

REPORT ON PROCEEDINGS BEFORE

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**

CORRECTED

At Macquarie Room, Parliament House, Sydney, on Tuesday 25 June 2024

The Committee met at 9:45.

PRESENT

The Hon. Dr Sarah Kaine (Chair)

Ms Abigail Boyd (Deputy Chair)

The Hon. Anthony D'Adam

The Hon. Rachel Merton

The Hon. Bob Nanva

The Hon. Emily Suvaal

The Hon. Damien Tudehope

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The CHAIR: Welcome to the third hearing of the Standing Committee on Social Issues inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respects to any Aboriginal and Torres Strait Islander people joining us today. My name is Sarah Kaine and I am the Chair of the Committee.

I ask everyone in the room to turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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Ms KYLIE FLAMENT, Chief Executive Officer, Social Enterprise Council of NSW and ACT, affirmed and examined

The CHAIR: Welcome, Ms Flament, and thank you for making the time to give evidence today. We appreciate it. Would you like to start by making a short statement?

KYLIE FLAMENT: Yes, please. Thank you very much for inviting me to speak on the lands of the Gadigal people of the Eora nation. I acknowledge that they have been trading here for tens of thousands of years in a way that is socially and environmentally responsible, and we have a lot to learn. I am here on behalf of the Social Enterprise Council of NSW and ACT [SECNA], a member-led peak body for social enterprise in New South Wales and the ACT, social enterprises being businesses that put people and planet first. I have also run a large social enterprise, employing young people and refugees to do environmental work, for almost five years. I can speak to that if it's helpful.

I'd like to make two points as my opening remarks. Firstly, as we all know, the New South Wales Government has a responsibility to deliver value for money in its procurement for the people of New South Wales. But that needs to be the full cost and benefit of a purchase, not just the dollar figure on the contract, otherwise it risks making false economies. For example, I am told that within NSW Health we are purchasing cheaper body bags from China and having to use two instead of one, where we could be purchasing higher quality body bags from a social enterprise in New South Wales—false economies. I have also heard that within Transport for NSW there are contractors employing cash-in-hand workers to plant trees and, as a result, on some projects more than one-third of those trees died and had to be replanted—false economies.

I am also told it is standard practice in some industries that contractors underquote to government in order to get the contract and then make up for it by overcharging on variations—more false economies. Social enterprises offer greater value for money. Some employ people who need the jobs most, some sell goods and services that are fundamentally improving the world, and some donate their profits to charity. All three types of social enterprise save the New South Wales Government money overall, and a social procurement strategy would ensure that these businesses rise to the fore.

My second remark is based on the well-used saying that "sunlight is the best disinfectant". I note that there has been a transparency revolution in business to consumer markets; everything gets reviewed and you know which products to buy or which companies to buy from and which to avoid. The same has not yet happened in business to government. So I can quickly find out which coffee or cat food or kettle to purchase for \$50, based on other users' experiences, but the New South Wales Government cannot figure out which construction company, or consultant, or cybersecurity expert to spend \$50 million of taxpayer money on. Both social procurement and greater transparency will bring greater value for money for the New South Wales Government and positively impact the people of New South Wales. I look forward to answering any questions you have.

The CHAIR: The first question I have is quite a general one, and I note the examples you have already given. How successful do you think the current procurement policy framework is at encouraging agencies to procure from social enterprise, and how could this be improved?

KYLIE FLAMENT: There is one small statement in the procurement framework that encourages purchase from social enterprises, but that has no teeth, and so I would say it's not effective at all, currently. I think there are a number of ways that it could be improved. One suggestion that has been put forward is a percentage spend on social procurement. Another suggestion would be social and environmental impact weightings on contracts. The feedback I'm getting from others around Australia is that the weightings would be the best way to go.

The CHAIR: Maybe relatedly, I note in your submission that the feedback from your members about their experience with the procurement process reveals some concerning issues, notably, being squeezed on price and also—a bit disturbingly—being included tokenistically on tenders. Can you talk a bit about that? Are there any other ways that those could be overcome?

