, especially in 'situations of rampant black market operating'
- an obligation for the tracking agencies to report back to government about what has been found in the supply chain, so that 'there can be a prompt, low-cost, effective remedy to the problems of illegality in relation to the minimum standards for workers rather than expensive bureaucratic and other legal processes'.<sup>136</sup>

**2.124** Mr Nossar highlighted that this proposed approach could complement other verification processes.<sup>137</sup>

### *Ethical Clothing Australia Accreditation Program*

**2.125** The committee received evidence about the Ethical Clothing Australia's Code of Practice, incorporating Outworkers, which is a voluntary, vendor-paid accreditation program, which provides labour market governance in the local textile, clothing and footwear industry.<sup>138</sup>

<sup>133</sup> Media release, NSW Government, 'Dodgy suppliers to be banned from NSW Government contracts', 1 September 2024, <https://www.nsw.gov.au/media-releases/dodgy-suppliers-to-be-banned-from-nsw-government> contracts#:~:text=For%20the%20first%20time%2C%20the,to%20comply%20with%20taxation%20laws.

<sup>134</sup> Submission 22, Luigi Amorasano and Igor Nossar, p 2.

<sup>135</sup> Evidence, Mr Igor Nossar, Independent Scholar, 3 July 2024, p 40.

<sup>136</sup> Evidence, Mr Nossar, 3 July 2024, p 40.

<sup>137</sup> Evidence, Mr Nossar, 3 July 2024, p 45.

<sup>138</sup> See, Ethical Clothing Australia, *Ethical Clothing Australia's Code of Practice including Homeworkers* (1 February 2021), <https://ethicalclothingaustralia.org.au/wp-content/uploads/2021/02/Code-of->

- 2.126** Ethical Clothing Australia highlighted that this Code of Practice is designed to assist businesses to ensure that they, and all their outsourced supply chain, comply with industry specific legislation and workplace laws. It mandates compliance with existing legal obligations but 'extends the liability of some accredited manufacturers to cover unpaid remuneration to outworkers within their outsourced supply chains'. As highlighted by Ethical Clothing Australia, this provision addresses the high rates of exploitation of workers within textile, footwear and clothing supply chains.<sup>139</sup>
- 2.127** In considering how this type of accreditation scheme could interact with the Modern Slavery legislation operating in New South Wales, Ms Rachel Reilly, National Director, Ethical Clothing Australia, explained that the Victorian Government had, under its equivalent buy local scheme 'Buy Victoria' a policy that 'mandated that to be registered on its ethical supplier register, government buyers would have to verify that the supplier was on its register 'mandates the local....ensuring Ethical Clothing Australia accreditation is the benchmark'.<sup>140</sup>
- 2.128** Ms Reilly added that Ethical Clothing Australia accreditation could assist the NSW Government to mitigate modern slavery risks, given the textile, clothing and footwear is a high-risk industry.<sup>141</sup>
- 2.129** The potential benefits of this type of accreditation were also noted by the CFMEU (Manufacturing Division). Given there can be 'sham contracts' in the textile, clothing and footwear industry, where workers do not receive minimum wages, paid leave or superannuation, the Union argued that the 'role of the ECA and its Code of Practice remains critical to ensuring ongoing monitoring, compliance and education in this industry'.<sup>142</sup>
- 2.130** In answers to questions on notice, the committee was informed about the annual accreditation fees for businesses involved in the scheme, which cover the cost of compliance audits as well as marketing benefits and administration. Ethical Clothing Australia explained that the fee is based on a business's local manufacturing and considers the value of outsourcing and the number of in-house workers. Between 2017-2023, 49 businesses in New South Wales applied for this accreditation.<sup>143</sup>

### **Implementation of culture standards**

- 2.131** Some inquiry participants also discussed how culture standards could be promoted within government procurement processes, particularly in relation to standards that can improve health and wellbeing outcomes for workers in some sectors.
- 2.132** Ms Diana Burgess, Project Manager, Construction Industry Culture Taskforce, provided evidence to the committee about the work of the Construction Industry Culture Taskforce in

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Practice\_FA-1.pdf; Evidence, Ms Rachel Reilly, National Director, Ethical Clothing Australia, 3 July 2024, pp 2-5.

<sup>139</sup> Submission 15, Ethical Clothing Australia, p 10.

<sup>140</sup> Evidence, Ms Reilly, 3 July 2024, p 4.

<sup>141</sup> Evidence, Ms Reilly, 3 July 2024, p 5.

<sup>142</sup> Submission 11, CFMEU (Manufacturing division), p 12.

<sup>143</sup> Answers to questions on notice, Ethical Clothing Australia, 31 July 2024, p 5.

aiming to create a more sustainable construction industry by improving the culture and experience of workers on sites.<sup>144</sup>

- 2.133** At a hearing, Ms Burgess emphasised how ‘procurement is a critical lever for driving change’, explaining that a culture standard should be embedded into procurement processes, to create a ‘minimum standard of cultural experience for people within our industry’.<sup>145</sup>
- 2.134** Ms Burgess outlined how this type of standard would aim to address a range of factors, such as:
- time for life – by placing a 50 hour working cap on salary, wage and subcontractor positions to 'enable greater mental health and wellbeing and greater diversity'
  - diversity and inclusion – including a requirement for having greater female representation, including in decision-making roles, along with gender pay mitigations
  - wellbeing - ensuring fatigue management programs are established to allow workers sufficient time to recover, for example where a high delivery period in a project occurs.<sup>146</sup>
- 2.135** Mr Josh Murray, Secretary, Transport for NSW, informed the committee that the Culture Standard was being trialled in six projects nationally, but specifically on the Mulgoa Road Stage One project in New South Wales. He added that Transport for NSW expects to incorporate the Culture Standard 'in all of our major transport procurement going forward...[and] hope[s] to share that with the industry more broadly'.<sup>147</sup>
- 2.136** In connection to this trial, Ms Burgess confirmed that the Culture Standard research outcomes would be released at the end of 2024.<sup>148</sup>
- 2.137** In a related context, Australians for Mental Health called for the Procurement Policy Framework to be updated to mandate a mental health and wellbeing risk assessment and mitigation plan.<sup>149</sup>
- 2.138** Mr Chris Gambian, Executive Director, Australians for Mental Health, advocated that the government has an obligation to interrogate prospective suppliers, in creating mentally healthy and safe workplaces.<sup>150</sup>
- 2.139** In the context of ensuring working environments do not create health risks, Mr Gambian contended that there needs to be verification of a potential supplier’s credibility and proposal, stating:

I think that the credibility of the written word on a particular project proposal needs to be verified against the track record. How you do that, I think, is a more open question but recognition that we've had some pretty bad behaviour in a lot of industries over the

<sup>144</sup> Evidence, Ms Diana Burgess, Project Manager, Construction Industry Culture Taskforce, 25 June 2024, p 32.

<sup>145</sup> Evidence, Ms Burgess, 25 June 2024, p 32.

<sup>146</sup> Evidence, Ms Burgess, 25 June 2024, p 34.

<sup>147</sup> Evidence, Mr Josh Murray, Transport for NSW, 2 April 2024, p 37.

<sup>148</sup> Evidence, Ms Burgess, 25 June 2024, p 40.

<sup>149</sup> Submission 45, Australians for Mental Health, p 3.

<sup>150</sup> Evidence, Mr Chris Gambian, Australians for Mental Health, 25 June 2024, pp 35-36.

years; there's a reason we have this uptick in the number of psychosocial injury claims through the workers comp system. We've had some bad working environments.

I don't think it's necessarily a level playing field right now. If you're a prospective supplier that has a good track record, you should be recognised for that. And if you're a prospective supplier that has a terrible track record, then I think government has an obligation to ask a few more questions to interrogate what is actually happening in the workplace...<sup>151</sup>

**2.140** Mr Gambian advocated for progress reporting and compliance, to minimise the risk of mental health issues or psychosocial injuries. He stated that a regular compliance regime would mean 'businesses are incentivised to create constructive working environments', in order to create mentally healthy and safe workplaces.<sup>152</sup>

**2.141** When asked whether the embedding of culture standards or requirements could add another layer to a procurement process that some may consider is complicated or undesirable, Ms Burgess explained that 'it's the only lever that we have to be able to drive change through the supply chain from that head contract point'. She added:

A lot of what the CICT is currently focusing on is how to minimise bureaucracy and minimise administration in the delivery of this. It may be some initial work to be able to put together the first reports but then the industry should get used to the asks within that culture standard and be able to roll them out more systematically, which is why staged implementation with a leaning in, if you like, of requirements would be more palatable than a day zero countdown where everything has to be implemented from day one.

It eases people into that approach. But I definitely take the point that the management of the administration around this is something that's absolutely critical.<sup>153</sup>

### **Direct employment opportunities**

**2.142** Given government agencies can contract out employment opportunities via a competitive process, the committee also considered whether there are more direct employment opportunities.

**2.143** The committee noted that outsourcing of employment has been a requirement of some agencies in order to acquire certain skillsets, capability and expertise. For example, Ms Laura Christie, Deputy Secretary - Digital.NSW and Government Chief Information and Digital Officer, Department of Customer Service, highlighted that there was currently a struggle within the agency to hire permanent ICT staff, noting 'skills shortages...[and] the context of government not necessarily being the most attractive digital place to work' for some in this sector.<sup>154</sup>

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<sup>151</sup> Evidence, Mr Gambian, 25 June 2024, p 35.

<sup>152</sup> Evidence, Mr Gambian, 25 June 2024, pp 35-36.

<sup>153</sup> Evidence, Ms Burgess, 25 June 2024, pp 37-38.

<sup>154</sup> Evidence, Ms Laura Christie, Deputy Secretary – Digital,NSW and Government Chief Information and Digital Officer, NSW Department of Customer Service, 2 April 2024, p 11.

- 2.144** Similarly, Mr Murray, Secretary, Transport for NSW, explained that while there has been a reduction of consultants, contractors and labour hire within the department, there is still a need to ensure we get the best and brightest to provide some of our major projects'.<sup>155</sup>
- 2.145** Mr Murat Dizdar, Secretary, NSW Department of Education, also noted that use of a contingent workforce has been necessary where they 'need the ongoing repeatable expertise in the organisation'. Mr Dizdar explained though, that where possible, the department has been converting some roles into permanent roles in the organisation, given sometimes they may be paying more for contingent labour.<sup>156</sup>
- 2.146** It was also suggested by some inquiry participants that the NSW Government ought to consider the merits of directly employing people in some industries, in roles which have typically been outsourced. For example, Ms Gatfield, United Workers Union, discussed the outsourcing of approximately 7,000 cleaners, who clean schools, offices, courthouses and a range of other government buildings.<sup>157</sup>
- 2.147** Ms Gatfield informed the committee that cleaners in the ACT, Tasmania, Queensland and Western Australia are all directly employed, with states maintaining transparent cleaning standards and collective agreements. As a result of direct employment, she added that the ACT Department of Education reported that cleaning standards had improved.<sup>158</sup>

## Committee comment

- 2.148** The committee is pleased to see the NSW Government's proposed reforms in relation to prioritising local content within the procurement framework. The changes will support local industries and boost local jobs, enabling local businesses to have greater opportunities to secure government contracts.
- 2.149** The committee also acknowledges the important role that will be played by the NSW Jobs First Commission, who will oversee the implementation and enforcement of local content, job creation, small business and ethical supply chains. The benefits of having a stronger local content policy within government procurement processes are clear. Not only will local suppliers and vendors be supported and given opportunities to grow, capitalise and become more competitive, the economic and social wellbeing of the state will be enhanced.
- 2.150** In this regard, the committee notes that many stakeholders in this inquiry expressed their support for an increase in tender weightings for local content. Several also rejected the view that this approach, or the mandating of a local content policy, would impact on the state's free trade obligations. The committee agrees, and notes that a number of other Australian states and territories have adopted similar local content approaches without offending any free trade obligations. The committee, therefore, looks forward to the NSW Government's implementation of these reforms, and the uplift they will create for local businesses and workers.

<sup>155</sup> Evidence, Mr Murray, 2 April 2024, p 36.

<sup>156</sup> Evidence, Mr Murat Dizdar, Secretary, NSW Department of Education, 3 April 2024, p 6.

<sup>157</sup> Evidence, Ms Gatfield, 3 July 2024, p 34.

<sup>158</sup> Evidence, Ms Gatfield, 3 July 2024, pp 33 and 35.



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**Finding 1**

That there is broad support across stakeholders for procurement measures that prioritise local content and support local businesses.

**Finding 2**

That while Australia is party to a number of international trade agreements, these should not be seen as a barrier to local content provisions as other jurisdictions both in Australia and international are able to prioritise local content without breaching international obligations.

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- 2.151** The committee believes that the NSW Government can play a significant role in supporting local businesses to innovate and engage in government procurements. The NSW Government has significant purchasing power, and can use its levers to stabilise market demand and promote greater innovation, particularly in terms of local manufacturing and emerging industries, and uplift workforce training and education.
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**Finding 3**

That government procurement practices have a role in stabilising market demand to allow more surety for local businesses, empowering them to grow and innovate, providing benefits to the State economy.

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- 2.152** While we are pleased to see that there will be an independent advisory board established by the NSW Government, in enacting the Jobs First Commission, to ensure there is engagement on government procurement policies and strategies, we believe it is vital for the NSW Government to harness all the opportunities it can to build, support and encourage innovation by local suppliers and businesses.

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**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.

**Recommendation 2**

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

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**2.153** The committee recognises the important role of the NSW Anti-Slavery Commissioner in preventing modern slavery, particularly in ensuring that due diligence procedures are in place to ensure that goods and services procured by Government agencies are not the product of modern slavery. We commend the Commissioner for paving the way for New South Wales to better identify, manage and prevent modern slavery practices in New South Wales.

**2.154** The committee acknowledges that procurement processes can be harnessed to prevent modern slavery occurring in supply chains, and that the inclusion of modern slavery model tender clauses in contracts can be beneficial for procuring agencies. The committee notes that these clauses have, to date, not been mandated, although they are considered guidance and are likely to be considered an auditable standard against which a modern slavery audit would be conducted. The committee is of the view that the NSW Government should mandate the use of modern slavery model tender clauses by procuring government agencies, to ensure these clauses are inserted in all contracts where modern slavery presents a risk.

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**Finding 4**

That while the modern slavery clauses developed by the NSW Anti-slavery Commissioner are currently issued as guidance, the guidance is likely to be treated at the auditable standard against which a modern slavery audit would be conducted.

**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.

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**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.

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- 2.155** The committee recognises that NSW Government agencies have obligations to take reasonable steps to ensure they do not procure products of modern slavery. The committee heard that there is also a community expectation that the Government does not engage suppliers that do not adhere to relevant policies and legislation. The committee is of the view that procuring government agencies should conduct compliance history checks prior to engaging a supplier to ensure that the government agency is meeting both its modern slavery obligations and community expectations.
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**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.

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- 2.156** The committee heard throughout this inquiry how procurement processes can be leveraged to ensure businesses comply with legal minimum standards for labour, particularly in industries at high risk of modern slavery and other forms of non-compliance like the cleaning, security and hospitality industries. Indeed, the committee heard how undercutting of legal wages and conditions can be used by suppliers to win contracts in these industries.
- 2.157** The committee notes that when suppliers win tenders based on a price that does not comply with minimum labour standards, or does not appropriately cost the scope of the contract, this impedes fair and open competition. The committee agrees that there would be benefit in a tool that enables procuring government agencies to determine a labour baseline cost to ensure suppliers are competing on a level playing field. This would be particularly useful in industries that have been deemed as high risk by the modern slavery commissioners.
- 2.158** The committee was encouraged by initiatives such as the Cleaning Accountability Framework which has, through multi-stakeholder collaboration, developed a pricing tool to enable property managers and building owners in the cleaning industry to calculate a labour baseline cost that allows them to determine if bids have appropriately taken into consideration minimum labour standards and deliver on the scope of the contract. The pricing tool helps to level the playing field and avoid a 'race to the bottom'. The committee also supports greater consideration being given to direct employment opportunities for some government services, rather than the use of contingent workforces, to provide greater transparency.
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**Finding 5**

That certain industries that procuring government agencies engage with are at higher risk of modern slavery and non-compliance with labour laws, such as cleaning, security and hospitality.

**Finding 6**

That current procurement practices do not enable transparency, particularly down supply chains, of suppliers providing government services, and it can be difficult for procuring agencies to determine if there is demonstrably enough money in contracts to meet legal minimum obligations.

**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.

**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.

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**2.159** The committee also received a significant amount of evidence on mechanisms which could be adopted to strengthen supplier compliance and due diligence, including various certification codes in other jurisdictions and compliance systems.

**2.160** In the context of this evidence, and the experience in other jurisdictions, the committee believes that the existing procurement framework does not go far enough in terms of enforcement and compliance and that more could be done to deter poor supplier conduct. While ensuring minimum legal standards are met for high-risk industries, and some certification mechanism operating prior to contracts being awarded might also be of benefit, the committee believes there would also be merit in also implementing other enforcement measures. One such measure that the committee believes should be strengthened and applied more systematically is post-award compliance checks for legal minimum standards, across all areas of contracts.

**2.161** In this regard, the committee notes that the Jobs First Commission, which will soon be established by the NSW Government, will likely undertake some compliance and enforcement role with respect to the procurement of local content and be tasked with managing the debarment scheme. Sitting alongside this system needs to be other measures which will ensure broader compliance with supplier and agency requirements and contractual conditions in procurement processes.

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**Finding 7**

That post-award contract and supplier compliance checks are not carried out frequently or systematically by government procuring agencies.

**Recommendation 8**

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

**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.

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- 2.162** The committee also believes that is merit in the NSW Government, potentially through the new Jobs Commission, undertake mapping of existing legal, regulatory and policy obligations procuring agencies should comply with, in order to improve awareness in the public sector and promote delivery of goods and services consistent with regulatory, policy and contractual requirements. This would also potentially identify areas of duplication or ambiguity which could be streamlined or refined.
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**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.

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## Chapter 3 Social procurement, environmental and sustainability outcomes

This chapter focuses on how government procurement practices can drive social, environmental and sustainability outcomes for the state. It considers the setting of targets in relation to these outcomes, in addition to certification schemes and other measures which could be implemented to validate or enforce the social impact of procured businesses.

### Social procurement outcomes

- 3.1** The NSW Government Procurement Policy Framework requires NSW government agencies to incorporate procurement activities that ‘support economic participation, social outcomes, develop skills and create jobs for citizens of NSW’.<sup>159</sup>
- 3.2** Under the framework, NSW Government agencies are also ‘encouraged to buy goods and services from social enterprises to support economic and social change for disadvantaged people. Social enterprises are defined as ‘a business that trades to intentionally drive social or environmental change’.<sup>160</sup>
- 3.3** According to the NSW Government’s *Small and Medium Enterprise and Regional Procurement Policy*, this approach can provide social and economic opportunities, including initiatives which support access to training and protect the environment.<sup>161</sup>
- 3.4** In terms of goods and services contracts valued at \$3 million or more, an agency must include in the non-price evaluation criteria as a minimum 10 per cent allocation to small and medium enterprise participation and 10 per cent allocated to support the government’s economic, ethical, environmental and social priorities. The Policy further states that: ‘Where no weightings are used, small and medium enterprise participation and support for the NSW Government’s economic, ethical, environmental and social priorities should be given appropriate qualitative consideration’.<sup>162</sup>

### Social procurement targets and weightings

- 3.5** A number of inquiry participants discussed the benefit of setting targets and weightings within the procurement framework to help promote social procurement outcomes. Some stakeholders

<sup>159</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 30, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf).

<sup>160</sup> NSW Government, *Buyer guidance: Social enterprises*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/social-enterprises>.

<sup>161</sup> NSW Government, *Buyer guidance: Social enterprises*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/social-enterprises>.

<sup>162</sup> NSW Government, *Small and Medium Enterprise and Regional Procurement Policy* (1 July 2021), p 8, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0010/990478/0621-01\\_Procurement-Policy-Reports\\_SME-and-Regional-Procurement-Policy\\_v5a.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0010/990478/0621-01_Procurement-Policy-Reports_SME-and-Regional-Procurement-Policy_v5a.pdf).

also discussed the approach to social procurement taken in other jurisdictions, including international jurisdictions.

- 3.6** Ms Tara Anderson, Chief Executive Officer, Social Traders, contended that ‘public spend should contribute to the Government’s policy agenda...[and] social procurement is the mechanism to achieve this’. Ms Anderson advised the committee that there is ‘a significant opportunity to unlock additional social procurement across New South Wales and, in doing so, create far greater value for money by considering best value in procurement’.<sup>163</sup>
- 3.7** In its submission, Social Traders recommended that there be specific procurement targets to drive growth across specific suppliers as part of a potential broader social procurement framework, as demonstrated in the Victorian Government’s Social Procurement Framework. As part of this process, Social Traders called for the integration of social enterprise procurement spend into existing procurement practices. Some suggested steps to achieve this were:
- conducting assessments of current procurement spending
  - identification of where social procurement opportunities could be embedded, and
  - engagement with certified social enterprises to explore their capabilities and products or services.<sup>164</sup>
- 3.8** Social Traders noted that the formation of collaborative partnerships with social enterprise intermediaries, like themselves, would support the establishment of realistic and impactful social procurement outcomes. It stated that these actions can ‘can lay the groundwork and lead to a structured and impactful social procurement strategy in NSW’.<sup>165</sup>
- 3.9** Ms Anderson explained that prior to implementing a target, steps would be required to map supplier capability, which could include reviewing government supplier information across government agencies.<sup>166</sup>
- 3.10** Ms Anderson also outlined how she expected that the supplier base would grow with market demand when a target is introduced, noting that this was the experience in Victoria. Ms Anderson explained that there are 100 certified social enterprises in New South Wales, whereas in Victoria there is 250. She added: ‘When a target is introduced, we see more social enterprises suppliers get certified so that they can access these procurement opportunities, so that would grow’.<sup>167</sup>
- 3.11** Ms Anderson also suggested that the targets could be incremental as opportunities grow, similar to the Commonwealth Government’s Indigenous Procurement Policy which started at 1 per cent and shifted to 3 per cent. Ms Anderson told the committee that 1 per cent ‘is a good place’ to start.<sup>168</sup>

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<sup>163</sup> Evidence, Ms Tara Anderson, Chief Executive Officer, Social Traders, 4 July 2024, p 2.