KYLIE FLAMENT: Yes, quite a few members have spoken to me about this, particularly the latter. Often contractors who are putting in a tender submission will ask for letters from social enterprises saying, "Yes, I will absolutely work with these people and here is everything you need to know about my social and environmental outcomes." Presumably, given that they continue to be asked to make these submissions, they are counting for something in those tenders, and then often they never hear back or they're told after the fact that it just didn't eventuate. So the contractor might have got the tender but they didn't engage the social enterprise, so there wasn't a fair exchange there. I think it comes back to transparency. If a social enterprise is named in a tender

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submission, then they should have the right to know what was promised on their behalf and be able to speak up if it wasn't delivered on.

They should also have some mechanism to give feedback to government where there might be "social washing" happening. While I was the general manager of Green Connect, for example, we were engaged on a New South Wales Government project. The contractor that we were subcontracting to won an award for 5 per cent spend with a social enterprise. Now, I would be shocked if 5 per cent of that contract value came to us because we were engaged in a very minor way. A lot of photos were taken, a lot of press releases came out about our engagement, but we weren't given a substantial amount of work. But I had no way of knowing the full contract value and so no way of raising that there was overpromising and underdelivering happening.

The CHAIR: There's a bit of catch 22 in that social enterprises want to be involved so when they're approached, they're amenable to that; but after they've given some of their social capital, they're not then necessarily engaged with.

KYLIE FLAMENT: Correct, or they're engaged in a very minor way. I saw another one just yesterday. I'm judging some awards at the moment, and a very large construction company that is contracting to government asked for an award for engaging four Aboriginal apprentices on a very large project. I just looked at that and went, "That's not significant enough to warrant an award. But you've done an excellent job of promoting that you're engaging Aboriginal people on this project." I think there needs to be greater transparency so that you're not relying on compliance and auditing; you're relying on the promises being made by these companies publicly and the public holding them to account.

The CHAIR: So maybe they should apply for a PR award?

KYLIE FLAMENT: I'd say so.

The CHAIR: In your submission you spoke about competitive tendering and you already touched on issues of transparency. But you talk about underpricing and unethical conduct, generally. Competitive tendering is often seen as one of the key things that needs to be protected in the procurement process so that you get the best bang for your buck, so to speak. What are your concerns about the competitive tender process?

KYLIE FLAMENT: My main concern is that it is creating false economies and bad behaviour. Competitive tendering is a race to the bottom on price. It means that some contractors, as I mentioned in the opening remarks, are underquoting. Again, when I was general manager of Green Connect, 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 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."

That's really bad behaviour and, ultimately, it's not getting government best value for money. You're not necessarily paying the price that was quoted to you because of these behaviours. I think competitive tendering just on price is going to continue to have these negative outcomes, whereas, for example, if you had a budget you could say, "Right, we need the gardening and landscaping of this site done and our budget is \$1 million over five years. What can you do for that price? What is included?" You might get better outcomes and be able to see the difference between an organisation that is just going to do the job and an organisation that is going to do the job while employing people who need the jobs most.

The CHAIR: There seems to be a theme in the submissions we have received about the current process and innovation—or perhaps not allowing for innovation—and linking that also with a sense that maybe there is a reticence amongst procurement officials to taking risks or thinking a bit creatively. Have you got any thoughts on that?

KYLIE FLAMENT: Yes. I can only assume that procurement officials, having been on the receiving end of some of this bad behaviour over a number of years, become more and more stick approach rather than carrot approach. So someone who has been outsmarted, as it were, in a competitive tendering situation—where it does feel adversarial between government as the procurer and the contractor delivering—the procurement official might have missed something in the contract that the contractor then uses to their advantage to overcharge on, for example. They are going to become battle weary, and so become more and more compliance driven, and minimising risk rather than maximising outcomes.

The CHAIR: Thinking about social impact and thinking about engaging with social enterprise, what is the social impact of whatever it is we are trying to do and how do we measure that? That seems to be quite a tricky

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thing to do. What do you recommend is an appropriate way of considering, or a method for considering, the measurement of social impact?