<sup>164</sup> Submission 5, Social Traders, p 11.

<sup>165</sup> Submission 5, Social Traders, p 11.

<sup>166</sup> Evidence, Ms Anderson, 4 July 2024, p 5.

<sup>167</sup> Evidence, Ms Anderson, 4 July 2024, p 5.

<sup>168</sup> Evidence, Ms Anderson, 4 July 2024, p 5.

- 3.12** Reflecting on the experiences in other jurisdictions, the Social Enterprise Council of NSW and ACT also highlighted how Victoria's Social Procurement Framework objectives have resulted in significant growth for social enterprises, by mandating a minimum social procurement spend, such as a percentage of procurement value on large contracts.<sup>169</sup>
- 3.13** Ms Kylie Flament, Chief Executive Officer, Social Enterprise Council of NSW and ACT, contended that the existing procurement framework is ineffective in encouraging purchase from social enterprises, stating that it 'has no teeth'. Ms Flament suggested that a percentage spend on social procurement, along with social and environmental impact weightings would be beneficial.<sup>170</sup>
- 3.14** In its submission, the Social Enterprise Council of NSW and ACT explained that the adoption of mandatory weightings for social outcomes when evaluating tenders 'supports local communities...delivers a social return on investment ...[and] also ensures diverse perspectives in project execution'.<sup>171</sup>
- 3.15** The Western Sydney Leadership Dialogue also reflected positively on the policy approaches in Victoria and Queensland, noting the benefits of embedding social procurement within the government's framework:
- The development of a comprehensive, whole-of-government framework would bring together existing policies to fully embed social procurement across the NSW Government and produce greater social value outcomes. While elements of this framework exist in various silos of government, we see a need for a central framework which can be implemented, monitored and refined to optimise the return to communities from taxpayer-funded projects.<sup>172</sup>
- 3.16** The committee also received evidence about the implementation of social procurement frameworks in some international jurisdictions. Social Traders noted that countries like Scotland, the United Kingdom, Canada and New Zealand have taken steps in promoting social procurement. The committee was informed that:
- Scotland's sustainable procurement is driven by legislation and policy that prioritises social, environmental and economic well-being into procurement practices
  - the United Kingdom implemented specific legislation which encourages social impact considerations in service commissioning
  - Canada is involving social enterprises in government supply chains for community benefit and economic inclusivity
  - New Zealand procurement rules require agencies to consider how they can create opportunities for New Zealand businesses, including social enterprises.<sup>173</sup>
- 3.17** The Social Enterprise Council of NSW and ACT called for an explicit obligation to consider social and environmental value in the NSW Procurement Policy Framework, noting this was

<sup>169</sup> Submission 16, Social Enterprise Council of NSW and ACT, p 8.

<sup>170</sup> Evidence, Ms Flament, 25 June 2024 p 2.

<sup>171</sup> Submission 11, Social Enterprise Council of NSW and ACT, p 9.

<sup>172</sup> Submission 10, Western Sydney Leadership Dialogue, p 1.

<sup>173</sup> Submission 5, Social Traders, pp 8-9.



the approach taken in the United Kingdom through the *Public Services (Social Value) Act 2012* (UK).<sup>174</sup>

### **Procurement to support Aboriginal businesses, disability employment organisations and women-led businesses**

- 3.18** In the context of achieving social impact through procurement, some inquiry participants discussed the opportunities for government procurement to support Aboriginal businesses, women-led organisations and people living with disabilities. In this regard, the committee considered the effectiveness of the existing procurement framework and procurement policies in engaging with these businesses.
- 3.19** The NSW Government Procurement Framework states that the government uses procurement to support small and medium sized businesses, Aboriginal businesses, regional businesses, disability employment organisations and social enterprises. The Framework also notes that the government is using substantial infrastructure investments to support jobs and skills development for a range of workers including Aboriginal people, apprentices and young people.<sup>175</sup>
- 3.20** In the Framework, agencies must comply with the Aboriginal Procurement Policy to support employment opportunities for Aboriginal people through government procurement activities. The policy, dated January 2021, requires government agencies to:
- publish an annual Aboriginal Participation Strategy that describes how the agency will meet its obligations under the policy
  - include minimum requirements for 1.5 per cent Aboriginal participation in all contracts valued at \$7.5 million or above by requiring either at least 1.5 per cent of the contract value to be subcontracted to Aboriginal businesses and/or at least 1.5 per cent of the contracts Australian-based workforce to be Aboriginal or Torres Strait Islander peoples and/or at least 1.5 per cent of the contract value to be applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.<sup>176</sup>
- 3.21** The NSW Aboriginal Land Council noted that since the introduction of the NSW Government's Aboriginal Procurement Policy, over 1,000 Aboriginal businesses are now registered to provide goods and services to the NSW Government.<sup>177</sup>
- 3.22** The NSW Coalition of Peak Aboriginal Organisations explained that the Aboriginal Procurement Policy is consistent with the NSW Government's commitment to deliver on its targets under the *National Agreement on Closing the Gap*, in accordance with Priority Reform 5 – Employment, Business Growth and Economic Prosperity. It noted that 'procurement policies

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<sup>174</sup> Submission 16, Social Enterprise Council of NSW and ACT, p 8.

<sup>175</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 30, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf).

<sup>176</sup> NSW Government, *Aboriginal Procurement Policy* (January 2021), p 4, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/949174/app\\_policy\\_jan\\_2021.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0007/949174/app_policy_jan_2021.pdf)

<sup>177</sup> Submission 36, NSW Aboriginal Land Council, p 2.

can provide an opportunity to develop and grow Aboriginal owned and operated businesses by leveraging the Government Procurement spending'.<sup>178</sup>

**3.23** The NSW Coalition of Peak Aboriginal Organisations also outlined the targets, including that the NSW Government spend 3 per cent of the total number of goods and services contracts to Aboriginal businesses, and that there is an aim of supporting an estimated 3,000 full time equivalent opportunities for Aboriginal and Torres Strait Islander peoples through NSW Government procurement activities.<sup>179</sup>

**3.24** The NSW Aboriginal Land Council suggested that in regional communities, Aboriginal procurement targets should be reflective of the percentage of Aboriginal people in the population. The Council provided an example of this, stating that in communities such as Nowra, 'where Aboriginal people make up 10% of the population, the percentage of government contracts awarded to Aboriginal businesses organisations could also be 10%'.<sup>180</sup>

**3.25** Despite the Aboriginal Procurement Policy operating to enhance economic opportunities for Aboriginal businesses, some concerns were put forward by the NSW Aboriginal Land Council and the NSW Coalition of Peak Aboriginal Organisations, including:

- government officials dividing up contracts into smaller contracts, to meet aboriginal procurement target requirements<sup>181</sup>
- government officials only procuring from a set number of Aboriginal suppliers, rather than a range of Aboriginal suppliers<sup>182</sup>
- government agencies inconsistently implementing, monitoring and reporting on Aboriginal Procurement Policy outcomes<sup>183</sup>
- that smaller Aboriginal business can struggle with the tender writing process due to a lack of resources, often leading them to hire contractors to undertake this work.<sup>184</sup>

**3.26** The committee also heard about the issue whereby a non-Indigenous business partners with an Aboriginal business to win contracts under the NSW Aboriginal Procurement Policy, which the NSW Aboriginal land Council stated was 'common with many joint ventures'. The Council explained that where this occurs, there is a lack of consequence or accountability for the businesses failing to meet requirements:

...it seems in several of the joint ventures the decision making and most of the actual work is undertaken by the non-Indigenous business partner. The primary issue in these cases appears to be a lack of accountability, with few repercussions for those businesses that misrepresent themselves and who do not honour their commitments to sub-contract to Aboriginal businesses or employ local Aboriginal people. To provide greater accountability, businesses that fail to meet local employee targets or are found to not be

<sup>178</sup> Submission 46, NSW Coalition of Peak Aboriginal Organisations, p 2.

<sup>179</sup> Submission 46, NSW Coalition of Peak Aboriginal Organisations, p 2.

<sup>180</sup> Submission 36, NSW Aboriginal Land Council, p 5.

<sup>181</sup> Submission 36, NSW Aboriginal Land Council, p 4.

<sup>182</sup> Submission 36, NSW Aboriginal Land Council, p 4.

<sup>183</sup> Submission 46, NSW Coalition of Peak Aboriginal Organisations, p 3.

<sup>184</sup> Submission 36, NSW Aboriginal Land Council, p 4.

a genuine Aboriginal business should face financial consequences, such as a fine or a ban on applying for government contracts for a period of time.<sup>185</sup>

**3.27** Other social enterprises conveyed similar issues with being named in tenders but then not being engaged during the contract stage. Ms Flament termed this 'social washing'.<sup>186</sup>

**3.28** Various recommendations were suggested by the NSW Aboriginal Land Council, including:

- the need for greater accountability for businesses who do not meet local employee targets or are found not to be a genuine Aboriginal or other minority business
- providing incentives for state owned corporations and local councils to adopt Aboriginal Procurement Policy requirements
- education to government staff and procurement officials to ensure understanding of Aboriginal Procurement Policy requirements.<sup>187</sup>

**3.29** On this last point, Mr Yuseph Deen, Chief Executive Officer, NSW Aboriginal Land Council, noted that capacity and capability building is important, particularly in terms of implementation of the policy, even as it evolves.<sup>188</sup>

**3.30** Mr Yuseph Deen also highlighted the potential benefits that can arise where government contracts are broken up into smaller packages, noting that this can provide Aboriginal businesses with the capacity to bid for those contracts.<sup>189</sup>

**3.31** Indeed, the committee heard how meaningful engagement and participation with Aboriginal businesses can lead to improved economic outcomes for Aboriginal people. Mr Sharif Deen, Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations, explained that the procurement of Aboriginal businesses, including greater participation of Aboriginal people in employment, can boost economic prosperity in the Aboriginal community more broadly, beyond the business or individual contracted.<sup>190</sup>

**3.32** Mr Yuseph Deen added to this point, also highlighting how these benefits can then influence social outcomes related to health and education:

...the downstream impact of more meaningful engagement is increased employment opportunities and more mainstream understandings around the benefits and in terms of the social determinants of health, those sorts of metrics as well. As people have more money in their pocket, as people in the community become more financially stable, there are upticks in education, in health, so on and so forth. It also goes to mentoring and the aspirations of Aboriginal people being able to see their own people run and lead successful businesses.<sup>191</sup>

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<sup>185</sup> Answers to supplementary questions, NSW Aboriginal Land Council, 23 July 2024, p 1.

<sup>186</sup> Evidence, Flament, 25 June 2024, pp 2-3.

<sup>187</sup> Submission 46, NSW Coalition of Peak Aboriginal Organisations, p 6.

<sup>188</sup> Evidence, Mr Yuseph Deen, Chief Executive Officer, NSW Aboriginal Land Council, 25 June 2024, p 9.

<sup>189</sup> Evidence, Mr Deen, NSW Aboriginal Land Council, 25 June 2024, p 11.

<sup>190</sup> Evidence, Mr Sharif Deen, Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations, 25 June 2024, p 13.

<sup>191</sup> Evidence, Mr Deen, NSW Aboriginal Land Council, 25 June 2024, p 13.

- 3.33** The committee also noted that there was a recent review of the Aboriginal Procurement Policy. Mr Sharif Deen acknowledged that the NSW coalition of Aboriginal Peak Organisations was provided with a copy of the revised policy, also acknowledging that the review had dealt with some of the concerns raised by Aboriginal stakeholders and businesses.<sup>192</sup>
- 3.34** The 2023 review of the Aboriginal Procurement Policy by NSW Treasury led to 17 recommendations. Several of these were focused on improving the targets for Aboriginal procurement, with a recommendation that there be a higher annual spend target for procurement with Aboriginal businesses, with this target increased each year. There were also a number of recommendations related to improved reporting, and better support and resources for agencies working with Aboriginal businesses.<sup>193</sup>
- 3.35** The NSW Government has stated that they will consider the recommendations coming out of the review, with the aim of making government processes and procurement procedures more accessible for Aboriginal business and individuals.<sup>194</sup>
- 3.36** In addition to government procurement practices focusing on support for Aboriginal organisations, there was also evidence put forward in this inquiry about enhancing opportunities for disability enterprises and contracts for people with a disability.
- 3.37** In this regard, the committee noted that government agencies can procure through an Australian disability enterprise, which is a not for profit organisation that employs people with disabilities. Operating across a range of industries, with no limit on the maximum contract value and only one single quote being required, agencies are still required to consider the usual procurement objectives.<sup>195</sup>
- 3.38** National Disability Services, the peak body for non-government disability service organisations, advised that the Buy NSW website specifically identifies the BuyAbility website and Director, an initiative it administers, which includes a register of supported employment services funded to provide employment for jobseekers and employees with disability in disability enterprises.<sup>196</sup>
- 3.39** National Disability Services also highlighted that Australian disability enterprises are eligible to use the *Supported Employment Services Award 2020*, which is a Modern Award identified in the *Fair Work Act 2010 (Cth)* and subject to oversight by the Fair Work Commission.<sup>197</sup> Mr Paul Musso, Policy Advisor, National Disability Services, explained that the supported wage system increased wages for these employees, promoting greater consistency.<sup>198</sup>

<sup>192</sup> Evidence, Mr Deen, NSW Coalition of Aboriginal Peak Organisations, 25 June 2024, p 14.

<sup>193</sup> NSW Government, *A summary of the Aboriginal Procurement Policy Review 2023* (September 2023), pp 1-2, [https://info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0005/1204682/aboriginal-procurement-policy-review-report-summary-2023.pdf](https://info.buy.nsw.gov.au/__data/assets/pdf_file/0005/1204682/aboriginal-procurement-policy-review-report-summary-2023.pdf).

<sup>194</sup> NSW Government, *A summary of the Aboriginal Procurement Policy Review 2023* (September 2023), pp 1-2, [https://info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0005/1204682/aboriginal-procurement-policy-review-report-summary-2023.pdf](https://info.buy.nsw.gov.au/__data/assets/pdf_file/0005/1204682/aboriginal-procurement-policy-review-report-summary-2023.pdf).

<sup>195</sup> NSW Government, *Buyer guidance: Australian Disability Enterprises*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/australian-disability-enterprises>.

<sup>196</sup> Submission 6, National Disability Services, p 5.

<sup>197</sup> Submission 6, National Disability Services, p 5.

<sup>198</sup> Evidence, Mr Paul Musso, Policy Advisor, National Disability Services, 3 July 2024, p 66.

- 3.40** Noting that social procurement policies and practice can create 'significant economic and social benefit for jobseekers and employees with disability', National Disability Services recommended:
- annual reporting on the total amount of goods and services that NSW Government agencies purchase from supported employment services
  - increasing purchasing opportunities and a minimum purchasing amount from supported employment services.<sup>199</sup>
- 3.41** In terms of promoting positive outcomes specifically for people with an intellectual disability, the Council for Intellectual Disability called for a general preference for engaging contractors who provide open employment of people with a disability, including people with intellectual disability, and a requirement in major contracts, that contractors employ a substantial number of people with a disability, including people with intellectual disability.<sup>200</sup>
- 3.42** Mr Jim Simpson, Senior Advocate, Council for Intellectual Disability, explained that this proposal should be considered to comparable government initiatives, like where 'there is a ratio of First Nations people and women employed'.<sup>201</sup>
- 3.43** The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) made recommendations for Australia to transition 'away from segregated forms of employment and the payment of subminimum wages'.<sup>202</sup>
- 3.44** Mr Simpson gave anecdotal evidence of subminimum wages being paid in disability enterprises:
- ... we were talking to one of our staff members just yesterday who has worked in open and then segregated employment and then came to us. He related that he was receiving \$2 an hour for the work that he was doing in an Australian disability enterprise. Anecdotally, that's a very common figure, down towards that level.<sup>203</sup>
- 3.45** On the other hand, Mr Musso noted that under the new wage-setting structure set by the Fair Work Commission in 2022:
- I think we will end up seeing probably around 70 per cent of employees working in supported employment services earning around two-thirds of the minimum wage by the end of that three-year period. That is a significant increase, and it does come with some risks to the viability of these organisations, in particular, with attendant job losses for employees with disability—mainly, probably, those employees who have more

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<sup>199</sup> Submission 51, National Disability Services, p 3.

<sup>200</sup> Submission 51, Council for Intellectual Disability, p 5.

<sup>201</sup> Evidence, Mr Jim Simpson, Senior Advocate, Council for Intellectual Disability, 3 July 2024, p 67.

<sup>202</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Inclusive education, employment and housing – Summary and recommendations* (September 2023), p 11, <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%207%2C%20Inclusive%20education%2C%20employment%20and%20housing%20-%20Summary%20and%20recommendations.pdf>.

<sup>203</sup> Evidence, Mr Simpson, 3 July 2024, p 66.

severe disability, who require more on-the-job support. I think they're most at risk of being displaced from the labour market as a result of these changes.<sup>204</sup>

- 3.46** Some stakeholders also called for the NSW Government's procurement framework to better support women-led businesses. To enhance diversity and inclusion in procurement, Entrepreneurial and Small Business Women Australia called for dedicated opportunities for solely owned women led organisations to be incorporated into government procurement, stating that this will enhance the financial security of women in small business. It also suggested:
- that there could be a specialised team dedicated to helping women led businesses secure tenders and ensuring successful contract management
  - enhanced communication is needed, including a strategy for communicating crucial information about procurement opportunities for new entrants
  - more opportunities for previous successful tender participants and external industry experts to join decision making panels
  - the establishment of collaborative networks for resource support and guidance.<sup>205</sup>
- 3.47** Ms Rose noted that in New York targets were introduced in relation to the procurement of women minority owned small businesses, with the aim of supporting the financial independence of women and addressing the challenges women can face in businesses.<sup>206</sup>
- 3.48** In this context, the committee also noted that in the NSW Government's *2023-2024 Gender Equality Budget Statement*, opportunities exist for the government to leverage its purchasing power to facilitate large suppliers to support women in their workforces.<sup>207</sup>

### **Social procurement certification**

- 3.49** The committee also received evidence indicating that there may be benefit in social enterprises being certified for procurement purposes, in order to confirm that social enterprises are legitimate and have substantiated social impact.
- 3.50** The NSW Government outlined that of the 106 social enterprises in New South Wales and 259 social enterprises services in the state, the government engaged with 95 social enterprises in goods and services procurement and 18 through construction procurement activities, in the financial year 2022-2023.<sup>208</sup>
- 3.51** As an organisation that represents a cohort of social enterprises, providing social procurement advocacy, networking, capacity building and financing opportunities, Social Traders outlined

<sup>204</sup> Evidence, Mr Musso, 3 July 2024, pp 66-67.

<sup>205</sup> Submission 9, Entrepreneurial and Small Business Women Australia, p 3.

<sup>206</sup> Evidence, Ms Amanda Rose, Entrepreneurial and Small Business Women Australia, 25 June 2024, p 24.

<sup>207</sup> NSW Government, *Women's Economic Opportunities* (28 February 2023), <https://www.treasury.nsw.gov.au/women-opportunities-review>; Submission 40, NSW Government, p 60.

<sup>208</sup> Submission 40, NSW Government, pp 14-15.

the merits of its 'Social Traders certification' scheme, which it said is 'world leading', has been developed over 5 years and currently has over 565 social enterprises certified across Australia.<sup>209</sup>

**3.52** Social Traders explained that a certification process could be used a means to verify social enterprises, ensuring government investments creates 'measurable and verified social impact', contributing to enhanced accountability and effectiveness in public spending.<sup>210</sup>

**3.53** Explaining this further, Social Traders explained that certification could be used to verify that social enterprises:

- demonstrate a clearly defined social, cultural, or environmental purpose
- derive a substantial portion of their income from trade
- invest efforts and resources into their purpose so that public and community benefit outweighs the private benefit.<sup>211</sup>

**3.54** Ms Anderson, Social Traders, noted the rigour of its certification assessment process, highlighting various activities that complement the process, including an independent advisory group, spot checks and audits, and a complaints and review process which is used to identify when a social enterprise is not operating effectively.<sup>212</sup>

**3.55** Reflecting on this scheme compared to a 'verification' process, which Social Traders described as a 'light-touch assessment of social enterprise status against a minimum set of global standards and is owned overseas by Social Enterprise World Forum', Social Traders noted that its certification process is a 'rigorous and deeper check of social enterprise status including impact outcomes'. It noted that the scheme has been designed specifically for the Australian market, is delivered in Australia and has been trusted by a range of stakeholders for about seven years.<sup>213</sup>

**3.56** The Social Enterprise Council of NSW and ACT also indicated its support for a certification process for social enterprises as part of social procurement, such as that provided by Social Traders.<sup>214</sup>

### **Collaborative tendering**

**3.57** Stakeholders also discussed collaborative tendering approaches for government procurements, where businesses can partner or collaborate when tendering for contracts.

**3.58** The Social Enterprise Council of NSW and ACT explained that this approach generally involves competitors focusing more broadly on quality and outcomes, rather than contract price. It suggested that this approach would 'mitigate cost-cutting, unethical conduct and the consequential erosion of trust between stakeholders'.<sup>215</sup>

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<sup>209</sup> Submission 5, Social Traders, p 5.

<sup>210</sup> Submission 5, Social Traders, p 12.

<sup>211</sup> Submission 5, Social Traders, p 5.

<sup>212</sup> Evidence, Ms Anderson, 4 July 2024, p 5.

<sup>213</sup> Answers to questions on notice, Social Traders, 31 July 2024, p 5.

<sup>214</sup> Submission 16, Social Enterprise Council of NSW and ACT, p 9.

<sup>215</sup> Submission 16, Social Enterprise Council of NSW and Act p 10.

- 3.59** Mr David Harding, Executive Director – Policy and Advocacy, Business NSW, also indicated support for initiatives which ‘encourage smaller players to become government contract ready’, including opportunities to ‘collaborate with peers to provide greater scale and to register on e-procurements and panel arrangements’.<sup>216</sup>
- 3.60** The Australasian Railway Association also expressed its support for a collaborative arrangement for complex rail projects or programs. It highlighted that innovation was best enabled through collaborative models, alliances and early contractor engagement. Further, the Association added that the use of smaller contractors was important for ‘industry diversity, competitiveness and sustainability’.<sup>217</sup>
- 3.61** Some inquiry participants put forward examples of collaborative tendering processes which had worked successfully. For example, Ms Flament shared an example of collaborative tendering where a company, Green Connect, was approached by Wollongong City Council to address waste caused by bikes going into landfill. In that example, Green Connect had worked with a number of local organisations to identify a proposal to recover the bikes and address the Council’s issue.<sup>218</sup>
- 3.62** Ms Helen Sloan, Chief Executive Officer, Southern Sydney Regional Organisation of Councils Inc, also shared a recent example of collaboration with southern Sydney councils, where through a collaborative tender approach, 25 councils were engaged to ‘supply electricity from renewable sources and potentially at lower prices, or at least at a competitive price’.<sup>219</sup>

### **Improvements to data collection and reporting for social procurement**

- 3.63** Inquiry participants also shared views on potential improvements that could be made to provide enhanced transparency and data in relation to the procurement of social enterprises, small businesses and Aboriginal organisations.
- 3.64** In calling for improved data generally of all suppliers on any works, program or project, Nook Studios noted that it is currently not possible to obtain a complete list of all suppliers on a government project or procurement activity, with this impacting small businesses, social enterprises and Aboriginal Community Controlled Organisations.<sup>220</sup>
- 3.65** Ms Mel Flanagan, Founder, Nook Studios, also highlighted that the current Buy.NSW website supported the current approval process but did not include categories around an organisation being a social enterprise.<sup>221</sup>
- 3.66** Ms Sophie Brown, Communications Advisor, Nook Studios, informed the committee of international jurisdictions in which there was open data on suppliers, such as Colombia, which has contracting data ‘completely open, down to the smallest contracts’. The committee was also

<sup>216</sup> Evidence, Mr Harding, 2 April 2024, p 39.

<sup>217</sup> Submission 12, Australasian Railway Association, p 6.

<sup>218</sup> Evidence, Ms Flament, 25 June 2024, p 4.

<sup>219</sup> Evidence, Ms Helen Sloan, Chief Executive Officer, Southern Sydney Regional Organisation of Councils Inc, 4 July 2024, pp 43-44.

<sup>220</sup> Submission 31, Nook Studios, p 31.

<sup>221</sup> Evidence, Ms Flanagan, 25 June 2024, p 23.



advised that Paraguay has 'a platform where small businesses can provide feedback on open tenders'.<sup>222</sup>

**3.67** In this context, Ms Flanagan explained that having greater access to government supplier data would aid questions such as the duration of a project, the stakeholders involved and other parties who organisations could be working with as collaborators, servicing and supplying to the government.<sup>223</sup>

**3.68** The Social Enterprise Council of NSW and ACT, also made suggestions to improve data transparency and accountability, advocating for the NSW government to publish its value of social procurement as a percentage of procurement spending.<sup>224</sup>

### Environmental and sustainability outcomes

**3.69** The committee also considered how procurement practices can deliver positive sustainability and environmental outcomes. The NSW Government's Procurement Policy Framework outlines that sustainable procurement focuses on spending public money efficiently, economically and ethically to deliver value for money on a whole of life basis. It states that sustainable procurement extends the assessment of value for money beyond the sourcing process, considering benefits and risks to the organisation, the community, the economy and impacts on the environment.<sup>225</sup>

**3.70** The Framework explains that sustainable procurement:

- consider how procurement impacts society, the economy and the environment
- provides all suppliers with full and fair opportunities to compete
- seeks innovative solutions to address sustainability throughout the supply chain
- buys only what is needed or seeks sustainable alternatives
- analyses all procurement costs, including benefits for society, environment and the economy.<sup>226</sup>

**3.71** In its submission, the NSW Government noted that the scale, scope and complexity of government procurement requirements can be a powerful enabler for further economic, social and environmental objectives. It also outlined various policies and guides that apply to government procurement in New South Wales that contribute to these objectives, including these strategies and plans administered by the Department of Climate Change, Energy, the Environment and Water:

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<sup>222</sup> Evidence, Ms Sophie Brown, Communications Advisor, Nook Studios, 25 June 2024, p 25.

<sup>223</sup> Evidence, Ms Flanagan, 25 June 2024, p 27.

<sup>224</sup> Submission 16, Social Enterprise Council of NSW and ACT, p 8.

<sup>225</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 30, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf).

<sup>226</sup> Submission 40, NSW Government, p 12.

- Net Zero Plan Stage 1: 2020-2030 – which commits to purchase electricity from low emissions sources of generations and increase electric vehicle targets, among other commitments.
- Waste and Sustainable Materials Strategy - which requires government agencies to procure recycled content on an 'if not, why not' basis. It also aims to drive waste avoidance and recycling in operations.
- Government Resource Efficiency Policy – which sets minimum energy, water use, and clean air emissions standards when procuring certain goods and construction projects, also encouraging the use of recycled content in construction materials and print publication paper.<sup>227</sup>

**3.72** The committee was also informed of the developments relating to sustainability in procurement practices across other jurisdictions in Australia and internationally. In particular, the NSW Environment Protection Authority outlined the following initiatives in other jurisdictions:

- the Victorian Government's Social Procurement Framework which focuses on ensuring social and sustainable procurement to be considered within value for money assessments, including a focus on environmentally sustainable outputs and business practices, along with the implantation of climate change policy objectives.
- the Australian Government's Environmentally Sustainable Procurement Policy, which aims to 'improve environmental sustainability across... climate, the environment and circularity'. This policy guides sustainable procurement decisions and delivers on one of the National Waste Policy Action Plan targets to significantly increase the use of recycled content by governments and industry.
- the Government of the Netherlands Sustainable Public Procurement strategy, which aims to be climate neutral by 2030, reducing raw materials and forming a fully circular economy by 2050, creating employment opportunities and stimulating innovation.<sup>228</sup>

**3.73** Ms Lina Goodman, Chief Executive Officer, Tyre Stewardship Australia, also highlighted that the Canadian government has used government procurement and production stewardship regulation to drive the recycling of products and to leverage and create recycled product demand.<sup>229</sup>

### **Current sustainability developments**

**3.74** The NSW Environment Protection Authority also provided evidence about its intention to make its first Protection of the Environment Policy, in partnership with Infrastructure NSW, for sustainable construction, the promotion of low-carbon design and constructions, and increased use of recycled materials for public infrastructure projects.<sup>230</sup>

<sup>227</sup> Submission 40, NSW Government, p 12.

<sup>228</sup> Submission 60, NSW Environment Protection Authority, pp 10-11.

<sup>229</sup> Evidence, Ms Lina Goodman, Chief Executive Officer, Tyre Stewardship Australia, 4 July 2024, p 15.

<sup>230</sup> Submission 60, NSW Environment Protection Authority, p 5.

- 3.75** At a hearing, Mr Tony Chappel, Chief Executive Officer of the NSW Environment Protection Authority, highlighted that this policy is in draft form, but has been successfully piloted on three Transport for NSW projects, being the Edmonson Park North commuter car park, St Mary's footbridge and the M12 West. Mr Chappel explained that the intention was for this policy to be mandated in infrastructure procurement.<sup>231</sup>
- 3.76** Mr Chappel highlighted that from April 2025, public authorities will be required to consider the Protection of the Environment Policy requirements where infrastructure projects meet a certain threshold, including requirements for reporting of carbon impacts throughout the project lifecycle and preferencing the use of recycled materials on an 'if not, why not' basis and ensuring this is also reported.<sup>232</sup>
- 3.77** Mr Chappel stated that this policy is an 'important instrument to drive sustainable procurement in construction and related market development [including]...other measures outlined in the submission that aim to build and encourage greater sustainability and circularity in procurement'.<sup>233</sup>
- 3.78** In this context, the committee noted that the NSW Environment Protection Authority is able to make protection of the environment policies under the *Protection of the Environment Operations Act 1997(NSW)*, for the purpose of furthering objectives set out in the Act or managing the cumulative impacts on the environment of existing and future human activities.<sup>234</sup>
- 3.79** The committee also heard from Ms Pamela Henderson, Head of Technical Services – Infrastructure and Place, Transport for NSW, on the implementation of the Sustainable Infrastructure Program in her agency. Ms Henderson advised that the program encompasses sustainability considerations within procurements, with a focus on the development and delivery phases in projects including 'the improvement in materials, the reuse of recycled materials and the uplift in percentage content of recycled materials that we allow in our infrastructure'.<sup>235</sup>
- 3.80** Transport for NSW explained that minimum requirements in relation to environmental and sustainability outcomes are included within major project contracts. These are developed by specialist teams and form parts of project standards, specifications and technical requirements, which are then included in documentation for procurement processes.<sup>236</sup>
- 3.81** The committee was also informed that compliance with these requirements during project delivery is monitored, including on sustainability outcomes, carbon, as it is aligned to key project design and construction milestones.<sup>237</sup>

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<sup>231</sup> Evidence, Mr Chappel, 4 Jul 2024, p 8.

<sup>232</sup> Evidence, Mr Chappel, 4 Jul 2024, p 7.

<sup>233</sup> Evidence, Mr Chappel, 4 Jul 2024, p 7.

<sup>234</sup> Submission 60, NSW Environment Protection Authority, p 6.

<sup>235</sup> Evidence, Ms Pamela Henderson, Head of Technical Services – Infrastructure and Place, Transport for NSW, 4 July 2024, p 22.

<sup>236</sup> Answers to questions on notice, Transport for NSW, 1 August 2024, p 7.

<sup>237</sup> Answers to questions on notice, Transport for NSW, 1 August 2024, p 7.

**3.82** However, Ms Henderson highlighted that outcomes of the Sustainable Infrastructure Program did not include a requirement to specify the nominal percentage for recycled materials to be used on a project, but rather placed an emphasis on achieving the best carbon outcome.<sup>238</sup>

### **Barriers to implementing sustainable and environmental initiatives**

**3.83** Stakeholders told the committee that there were barriers to implementing sustainability and environmental initiatives within current procurement practices. For example, Ms Jaana Quaintance-James, Chief Executive Officer, Australian Fashion Council, shared her perspective from the local textile industry, highlighting a lack of confidence in the sector and the volumes which a buyer may be able to procure as barriers. Further, Ms Quaintance-James stressed that there is an opportunity for government procurement to play a role in changing this perception, including through policy directions.<sup>239</sup>

**3.84** Similarly, Mr Eric Phu, Co-founder, Citizen Wolf, suggested that the government has a strong role to play, not specifically as a legislator, but as the largest procurer, to enforce procurement standards which can change the market.<sup>240</sup>

**3.85** Mr Adrian Jones, BlockTexx, also emphasised that the government has the 'power to drive market change, reduce risk and attract private capital into the future circular economy'.<sup>241</sup> As an example, Mr Jones told the committee that if the government was to mandate the use of recycled plastics for a period, it would increase capital into the market, increase scale and lower recycled product prices, which would result in market forces driving operations.<sup>242</sup>

**3.86** The NSW Environmental Protection Authority supported the view that procurement is a tool which the NSW Government could use to assist with sustainability, investment, circular economy and net zero outcomes. It highlighted that the Australian Government had consulted with New South Wales government agencies to understand barriers to the procurement of recycled and low emission building materials, with the following factors noted:

- low trust or confidence in product quality – including knowledge of risk profiles and sustainability information on materials
- knowledge and awareness factors – such as product suitability availability, government requirements to use recycled materials and a lack of understanding on how to implement such materials into current practices
- complexity and cost – including uncertainty of supply and development of specifications to material usage, capacity and capability of people to address extra challenges and real and perceived costs
- lack of accountability and integration – such as a lack of direction, requirements not being integrated into processes or contracts and a lack of compliance verifications.<sup>243</sup>

<sup>238</sup> Evidence, Ms Henderson, 4 July 2024, p 22.

<sup>239</sup> Evidence, Ms Quaintance-James, 26 June 2024, p 48.

<sup>240</sup> Evidence, Mr Eric Phu, Co-founder, Citizen Wolf, 26 June 2024, p 50.

<sup>241</sup> Evidence, Mr Adrian Jones, BlockTexx, 4 July 2024, p 26.

<sup>242</sup> Evidence, Mr Jones, BlockTexx, 4 July 2024, p 26.

<sup>243</sup> Submission 60, NSW Environment Protection Authority, pp 6-7.

- 3.87** Noting that the public sector can be risk averse, Mr Chappel, NSW Environmental Protection Authority, suggested that government mandates in this area could help to drive change and innovation in procurement processes, to achieve environmental outcomes:

The public sector traditionally, and often for good reason, is risk averse, but sometimes that leads to perhaps an undue resistance to change and innovation. We don't typically incentivise that in line agencies. They obviously have other specifications to meet, which are the product of lived experience and past experience. Helping to navigate that and bring those examples to bear through trials and then, once they're proven, making it mandatory to at least consider those alternatives would be a real step change across procurement. You could imagine a government procurement PEP for consumable products that looked at the input and the constitution of those products and their embodied footprint, be it in carbon or other resource uses. You could consider a procurement PEP more broadly for other dimensions as well. I think those tools would actually be very useful.<sup>244</sup>

### **Environmental and sustainability innovation**

- 3.88** A number of inquiry participants discussed the importance of the government driving environmental and sustainability outcomes through innovation and other levers in procurement practices.
- 3.89** In particular, the creation of levies or taxation to drive environmental and sustainability outcomes was considered. In this regard, Ms Sloan, Southern Sydney Regional Organisation of Councils Inc, suggested that in moving away from 'we've always done it this way' attitudes could be shifted via a levy, illustrating that the 'waste levy' has been a key factor in changing waste practices.<sup>245</sup>
- 3.90** Mr Jones, BlockTexx, advised the committee of the recent launch of 'Seamless', a voluntary scheme that factors in a four per cent levy, to encourage reuse and recycling in the textiles industry. He also added that there has also been legislation passed in Europe, where taxes are charged on fast fashion, stating that he felt a levy should be applied in this industry.<sup>246</sup>
- 3.91** In a similar vein, some inquiry participants suggested to the committee that the implementation of key performance indicators and other metrics and targets could drive environmental and sustainable outcomes in the market. For example, Ms Sloan stated that embedding targets and key performance indicators were mechanisms to ensure 'what gets measured is what gets done'. Ms Sloan told the committee that the 'characteristics' should be built into the evaluation criteria and followed, noting that the requirements should also be embedded in policy and position descriptions, with ongoing training provided to staff on sustainable procurement.<sup>247</sup>
- 3.92** Ms Henderson, Head of Technical Services, Infrastructure and Place, Transport for NSW, reported feedback from industry on the issue of sustainability being considered within procurement practices: 'Some of the clear messaging was about setting clear targets, setting

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<sup>244</sup> Evidence, Mr Chappel, 4 Jul 2024, p 8.

<sup>245</sup> Evidence, Ms Sloan, 4 July 2024, p 47.

<sup>246</sup> Evidence, Mr Jones, BlockTexx, 4 July 2024, p 31.

<sup>247</sup> Evidence, Ms Sloan, 4 July 2024, pp 43 and 48.

challenging targets, backing that up with documentation and backing that up with clarity in our procurement processes'.<sup>248</sup>

- 3.93** Some inquiry participants also supported the need for greater accountability through monitoring of sustainability data and reporting, to ensure that sustainability, environmental and social outcomes are delivered. For example, Social Traders stated that 'reporting mechanisms serve as essential tools for transparency, accountability...highlighting the tangible social impact achieved through procurement activities'.<sup>249</sup>
- 3.94** Ms Sloan also shared this view, calling for accountability and regular reporting to show the environmental, social, economic and financial outcomes from procurement activities.<sup>250</sup>
- 3.95** The NSW Environment Protection Authority highlighted that a lack of accountability and compliance checks, in addition to a lack of direction from senior leadership and governance issues, can all impact the ability to procure in a sustainable way. The Authority noted that with sustainability requirements not being built into contracts, there is less incentive for agencies to prioritise sustainability considerations.<sup>251</sup>
- 3.96** Further, the NSW Environmental Protection Authority highlighted that in Victoria and also the Netherlands, the governments are working to development long-term goals to support procurement, including integrated reporting as a common feature, to ensure environmental outcomes are measured.<sup>252</sup>
- 3.97** The NSW Government acknowledged that while several policies addressed net zero and environmentally sustainable practices in procurement, there was an 'opportunity to improve coordination and align approaches to ensure greater consistency, reporting and impact of environmentally sustainable procurement interventions'.<sup>253</sup>

### **Supporting a circular economy**

- 3.98** The committee also considered the importance of procurement practices operating to support a circular economy. The NSW Environment Protection Authority noted that a circular economy 'means using resources more efficiently and making them as productive as possible', which 'results in less waste and emissions, reduced harm to the environment and increases local employment opportunities'.<sup>254</sup>
- 3.99** The Total Environment Centre acknowledged that the NSW Government Procurement Policy Framework encourages agencies to consider the product lifecycle when conducting needs analysis and developing, product specifications, including taking account of circular economy

<sup>248</sup> Evidence, Ms Henderson, 4 July 2024, p 20.

<sup>249</sup> Submission 5, Social Traders, p 15.

<sup>250</sup> Evidence, Ms Sloan, 4 July 2024, p 43.

<sup>251</sup> Submission 60, NSW Environment Protection Authority, p 9.

<sup>252</sup> Submission 60, NSW Environment Protection Authority, p 8.

<sup>253</sup> Submission 40, NSW Government, p 16.

<sup>254</sup> Submission 60, NSW Environment Protection Authority, p 4.

consideration, but it noted that, there was no obligation for agencies to include these considerations in their procurement policies.<sup>255</sup>

**3.100** The example of recycling tyres was discussed, with Ms Goodman, Tyre Stewardship Australia, highlighting some examples in other jurisdictions which support the repurposing of rubber from car and truck tyres, including:

- Victoria – which, through its Recycled First Policy and ecologiQ scheme for recycled materials in transport infrastructure projects, includes the reuse of tyres
- Western Australia – which recorded 20 per cent reuse of crumb tyre rubber in roads.<sup>256</sup>

**3.101** Ms Sloan noted that through the organisation's 'Paving the Way' project in select local councils, they are now assessing recycled rubber to address tyre waste. Similarly, Ms Sloan reported that the same initiative has used recycled crushed glass in road instead of typical virgin sand, which 'reduces carbon emissions and [has] established a market for low-quality recycled glass'.<sup>257</sup>

**3.102** The committee also received evidence about how circular principles could be considered with respect to uniforms and commercial textiles procured by government agencies. The Australian Fashion Council suggested that uniforms, such as those purchased by government agencies, are 'well suited to circular design principles including using mono-fibre materials and simplifying design features and trims for ease of disassembly and recycling at its end of life'.<sup>258</sup>

**3.103** Noting that uniforms are typically thrown away or burnt instead of recycled, Mr Adrian Jones, Chief Executive Officer, BlockTexx, called for government procurement practices to ensure that commercial textiles and uniforms, upon end of life, could be recycled by Australian companies. Mr Jones highlighted that in a recent recycling tender with Services Australia, it was found that forty tonnes (or 160,000 garments) had been stockpiled across Australia and the Cocos and Keeling Islands. Mr Jones highlighted that the recycled material is then broken down into raw materials and onsold.<sup>259</sup>

**3.104** In a related context, Mr Chappel also addressed the issue of waste reduction, particularly in terms of materials like batteries in testing products. He stressed that further work is needed to ensure that products like batteries can be 'more readily recycled and recovered', or where not recyclable, 'we have safe pathways for disposal'. Mr Chappel also explained that New South Wales was working with Victoria and Queensland on design standards and stewardship arrangements for solutions to address battery waste.<sup>260</sup>

**3.105** The committee also heard of concerns in particular agencies about waste. For example, the NSW Nurses and Midwives' Association raised a concern about the wastage occurring through bulk orders by HealthShare NSW or a lack of consultation with nurses and midwives regarding purchases.<sup>261</sup>

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<sup>255</sup> Submission 58, Total Environment Centre, p 3.

<sup>256</sup> Evidence, Ms Goodman, 4 July 2024, p 16.

<sup>257</sup> Evidence, Ms Sloan, 4 July 2024, pp 43 and 46.

<sup>258</sup> Submission 61, Australian Fashion Council, p 10.

<sup>259</sup> Evidence, Mr Jones, BlockTexx, 4 July 2024, pp 26 - 27.

<sup>260</sup> Evidence, Mr Chappel, 4 Jul 2024, p 13.

<sup>261</sup> Submission 8, NSW Nurses and Midwives' Association, p 10.