KYLIE FLAMENT: I think there are two potential approaches. The first is to request and measure and look for evidence of the social and environmental impact of a contract. It doesn't matter who is delivering it, whether it is a social enterprise or not, it is ultimately the outcomes that count. But the cost of auditing that may be prohibitive. Having said that, I strongly believe that transparency can help in that respect. If there are public commitments made then they can be publicly held to account. The second way would be to engage certified social enterprises. There are currently two different modes of verification and certification in Australia. The first is the Social Traders certification, which has been around for a long time. They have their own process where they check that an organisation genuinely is having the social and environmental outcomes that they say they are.

The second is fairly new. It is a global standard that came in last year under the Social Enterprise World Forum called People and Planet First. It is a participatory governance model where there are checks and balances in who gets the verification, who gets the green tick, to say, "Yes, they are a social enterprise." But then anyone can raise concerns—anyone in the entire community. If concerns are raised that someone is engaging in social washing, greenwashing, unethical behaviour, then that is reviewed immediately by the People and Planet First verification team in partnership with a local verifier. In New South Wales and the ACT, as of last week, that verifier will be SECNA.

Ms ABIGAIL BOYD: Thank you very much for coming this morning and for your submission. I wanted to pick up on that competitive tendering point. I see in your submission the idea of collaborative tendering. Can you talk us through collaborative tendering and whether it has been used in any other jurisdictions or any other places?

KYLIE FLAMENT: Yes. The idea would be that government has something that they need to have done, like a good or a service that they need to procure, and they go out to market, talking about, "This is our rough budget" or "Generally, what could be here done here? What might this look like?" I have seen it done at a local council level. For example, Wollongong City Council approached Green Connect while I was the general manager and said, "We have a problem with bikes. There are too many bikes going into landfill. It is not commercially viable to fix this problem, but we need it fixed. We can't keep throwing good metal into our landfill. What can we do here?" So Green Connect worked with a number of local organisations to find who would be best placed. We had community meetings about how we would fix this and how much it would cost. Ultimately, a proposal was given to Wollongong City Council to consider to say, "This is absolutely transparently how many bikes could be recovered, who could recover them, how much that would cost, how much they could be sold for and, therefore, what the gap is." That is a really different way of doing things than that council saying, "We need bikes to be recovered. How much is it?"

Ms ABIGAIL BOYD: In terms then of the cost of that project—I understand that the collaboration involved the design of what it would look like—what was the process around determining the best price or the scope of cost?

KYLIE FLAMENT: We just did things absolutely transparently and said, "This is how much salaries and wages on this project will be. This is how much it would cost to rent a space the size that would be required. This is what transport would cost." Everything was completely transparent to council. There were no hidden lines. There was nothing done that they couldn't see and investigate themselves and, ultimately, it was about the outcome. So if council wanted to look at that and say, "We think we could deliver this better, cheaper and faster ourselves," then they could take those costings and go away and use them internally.

Generally, I find with projects like that—one member of one council once said to me, "We can't get around our own red tape. Can you please take this project on?" Social enterprises tend to be more agile and able to adapt faster and, ultimately, can deliver things for greater value for money than the government organisations themselves. What I find—I have worked in the commercial sector, I've worked for government and I've worked in social enterprise, and social enterprise is unbelievably willing to share their information, their knowledge and their networks. They care about the outcomes, what is good for people and the planet, not about the profit to be made. They use profit as the tool, not the goal. So they are willing to engage in conversations where it's about how do we get this problem fixed and who is best placed to do it, not about how can I get the most out of this opportunity.

Ms ABIGAIL BOYD: When we are talking then about collaborative tendering, it is for projects that we have already identified as something that a social enterprise would be collaborating with. I love the idea; I am just trying to work out, from a government perspective—playing devil's advocate, they would say, if it was anyone who was profit motivated, then that reverse way of doing things might lead to the prices going up too much. Have you seen it being applied anywhere where it is not just with social enterprises in mind?