- 3.106** The NSW Environment Protection Authority provided evidence that government procurement can be an effective way to encourage suppliers to adopt circular economy principles in their operations, including through participation in extended producer responsibility schemes. It explained that there can be a range of ways to achieve this through tenders and procurement, such as by providing take-back options for products when they reach end of life, and then considering refurbishment, selling or donating these products or recycling them domestically.<sup>262</sup>
- 3.107** The NSW Environment Protection Authority noted that the Department of Climate Change, Energy, the Environment and Water and NSW Procurement are in the process of developing guidance to assist agencies to implement environmentally sustainable procurement practices.<sup>263</sup> It explained that this guidance will demonstrate how circular economy principles can be incorporated into government tenders and contracts, including producer responsibility.<sup>264</sup>

### Sustainability and stewardship schemes

- 3.108** The committee also considered sustainability related certifications, which could attest to projects or products meeting certain sustainability requirements.
- 3.109** For example, Mr Patrick Hastings, Acting Chief Executive Officer, Infrastructure Sustainability Council, highlighted the IS Rating Scheme, which assesses the sustainability performance of infrastructure at the individual assets level, for portfolios or networks, or even at a regional scale. The scheme 'drives and measures the performance of infrastructure assets across the quadruple bottom line'.<sup>265</sup>
- 3.110** Mr Hastings explained that this scheme is a benchmark to demonstrate environmental and social performance, by way of satisfying criteria which the Sustainability Infrastructure Council would expect to see.<sup>266</sup>
- 3.111** Mr Hastings emphasised that the Sustainability Infrastructure Council supports organisations to build capability in their infrastructure sustainability, adding that:
- ...at the design phase we bring third-party verifiers in to review the performance of the asset and we certify the performance of the design. We then also certify the performance at the end of the process, or at the end of as-built or practical completion.<sup>267</sup>
- 3.112** Mr Hastings noted that Sydney Water has started to use the scheme 'quite consistently', as has the Department of Planning for transport critical state infrastructure, where the scheme is being recognised in Secretary's environmental assessment requirements.<sup>268</sup>

<sup>262</sup> Answers to supplementary questions, NSW Environment Protection Authority, 30 July 2024, p 6.

<sup>263</sup> Submission 60, NSW Environment Protection Authority, p 4.

<sup>264</sup> Answers to supplementary questions, NSW Environment Protection Authority, 30 July 2024, p 6.

<sup>265</sup> Evidence, Mr Patrick Hastings, Acting Chief Executive Officer, Infrastructure Sustainability Council, 4 July 2024, p 34.

<sup>266</sup> Evidence, Mr Patrick Hastings, Infrastructure Sustainability Council, 4 July 2024, p 34.

<sup>267</sup> Evidence, Mr Patrick Hastings, Infrastructure Sustainability Council, 4 July 2024, p 35.

<sup>268</sup> Evidence, Mr Patrick Hastings, Infrastructure Sustainability Council, 4 July 2024, p 35.



- 3.113** Tyre Stewardship Australia contended that governments have a role to play through procurement practices to ensure more tyres are recovered and recycled into products such as crumb rubber materials, to be used in Australian roads.<sup>269</sup>
- 3.114** The committee was also told of the Tyre Product Stewardship Scheme, which is administered and implemented by Tyre Stewardship Australia as a voluntary scheme focused on recycling tyres for the benefit of the community. The scheme focuses on the following objectives:
- market development – including funding for projects
  - auditing and compliance – including the accreditation of organisations in the tyre industry
  - public awareness – including research and analysis.<sup>270</sup>
- 3.115** Tyre Stewardship Australia highlighted that despite the efforts of the scheme, including effort by scheme contributors and participants and all tiers of government, it is 'falling short on community expectations', with 42 per cent of tyres at end of life being buried, stockpiled or dumped.<sup>271</sup>
- 3.116** The NSW Environmental Protection Authority noted that the NSW Government has committed \$37 million under the *NSW Waste and Sustainable Material Strategy 2041* Carbon Recycling and Abatement Fund to include 'coal combustion products in cement manufacturing, crumb rubber from waste tyres in roadmaking, and increased use of reclaimed asphalt pavement'.<sup>272</sup>
- 3.117** Tyre Stewardship Australia recommended that the NSW Government consider:
- government vehicles are accredited under the Tyre Product Stewardship Scheme, to support circular economy outcomes
  - the implementation of a Recycled First Policy for NSW and Social Procurement Policy for NSW
  - social and sustainable objectives being incorporated into evaluation criteria, negotiation and selection processes in procurement activities.<sup>273</sup>
- 3.118** The NSW Environmental Protection Authority acknowledged that stewardship initiatives assist to 'improve circularity for materials commonly procured by NSW Government that have a high propensity to end up in landfill'.<sup>274</sup>

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<sup>269</sup> Submission 59, Tyre Stewardship Australia, pp 2-3.

<sup>270</sup> Submission 59, Tyre Stewardship Australia, p 2.

<sup>271</sup> Submission 59, Tyre Stewardship Australia, p 2.

<sup>272</sup> Submission 60, NSW Environment Protection Authority, p 5.

<sup>273</sup> Submission 59, Tyre Stewardship Australia, p 4.

<sup>274</sup> Submission 60, NSW Environment Protection Authority, p 9.

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## Committee comment

- 3.119** The committee heard a range of evidence in this inquiry about the potential for government procurement processes to drive social, economic, environmental and sustainability outcomes. While the NSW Government's Procurement Policy Framework and associated policies, such as targets and weightings, are helpful in providing some direction in this area, the committee agrees that the legislation and framework can be strengthened, with more ambitious targets set and clearer legislative objectives. In this regard, the committee believes there would be benefit in amending the procurement legislation to specifically set out social procurement and environmental sustainability objectives for the NSW Procurement Board, following a mapping of current legal, regulatory and policy objectives, as set out in Recommendation 11).

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### Finding 8

That the current procurement policies and legislation provide some direction to drive social, economic and environmental sustainability outcomes but require strengthening.

### 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.

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- 3.120** More ambitious and specific targets in terms of social procurement objectives could also be embedded within the government's framework and associated policies. Instead of agencies being 'encouraged' to procure from social enterprises to support economic and social change for disadvantaged people, there should be stronger requirements put in place, in addition to improved data and reporting in this area.
- 3.121** To this end, the committee recommends that the NSW Government's Procurement Policy Framework and associated policies be strengthened in relation to achieving social procurement outcomes, including through the introduction of specific targets for the procurement of social enterprises, including women-led small and medium sized businesses. The committee also believes that certification schemes may provide value, particularly in terms of ensuring that businesses contracted by agencies achieve social impact. Appropriate post-award compliance checks should be undertaken to ensure that social enterprises named in the tendering stage are engaged throughout the contact.

**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.

**Finding 9**

That there is minimum post-award transparency, compliance and data to ensure that social enterprises named in the tender stage are engaged throughout the contract.

**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.

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- 3.122** While the committee is pleased to see that there is a focus on procurement being used to support employment opportunities and greater economic participation for Aboriginal peoples, some stakeholders have pointed out how these policies and the procurement framework could be improved. We encourage the NSW Government to consider this feedback, particularly in relation to Closing the Gap, along with other feedback obtained through recent reviews, including the outcomes of the recent review of the Aboriginal Procurement Policy.
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**Finding 10**

That while the Aboriginal Procurement Policy has been successful in increasing the number of Aboriginal businesses that are now registered to provide goods and services, there is still more work to be done.

**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.

**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.

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- 3.123** In relation to procurement being used to support employment opportunities and greater economic participation for people with a disability, the committee notes the difference in opinions of stakeholders in relation to the benefits of open vs segregated employment settings and the payment of minimum vs subminimum wage to people with disability.
- 3.124** The committee also notes that the Disability Royal Commission Report, in Part B on ‘Inclusive employment’, considered how to increase the pathways and opportunities for people with disability in the workforce. Consistent with its vision for inclusion, the Disability Royal Commission stated ‘we believe people with disability should have genuine choice and control over where and how they work. This should include a range of supported employment options in integrated, open and community-facing settings. This may include Australian Disability Enterprises (ADEs), for as long as they exist, but should not be limited to ADEs. People with disability should be paid fair wages’.
- 3.125** The committee notes that the Disability Royal Commission made recommendations to increase open employment and for the Australian Government to develop a plan to transition Australia away from segregated forms of employment and the payment of subminimum wages to people with disability. The report stated that ‘Commissioners have a shared commitment to inclusive employment for people with disability. However, Commissioners have set out different perspectives and recommendations in some areas’.<sup>275</sup>

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### 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.

- 3.126** The committee was also interested to hear about collaborative tendering approaches and how these may achieve social objectives. In this regard, the committee notes that collaborative tendering could be an outcomes based approach, extending beyond typical price-based considerations. It could offer smaller businesses the opportunity to work together on a contract, particularly businesses that are aligned with social, economic or environmental objectives. The committee believes that there would be value in looking at these options further, and how they could assist small businesses and social enterprises to participate in government procurement processes.

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<sup>275</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Inclusive education, employment and housing – Summary and recommendations* (September 2023), p 11, <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%207%2C%20Inclusive%20education%2C%20employment%20and%20housing%20-%20Summary%20and%20recommendations.pdf>.

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**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.

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- 3.127** The committee also recognises the influence government procurement can have on achieving environmental and sustainability outcomes. The committee acknowledges the efforts undertaken by the NSW Environment Protection Authority in relation to the introduction of the Protection of the Environment tool to assist with sustainability and broader environmental considerations in government construction projects. The committee notes that this tool is currently being trialled and is encouraged by its focus on sustainability considerations in construction procurement.
- 3.128** The committee also heard about various environmental and sustainability certification and stewardship schemes, including the scheme operated by Tyre Stewardship Australia. We are encouraged by the focus on recycling policies and re-use schemes which can encourage the achievement of sustainable objectives and minimisation of waste. Noting the experience in other jurisdictions, including countries like Canada, where crumb rubber is reused to address waste and environmental concerns, the committee recommends that the NSW Government introduce 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 in procurement.
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**Finding 11**

That current government procurement processes do not adequately consider end of life and recycling of products, particularly in regards to bulk waste.

**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.

**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.

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- 3.129** In terms of driving and monitoring the achievement of social procurement objectives, including social, environmental and sustainable outcomes, the committee believes that the NSW Procurement Board should take a stronger role. There should be key performance indicators and more robust reporting requirements, to ensure the policy approach is working effectively to achieve its social procurement aims. Therefore, the committee recommends 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, including by the implementation of key performance indicators and through enhanced monitoring of the delivery of social outcomes.

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**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.
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## Chapter 4 Other matters

This chapter outlines further evidence relating to matters covered in the committee's first report, including consideration of value for money and training and support for procurement officers in government agencies. It also discusses the importance of end user consultation in the design of procurement opportunities.

### Value for money

- 4.1** As noted in the committee's first report, the NSW Procurement Policy Framework identifies value for money as a government procurement objective that is 'not necessarily the lowest price, nor the lowest quality good or service'.<sup>276</sup> The committee heard a range of concerns about the definition and application of this objective and ultimately:
- made a finding that there is no consistent or comprehensive definition and understanding of 'value for money' as a part of the NSW Procurement Policy Framework to assist government agencies to interpret and apply effectively to government procurement activities
  - made a recommendation that the NSW Government review and implement an expanded definition of 'value for money' as a part of the NSW Procurement Policy Framework, as an immediate priority, to assist government agencies to interpret and apply effectively to government procurement activities.
- 4.2** The NSW Government supported the need to strengthen the definition of value for money as an objective of the Procurement Policy Framework. In its response, the NSW Government said that it will work with agencies to ensure that the definition is consistently applied to procurement activities.<sup>277</sup>
- 4.3** Further concerns about this objective, as it currently stands, were also raised in hearings after the first report was tabled. Amongst similar themes previously raised with the committee, inquiry participants called for a broader definition of the 'value for money' objective in the procurement framework. Ms Tara Anderson, Chief Executive Officer, Social Traders, contended that there should be a broader concept of value for money, highlighting that the Victorian Government acknowledges that consideration needs to be given to both financial and non-financial factors.<sup>278</sup>
- 4.4** Ms Anderson also pointed to the Canadian Government's approach which defines value for money as best value in procurement, with consideration given to socio-economic objectives and wider policy objectives. Illustrating the benefit of this approach, Ms Anderson added:

<sup>276</sup> NSW Government, Procurement Policy Framework (28 March 2024), p 9.

<sup>277</sup> Correspondence from The Hon Courtney Houssos MLC to the Clerk of the Parliaments, providing government response to the 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, 20 September 2024.

<sup>278</sup> Evidence, Ms Anderson, 4 July 2024, p 3.



It's an acknowledgement that the value created through procurement may not be financial; it may be other contributions to government policy and also socio-economic outcomes.<sup>279</sup>

- 4.5** The Social Enterprise Council of NSW and ACT also noted concerns with the Guidance for NSW Government Buyers provided to agencies regarding an assessment of 'value for money', stating that this guidance 'does not point to how social or environmental costs/benefits should be taken into account... or suggest a weighting for them'. It questioned to what extent costs and/or benefits outside the remit of the procuring agency would be included when considering value for money, suggesting that there is a lack of clarity in relation to this. The Social Enterprise Council of NSW and ACT called for the NSW Government to be explicit about the factor it expects to be taken into consideration when assessing value for money.<sup>280</sup>
- 4.6** The committee also received evidence on the need for assessments on value for money to also consider whole of life considerations and costs. In its submission, the Australian Steel Institute noted that the definition of what constitutes 'value for money' can be construed narrowly, with 'whole of life' consideration not often given appropriate weight as they related to large infrastructure projects.<sup>281</sup>
- 4.7** Mr David Varcoe, NSW/ACT State Manager, Australian Steel Institute, told the committee that there is often emphasis on up-front costs without consideration of the 'life of the thing being procured'. Discussing the example of security fencing procured for schools, Mr Varcoe noted that the cheaper fences being procured were not lasting more than a couple of years, resulting in replacement costs due to the short design life of the procured product. He added: 'In simple terms, it's an overemphasis on the up-front costs and a neglect of looking at the expected lifetime of the thing and whether that's going to result in an overall more costly outcome for the Government'.<sup>282</sup>
- 4.8** Ms Quaintance-James, Australian Fashion Council, also agreed that consideration needs to be given to whole of life costing in assessments of value for money, including with the procurement of textiles and clothing. She explained that consideration should take into account social, economic and environmental considerations, along with where items are manufactured, and form and function, including what's happening at the end of life of the items.<sup>283</sup>
- 4.9** Similarly, Ms Elizabeth Macpherson highlighted the importance of this, noting the experience of Victoria where police uniforms had been purchased offshore and were 'poorly made...having to be replaced three or four times a year'. In addition to emphasising the importance of buying local, and supporting jobs and the industry, Ms Macpherson stated that the government needs to consider environmental considerations, including sustainability and the life of the garment.<sup>284</sup>

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<sup>279</sup> Evidence, Ms Anderson, 4 July 2024, pp 3-4.

<sup>280</sup> Answers to supplementary questions, Social Enterprise Council of NSW and ACT, 23 July 2024, pp 1-2.

<sup>281</sup> Submission 53, Australian Steel Institute, p 9.

<sup>282</sup> Evidence, Mr David Varcoe, NSW/ACT State Manager, Australian Steel Institute, 26 June 2024, p 3.

<sup>283</sup> Evidence, Ms Quaintance-James, 26 June 2024, p 50.

<sup>284</sup> Evidence, Ms Elizabeth Macpherson, National Senior Vice-President, CFMEU Manufacturing, 3 July 2024, p 2.

- 4.10** Further Mr Luigi Amoresano, National Research Officer, Australian Manufacturing Workers' Union, suggested that value for money should include a 'holistic view that considers the entire life cycle of the procured goods and services, including the governmental cost incurred as a result of their economic, social and environmental impacts'.<sup>285</sup>

## Procurement officer skills and training

- 4.11** In the committee's first report, it was noted that procurement officers play an important role in assisting with purchasing in New South Wales government agencies, requiring specialist authority and skills to ensure government procurement operates effectively.
- 4.12** The committee received further evidence on this issue, including the importance of procurement officers in agencies having the requisite skills and experience to undertake effective procurement activities, including an understanding of the objectives of the procurement framework and associated policies, like meeting social, environmental and sustainability related outcomes.
- 4.13** Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney Business School, emphasised the importance of expertise and capability building, rather than 'relying on procurement officers that sit devolved across different agencies who might not have...[the required] skill'.<sup>286</sup>
- 4.14** Ms Kylie Flament, Chief Executive Officer, Social Enterprise Council of NSW and ACT, also discussed the issue of competitive tendering, raising a concern that procurement officials tend to operate with 'more stick approach rather than carrot approach'. She suggested that officials might 'become more and more compliance driven, and minimising risk rather than maximising outcomes'.<sup>287</sup>
- 4.15** Ms Flament also informed the committee of a study conducted by NSW Procurement on the behaviour of procurement managers, which found that junior procurement officers were more likely to look for 'overall value for money'. She explained:

They told me that what the junior procurement officers reported was that they wanted to make sure that the purchasing decisions they were making on behalf of the New South Wales Government were going to make the greatest difference. But the more senior the procuring officer, the less likely they were to go anything outside the norm. They just wanted to make the contract as easy as possible. They are more likely to bundle contracts to make sure there are just a couple to choose from and not seven different contracts—we're going to have seven different organisations apply. They just wanted to make it easier for themselves. My personal opinion is they've just been worn down by competitive behaviour, and they act accordingly.<sup>288</sup>

<sup>285</sup> Evidence, Mr Luigi Amoresano, National Research Officer, Australian Manufacturing Workers' Union, 3 July 2024, p 39.

<sup>286</sup> Evidence, Dr Martijn Boersma, Associate Professor, Work and Organisational Studies, University of Sydney Business School, 3 July 2024, p 53.

<sup>287</sup> Evidence, Ms Flament, 25 June 2024, p 3.

<sup>288</sup> Evidence, Ms Sloan, 4 July 2024, p 43.

**4.16** Other views were put forward about the importance of procurement staff being provided with effective training, including:

- the need for ongoing training to staff on social, sustainable and inclusive procurement<sup>289</sup>
- the importance of procurement officials getting training and ongoing support in order to shift 'from a narrow focus on risks to the organisation, or risk to businesses, to broader social risks'.<sup>290</sup>

**4.17** Ms Quaintance-James raised the importance of industry specific training and knowledge of procurement officers to better enable local manufacturing, noting that small changes at the design stage of a procurement could enable onshore manufacturing:

We can be a bit more mindful in breaking these items down into their component parts and looking at what might be able to be done in Australia. I think there is also an opportunity to influence design and how a product is structured to support more integration of Australian made. We know of a local factory in Victoria which has received a State Government contract to provide one of the major uniform contracts, and they are able to make the materials in Australia. But there is one part of this uniform, a seam, which is particularly complex, and we don't have the machinery to do that in Australia. For that reason, the whole order is final-stage manufactured offshore. Could we look at that in the design stage and say, "Actually, do you need that seam?" or "The seam we could do here doesn't affect the form and function of the garment for the user." I think it's about being more thoughtful and looking across those contracts. I guess that would be why we would see value in having more TCF specialism within government procurement. That helps almost broker those conversations between government and industry in order to integrate Australian made.<sup>291</sup>

## End user stakeholder consultation

**4.18** One of the issues emphasised to the committee was the importance of having end user stakeholder consultation embedded within the design of procurement processes, particularly to ensure that goods and services procured by government agencies are fit for purpose and met the needs of end users.

**4.19** The 'Transport Workers' Union of NSW emphasised that consultation is 'necessary on many fronts; particularly throughout the stages in which work is procured, or where contracts are being developed and awarded'.<sup>292</sup>

**4.20** In relation to the procurement of new and replacement of existing trains, the Rail, Tram and Bus Union (NSW Branch) highlighted concerns relating to the consultation process, including that:

- prior to the execution of the contract for the New Regional Rail Fleet, there 'was little to no consultation with end users, which has resulted, and continues to result, in overwhelming challenges in the procurement process for this train'

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<sup>289</sup> See, for example, Evidence, Ms Jodie Hoyer, 25 June 2024, p 44.

<sup>290</sup> Evidence, Dr Cockayne, 3 July 2024, p 55.

<sup>291</sup> Evidence, Ms Quaintance-James, 26 June 2024, p.46.

<sup>292</sup> Submission 29, Transport Workers Union of NSW, p 13.

- safety issues upon the delivery of the New Intercity Fleet, which included factors such as the 'removal of guards, surveillance, and door operations [which] meant that the trains were designed in such a way that commuter safety would be put at real risk'.<sup>293</sup>

- 4.21** Mr Alex Claassens, State Secretary (NSW Branch), stressed that there are benefits with better consultation and better involvement in the process for end users.<sup>294</sup> Illustrating this point, the Rail, Tram and Bus Union (NSW Branch) noted that throughout the replacement of the Tangara fleet of trains, better consultation with of end-users has been witnessed from the commencement of the project.<sup>295</sup>
- 4.22** In terms of the health sector, Ms Veronica Black, Lead Professional Officer – WHS, NSW Nurses and Midwives' Association, noted that the Association is faced with issues resulting from a 'lack of consultation and poor procurement decisions when those things pose risks to the health and safety of our members and to patients within the public health system'.<sup>296</sup>
- 4.23** Ms Black discussed the procurement of safety duress alarms as an example of this issue. Ms Black noted that in Local Health Districts there is a requirement to maintain safety duress alarms which are 'buttons that they [workers] press if they are being assaulted or attacked and need security and other people to come in a hurry'. Despite there being requirements for these alarms, the Association had found in a review process that 10 different types of alarms had been procured across the districts, with none meeting the necessary requirements.<sup>297</sup>
- 4.24** The NSW Nurses and Midwives' Association emphasised the importance of having consistencies in this type of procurement, given workforce movements, such as doctors working across hospitals and local health districts. The Association called for guarantees of minimum standards of equipment that is available across all Local Health Districts, which meets safety standards and the needs of the service.<sup>298</sup>
- 4.25** The committee also heard about the importance of end user consultation in relation to technological procurement, where there is a need to consider accessibility requirements for end users for services and products. Ms Jodie Hoger, a disability advocate with lived experience, discussed her access issues related to touchscreen photocopiers rolled out across the public service a few years ago.<sup>299</sup>
- 4.26** Ms Hoger explained that as a blind person, while she can print from the devices, she cannot copy or scan documents using the acquired machines. She suggested that there is a general lack of knowledge about ICT accessibility requirements and standards across government agencies,

<sup>293</sup> Submission 55, Rail, Tram and Bus Union (NSW Branch), pp 2 and 4.