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KYLIE FLAMENT: This example is sort of in train, but a New South Wales Government agency has approached us to say, "We have got this land and we want to use it for something. How would we go about designing? We don't even know where to start." My advice to them was that it is a bit of a chicken-and-egg scenario, because once you write the tender you have locked yourself out of any innovation. You have said, "This is what we are going to do," so a consultative process with the general community and opening it up to businesses, social enterprises or anyone who thinks that they know what could be done here—perhaps not the best example, sorry.

Ms ABIGAIL BOYD: Again, that is collaboration in design, before the tender process. I am interested in—as you have well identified, one of the problems of competitive tendering is this race to the bottom, where people are putting forward a certain cost that is just not actually possible and, down the track, they end up increasing the cost of the project. I am very interested in these examples of where—in your submission, you say:

Set the price and compete on quality and outcomes, rather than setting the quality and outcomes and competing on price ...

It was that aspect that I found quite compelling. If we have an envelope of price and then people are competing within it, then, presumably, that allows a focus of the quality of not just the providers but also the social impacts and everything else. Are there any examples of that setting a window of price and then having people compete within it? Is that something that we have seen elsewhere?

KYLIE FLAMENT: I would have to take that question on notice and see if I can find examples. In theory, though—I used to work at the children's hospitals and there are all sorts of things that we procured there, from office furniture, computers, food. Hospital food, my goodness. Imagine if we had a budget set—which we did; the hospital knew its budget for food, but we would go out looking for the cheapest possible provider. Rather than that, if the hospital went out saying, "This is the budget and this is how many meals need to be served, so what can you do within that price?", they might have better options in front of them and more social and environmentally friendly options.

Ms ABIGAIL BOYD: So perhaps those tenders where the price is a bit more certain, or where we have had a recurring contract and over time it's clear as to how much it should cost, are the sorts of areas. As an alternative, you talk about setting targets for a percentage of contracts that could be delivered to social enterprise or at least with those objectives in mind. Is that something you have seen in other jurisdictions, and has it worked well?

KYLIE FLAMENT: Yes, we have seen it in Victoria. We have actually have seen it on some contracts in New South Wales where large contractors were trying to get ahead of the curve. Seeing what was happening in Victoria and moving into Queensland on a percentage spend, they went, "We are going to implement that in New South Wales." Again, while I was general manager of Green Connect, we were approached by a tier 2 company to say, "We want you or someone like you in our supply chain." And so we have put a piece of work out to tender, and we have made it very clear that the social impact aspect of people's bids will be very important to determining who gets the tender.

Both tenderers spoke to us and both of them said, "We don't get this social enterprise thing. We don't get why it matters. This is outside of our scope." One of them was chosen, presumably—actually, we were told—based on how much they promised to work with us. By the end of the contract, that manager who had said, "I don't get it", was like, "Oh, my goodness. Your staff—we actually had a complaint that our staff were working too hard and that we were creating bottlenecks in the process because the team were absolutely committed to getting the job done.

There were also some incidents, when employing young people and refugees, of racism. We went in and offered advice to the contractor on how they might go about engaging a more diverse workforce and ironing those issues out because that is what we were absolutely committed to doing. It wasn't a box-ticking exercise for us. That contractor went on to engage Green Connect in further work. I have seen that where targets are set contractors will adhere to them. They might do so unwillingly at first, but I think the quality of the work often speaks for itself and so they are sold, basically, by the end of the process.

The Hon. DAMIEN TUDEHOPE: The current New South Wales Government procurement framework encourages people who are seeking procurement. Since that was adopted, I think in 2020, has there been any change in that framework?

KYLIE FLAMENT: Any change in the behaviour?

The Hon. DAMIEN TUDEHOPE: Any change in moving away from "encourage" to a more prescriptive approach to social enterprises?

KYLIE FLAMENT: Sorry, are you asking me—

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The Hon. DAMIEN TUDEHOPE: Has the Government adopted any other policies?

KYLIE FLAMENT: Not to my knowledge.

The Hon. DAMIEN TUDEHOPE: So in the last 18 months nothing has occurred?

KYLIE FLAMENT: In terms of social procurement?

The Hon. DAMIEN TUDEHOPE: Yes.

KYLIE FLAMENT: Not to my knowledge.