<sup>294</sup> Evidence, Mr Alex Claassens, State Secretary, Rail, Tram and Bus Union (NSW Branch), 2 April 2024, p 54.

<sup>295</sup> Submission 55, Rail, Tram and Bus Union (NSW Branch), p 3.

<sup>296</sup> Evidence, Ms Veronica Black, Lead Professional Officer – WHS, NSW Nurses and Midwives' Association, 3 July 2024, p 19.

<sup>297</sup> Evidence, Ms Black, 3 July 2024, p 21.

<sup>298</sup> Submission 8, NSW Nurses and Midwives' Association, p 12.

<sup>299</sup> Evidence, Ms Hoger, 25 June 2024, p 44.

highlighting to the committee the importance of end user experience being considered in the procurement of these devices.<sup>300</sup>

- 4.27** Ms Hoger highlighted some outcomes of a recent sector wide review on disability inclusion. One of the recommendations was for improved procurement practices to create more accessible environments.<sup>301</sup> Ms Hoger also mentioned that the review considered a statewide adjustment passport for the public sector, noting also that a workplace adjustments policy was being drafted by the Public Service Commission.<sup>302</sup>

## Committee comment

- 4.28** The purpose of the committee's first report was to closely examine the procurement processes adopted by New South Wales government agencies, to understand the practices that exist and consider whether the procurement framework and associated policies were working effectively. After hearing from a range of stakeholders, the committee tabled its first report, with 4 findings and 9 recommendations.
- 4.29** The committee commends the government's support of all recommendations to its first report, including the agreement to improve transparency and access to information on procurement contracts, as well as the commitment to making it easier for small to medium sized enterprises to participate in government procurement. We also note the government's intention to strengthen the Procurement Policy Framework, particularly with respect to supplier feedback and the definition of value for money.
- 4.30** The following four hearings, and this final report, has focused on how government procurement can meet social, economic, environmental and sustainable objectives more effectively. In this regard, the committee has taken evidence from a broad range of stakeholders, including from academics, professionals, industry bodies, unions and further government departments. While we have made a number of recommendations in the previous chapters, the committee also encourages the NSW Government to consider the further evidence the committee has received on the issues of value for money and end user consultation in procurement design. This latter point is especially important. It is critical that a users' needs are considered when procuring certain goods and services. Embedding timely consultation in the design of tenders is key to this, otherwise there is a risk that goods and services procured by agencies are not fit for purpose, which not only is a concern in terms of cost but also wastage.

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<sup>300</sup> Evidence, Ms Hoger, 25 June 2024, p 44.

<sup>301</sup> Public Service Commission, *Boosting the employment of people with disability in the public sector* (April 2024), <https://www.psc.nsw.gov.au/reports-and-data/state-of-the-nsw-public-sector/state-of-the-nsw-public-sector-report-2023/case-studies/case-study-boosting-the-employment-of-people-with-disability-in-the-public-sector>.

<sup>302</sup> Evidence, Ms Hoger, 25 June 2024, p 45.

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**Finding 12**

That timely end user consultation is necessary to ensure that procured goods and services are accessible and fit for purpose.

**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.

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- 4.31** The committee also recommends that the training, skills and resources of procurement officers and agencies be enhanced, to build capacity and procurement experience in the public sector. The committee made a number of recommendations in its first report and strongly feels that in order to successfully implement the governments planned reforms, and the recommendations from this report, further training and capacity building is critical.
- 4.32** In particular, training and development should focus on how government procurement processes can meet social, economic, environmental and sustainability objectives, encouraging officers to more effectively consider non-price considerations when assessing value for money in government procurement processes. This training and development should be delivered to procurement officers of all seniorities, given evidence heard by the committee that it is often more senior procurement officers that are less likely to look for ‘overall value for money’. Consideration should be given to who should have ultimate responsibility for tracking the workflow within the procurement process including the management of risk. This is particularly pertinent in areas where there is likely to be sub-contractors engaged down a supply chain.
- 

**Finding 13**

That procurement officers do not consistently understand or apply non-price considerations when assessing value for money in government procurement processes. Training is required for procurement officers and anyone with procurement responsibilities to ensure that non-price considerations are more effectively considered when assessing value for money and to ensure responsibility for risk management and progress monitoring is appropriately identified.

**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.
-

- 4.33** The committee looks forward to the implementation of the NSW Government's proposed reforms in terms of procurement and hopes that those reforms, and the recommendations arising out of this inquiry, will assist in creating a more robust, fair and effective procurement framework, particularly in relation to the support it will give local businesses and workers.

## Appendix 1 Submissions

No.	Author
1	Laundry Association Australia (LAA)
2	Dr Christopher Day
3	NSW Small Business Commissioner
4	CFMEU Construction
5	Social Traders
6	National Disability Services
7	Mr Osmond Chiu
8	NSW Nurses and Midwives' Association
9	Entrepreneurial & Small Business Women Australia
10	Western Sydney Leadership Dialogue
11	CFMEU Manufacturing
12	Australasian Railway Association
13	Industry Capability Network
14	Australian Manufacturing Workers' Union
15	Ethical Clothing Australia
16	Social Enterprise Council of NSW & ACT
17	Office of the NSW Anti-slavery Commissioner
18	NSW Independent Commission Against Corruption
19	CareerSeekers
20	Confidential
21	Consult Australia
22	Luigi Amoresano and Igor Nossar
23	The Co-op Federation
24	Confidential
25	Name suppressed
26	Name suppressed
27	Confidential
28	Yuwaya Ngarra-li
29	Transport Workers' Union of NSW
30	Civil Contractors Federation (CCF) NSW
31	Nook Studios



<b>No.</b>	<b>Author</b>
32	National Electrical and Communications Association (NECA)
33	Name suppressed
34	Mr Chris Christodoulou
35	Ms Catherine Retter
36	NSW Aboriginal Land Council
37	Dr Martijn Boersma
38	United Workers Union
39	The SlaveCheck Foundation Limited
40	NSW Government
41	Australian Owned Contractors
42	Business NSW
42a	Business NSW
43	NSW Wine Industry Association
44	Mrs Rhonda Bell
45	Australians for Mental Health
46	NSW Coalition of Aboriginal Peak Organisations (CAPO)
47	St John Ambulance Australia (NSW)
48	SunDrive Solar
49	Ms Kate Stewart
50	Medical Technology Association of Australia
51	Council for Intellectual Disability
52	PSA (Public Service Association of NSW)
53	Australian Steel Institute (ASI)
54	Confidential
55	Rail, Tram & Bus Union NSW Branch
56	Confidential
57	Australian Workers' Union
58	Total Environment Centre
59	Tyre Stewardship Australia
60	NSW Environment Protection Authority (EPA)
61	Australian Fashion Council
62	Finance Sector Union
63	Unions NSW
64	IBM

## Appendix 2 Witnesses at hearings

Date	Name	Position and Organisation
Tuesday, 2 April 2024 Macquarie Room Parliament House, Sydney	Ms Sonya Campbell	Deputy Secretary Commercial, NSW Treasury
	Mr Song Hong	Executive Director, NSW Procurement – Policy, Analytics and Advisory, NSW Treasury
	Mr Nigel Bailey	Executive Director, NSW Procurement – Operations and Governance, NSW Treasury
	Mr Rudi Pircher	Chief Procurement Officer, NSW Treasury
	Mr Kwabena Bediako	Cluster Chief Procurement Officer (CPO), Department of Customer Service
	Ms Laura Christie	Deputy Secretary, Digital.NSW, Government Chief Information & Digital Officer, Department of Customer Service
	Ms Mandy Young	Deputy Secretary & Chief Operating Officer (COO), Department of Customer Service
	Mr Mark Lenzner	Executive Director ICT / Digital Sourcing, Department of Customer Service
	Mr Angus Begg	Chief Financial Officer, NSW Public Works
	Mr Drew Varnum	Executive Director, NSW Public Works
	Mr Said Hirsh	Head of Strategy, Planning and Innovation, Infrastructure NSW
Ms Deborah Chapman	Chief Financial and Operating Officer, Infrastructure NSW	
Mr Josh Murray	Secretary, Transport for NSW	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Ms Belinda Ritchie	Executive Director Commercial Services, Infrastructure, & Place, Transport for NSW
	Mr Peter Perdikos	Executive Director Commercial, Procurement & Transformation, Transport for NSW
	Mr Rob Halsall	Executive Director Procurement, Goods & Services, Transport for NSW
	Mr David Harding	Executive Director, Policy & Advocacy, Business NSW
	Mr Mustafa Agha	Executive Manager, Policy, Business NSW
	Mr Alex Claassens	State Secretary, Rail, Tram and Bus Union NSW Branch
	Mr David Babineau	Divisional Secretary, Tram and Bus, Rail, Tram and Bus Union NSW Branch
	Dr Christopher Day	Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney
	Mr Lewis Rangott	Executive Director, Corruption Prevention, NSW Independent Commission Against Corruption
	Dr Benjamin Marx	Principal Officer, Corruption Prevention, NSW Independent Commission Against Corruption
	Mr Chris Lamont	NSW Small Business Commissioner, NSW Small Business Commission
	Mr Mark Frost	Director, Advocacy, NSW Small Business Commission
<b>Wednesday, 3 April 2024</b>	Mr Murat Dizdar	Secretary, NSW Department of Education
<b>Macquarie Room</b>	Mr Paul Hannan	Group Director and Chief Procurement Officer, NSW Department of Education
<b>Parliament House, Sydney</b>		

Date	Name	Position and Organisation
	Adjunct Professor Alfa D'Amato	Deputy Secretary, Financial Services and Asset Management, and Chief Financial Officer, NSW Health
	Mr Michael Gendy	Chief Procurement Officer, NSW Health
	Ms Emma Skulander	Chief Operating Officer, Health Infrastructure, NSW Health
	Mr Alex Araujo	Executive Director, Procurement & Supply Chain, Health Share NSW, NSW Health
	Mr Paul Dale	Policy Director, Medical Technology Association of Australia
	Mr Andrew Mirich	Senior Tenders and Contract Specialist, Stryker & Chair of the MTAA Procurement Forum, Medical Technology Association of Australia
	Ms Kylie Yates	Chief Executive Officer, Civil Contractors Federation (NSW Branch)
	Mr Michael Boyle	Board Member, Civil Contractors Federation (NSW Branch)
	Mr Brent Crockford	Chief Executive Officer, Australian Owned Contractors
	Mr Treaven Martinus	Director, Australian Owned Contractors
	Ms Margaret Crawford	Auditor-General, Audit Office of NSW
	Mr Ian Goodwin	Deputy Auditor-General, Audit Office of NSW
	Ms Claudia Migotto	Assistant Auditor-General, Audit Office of NSW
	Witness A	
	Witness B	

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Witness C	
	Witness D	
	Witness E	
<b>Tuesday, 25 June 2024</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Ms Kylie Flament	Chief Executive Officer Social Enterprise Council NSW and ACT
	Mr Yuseph Deen	Chief Executive Officer, NSW Aboriginal Land Council
	Mr Sharif Deen	Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)
	Ms Mel Flanagan	Founder/Director, Nook Studios
	Ms Sophie Brown	Advocacy/Communications, Nook Studios
	Ms Amanda Rose	Chief Executive Officer, Entrepreneurial & Small Business Women Australia
	Mr Chris Gambian	Executive Director, Australians for Mental Health
	Ms Diana Burgess	Member, Construction Industry Culture Taskforce
	Ms Jodie Hoger	Disability advocate with lived experience
	Mr John Gelagin	Chief Executive Officer, CareerSeekers
<b>Wednesday, 26 June 2024</b> <b>Macquarie Room</b> <b>Parliament House, Sydney</b>	Mr Jack Ayoub	Organiser, Australian Workers Union (NSW Branch)
	Mr David Varcoe	NSW/ACT State manager, Australian Steel Institute
	Mr Matthew Jessop	Executive Officer, NSW Wine Industry Association

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Geoff Krieger	Member, NSW Wine Industry Association / CEO, Brokenwood Wines
	Ms Thuy Ho	Senior Consultant, Industry Capability Network
	Dr Jens Goennemann	Managing Director, Advanced Manufacturing Growth Centre
	Ms Kristi Riordan	Member, Advanced Manufacturing Growth Centre / Co-Founder and CEO, Harvest B
	Mr Alan Lipman	Member, Advanced Manufacturing Growth Centre / CEO, Romar Engineering
	Mr Dario Valenza	Member, Advanced manufacturing Growth Centre / Founder, Carbonix
	Mr Brian Craighead	Member, Advanced Manufacturing Growth Centre / CEO, Energy Renaissance
	Dr Peter Cull	Member, Advanced Manufacturing Growth Centre / Director (founder and inventor), ICT International
	Ms Jaana Quaintance – James	Chief Executive Officer, Australian Fashion Council
	Ms Joucelen Gabriel	Production manager, The Social Outfit
	Mr Eric Phu	Founder, Citizen Wolf
<b>Wednesday, 3 July 2024</b>	Ms Rachel Reilly	National Manager, Ethical Clothing Australia
<b>Macquarie Room</b>	Ms Elizabeth Macpherson	National TCF Senior Vice President, CFMEU Manufacturing Division
<b>Parliament House, Sydney</b>	Ms Alison Rudman	NSW Division Secretary, CFMEU Manufacturing Division
	Mr Mark Morey	Secretary, Unions NSW

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Todd Pinkerton	Director of Campaigns & Strategy, Unions NSW
	Ms Veronica Black	Lead Professional Officer – WHS, NSW Nurses and Midwives Association
	Mr David Russell	Member, NSW Nurses and Midwives Association
	Ms Rita Mallia	President, CFMEU Construction
	Ms Naomi Brooks	Policy Advisor, CFMEU Construction
	Ms Mel Gatfield	NSW Secretary and National Director – Food and Beverage, United Workers Union
	Mr Aaron Jones	Political Coordinator, United Workers Union
	Mr Luigi Amoresano	National Research Officer, Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union (Australian Manufacturing Workers' Union)
	Mr Igor Nossar	Former Chief Advocate, Textile Footwear and Clothing Union of Australia (TCFUE), Former Advisor, International Transport Workers' Federation (ITF) and Independent Scholar
	Dr Martijn Boersma	Associate Professor, Work and Organisational Studies, University of Sydney Business School
	Dr Chris F Wright	Associate Professor, Work and Organisational Studies, University of Sydney Business School
	Dr James Cockayne	Commissioner, Officer of the NSW Modern Slavery Commissioner
	Mr Paul Musso	Policy Advisor, National Disability Services
	Dr Debbie Jagers	State Manager NSW, National Disability Services

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Jim Simpson	Senior Advocate, Council for Intellectual Disability
	Mr Ben Alexander	Inclusion Projects Officer, Council for Intellectual Disability
	Mr Brad Pidgeon	Acting NSW/ACT State Secretary, Australian Manufacturing Workers' Union
<b>Thursday, 4 July 2024</b>	Ms Tara Anderson	Chief Executive Officer, Social Traders
<b>Macquarie Room</b>	Mr Tony Chappel	Chief Executive Officer, Social Traders
<b>Parliament House, Sydney</b>	Ms Lina Goodman	Chief Executive Officer, Tyre Stewardship Australia
	Ms Sandra Scalise	Director Strategic Marketing Communications, Tyre Stewardship Australia
	Ms Pamela Henderson	Head of Technical Services, Infrastructure and Place, Transport for NSW
	Dr Jane Inglis	Director Social Procurement and Workforce Development, Infrastructure and Place, Transport for NSW
	Mr Adrian Jones	Chief Executive Officer, BlockTexx
	Mr Patrick Hastings	Acting Chief Executive Officer, Infrastructure Sustainability Council
	Miss Annie Walker	Senior Coordinator, Circular Economy, Southern Sydney Regional Organisation of Councils (SSROC) Inc.
	Ms Helen Sloan	Chief Executive Officer, Southern Sydney Regional Organisation of Councils (SSROC) Inc.



## Appendix 3 Minutes

### Draft minutes no. 2

Wednesday 11 October 2023

Standing Committee on Social Issues

Room 1043, Parliament House, 12.51 pm

#### 1. Members present

Dr Kaine, *Chair*

Mrs Mitchell, *Deputy Chair*

Dr Cohn

Mr D'Adam

Mr Lawrence (substituting for Mr Nanva)

Ms Merton

Ms Suvaal

#### 2. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 1 be confirmed.

#### 3. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 12 September 2023 – Letter to Dr Kaine from Minister Houssos, Minister for Finance, requesting that the committee consider terms of reference for an inquiry into the procurement practices of government agencies in New South Wales.

#### 4. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from Minister Houssos, Minister for Finance, on 12 September 2023.

3. That the Standing Committee on Social Issues inquire into and report on the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales, and in particular:
  - (j) the current state of procurement by New South Wales government agencies, in particular:
    - (vii) the value of procurement, through whole of government or agency procurement arrangements
    - (viii) the policies, schemes and contracts of all categories that New South Wales government agencies procure, including labour
    - (ix) the number of whole of government procurement arrangements available to New South Wales government agencies
    - (x) the application of the New South Wales Procurement Policy Framework and the devolved nature of the responsibilities and obligations of New South Wales government agencies under the framework
    - (xi) the value/volume of New South Wales government agencies procurement undertaken outside of whole of government procurement arrangements
    - (xii) the accreditation program for goods and services procurement and construction procurement
  - (k) the effectiveness of whole of government and agency procurement arrangements, including standing offers, panels and prequalification schemes, in ensuring that suppliers and their subcontractors deliver value for money and comply with relevant policies and regulations,

including labour laws, at the qualification, contract negotiation stage and contract management stages of procurement

- (l) current capacity of procurement officials in government agencies to assess suppliers and ensure they, and their subcontractors deliver value for money and comply with relevant policies and regulation, including labour laws, at the qualification or contract stage and throughout the contract management stage
- (m) any opportunities that may exist for co-regulation, and other incentives to improve labour market governance and enforcement through the procurement process to ensure the process delivers both value for money and social outcomes
- (n) the evaluation criteria used in tenders and how they are weighted in making a decision to award a contract, in particular consideration of:
  - (vii) local content
  - (viii) value for money
  - (ix) social, economic and labour market outcomes
  - (x) environmental considerations, such as sustainable sourcing, energy efficiency and waste reduction
  - (xi) innovation
  - (xii) subcontracting arrangements
- (o) current approaches to transparency and accountability of procurement by New South Wales government agencies, in particular:
  - (iv) function and requirements of the New South Wales Government Procurement Board and the New South Wales Procurement Policy Framework
  - (v) record keeping arrangements for procurement activities
  - (vi) Agency annual self-reports and outcome reports
- (p) the New South Wales Government's procurement practices, in particular its ability to:
  - (v) prioritise local content, local manufacturing, and local jobs
  - (vi) improve opportunities for quality training and workforce participation
  - (vii) provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities
  - (viii) support local suppliers, and small and medium enterprises
- (q) procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally
- (r) any other related matters.

4. That the committee report by July 2024.

Mr D'Adam moved that the committee adopt the terms of reference.

Question put.

The committee divided.

Ayes: Dr Cohn, Mr D'Adam, Dr Kaine, Mr Lawrence and Ms Suvaal.

Noes: Ms Merton and Mrs Mitchell.

Question resolved in the affirmative.

**5. 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**

**5.1 Closing date for submissions**

Resolved, on the motion of Mr D'Adam: That the closing date for submissions be Friday 19 January 2024.

## 5.2 Stakeholder list

Resolved, on the motion of Ms Suvaal: That:

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

## 5.3 Hearing dates

Resolved, on the motion of Ms Suvaal: That the committee hold three hearings and identify a reserve hearing day from mid-February 2024 onwards, the dates of which are to be determined by the Chair after consultation with members regarding their availability.

## 6. Publication of confidential submissions to the inquiry into adoption practices

The committee noted the provision of a briefing paper regarding Dr Christine Cole's request to publish submissions to the inquiry into adoption practices in New South Wales conducted by the Standing Committee on Social Issues from 1998-2000.

The committee noted that it will reconvene before the end of the 2023 sitting year to discuss its response to Dr Cole's request.

Resolved, on the motion of Dr Cohn: That the secretariat contact Dr Cole to advise that the committee is considering options in response to her request.

## 7. Adjournment

The committee adjourned at 1.05 pm. *Sine die*.

Kate Mihaljek

**Committee Clerk**

## Minutes no. 3

Wednesday 7 December 2023

Standing Committee on Social Issues

Room 1043, Parliament House, 11.33 am

### 1. Members present

Dr Kaine, *Chair*

Mrs Mitchell, *Deputy Chair* (via videoconference)

Mr D'Adam

Ms Merton

Mr Nanva (via videoconference)

### 2. Apologies

Dr Cohn

Ms Suvaal

### 3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 2 be confirmed.

### 4. Correspondence

The committee noted the following items of correspondence:

**Received**

- 11 October 2023 – Email from Dr Amanda Cohn, to secretariat, advising that Ms Boyd will be substituting for Dr Cohn for the duration of the procurement inquiry.

**Sent**

- 26 October 2023 – Letter from secretariat to Dr Christine Cole regarding the request to publish submissions from the Past Adoption Practices inquiry to advise that the committee is considering option in response to her request.

**5. Publication of confidential submissions to the inquiry into adoption practices**

Committee discussed options regarding Dr Christine Cole's request to publish submissions from the inquiry into adoption practices conducted from 1998-2000.

Resolved, on the motion of Mr D'Adam: That the committee:

- consult with representative organisation to:
  - seek their view on a proposal to publish confidential submissions from the inquiry into adoption practices
  - seek their guidance in relation to an appropriate protocol for contacting submission authors, should the committee and ultimately the House, agree to establish such a protocol..
- a member of the committee/the Chair to move a motion in the House, for the Procedure Committee to inquire into and report on the potential adoption of rules to govern the publication of confidential documents in the custody of the clerk after a certain time period..
- write to Dr Cole to provide a brief update on the steps the committee are taking in relation to this matter

**6. Adjournment**

The committee adjourned at 11.57 am. *Sine die*.

Jessie Halligan  
Committee Clerk

**Minutes no. 4**

Thursday 14 March 2024

Standing Committee on Social Issues 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

Members' Lounge, Parliament House, Sydney at 4.20 pm

**1. Members present**

Dr Kaine, *Chair*

Ms Boyd (substituting for Dr Cohn for the duration of the Procurement practices inquiry)

Mr Buckingham

Mr D'Adam

Ms Merton

Mr Nanva (via videoconference)

Ms Suvaal

Mr Tudehope (substituting for Mrs Mitchell for the duration of the Procurement practices inquiry)

**2. Apologies**

**3. Draft minutes**

Resolved, on the motion of Mr D'Adam: That the draft minutes no. 3 be confirmed.

**4. Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 11 October 2023 – Email from Dr Amanda Cohn, to secretariat, advising that Ms Boyd will be substituting for Dr Cohn for the duration of the Procurement practices inquiry.
- 19 December 2023 – Email from Deyi Wu, Office of the Opposition Whip, to secretariat, advising that Mr Tudehope will be substituting Mrs Mitchell for the duration of the Procurement practices inquiry.
- 11 March 2024 – Letter from Hon Damien Tudehope MLC, Shadow Treasurer, Shadow Minister for Industrial Relations, Leader of the Opposition in the Legislative Council, to the secretariat, regarding the Chair's proposed restructure of committee activities for Procurement practices inquiry.

**5. 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**

Resolved, on the motion of Mr D'Adam: That:

- the committee adopt the following revised timeline for the administration of the inquiry:

Date	Activity
Tuesday 2 April 2024	Hearing 1
Wednesday 3 April 2024	Hearing 2
Tuesday 11 June 2024 <b>OR</b> Wednesday 12 June 2024	Report deliberative – Interim report
Monday 17 June 2024	Table Interim report
Week of 24 June 2024	Hearing 3 Hearing 4
Week of 1 July 2024	Hearing 5 Hearing 6
Tuesday 8 October 2024	Report deliberative – Final report
Friday 11 October 2024	Table Final report

- based on the revised timeline:
  - 2 and 3 April be maintained as previously confirmed hearing dates, and that 4 and 30 April be vacated as previously confirmed hearing dates
  - the remainder of hearing dates and report deliberative dates be determined after consultation with members regarding availability
  - the interim report be tabled on 17 June 2024 and the final report on 11 October 2024.
- the Chair, on behalf of the committee, write to the Minister advising of the committee's decision to restructure the inquiry and seek her endorsement.

**6. Adjournment**

The Committee adjourned at 4.28 pm until Tuesday 2 April 2024 (committee hearing – 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).

Daniel Whiteman  
**Committee Clerk**

**Minutes no. 5**

Tuesday 2 April 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.00 am

**1. Members present**

Dr Kaine, *Chair*  
 Ms Boyd  
 Mr D'Adam,  
 Ms Merton  
 Mr Nanva (via videoconference)  
 Ms Suvaal  
 Mr Tudehope

**2. Apologies**

Mr Buckingham

**3. Previous minutes**

Resolved, on the motion of Ms Suvaal: That draft minutes no. 4 be confirmed.

**4. Election of Deputy Chair**

The Chair noted the absence of the Deputy Chair for the meetings on 2 and 3 April 2024.

The Chair called for nominations for Deputy Chair.

Ms Suvaal moved: That Ms Boyd be elected Deputy Chair of the committee for the purposes of the meetings on 2 and 3 April 2024.

There being no further nominations, the Chair declared Ms Boyd Deputy Chair for the purposes of the meetings on 2 and 3 April 2024.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

- 27 March 2024 – Email from NSW Treasury to the secretariat, advising of updates to the NSW Government submission (Submission 40).
- 28 March 2024 – Email from Helen Macukewicz, Professional Officer, NSW Nurses and Midwives' Association, declining the invitation to attend the public hearings on 2 April and 3 April.

***Sent:***

- 18 March 2024 – Letter to Hon Courtney Houssos MLC, advising of the Standing Committee on Social Issues resolution to restructure the Procurement practices inquiry and extend the reporting date.

**6. 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****6.1 Public submissions**

The committee noted that the that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 1-19, 21-23, 28-32, 34-53 and 55.

Resolved, on the motion of Ms Boyd: That the committee authorise the replacement submission nos. 22 and 40 with revised, as per the request of the submission authors.

**6.2 Partially confidential submission**

Resolved, on the motion of Ms Boyd: That:

- the committee keep the following information confidential, as per the request of the author and as per the recommendation of the secretariat: identifying information and potential adverse mention in submission no. 25.
- the committee keep the following information confidential, as per the request of the author: identifying information in submission nos. 26 and 33.

### 6.3 Confidential submissions

Resolved, on the motion of Ms Suvaal: That the committee keep submission nos. 20, 24, 27 and 54 confidential, as per the request of the submission authors.

### 6.4 Attachments

Resolved, on the motion of Mr D'Adam: That the committee authorise the publication of the following attachments to submissions 5, 10 and 28:

- Attachments 1 and 2 – Reports by Social Traders entitled 'Profile of Australia's Certified Social Enterprises' and 'Impact Report FY22' (Submission 5)
- Attachment 1 – Report by Western Sydney Leadership Dialogue entitled 'Humanising Infrastructure' (Submission 10)
- Attachment 1 – Report by Yuwara Ngarra-Li entitled 'Creating Better Futures with Contracts' (Submission 28).

### 6.5 Submission no. 8

Resolved, on the motion of Mr Tudehope: That the committee authorise the publication of submission no. 8, with the exception of material highlighted on page 14.

## 7. Public Hearing

Resolved, on the motion of Ms Suvaal: That the sequence of questions to be asked at the hearings on 2 and 3 April 2024 alternate between opposition, crossbench and government members, in that order with equal time allocated to each.

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

- Ms Sonya Campbell, Deputy Secretary – Commercial, NSW Treasury
- Mr Song Hong, Executive Director, NSW Procurement – Policy, Analytics and Advisory, NSW Treasury.
- Mr Nigel Bailey, Executive Director, NSW Procurement – Operations and Governance, NSW Treasury.
- Mr Rudi Pircher, Chief Procurement Officer, NSW Treasury.

The evidence concluded and the witnesses withdrew.

Mr D'Adam left the meeting.

The following witnesses were sworn and examined:

- Mr Kwabena Bediako, Cluster Chief Procurement Officer, Department of Customer Service.
- Ms Laura Christie, Deputy Secretary – Digital.NSW and Government Chief Information and Digital Officer, Department of Customer Service
- Ms Mandy Young, Deputy Secretary and Chief Operating Officer, Department of Customer Service
- Mr Mark Lenzner, Executive Director – ICT/Digital Sourcing, Department of Customer Service.

The evidence concluded and the witnesses withdrew.

Mr D'Adam re-joined the meeting.

The following witnesses were sworn and examined:

- Mr Angus Begg, Chief Financial Officer, NSW Public Works
- Mr Drew Varnum, Executive Director, NSW Public Works
- Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW
- Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Josh Murray, Secretary, Transport for NSW,

- Ms Belinda Richie, Executive Director Commercial Services, Infrastructure and Place, Transport for NSW.
- Mr Peter Perdikos, Executive Director Commercial and Procurement, Transport for NSW.
- Mr Rob Halsall, Executive Director Procurement, Goods and Services, Transport for NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr David Harding, Executive Director, Policy and Advocacy, Business NSW
- Mr Mustafa Agha, Executive Manager, Policy, Business NSW.

The evidence concluded and the witnesses withdrew.

Mr D'Adam left the meeting.

The following witnesses were sworn and examined:

- Mr Alex Claassens, State Secretary, Rail, Tram and Bus Union (NSW Branch).
- Mr David Babineau, Divisional Secretary, Rail, Tram and Bus Union (NSW Branch).

The evidence concluded and the witnesses withdrew.

Mr D'Adam re-joined the meeting.

The following witness was sworn and examined:

- Dr Christopher Day, Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Lewis Rangott, Executive Director, Corruption Prevention, NSW Independent Commission Against Corruption.
- Dr Benjamin Marx, Principal Officer, Corruption Prevention, NSW Independent Commission Against Corruption
- Mr Chris Lamont, NSW Small Business Commissioner, NSW Small Business Commission
- Mr Mark Frost, Director, Advocacy, NSW Small Business Commission.

The evidence concluded and the witnesses, public and media withdrew.

## 8. Adjournment

The committee adjourned at 5.32 pm until 9.15 am Wednesday 3 April 2024 (second hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman  
**Committee Clerk**

## Minutes no. 6

Wednesday 3 April 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.15 am

## 1. Members present

Dr Kaine, *Chair*

Ms Boyd, *Acting Deputy Chair*

Mr Buckingham (until 11.45 am)

Mr D'Adam



Ms Merton (until 3.06 pm)  
Mr Nanva (via videoconference)  
Ms Suvaal  
Mr Tudehope (until 3.55 pm)

## 2. 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

### 2.1 Evidence to be taken *in camera*

Resolved, on the motion of Mr Buckingham: That the committee take evidence from Witness A, Witness B, Witness C, Witness D and Witness D *in camera* at the hearing on 3 April 2024.

### 2.2 Public hearing

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

- Mr Murat Dizdar, Secretary, Department of Education
- Mr Paul Hannan, Group Director and Chief Procurement Officer, Department of Education.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Adjunct Professor Alfa D'Amato, Deputy Secretary, Financial Services and Asset Management and Chief Financial Officer, NSW Health
- Mr Michael Gendy, Chief Procurement Officer, NSW Health
- Ms Emma Skulander, Chief Operating Officer, Health Infrastructure, NSW Health
- Mr Alex Araujo, Executive Director, Procurement and Supply Chain, HeathShare NSW, NSW Health.

The evidence concluded and the witnesses withdrew.

Mr Nanva left the meeting.

The following witnesses were sworn and examined:

- Mr Paul Dale, Policy Director, Medical Technology Association of Australia
- Mr Andrew Mirich, Senior Tender and Contract Specialist, Stryker and Chair, Procurement Forum, Medical Technology Association of Australia.

The evidence concluded and the witnesses withdrew.

Mr Nanva re-joined the meeting.

The following witnesses were sworn and examined:

- Ms Kylie Yates, Chief Executive Officer, Civil Contractors Federation (NSW Branch).
- Mr Michael Boyle, Board Member, Civil Contractors Federation (NSW Branch).
- Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors.
- Mr Treaven Martinus, Director, Australian Owned Contractors.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Margaret Crawford, Auditor-General, Audit Office of NSW
- Mr Ian Goodwin, Deputy Auditor-General, Audit Office of NSW.
- Ms Claudia Migotto, Assistant Auditor-General, Audit Office of NSW.

The evidence concluded and the witnesses withdrew.

The public hearing concluded at 3.00 pm. The public and media withdrew.

Ms Boyd left the meeting.

### 2.3 *In camera* hearing

The committee proceeded to take *in camera* evidence.

Persons present other than the committee: Rhia Victorino, Daniel Whiteman, Reeti Pandharipande, audio-visual broadcast operators and Hansard reporters.

The witnesses were admitted.

The Chair made an opening statement regarding the proceedings and other matters.

The following witnesses were sworn and examined:

- Witness A
- Witness B.

The evidence concluded and the witnesses withdrew.

Ms Boyd re-joined the meeting.

The following witnesses were sworn and examined:

- Witness C
- Witness D
- Witness E.

The evidence concluded and the witnesses withdrew.

The *in camera* hearing concluded at 4.30 pm.

### 3. **Adjournment**

The committee adjourned at 4.36 pm until Wednesday 12 June 2024 (interim report deliberative – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman  
**Committee Clerk**

### **Minutes no. 7**

Wednesday 12 June 2024

Standing Committee on Social Issues

Room 1043, Parliament House, Sydney at 2.01 pm

#### 1. **Members present**

Dr Kaine, *Chair*  
Ms Boyd  
Mr Buckingham (via videoconference)  
Mr D'Adam  
Ms Merton  
Mr Nanva (via videoconference)  
Mr Tudehope  
Ms Suvaal

#### 2. **Previous minutes**

Resolved, on the motion of Ms Suvaal: That draft minutes nos. 5 and 6 be confirmed.

#### 3. **Correspondence**

The committee noted the following items of correspondence:

**Received:**

- 17 April 2024 – Letter from Acting Clerk of the Parliaments to the Chair, regarding the committee's request for written advice on the options for pursuing a potential referral of evidence to ICAC
- 30 April 2024 – Email from Ms Alice Batchelor, Systemic Advocacy and Engagement Officer, Physical Disability Council of NSW, to the committee requesting for the opportunity to present to the committee
- 30 April 2024 – Email from Ms Megan Bennett, Executive Officer to the NSW Small Business Commissioner, NSW Small Business Commission, to the secretariat requesting corrections to the transcript from the public hearing on 2 April 2024 and providing answers to supplementary questions
- 1 May 2024 – Email from Mr Mitch Dudley, Transport for NSW, to the secretariat providing answers to questions on notice and supplementary questions from the public hearing on 2 April 2024
- 1 May 2024 – Email from Ms Ali Nelson-Watt, Infrastructure NSW, on behalf on Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW, to the secretariat, requesting clarifications to the transcript from the public hearing on 2 April 2024
- 1 May 2024 – Email from Mr Lewis Rangott, Executive Director – Corruption Prevention, NSW Independent Commission Against Corruption, to the secretariat providing answers to questions on notice, answers to supplementary questions, requesting corrections to the transcript from the public hearing on 2 April 2024 and providing further information
- 2 May 2024 – Email from an individual to the secretariat, attaching a statement in relation to evidence provided at the procurement practices inquiry hearing by the Department of Education and other matters
- 2 May 2024 – Email from Mr Daniel Galluzzo, Manager – Parliamentary Services, NSW Treasury, on behalf on Mr Kwabena Bediako, Chief Procurement Officer, Department of Customer Service, to the secretariat, requesting clarifications to the transcript from the public hearing on 2 April 2024
- 17 May 2024 – Email from Ms Courtney Taylor, Associate Director – Parliamentary Services, NSW Treasury, on behalf on Mr Song Hong, Executive Director, NSW Treasury, to the secretariat, requesting clarifications to the transcript from the public hearing on 2 April 2024
- 20 May 2024 – Email from Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors, to the secretariat providing answers to questions on notice, and providing further information
- 30 May 2024 – Email from Ms Rewa Mackie, Project Delivery Lead, Social Traders, to the secretariat declining the invitation to attend the public hearing on 25 June 2024.

**Sent:**

- 14 December 2023 – Letter from Chair to Dr Christine Cole providing an update on her request to publish confidential submissions
- 13 May 2024 – Letter from Chair to Dr Christine Cole providing an update on her request to publish confidential submissions
- 13 May 2024 – Letter from Chair to Pre and Post Adoption Interagency providing an update on the request to publish confidential submissions.

Resolved, on the motion of Mr D'Adam: That the committee keep confidential the correspondence from an individual received 2 May 2024, at the recommendation of the secretariat, as it contains sensitive and identifying information, and potential adverse mention.

#### **4. 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**

##### **4.1 Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 57-61.

##### **4.2 Confidential submissions**

Resolved, on the motion of Mr D'Adam: That the committee keep submission no. 56 confidential, as per the request of the author.

### 4.3 Answers to questions on notice and supplementary questions

The committee noted answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- NSW Small Business Commission, received on 30 April 2024
- Infrastructure NSW, received on 1 May 2024
- Transport for NSW, received on 1 May 2024
- NSW Independent Commission Against Corruption, received on 1 May 2024
- Department of Customer Service, received on 2 May 2024
- NSW Public Works, received on 6 May 2024
- Audit Office of NSW, received on 6 May 2024
- Department of Education, received on 7 May 2024
- NSW Health, received on 9 May 2024
- Medical Technology Association of Australia, received on 9 May 2024
- NSW Treasury, received on 10 and 13 May 2024
- Civil Construction Federation (NSW Branch), received on 20 May 2024
- Australian Owned Contractors, received on 20 May 2024

### 4.4 Transcript corrections

Resolved on the motion of Ms Suvaal: That the committee authorise:

- the publication of correspondence from:
  - Ms Deborah Chapman, Infrastructure NSW, clarifying her evidence on 2 April 2024, received on 1 May 2024
  - Mr Kwabena Bediako, Department of Customer Service, clarifying his evidence on 2 April 2024, received on 2 May 2024
  - Mr Song Hong, NSW Treasury, clarifying his evidence on 2 April 2024, received on 17 May 2024

on the inquiry webpage

- the insertion of footnotes at the relevant points in the transcript on 2 April 2024 noting that correspondence clarifying the evidence had been received and providing a hyperlink to the published correspondence.

### 4.5 Clerk's advice

Resolved, on the motion of Ms Suvaal: That the committee keep confidential the letter from the Acting Clerk of the Parliaments, regarding the committee's request for written advice on the options for pursuing a potential referral of evidence to ICAC, dated 17 April 2024.

### 4.6 Consideration of the Chair's Report

Consideration of the Chair's draft report, entitled *'Procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales – First Report'*.

#### Chapter 1

Resolved, on the motion of Mr Tudehope: That paragraph 1.3 be amended by omitting 'based on broad themes' after 'two reports for the inquiry'.

#### Chapter 2

Mr Tudehope moved: That the following paragraph be inserted after paragraph 2.1:

'Detailed guidance on how to assess value for money in procurement is set out on the buy.nsw with an associated training module which all those involved in training can access'. [FOOTNOTE: NSW Government, *Buyer guidance: Value for Money*, <https://www.info.buy.nsw.gov.au/buyer-guidance/get-started/procurement-objectives/value-for-money>].

Ms Suvaal moved: That the motion of Mr Tudehope be amended by:

- a) omitting 'Detailed guidance' and instead inserting 'Some guidance'
- b) omitting 'set out on the buy.nsw' and inserting instead 'set out on buy.nsw'
- c) omitting 'which all those involved in training can access'.

Amendment of Ms Suvaal put and passed.

Original question of Mr Tudehope, as amended, put and passed.

Mr Tudehope moved: That:

- paragraph 2.141 be amended by omitting 'definition of "value for money"' and inserting instead 'understanding of "value for money"'
- Finding 1 be amended by omitting 'definition of "value for money"' and inserting instead 'understanding of "value for money"'
- paragraph 2.142 be amended by omitting 'definition of "value for money"' and inserting instead 'understanding of "value for money"'
- paragraph 2.143 be amended by omitting 'improve the definition of "value for money"' and inserting instead 'improve the understanding of "value for money"'

Ms Boyd moved: That the motion of Mr Tudehope be amended by:

- omitting 'understanding of "value for money"' and inserting instead 'definition and understanding of "value for money"'
- Finding 1 be amended by omitting 'understanding of "value for money"' and inserting instead 'definition and understanding of "value for money"'
- paragraph 2.142 be amended by omitting 'understanding of "value for money"' and inserting instead 'definition and understanding of "value for money"'
- paragraph 2.143 be amended by omitting 'improve the understanding of "value for money"' and inserting instead 'improve the definition and understanding of "value for money"'

Amendment of Ms Boyd put.

The committee divided.

Ayes: Ms Boyd: Mr Buckingham, Mr D'Adam, Dr Kaine, Ms Suvaal.

Noes: Ms Merton, Mr Tudehope.

Amendment of Ms Boyd resolved in the affirmative.

Original question of Mr Tudehope, as amended, put.

The committee divided.

Ayes: Ms Boyd: Mr Buckingham, Mr D'Adam, Dr Kaine, Ms Suvaal.

Noes: Ms Merton, Mr Tudehope.

Original question resolved in the affirmative.

Mr Tudehope moved: That:

- paragraph 2.143 be amended by omitting 'and implement an expanded definition of "value for money" as part of the NSW Procurement Policy Framework' and inserting instead 'the guidance on how to assess value for money provided for buyers on buy.nsw, along with associated training'
- Recommendation 1 be amended by omitting 'and implement an expanded definition of "value for money" as part of the NSW Procurement Policy Framework' and inserting instead 'the guidance on how to assess value for money provided for buyers on buy.nsw, along with associated training'.

Question put.

The committee divided.

Ayes: Ms Merton, Mr Tudehope.

Noes: Ms Boyd, Mr Buckingham, Mr D'Adam, Dr Kaine, Ms Suvaal.

Question resolved in the negative.

Resolved, on the motion of Ms Boyd: That paragraph 2.146 be amended by omitting 'noting that New South Wales is amongst the highest' and inserting instead 'noting that New South Wales is the highest'.

Ms Boyd moved: That Recommendation 3 be amended by:

- a) omitting 'That the NSW Government consider reducing the threshold' and inserting instead 'That the NSW Government reduce the threshold'
- b) inserting 'to no higher than \$50,000' after 'government procurement activities.'

Mr D'Adam moved: That the motion of Ms Boyd be amended by omitting 'That the NSW Government reduce the threshold' and inserting instead 'That the NSW Government reduce the threshold to \$100,000 at most'.

Amendment of Mr D'Adam put and passed.

Original question of Ms Boyd, as amended, put and passed.

Mr Tudehope move: That paragraphs 2.162-2.166 and Finding 4 be omitted:

In considering the evidence to date, the committee recognises the scale, scope and complexity of NSW Government procurement requirements. Indeed, the committee's comments reflect the intricacies of the processes engaged by government agencies to procure the goods and services, including construction, it needs to exercise its functions.