The Hon. DAMIEN TUDEHOPE: In terms of actually doing something to make it easier for social enterprises to contract with the Government?

KYLIE FLAMENT: Not to my knowledge. I am aware of some government departments that are talking about bringing in their own social procurement ahead of whole of government, but we haven't seen anything delivered as yet.

The Hon. DAMIEN TUDEHOPE: But you haven't seen any changes to the policy?

KYLIE FLAMENT: No.

The Hon. DAMIEN TUDEHOPE: If I was going to suggest to you a definition of value for money, would you accept that the best way of looking at potential opportunities for social enterprises is looking at the total benefit to the community and measuring it and costing it in the most transparent way, not just about having the best cost indicator in relation to the product?

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: Would it surprise you that that's the Government's policy?

KYLIE FLAMENT: Yes, it would surprise me to hear that. If it is the policy, that is not the practice that I've observed or others have told me about.

The Hon. DAMIEN TUDEHOPE: Effectively, the definition is there but the practice is not. They can have the definition and have the statement of what value for money looks like. But, in many respects, when the rubber hits the road they may not be implementing their own policy?

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: Because the objectives of procurement include these things—I assume that you've potentially looked at the policy framework for the Government.

KYLIE FLAMENT: I have, though I couldn't quote from it.

The Hon. DAMIEN TUDEHOPE: They include value for money. That is the first thing. It goes on to say fair and open competition. You'd embrace that, would you not?

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: You'd embrace easy-to-do business?

KYLIE FLAMENT: That would be great.

The Hon. DAMIEN TUDEHOPE: Also, I think Ms Boyd or the Chair may have asked you about innovation, and you'd want opportunities. The last thing that is contained in the current policy framework is economic development, social outcomes and sustainability. Again, that would be something which I think you've given evidence about today, which is exactly what you're advocating upon the Government.

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: So, if it already exists in their framework, your question is not so much about improving the definition; it's about actually implementing what they already define as their policy framework.

KYLIE FLAMENT: Yes, I think that's fair. There's policy and then there's practice. I know that the New South Wales procurement team did a study on the behaviour of procurement managers. I don't know if they spoke to that; I skimmed through the transcriptions. But what they found was the junior procuring officers were often more likely to look for that.

The Hon. DAMIEN TUDEHOPE: To just look at number one: value for money.

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KYLIE FLAMENT: No, they're actually more likely to look for overall value for money. 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.

The Hon. DAMIEN TUDEHOPE: Taking you up on that, in relation to contracting generally, is the current system in relation to contracting with the Government—are they easy-to-read contracts?

KYLIE FLAMENT: No.

The Hon. DAMIEN TUDEHOPE: So would it also be a recommendation of yours that the language used in contracts be simplified so that organisations or social enterprises had a document which was a standardised version of a contract, which was easy to read?

KYLIE FLAMENT: Yes. I don't think that's just about social enterprises.

The Hon. DAMIEN TUDEHOPE: No, it would be across the board.

KYLIE FLAMENT: That's just a fairer process for everyone, so that you don't have to be a business that makes sufficient profits that you can engage lawyers and procurement experts to read these contracts and offer their thoughts.

The Hon. DAMIEN TUDEHOPE: One of the recommendations that I think you do make is you would suggest that the Government move towards a similar sort of policy to the Aboriginal Procurement Policy.

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: Have you had discussions with the Government about adopting that?

KYLIE FLAMENT: With the New South Wales Government? No. Sorry, yes, some brief conversations with the procurement team, but nothing official.

The Hon. DAMIEN TUDEHOPE: Is there a specific aspect of the Aboriginal Procurement Policy which you would say is appealing to social enterprises and that the Government should embrace?

KYLIE FLAMENT: Yes. I mean, the 1 per cent target sets in stone a commitment which flows through different contracts.

The Hon. DAMIEN TUDEHOPE: The 1 per cent target is up to what amount of procurement? Across the total procurement package or only in the contracts up to—what particular amount should be 1 per cent?

KYLIE FLAMENT: I don't see that there should be a limit.