However, in taking a step back from this, the committee must acknowledge an overarching theme in the evidence suggesting an ineffectiveness in the devolved approach underpinning the governance of procurement.

The committee notes that the devolved governance structure in place has government agencies bearing ultimate responsibility for managing its own procurement. While the committee accepts that agencies should play a role in not only planning, sourcing and managing its procurement activities as well as maintaining compliance, it is clear there is a gap in the centralised oversight of government procurement.

The committee's previous finding that the NSW Procurement Board is not functioning effectively as an oversight body only serves to highlight this gap.

The committee therefore concludes that a devolved approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met.

#### **Finding 4**

A devolved approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met.

Question put.

The committee divided.

Ayes: Ms Merton, Mr Tudehope.

Noes: Ms Boyd: Mr Buckingham, Mr D'Adam, Dr Kaine, Ms Suvaal.

Question resolved in the negative.

Resolved, on the motion of Ms Suvaal: That:

- paragraph 2.166 be amended by omitting 'a devolved approach to government procurement' and inserting instead 'the current approach to government procurement'.

- Finding 4 be amended by omitting 'a devolved approach to government procurement' and inserting instead 'the current approach to government procurement'.

Ms Boyd moved: That Finding 4 be amended by inserting at the end: 'and a new approach is warranted'.

Question put.

The committee divided.

Ayes: Ms Boyd: Mr Buckingham, Mr D'Adam, Dr Kaine, Ms Suvaal.

Noes: Ms Merton, Mr Tudehope.

Question resolved in the affirmative.

Resolved, on the motion of Ms Suvaal: That:

- The draft report, as amended, be the report of the committee and that the committee present the report to the House;
- The committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- The committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- Dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- The secretariat is tabling the report on Friday 21 June 2024;
- The Chair to advise the secretariat and members if they intend to hold a press conference, and if so, the date and time.

## 5. Adjournment

The committee adjourned at 2:38 pm, until Tuesday 25 June 2024, 9.00 am, Macquarie Room, Parliament House (public hearing for the procurement practices inquiry).

Daniel Whiteman  
**Committee Clerk**

### Minutes no. 8

Tuesday 25 April 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.31 am

#### 1. Members present

Dr Kaine, *Chair*

Ms Boyd

Mr D'Adam

Ms Merton

Mr Nanva

Ms Suvaal (via videoconference from 9.45 am to 10.15 am, in person from 11.30 to 2.30 pm)

Mr Tudehope

#### 2. Apologies

Mr Buckingham

#### 3. Previous minutes

Resolved, on the motion of Mr D'Adam: That draft minutes no. 7 be confirmed.

#### 4. Election of Deputy Chair

The Chair noted the absence of the Deputy Chair for the meetings on 25 and 26 June 2024.

The Chair called for nominations for Deputy Chair.

Mr Nanva moved: That Ms Boyd be elected Deputy Chair of the committee for the purposes of the meetings on 25 and 26 June 2024.

There being no further nominations, the Chair declared Ms Boyd Deputy Chair for the purposes of the meetings on 25 and 26 June 2024.

#### 5. Correspondence

The committee noted the following items of correspondence:

##### *Received*

- 6 June 2024 – Email from Dr Ruth McCausland, Associate Professor and UNSW Director, Yuwaya Ngarra-li Partnership with the Dharriwaa Elders Group, Walgett, declining the invitation to attend the public hearing on 25 June 2024.

#### 6. 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

##### **Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 62-63.

#### 7. Public Hearing

Resolved, on the motion of Mr Nanva: That the sequence of questions to be asked at the hearings on 2 and 3 April 2024 alternate between government, crossbench and opposition members, in that order with equal time allocated to each.

Resolved, on the motion of Ms Boyd: That Ms Kirsty O'Connell be able to sit alongside Ms Jodie Hoger when providing evidence during the hearing on 25 June 2024 as a support person.

The public and the media were admitted at 9.45 am.

The following witness was sworn and examined:

- Ms Kylie Flament, Chief Executive Officer, Social Enterprise Council NSW and ACT.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Yuseph Deen, Chief Executive Officer, NSW Aboriginal Land Council (via videoconference)
- Mr Sharif Deen, Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations (via videoconference).

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Mel Flanagan, Founder/Director, Nook Studios
- Ms Sophie Brown, Advocacy/Communications, Nook Studios
- Ms Amanda Rose, Chief Executive Officer, Entrepreneurial & Small Business Women Australia.

The evidence concluded and the witnesses withdrew.

Ms Boyd left the meeting.

The following witnesses were sworn and examined:

- Mr Chris Gambian, Executive Director, Australians for Mental Health
- Ms Diana Burgess, Member, Construction Industry Culture Taskforce.



Ms Boyd re-joined the meeting.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Ms Jodie Hoger, Disability advocate with lived experience.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr John Gelagin, Chief Executive Officer, CareerSeekers.

The evidence concluded and the witnesses, public and media withdrew.

## 8. Adjournment

The committee adjourned at 3.38 pm until 9.15 am Wednesday 26 June 2024 (fourth hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman

**Committee Clerk**

## Draft minutes no. 9

Wednesday 26 June 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.15 am

### 1. Members present

Dr Kaine, *Chair*

Ms Boyd, *Acting Deputy Chair*

Mr D'Adam,

Ms Merton

Mr Nanva

Mr Tudehope (until 12.31 pm)

### 2. Apologies

Mr Buckingham

Ms Suvaal

### 3. 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

#### Public Hearing

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

- Mr Jack Ayoub, Organiser, Australian Workers Union (NSW Branch)
- Mr David Varcoe, NSW/ACT State Manager, Australian Steel Institute (via videoconference).

The evidence concluded and the witnesses withdrew.

Ms Boyd left the meeting.

The following witnesses were sworn and examined:

- Mr Matthew Jessop, Executive Officer, NSW Wine Industry Association
- Mr Geoff Krieger, Member, NSW Wine Industry Association and CEO, Brokenwood Wines.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Thuy Ho, Senior Consultant, Industry Capability Network
- Mr Ian Hudson, Executive Director, Industry Capability Network.

The evidence concluded and the witnesses withdrew.

Ms Boyd re-joined the meeting.

The following witnesses were sworn and examined:

- Dr Jens Goennemann, Managing Director, Advanced Manufacturing Growth Centre
- Ms Kristi Riordan, Member, Advanced Manufacturing Growth Centre and Co-Founder & CEO, Harvest B
- Mr Alan Lipman, Member, Advanced Manufacturing Growth Centre and CEO, Romar Engineering
- Mr Dario Valenza, Member, Advanced Manufacturing Growth Centre and Founder, Carbonix
- Mr Brian Craighead, Member, Advanced Manufacturing Growth Centre, and Chief Executive Officer, Energy Renaissance
- Dr Peter Cull, Member, Advanced Manufacturing Growth Centre and Director (founder and inventor), ICT International.

Dr Cull tendered the following document:

- Information sheet on ICT International and NSW Government procurement practices.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Jaana Quaintance-James, Chief Executive Officer, Australian Fashion Council
- Ms Joucelen Gabriel, Production Manager, The Social Outfit
- Mr Eric Phu, Founder, Citizen Wolf.

The evidence concluded and the witnesses, public and media withdrew.

Resolved, on the motion of Mr Nanva: That the committee accept and publish the following document tendered during the public hearing:

- Information sheet on ICT International and NSW Government procurement practices.

#### 4. **Adjournment**

The committee adjourned at 4.07 pm until 9.00 am Wednesday 3 July 2024 (fifth hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman  
**Committee Clerk**

#### **Minutes no. 10**

Wednesday 3 July 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.01 am

#### 1. **Members present**

Dr Kaine, *Chair*

Ms Boyd

Mr D'Adam (until 3.02 pm)

Ms Merton (until 3.02 pm)

Mr Nanva

Ms Suvaal (via videoconference from 9.16 am to 10.21 am, and from 4.40 pm until 5.03 pm)

Mr Tudehope

**2. Apologies**

Mr Buckingham

**3. Previous minutes**

Resolved, on the motion of Mr D'Adam: That draft minutes nos. 8 and 9 be confirmed.

**4. Election of Deputy Chair**

The Chair noted the absence of the Deputy Chair for the meetings on 3 and 4 July 2024.

The Chair called for nominations for Deputy Chair.

Mr D'Adam moved: That Ms Boyd be elected Deputy Chair of the committee for the purposes of the meetings on 3 and 4 July 2024.

There being no further nominations, the Chair declared Ms Boyd Deputy Chair for the purposes of the meetings on 3 and 4 July 2024.

**5. Correspondence**

The committee noted the following items of correspondence:

***Received***

- 21 June 2024 – Email from Mr Jeff Angel, Director, Total Environment Centre, declining the invitation to attend the public hearing on 3 July 2024
- 24 June 2024 – Email from Mr Luke Turner, Executive Director – Policy and Advocacy, Western Sydney Leadership Dialogue, declining the invitation to attend the public hearing on 25 June 2024
- 25 June 2024 – Email from Ms Ali MacDonald, Head of Corporate Affairs and Partnerships, SunDrive Solar, declining the invitation to attend the public hearing on 26 June 2024
- 27 June 2024 – Email from Ms Alexis Davidson, Executive Program Director, Major Road Projects Victoria, declining the invitation to attend the public hearing on 4 July 2024.

**6. 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**

**Public Hearing**

Resolved, on the motion of Mr Nanva: That the sequence of questions to be asked at the hearings on 3 and 4 July 2024 alternate between government, crossbench and opposition members, in that order with equal time allocated to each.

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

- Ms Rachel Reilly, National Manager, Ethical Clothing Australia
- Ms Elizabeth Macpherson, National TCF Senior Vice President, CFMEU Manufacturing Division
- Ms Alison Rudman, NSW Division Secretary, CFMEU Manufacturing Division.

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Mr Mark Morey, Unions NSW
- Mr Todd Pinkerton, Director of Campaigns & Strategy, Unions NSW.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Veronica Black, Lead Professional Officer – WHS, NSW Nurses and Midwives Association
- Mr David Russell, Member, NSW Nurses and Midwives Association.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Rita Mallia, President, CFMEU Construction Division
- Ms Naomi Brooks, Policy Advisor, CFMEU Construction Division.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Mel Gatfield, NSW Secretary and National Director – Food and Beverage, United Workers Union
- Mr Aaron Jones, Political Coordinator, United Workers Union.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Mr Luigi Amoresano, National Research Officer, Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union (Australian Manufacturing Workers' Union)
- Mr Igor Nossar, Former Chief Advocate, Textile Footwear and Clothing Union of Australia (TCFUA), Former Advisor, International Transport Workers Federation (ITF), Independent Scholar.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Dr Martijn Booersma, Associate Professor, Work and Organisational Studies, University of Sydney Business School
- Dr Chris F Wright, Associate Professor, Work and Organisational Studies, University of Sydney Business School.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Dr James Cockayne, Commissioner, Office of the NSW Modern Slavery Commissioner.

The evidence concluded and the witness withdrew.

The following witnesses was sworn and examined:

- Mr Paul Musso, Policy Advisor, National Disability Services
- Mr Jim Simpson, Senior Advocate, Council for Intellectual Disability
- Mr Ben Alexander, Inclusion Projects Officer, Council for Intellectual Disability.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Brad Pidgeon, Acting NSW/ACT State Secretary, Australian Manufacturing Workers' Union.

The evidence concluded and the witnesses, public and media withdrew.

Resolved, on the motion of Mr Tudehope: That the committee authorise the replacement of submission no. 22 with a revised submission, as per the request of the submission author.

## 7. Adjournment

The committee adjourned at 5.03 pm until 11.00 am Thursday 4 June 2024 (sixth hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman  
**Committee Clerk**

**Minutes no. 11**

Thursday 4 July 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 11.01 am

**1. Members present**

Dr Kaine, *Chair*

Ms Boyd, *Acting Deputy Chair*

Mr D'Adam

Ms Merton

Mr Nanva (via videoconference from 11.08 am until 12.21 am)

Ms Suvaal (via videoconference from 11.10 am until 11.47 am)

Mr Tudehope

**2. Apologies**

Mr Buckingham

**3. 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**

**Public Hearing**

The public and the media were admitted at 11.15 am.

The following witness was sworn and examined:

- Ms Tara Anderson, Chief Executive Officer, Social Traders.

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Tony Chappel, Chief Executive Officer, NSW Environment Protection Authority (NSW EPA).

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

- Ms Lina Goodman, Chief Executive Officer, Tyre Stewardship Australia
- Ms Sandra Scalise, Director Strategic Marketing Communications, Tyre Stewardship Australia.

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

- Ms Pamela Henderson, Head of Technical Services, Infrastructure and Place, Transport of New South Wales
- Dr Jane Inglis, Director Social Procurement and Workforce Development, Infrastructure and Place, Transport of New South Wales.

The evidence concluded and the witnesses withdrew.

The following witness was sworn and examined:

- Mr Adrian Jones, Chief Executive Officer, BlockTexx (via videoconference).

The evidence concluded and the witness withdrew.

The following witness was sworn and examined:

- Mr Patrick Hastings, Acting Chief Executive Officer, Infrastructure Sustainability Council.

The following witnesses were sworn and examined:

- Miss Annie Walker, Senior Coordinator, Circulator Economy, Southern Sydney Regional Organisation of Councils (SSROC) Inc
- Ms Helen Sloan, Chief Executive Officer, Southern Sydney Regional Organisation of Councils (SSROC) Inc.

The evidence concluded and the witnesses, public and media withdrew.

#### 4. **Adjournment**

The committee adjourned at 4.24 pm until Wednesday 26 June 2024 (fourth hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people in New South Wales).

Daniel Whiteman  
**Committee Clerk**

#### **Minutes no. 12**

Tuesday 6 August 2024

Standing Committee on Social Issues

Members Lounge, Parliament House, Sydney, 3.09 pm

#### 1. **Members present**

Dr Kaine, *Chair*

Mrs Mitchell, *Deputy Chair* (from 3.09 pm until 3.28 pm)

Ms Boyd (substituted Dr Cohn for the procurement practices inquiry)

Mr Buckingham

Dr Cohn

Mr D'Adam (until 3.29 pm)

Mr Lawrence (from 3.29 pm, substituted for Mr D'Adam)

Ms Merton

Mr Nanva

Ms Suvaal

Mr Tudehope (substituted Mrs Mitchell for the procurement practices inquiry)

#### 2. **Apologies**

#### 3. **Previous minutes**

Resolved, on the motion of Mr Tudehope: That draft minutes nos. 10 and 11 be confirmed.

#### 4. **Correspondence**

The committee noted the following items of correspondence:

##### ***Received:***

- 5 July 2024 – Correspondence from Professor Jo Barraket AM, Director, Melbourne Social Equity Institute, providing information relating to the procurement practices inquiry
- 10 July 2024 – Correspondence from the Hon Rose Jackson MLC, Minister for Water, Housing, Mental Health, Youth, Homelessness and Minister for the North Coast, to Chair, referring proposed terms of reference for an inquiry into the prevalence, causes and impacts of loneliness in NSW
- 17 July 2024 - Email from Dr Chris Wright, Associate Professor, University of Sydney Business School, to the secretariat providing additional information and answers to questions on notice from the public hearing on 3 July 2024
- 23 July 2024 – Correspondence from the Hon Damien Tudehope MLC, Leader of the Opposition in the Legislative Council to the Chair, requesting an additional hearing for the inquiry into procurement

practices of government agencies in NSW and its impact on the social development of the people of NSW

- 23 July 2024 - Email from Mr Ian Hudson, Executive Director, Industry Capability Network, to the secretariat providing answers to supplementary questions from the public hearing on 26 June 2024
- 23 July 2024 - Email from Ms Kylie Flament, Chief Executive Officer, Social Enterprise Council NSW & ACT, to the secretariat providing answers to questions on notice and supplementary questions from the public hearing on 25 June 2024
- 23 July 2024 - Email from Ms Mel Flanagan, Founder and Director, Nook Studios to the secretariat providing additional information, answers to questions on notice and supplementary questions from the public hearing on 25 June 2024
- 23 July 2024 - Email from Ms Sara Hudson on behalf of Mr Yusef Deen, Chief Executive Officer, NSW Aboriginal Land Council to the secretariat providing an answer to a supplementary question from the public hearing on 25 June 2024.

***Sent:***

- 12 July 2024 – Email from the secretariat to Mr Kwabena Bediako, Chief Procurement Officer, Department of Customer Service, advising that the committee resolved to issue and publish an erratum for the 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 – First report
- 12 July 2024 – Correspondence from the Chair to the Clerk of the Parliaments, advising of and attaching an erratum for the 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 – First report.

## **5. Consideration of ministerial terms of reference**

The Chair tabled the following terms of reference received from the Hon Rose Jackson MLC, Minister for Water, Housing, Mental Health, Youth, Homelessness and Minister for the North Coast on 10 July 2024:

That the Standing Committee on Social Issues inquire into and report on the prevalence, causes and impacts of loneliness in NSW, and in particular:

- (a) the extent of loneliness and social isolation in NSW and how this is measured and recorded, including opportunities for additional and/or improved data capture
- (b) the identification of populations most at risk of loneliness and social isolation
- (c) evidence of the psychological and physiological impacts of loneliness on people, including young people, the elderly, those living with a disability, those living in regional areas and the bereaved
- (d) evidence linking social connection to physical health
- (e) factors that contribute to the development of transient loneliness into chronic loneliness
- (f) the financial costs of loneliness to the NSW budget and the state economy and steps that can be taken to reduce the financial burden of loneliness
- (g) the identification of existing initiatives by government and non-government organisations to mitigate and reduce loneliness and social isolation
- (h) developments in other jurisdictions regarding the implementation of policies and initiatives relevant to the treatment of loneliness as a public health issue
- (i) steps the State Government can take to reduce the prevalence and impacts of loneliness in the community
- (j) steps that community, technology/social media companies, organisations, and individuals can take to reduce impact of loneliness on individuals and the community; and
- (k) any other related matters.

Resolved, on the motion of D'Adam: That the committee adopt the terms of reference for an inquiry into the prevalence, causes and impacts of loneliness in NSW.

## 6. Inquiry into the prevalence, causes and impacts of loneliness in NSW

### Proposed timeline and committee activity

Resolved, on the motion of Mr D'Adam: That the committee adopt the following timeline for the administration of the inquiry:

- Submission closing date of 1 November 2024
- Hearings on 15 and 22 November, with a reserve date of 25 November
- Tabling the report by 28 March 2025.

### Stakeholder list

Resolved, on the motion of Ms Suvaal: That

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### Approach to submissions

Resolved, on the motion of Ms Mitchell: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
  - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
  - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
  - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

### Online questionnaire

Resolved, on the motion of Ms Suvaal: That:

- the committee use an online questionnaire to capture individuals' views, and that the draft questions for this questionnaire be circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the media release announcing the establishment of the inquiry and emails to stakeholders note that there will be an online questionnaire to capture individuals' views
- the inquiry webpage be updated to promote the online questionnaire
- the closing date for the online questionnaire be 1 November 2024
- the committee not accept proformas.

Resolved, on the motion of Mr Buckingham: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

## 7. Consideration of ministerial terms of reference

The Chair tabled the following terms of reference received from the Hon Michael Daley, Attorney General, on 2 August 2024:

That the Standing Committee on Social Issues inquire into the impacts of harmful pornography on mental, emotional, and physical health, with particular reference to:



- (a) age of first exposure to pornography and impacts of early exposure to pornography
- (b) media by which pornography is accessed and circulated
- (c) impacts on body image
- (d) the relationship between pornography use and respect and consent education
- (e) the production and dissemination of deepfake or AI-generated pornography
- (f) the impact of exposure to violent and/or misogynistic pornography on children, teenagers and young adults
- (g) impacts on minority groups including but not limited to First Nations, CALD or LGBTIQ+ people and people living with disability
- (h) effectiveness of any current education programs about use and misuse of pornography, and how these may be improved
- (i) the effectiveness of current restrictions on access to pornography and consideration of any need to improve these
- (j) the resources and support currently available to parents and carers to educate children about pornography, and how these might be improved; and
- (k) any other related matter.

Resolved, on the motion of Mr Buckingham: That paragraph (e) be omitted and the following inserted instead: 'the production and dissemination of pornography, including deepfake or AI generated pornography'.

Resolved, on the motion of Mr Buckingham: That the terms of reference for an inquiry into the impacts of harmful pornography on mental, emotional, and physical health be adopted, as amended.

## 8. Conduct of the inquiry into the impacts of harmful pornography on mental, emotional and physical health

### Proposed timeline and committee activity

Resolved, on the motion of Ms Mitchell: That the committee adopt the following timeline for the administration of the inquiry:

- Submission closing date of 1 November 2024
- one hearing in late November or early December, to be determined after submissions are received.

### Stakeholder list

Resolved, on the motion of Ms Suvaal: That

- the secretariat circulate to members the Chair's proposed list of stakeholders to be invited to make a submission
- members have two days from when the Chair's proposed list is circulated to make amendments or nominate additional stakeholders
- the committee agree to the stakeholder list by email, unless a meeting of the committee is required to resolve any disagreement.

### Approach to submissions

Resolved, on the motion of Ms Suvaal: That, to enable significant efficiencies for members and the secretariat while maintaining the integrity of how submissions are treated, in the event that 50 or more individual submissions are received, the committee may adopt the following approach to processing short submissions:

- All submissions from individuals 250 words or less in length will:
  - have an individual submission number, and be published with the author's name or as name suppressed, or kept confidential, according to the author's request
  - be reviewed by the secretariat for adverse mention and sensitive/identifying information, in accordance with practice
  - be channelled into one single document to be published on the inquiry website
- All other submissions will be processed and published as normal.