The Hon. DAMIEN TUDEHOPE: You have identified a significant number of negative experiences of the organisations. Are there any positive experiences? As the Minister, I dealt with beehive industries and they were very positive about their experiences in dealing with the Government.

KYLIE FLAMENT: Yes.

The Hon. DAMIEN TUDEHOPE: Can you identify other positive experiences in terms of procurement through the social enterprise system?

KYLIE FLAMENT: I think what is tricky, when you go out to members—we had 330 members at the time of submission, now 371. When you say, "What's your feedback?", you are more likely to get the negative stories.

The Hon. DAMIEN TUDEHOPE: You get the negative, yes.

KYLIE FLAMENT: I do take some of them with a grain of salt, but there are themes emerging. In general, there are some positive stories where social enterprises have been able to grow because they were able to sell to the Government. Where those relationships have been strong and the contracts have been fair, that has been great. What is really interesting to me is, as the social enterprise sector grows in numbers and acknowledgment and strength, and knowing that we've only had a peak body for four years, so we've only been really connecting with each other for four years, people are swapping stories and able to do reverse reference checks, for example.

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When they get a call from one of the big contractors to say, "Hey, can you submit a letter saying that you will work on our project and how amazing you are"—

The Hon. DAMIEN TUDEHOPE: I've just got one more question to ask you. Do you think a more centralised approach to procurement would help or hinder opportunities for social enterprises?

KYLIE FLAMENT: I don't know. I'm sorry.

The Hon. DAMIEN TUDEHOPE: If it was a devolved model where social enterprises in regional and local areas could deal with an organisation in those areas—so, a centralised body. You have no view in relation to that?

KYLIE FLAMENT: There are pros and cons. Obviously, with centralisation you can train people really well on best practice procurement, but then you—

The Hon. DAMIEN TUDEHOPE: May have availability issues.

KYLIE FLAMENT: Yes. And there is something to be said for local procurement, and local procurement is benefited by having people in those areas procuring. They know what's happening on the ground. They know the organisations that are truly delivering. So I think a mix of the two, which is what you already have. You have a centralised procurement team which can offer advice and strategies and checks, and you have a devolved procurement model. But there needs to be greater education around the policies saying what value for money is and how you might measure that.

The CHAIR: Thank you very much. That is the end for today. We very much appreciate you appearing.

The Hon. DAMIEN TUDEHOPE: There was one question on notice.

The CHAIR: That question will be sent to you by the secretariat and you will be given 21 days to respond. Thank you again for your submission and for appearing today.

(The witness withdrew.)

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Mr YUSEPH DEEN, Chief Executive Officer, NSW Aboriginal Land Council, before the Committee via videoconference, affirmed and examined

Mr SHARIF DEEN, Head of Secretariat, NSW Coalition of Aboriginal Peak Organisations, before the Committee via videoconference, affirmed and examined

The CHAIR: I welcome our next witnesses to the hearing. Thank you both for the time you are taking to give evidence but also for the submissions of your organisations. It is a little bit difficult with two witnesses with the same surname, but we will work our way through that.

SHARIF DEEN: You can address me as Sharif, if it makes it a bit easier for you.

The CHAIR: Thank you very much. Do either or both of you have an opening statement you wish to make?

YUSEPH DEEN: I can open with a statement. For context, the NSW Aboriginal Land Council is the largest member-based Aboriginal organisation in New South Wales and serves as a peak representative body for Aboriginal people in the State. NSWALC's primary goal is to protect the interests and further the aspirations of its 29,000 members and the broader Aboriginal community. One significant way NSWALC aims to achieve this goal is by enhancing the economic development of its land rights network and establishing social enterprises. NSWALC operates the Yarpa Indigenous business and employment hub, which is instrumental in building relationships and connecting Aboriginal people to businesses and employment opportunities across New South Wales. This hub plays a crucial role in strengthening both the economic and social development of the Aboriginal community. Based on its experience with New South Wales procurement policy, NSWALC suggests several improvements that could be beneficial.

They include a whole-of-government approach to supporting Aboriginal businesses and closing the gap; prioritising Aboriginal suppliers beyond the targets in the APP; and encouraging all government employees to procure from Aboriginal businesses. When it comes to a whole-of-government approach to supporting Aboriginal businesses and closing the gap, the New South Wales Government should take a holistic approach to procurement that goes beyond merely meeting targets under the Aboriginal Procurement Policy relating to working with Aboriginal businesses. That's covered off on priority reform under the jurisdictional agreement. It should also incorporate other priority reforms under Closing the Gap, such as Priority Reform 1, which focuses on working in genuine partnership with the NSW Coalition of Aboriginal Peak Organisations, or CAPO, and Aboriginal community-controlled organisations, or ACCOs; and Priority Reform 2, which aims to strengthen ACCOs, engaging with ACCOs to assist in capacity building with community through training and employment. This will help meet the supply and demand needs of the New South Wales Government more effectively.

The second area is prioritising Aboriginal suppliers beyond targets. The New South Wales procurement practices should encourage officials to prioritise Aboriginal suppliers, especially in regions with significant Aboriginal populations. For example, in Nowra, where Aboriginal people make up 10 per cent of the population, the percentage of government contracts awarded to Aboriginal businesses or organisations could also be 10 per cent. This prioritisation will lead to increased employment opportunities for local Aboriginal peoples, as Aboriginal businesses and organisations are more likely to hire Aboriginal employees. Aboriginal businesses have a 35 per cent Aboriginal employment rate, compared to 2.2 per cent employment rate among the 42 of Australia's largest corporations surveyed in 2022.

Finally, encourage all government employees to procure from Aboriginal businesses beyond procurement officials. All government employees should be encouraged to prioritise the procurement of Aboriginal businesses for internal purchases, such as stationery orders, cleaning, catering as part of the New South Wales Closing the Gap implementation plan and the APP, so beyond the large-scale infrastructure contracts that generally procurement officials focus on. I'll complete my opening statement there.

The CHAIR: Sharif, do you also have an opening statement?

SHARIF DEEN: I will also make an opening statement on behalf of CAPO. The NSW Coalition of Aboriginal Peak Organisations is a collective of New South Wales Aboriginal community-controlled peak organisations. We provide a strong independent and coordinated voice to address issues affecting Aboriginal people in New South Wales. NSW CAPO had signed the National Agreement on Closing the Gap and works in partnership with the New South Wales Government to implement this agreement in New South Wales. NSW CAPO member organisations are self-determining non-government Aboriginal peak bodies with boards that are elected by Aboriginal communities and/or Aboriginal organisations, which are accountable to their membership.

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Our member organisations are advocates for Aboriginal peoples throughout New South Wales. NSW CAPO and its member peaks have made previous representations to the New South Wales Government in relation to the New South Wales Aboriginal procurement policy, or the APP. This is in line with the New South Wales specific Closing the Gap Priority Reform 5 on employment, business growth and economic prosperity. Procurement policies can provide an opportunity to develop and grow Aboriginal-owned and operated businesses by leveraging the government's procurement spending. Aboriginal businesses are more likely to employ other Aboriginal people. The increasing employment opportunities also then offer increasing economic prosperity for the community.

The APP is part of the New South Wales Government's broader approach to procurement and can play a significant role in the New South Wales Government's ability, in partnership with NSW CAPO and the National Agreement of Closing the Gap, to deliver on its targets under Priority Reform 5. However, the implementation of the revised APP also provides the opportunity to help New South Wales meet its obligations outlined in the national agreement under Priority Reform 2, which is building the community-controlled sector, and Priority Reform 3 on transforming government organisations. NSW CAPO is supportive of the New South Wales Government's intent to develop and grow Aboriginal-owned and operated businesses by leveraging the government procurement spending program. Aboriginal businesses, as mentioned earlier, are more likely to employ other Aboriginal people and this directly contributes to increasing employment opportunities and economic prosperity within Aboriginal communities. I'll conclude my opening statement there.

The CHAIR: I'll ask questions, but I'm happy for either or both of you, where appropriate, to answer. I note that I will start with the submission by the New South Wales Aboriginal Land Council. Your submission talks about the growth of Aboriginal businesses since both the Federal Indigenous Procurement Policy and the APP. Could you talk about this and which aspects you have seen as being the most helpful in that growth.