**Online questionnaire**

Resolved on the motion of Mr D'Adam: That:

- the committee use an online questionnaire to capture individuals' views, and that the draft questions for this questionnaire be circulated and agreed by the committee over email, unless a formal meeting is needed to resolve any disagreement
- the media release announcing the establishment of the inquiry and emails to stakeholders note that there will be an online questionnaire to capture individuals' views
- the inquiry webpage be updated to promote the online questionnaire
- the closing date for the online questionnaire be 1 November 2024 (same as submission closing date)
- the committee not accept proformas.

Resolved, on the motion of Mr D'Adam: That the secretariat prepare a summary report of responses to the online questionnaire for publication on the website and use in the report, and that:

- the committee agree to publication of the report via email, unless a member raises any concerns
- individual responses be kept confidential on tabling.

## 9. **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**

**Public submissions**

The committee noted that the following submissions were published by the committee clerk under the authorisation of the resolution appointing the committee: submissions nos. 42a and 64.

**Erratum to report no. 63**

The committee noted that it agreed via email that:

- the committee publish the correspondence from the Department of Customer Service on the committee's website
- the committee issue an erratum, publish it on the committee's website and link to it on the first page of the report and in the footnote to paragraph 2.13
- the Chair write to the Clerk of the Parliaments advising him of the error and requesting that it be corrected in the official tabled records
- the secretariat write to Mr Bediako (who is cited in paragraph 2.13) advising him of the correction.

**Answers to questions on notice and supplementary questions**

The committee noted that the following answers to questions on notice and supplementary questions were published by the committee clerk under the authorisation of the resolution appointing the committee:

- Dr Chris Wright, received on 17 July 2024
- NSW Wine Industry Association, received on 23 July 2024
- Social Enterprise Council NSW & ACT, received on 23 July 2024
- Nook Studios, received on 23 July 2024
- NSW Aboriginal Land Council, received on 23 July 2024.
- 

**Unauthorised disclosure**

The Chair noted standing order 231 and the impacts of unauthorised disclosure of committee proceedings.

Resolved, on the motion of Ms Boyd: That the Clerk provide advice on whether correspondence provided to the committee by a member and publicly disclosed could constitute an unauthorised disclosure.

Mr D' Adam left the meeting.

Mr Lawrence joined the meeting.

Mr Tudehope moved: That:

- a further hearing be held as soon as possible
- Mr Darren Greenfield be invited to attend the hearing on behalf of the CFMEU and give evidence
- if Mr Greenfield declines to attend, a summons be issued for his attendance.

Question put.

The committee divided.

Ayes: Ms Merton, Mr Tudehope.

Noes: Ms Boyd, Mr Buckingham, Dr Kaine, Mr Lawrence, Mr Nanva, Ms Suvaal.

Question resolved in the negative.

## 10. Adjournment

The committee adjourned at 3.40 pm until 8 October 2024, McKell Room, Parliament House, Sydney (final report deliberative for the Procurement practices inquiry).

Rasika Somaweera

**Committee Clerk**

### Draft minutes no. 13

Tuesday 8 October 2024

Standing Committee on Social Issues

Room 1136, Parliament House, Sydney at 10.10 am

#### 1. Members present

Dr Kaine, Chair

Ms Boyd (via videoconference)

Mr Martin (via videoconference)

Mr D'Adam (via videoconference)

Mrs Carter (substituting for Ms Merton)

Mr Nanva (via videoconference)

Mr Tudehope

Ms Suvaal

#### 2. Previous minutes

Resolved on the motion of Ms Suvaal: That draft minutes no. 12 be confirmed.

#### 3. Sensitive content in inquiries

The committee noted that there may be sensitive and/or distressing information contained within submissions and evidence to the inquiries into the impacts of harmful pornography and loneliness. Submissions for both inquiries are currently open until 1 November 2024.

The committee also noted that:

- members and staff can access confidential and free counselling via the Parliament's Employee Assistance Program (EAP), and that reminders about this support will be provided to members as sensitive information is distributed or raised in hearings
- the Committee Office has protocols that will be put in place to ensure staff are supported throughout the inquiries

- referrals to support services have been included on each inquiry webpage, to provide support to inquiry participants and/or interested members of the public, given the nature of submissions and evidence could be sensitive/distressing
- the secretariat will investigate if there are any written resources that could be provided to members to assist with managing the impacts of receiving sensitive/distressing content in inquiries, in addition to any resources that may assist with the questioning of witnesses who have lived experience.

#### 4. 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

##### 4.1 Consideration of the Chair's Report

Consideration of the Chair's draft report, entitled '*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*'.

Ms Boyd moved: That the following paragraph be inserted before paragraph 2.36:

'A 30 per cent local content target was an election commitment of the Labor Government. NSW Procurement is currently responsible for the administration and operation of the existing 20 per cent local content requirement. Ms Campbell informed the committee that it would not be difficult for NSW Procurement to implement a change in policy from 20 per cent to 30 percent'. [FOOTNOTE: Evidence, Ms Sonya Campbell, Deputy Secretary - Commercial, NSW Treasury, 2 April 2024, p 4].

Question put and negatived.

Resolved, on the motion of Ms Suvaal: That Recommendation 2 be amended by omitting 'adjusted cost model' and inserting instead 'adjusted price model'.

Ms Boyd Moved: That the following new recommendation be inserted after Recommendation 7:

##### **'Recommendation X**

That the NSW Government provide additional funding towards the Anti-slavery Commission's monitoring functions under the *Modern Slavery Act 2018*'.

Question put.

The Committee divided.

Ayes: Ms Boyd, Mrs Carter, Mr Martin, Mr Tudehope.

Noes: Mr D'Adam, Dr Kaine, Mr Nanva, Ms Suvaal.

Question resolved in the negative, on the casting vote of the Chair.

Ms Boyd moved: That the following new finding and recommendations be inserted before Recommendation 8:

##### **'Finding X**

That there is strong support across the workforce for the adoption of a NSW Local Secure Jobs Code.

##### **Recommendation X**

That the NSW Government begin consultation with unions and industry bodies to develop a NSW Secure Jobs Code, using the ACT Secure Local Jobs Code as a model.

##### **Recommendation X**

That the NSW Government establish a mechanism by which registered trade unions can bring complaints or evidence of non-compliance by successful suppliers to the attention of the Jobs First Commission.

##### **Recommendation X**

That the NSW Government establish a two gate tendering model requiring tendering organisations to demonstrate a commitment to quality, safe and secure employment as a precondition. Organisations satisfying that precondition then bid for the work against a range of key objectives identified in the expanded procurement policy, including 'public good' considerations'.

Question put.

The committee divided.

Ayes: Ms Boyd

Noes: Mrs Carter, Mr D'Adam, Dr Kaine, Mr Martin, Mr Nanva, Ms Suvaal, Mr Tudehope.

Question resolved in the negative.

Resolved, on the motion of Ms Suvaal: That the following new recommendation be inserted:

**'Recommendation X**

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

Resolved, on the motion of Ms Boyd: That the following new paragraphs be inserted before paragraph 3.43:

'The Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (the Disability Royal Commission) made recommendations for Australia to transition 'away from segregated forms of employment and the payment of subminimum wages'. [FOOTNOTE: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Inclusive education, employment and housing – Summary and recommendations* (September 2023), p 11, <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%207%2C%20Inclusive%20education%2C%20employment%20and%20housing%20-%20Summary%20and%20recommendations.pdf>].

Mr Simpson gave anecdotal evidence of subminimum wage being paid in disability enterprises: '... we were talking to one of our staff members just yesterday who has worked in open and then segregated employment and then came to us. He related that he was receiving \$2 an hour for the work that he was doing in an Australian disability enterprise. Anecdotally, that's a very common figure, down towards that level...!'

On the other hand, Mr Musso noted that under the new wage-setting structure set by the Fair Work Commission in 2022:

'I think we will end up seeing probably around 70 per cent of employees working in supported employment services earning around two-thirds of the minimum wage by the end of that three-year period. That is a significant increase, and it does come with some risks to the viability of these organisations, in particular, with attendant job losses for employees with disability—mainly, probably, those employees who have more severe disability, who require more on-the-job support. I think they're most at risk of being displaced from the labour market as a result of these changes.' [FOOTNOTE: Evidence, Mr Paul Musso, Policy Advisor, National Disability Services, 3 July 2024, pp 66-67].

Resolved, on the motion of Ms Boyd: That paragraph 3.119 be amended by omitting 'and people with a disability' after 'and greater economic participation for Aboriginal peoples'.

Ms Boyd moved: That the following new paragraph be inserted after paragraph 3.119:

'In relation to procurement being used to support employment opportunities and greater economic participation for people with a disability, the committee notes the difference in opinions of stakeholders in relation to the benefits of open vs segregated employment settings and the payment of minimum vs subminimum wage to people with disability. However, noting that the Royal Disability Commission conducted a far wider-reaching and longer-running investigation into these issues than our inquiry has been able to, the committee is guided by the Royal Disability Commission's view that Australia should move to

open employment settings and the phasing out of subminimum wage by 2034. The committee believes that NSW procurement practices have a role to play in assisting that transition'.

Ms Suvaal moved: That the original motion of Ms Boyd be amended by omitting all the words after 'subminimum wage to people with a disability' and instead inserting:

'The committee also notes that the Disability Royal Commission stated that in Part B, 'Inclusive employment', we consider how to increase the pathways and opportunities for people with disability in the workforce. Consistent with our vision for inclusion, we believe people with disability should have genuine choice and control over where and how they work. This should include a range of supported employment options in integrated, open and community-facing settings. This may include Australian Disability Enterprises (ADEs), for as long as they exist, but should not be limited to ADEs. People with disability should be paid fair wages. We make recommendations to increase open employment and for the Australian Government to develop a plan to transition Australia away from segregated forms of employment and the payment of subminimum wages to people with disability. Commissioners have a shared commitment to inclusive employment for people with disability. However, Commissioners have set out different perspectives and recommendations in some areas'. [FOOTNOTE: Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability, *Inclusive education, employment and housing – Summary and recommendations* (September 2023), p 11, <https://disability.royalcommission.gov.au/system/files/2023-09/Final%20Report%20-%20Volume%207%2C%20Inclusive%20education%2C%20employment%20and%20housing%20-%20Summary%20and%20recommendations.pdf>].

Amendment of Ms Suvaal put and passed.

Original question of Ms Boyd, as amended, put and passed.

Ms Boyd moved: That the Recommendation 14 be omitted:

**'Recommendation 14**

- That the NSW Government provide greater support for the procurement of disability employment organisations, including by:
- increasing training, support and skill development for disability enterprises, 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'.

and the following new recommendation be inserted instead:

**'Recommendation 14**

That the NSW Government use the procurement framework to incentivise the employment of people with disability, including by:

- increasing training, support and skills development for disability employment organisations, in order to assist them with tendering processes,
- working with and assisting disability enterprises to transition to open employment settings in which minimum wage is paid to people with disability, in line with the Disability Royal Commission recommendations, while maintaining the financial viability of those organisations
- improving reporting and accountability requirements for procuring agencies
- enhancing training to government procurement officials on relevant requirements'.

Ms Suvaal moved: That the motion of Ms Boyd be amended by omitting in the second bullet point:

- ...'in line with the Disability Royal Commission recommendations, while maintaining the financial viability of those organisations.

Amendment of Ms Suvaal put and passed

Original question of Ms Boyd, as amended, put and passed.

Ms Boyd left the meeting.

Mr Tudehope moved: That the following paragraphs be inserted after paragraph 2.21:

"The Labor Government went to the election with a commitment to "increase tender weightings to 30 per cent to capture local content, job creation, small business and ethical supply chains". This change could have been made at any time by a Procurement Board Direction. However, 18 months on this policy commitment is still not in effect and there is no detail or clarity as to how it will operate.

The only announcement made has been to restrict the application of the policy so that it would not apply to any tender under \$7.5 million.

The current Procurement Framework – established under the previous Coalition Government – already requires that all tenders for goods and services valued at \$3 million or more must include a non-price tender weighting of 10% for small and medium enterprise participation. Such tenders must also include a minimum 10% non-price tender weighting for support of the NSW Government's economic, ethical, environmental and social priorities. All goods and services tenders for \$3 million or more must also include submission of a Small and Medium Enterprise and local participation plan, referencing NSW specific content and report on these commitments quarterly.

There has been no clarity from the Government as to whether these existing requirements are to be replaced by the new 30% tender weighting or if this will be an additional requirement.

The new 30% weighting is to cover four quite discrete matters: local content, job creation, small business and ethical supply chains. There is no clarity yet from the Government as to whether the 30% weighting will need to be broken down into these four discrete components with a 7.5% weighting each or will a supplier be assessed on all four factors together?

It is also unclear why only supplies valued at \$7.5 million or more should be assessed in relation to having an ethical supply chain. This should be a Yes or No rating not a percentage weighting.

The issue of identifying a local supplier is not straightforward. The Government has made it clear that under its proposed Jobs First Commission legislation "The definition of 'local content' will be any Australia or New Zealand-based enterprise.

The "if not, why not" directive, which comes into force on 1 January 2025 requires Government agencies to test the market with local suppliers for contracts valued at \$7.5 million or more. The only definition for a "local supplier" is "a NSW based enterprise". Purchasing agencies are directed to identify "local suppliers" by filtering the supplier database at buy.nsw by "location". However, this will capture any supplier with an ABN linked to a NSW address. This will include the NSW registered address of any international supplier who has or is hoping to do business with the NSW Government. Much more work will need to be done on refining what counts as a "NSW based enterprise" if this policy directive is to have any real effect other than increasing the paperwork in the procurement process'.

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Martin, Mr Tudehope.

Noes: Mr D'Adam, Dr Kaine, Mr Nanva, Ms Suvaal.

Question resolved in the negative.

Mr Tudehope moved: That the following new paragraphs be inserted after paragraph 2.119:

- 'The CMFEU General and Construction Division also called for the adoption of a Secure Local Jobs Code which would require not just the principal contractor but every subcontractor down the supply chain to have a union (effectively the CFMEU for any construction project) approved Enterprise Bargaining Agreement. No one could supply to the NSW Government without a Secure Local Jobs Certificate'.

- In Operation Kingfisher, the ACT Integrity Commission is investigating a matter in which it is alleged CFMEU officials cited the policy intent of the Secure Local Jobs Code to pressure the ACT Government to favour a less competitive supplier in favour of a CFMEU supplier.
- The Committee notes and commends the Minister for Domestic Manufacturing and Government Procurement for three times ruling out the adoption of a Secure Local Jobs Code. [FOOTNOTE: Evidence, Ms Courtney Houssos, Minister for Domestic Manufacturing and Government Procurement, 5 September 2024, p. 21].
- The Master Builders Australia, the Australian Industry Group, the Australian Constructors Association and the Civil Contractors Federation have called for the removal of Enterprise Bargaining Agreement clauses that give the CFMEU the right of veto over the use of subcontractors; require subcontractors be paid the same as those engaged by the head contractor; and give unfettered rights to officials to attend worker inductions and enter workplaces.
- Besix Watpac, which entered into an Enterprise Bargaining Agreement with the CFMEU on 16 July 2024, giving the Union veto power over all subcontractors, was awarded the contract for Shellharbour Hospital. Noting the recent media reports as well as official statements from Geoffrey Watson SC and the CFMEU Administrator about the involvement of criminal elements in the obtaining of some Enterprise Bargaining Agreements with the CFMEU as an interested party, it is concerning that such important projects may be subject to interference leading to cost blowouts or delays by the CFMEU'.

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Martin, Mr Tudehope.

Noes: Mr D'Adam, Dr Kaine, Mr Nanva, Ms Suvaal.

Question resolved in the negative.

Mr Tudehope moved: That the following new recommendation be inserted:

**'Recommendation X**

The NSW Government should conduct an audit of all current Government construction projects to identify suppliers with Enterprise Bargaining Agreements to which the CFMEU is a party and, in conjunction with the CFMEU Administrator, take all necessary steps to ensure that projects costs and timing are not adversely impacted by any inappropriate action by the CFMEU, former CFMEU officials or their associates'.

Question put.

The committee divided.

Ayes: Mrs Carter, Mr Martin, Mr Tudehope.

Noes: Mr D'Adam, Dr Kaine, Mr Nanva, Ms Suvaal.

Question resolved in the negative.

Resolved, on the motion of Mrs Carter: That:

- the draft report [as amended] be the report of the committee and that the committee present the report to the House;
- the committee secretariat correct any typographical, grammatical and formatting errors prior to tabling;
- the committee secretariat be authorised to update any committee comments where necessary to reflect changes to recommendations or new recommendations resolved by the committee;
- dissenting statements be provided to the secretariat within 24 hours after receipt of the draft minutes of the meeting;
- the secretariat table the report at 11.30 am on Friday 11 October 2024.



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

**5. Adjournment**

The committee adjourned at 10.50 am, *sine die*.

Daniel Whiteman  
**Committee Clerk**

## Appendix 4 Dissenting statement

Hon Damien Tudehope MLC; Hon Rachel Merton MLC, Liberal Party

### 30% TENDER WEIGHTING FOR LOCAL CONTENT, JOB CREATION, SMALL BUSINESS AND ETHICAL SUPPLY CHAINS

This inquiry was conducted following a referral from the Minister for Finance on 12 September 2023 – almost six months after Labor took office following an election in which it promised to “*increase tender weightings to 30 per cent to capture local content, job creation, small business and ethical supply chains*”.

**This change could have been made at any time by a Procurement Board Direction.** More than 18 months on this commitment is still not in effect nor is there any detail as to how it will operate. The only announcement made by the Minister for Domestic Manufacturing and Government Procurement is that it would **not apply to any tender under \$7.5 million**. This inquiry makes no recommendation to the Minister on how this 30% tender weighting should operate.

The current Procurement Framework – established under the Coalition Government – requires that **all tenders for goods and services valued at \$3 million or more** must include a non-price tender weighting of **10% for small and medium enterprise participation**. Such tenders must also include a **minimum 10%** non-price tender weighting for support of the Government's **economic, ethical, environmental and social priorities**. Goods and services tenders for \$3 million or more must include submission of a **Small and Medium Enterprise and local participation plan, referencing NSW specific content** and report on these commitments quarterly.

There is no clarity from the Government as to whether these existing requirements are to be replaced by the new 30% weighting or if it will be an additional requirement.

The new weighting is to cover four discrete matters: local content, job creation, small business and ethical supply chains. There is no clarity from the Government as to whether the 30% weighting will need to be broken down into these four components with a 7.5% weighting each or will a supplier be assessed on all four factors together?

It is also unclear why only supplies valued at \$7.5 million or more should be assessed in relation to having an ethical supply chain. This should be a Yes or No rating not a percentage weighting. A proposed recommendation from Greens Committee member, Ms Abigail Boyd, to increase funding “*towards the Anti-slavery Commission's monitoring functions under the Modern Slavery Act 2018*”, supported by the Opposition and the Hon Taylor Martin MLC, was surprisingly rejected by Government members and defeated by the casting vote of the Chair.

The issue of identifying a local supplier is not straightforward. The Government has made it clear that under its proposed Jobs First Commission legislation “The definition of ‘local content’ will be any Australia or New Zealand-based enterprise.”

The “if not, why not” directive, which comes into force on 1 January 2025 requires Government agencies to test the market with local suppliers for contracts valued at \$7.5 million or more. The only definition for a “local supplier” is “a NSW based enterprise”. Purchasing agencies are directed to identify “local suppliers” by filtering the supplier database at buy.nsw by “location”. However, this will capture any supplier with an ABN linked to a NSW address. This will include the NSW registered address of any international supplier who has been doing or is hoping to do business with the NSW Government. More work will need to be done on refining what counts as a “NSW based enterprise” if this policy directive is to have any effect other than increasing the paperwork in the procurement process.

### **CMFEU General and Construction Division**

Submission 4 to the inquiry was signed by Darren Greenfield, the then Secretary (since removed by the Administrator) of the NSW Branch of the CMFEU General and Construction Division. Mr Greenfield was scheduled to give evidence to the inquiry but did not appear. The Government-dominated Committee rejected a proposal by the Opposition members to call Mr Greenfield to give evidence at a further hearing.

The Greenfield-CFMEU submission called for the adoption of a Secure Local Jobs Code which would require, not just the principal contractor but every subcontractor down the supply chain, to have a union (effectively the CFMEU for any construction project) approved Enterprise Bargaining Agreement. No one could supply construction services to the NSW Government without a CFMEU approved EBA!

In Operation Kingfisher, the ACT Integrity Commission is investigating a matter in which it is alleged CFMEU officials cited the policy intent of the Secure Local Jobs Code to pressure the ACT Government to favour a less competitive supplier approved by the CFMEU.

The Master Builders Australia, the Australian Industry Group, the Australian Constructors Association and the Civil Contractors Federation have called for the removal of Enterprise Bargaining Agreement clauses that give the CFMEU the right of veto over the use of subcontractors; require subcontractors be paid the same as those engaged by the head contractor; and give unfettered rights to officials to attend worker inductions and enter workplaces.

Besix Watpac, which entered into an Enterprise Bargaining Agreement with the CFMEU on 16 July 2024, giving the CFMEU veto power over all subcontractors, was awarded the contract for Shellharbour Hospital. Noting recent media reports, as well as official statements from Geoffrey Watson SC and the CFMEU Administrator, about the involvement of criminal elements in the obtaining of some Enterprise Bargaining Agreements with the CFMEU as an interested party, it is concerning that such important projects may be subject to interference by the CFMEU, leading to cost blowouts or delays by the CFMEU.

While noting the Minister for Domestic Manufacturing and Government Procurement has three times ruled out the adoption of a Secure Local Jobs Code, the NSW Government should conduct an audit of all current Government construction projects to identify suppliers with Enterprise Bargaining Agreements to which the CFMEU is a party and, in conjunction with the CFMEU Administrator, take all necessary steps to ensure that projects costs and timing are not adversely impacted by any inappropriate action by the CFMEU, former CFMEU officials or their associates.