YUSEPH DEEN: The growth obviously comes from demand. It also comes from the ability of being able to understand the intricacies of the procurement framework within both State and Federal Government. What I mean by that is in the past, prior to the APP and prior to the Federal procurement policy, the ability of Aboriginal businesses to engage in those procurement frameworks was limited basically because of the impacts of, obviously, colonisation and the lack of affirmative action within government spaces around procurement.

Because there was more of a focus on introducing opportunities for Aboriginal businesses to tender for contracts, that also came with a turn in the Government's mindset about how to assist Aboriginal businesses access those contracts as well. That includes framing and development, although that stream is relatively limited. There was more of an effort in being able to work with Aboriginal businesses around not only capacity but also capability. That included financial assistance in the way of assisting those businesses to access those capability builds.

The other area where we look at demand on supply or procurement of Aboriginal businesses is in the understanding that, in the Indigenous business landscape, environment or ecosystem, what has been lacking because of the shut-out of access to the economy by Aboriginal businesses is, for want of a better term, the social capital that exists between non-Aboriginal businesses. A range of smaller businesses can integrate in a manufacturing line to consolidate and bid for larger contracts. That is only starting to come to the fore in the Indigenous business ecosystem. That is because, as the larger Aboriginal businesses start to attract or secure contracts with the Government and other private enterprises, that also creates the capability to link up with smaller Aboriginal businesses and scale up to access those larger contracts.

The CHAIR: I wanted to ask about the 2022-2024 Closing the Gap Implementation Plan. It was critical of some of the changes to the procurement process, indicating that it still did not go far enough to reduce red tape. I think the quote was, "The complexity of the procurement policy still excludes many." While I note that, in your previous answer, part of the benefit of the APP was an understanding of the framework, there still seems to be barriers or too much red tape. I wonder if either or both of you could distil the key aspects that would help remove those barriers.

YUSEPH DEEN: I might defer to Sharif, and I will provide any further comment on that.

SHARIF DEEN: In regards to the 2022-24 implementation plan, as part of the development process, CAPO undertook comprehensive community engagements across New South Wales. On the topic of the Aboriginal Procurement Policy, the references to red tape is that the existing arrangements often provide or create an administrative burden. There are issues around access to capital and the need for a certain level of underwriting. There are also barriers or challenges around insurance requirements. The other key element to the red tape is the size of work packages that are put forward inviting quotes or tenders tend to favour your bigger organisations. So your tier 1 contractors generally have the size and scope to be able to tender for those in their own right.

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Going to a point that Yuseph made in his previous answer, the Aboriginal business community had talked about the need for support to be able to grow, either in the short term as individuals or in the ability to group together. To loop back to the response, one of the key barriers is the fact that current processes favour bigger organisations, and 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.

The CHAIR: Mr Deen, would you like to speak to that? I note that recommendation 5 from your submission seems to echo those themes.

YUSEPH DEEN: Yes. If I could add to that, in previous iterations of the policy—and it's still prevalent to date—given what Sharif touched on, the larger work packages invite the tier 1 and tier 2 contractors. How Aboriginal businesses tried to access those contracts was through the gateway of the tier 1 and tier 2 contractors—Lendlease and the like. It's only recently that procurement officials are starting to listen to the fact that the packages need to be broken down to attract greater engagement with Aboriginal businesses, because there aren't many, if any, tier 1 or tier 2 Aboriginal contractors out there for the large-scale contracts.

If contracts are broken up into smaller packages, it provides businesses the capacity to bid for those contracts, but there's a fundamental recipe that denies Aboriginal businesses securing those contracts and that is track record. If you provide smaller packages to businesses that are growing and they deliver those packages successfully, they start to create a track record as well as growth so that they can bid for the larger contracts. There's a flow-on effect downstream to smaller businesses, because in the Aboriginal business space Aboriginal businesses are 66 per cent more likely to employ Aboriginal people, so there's an employment benefit downstream. Aboriginal businesses are also more likely to contract other Aboriginal businesses and create greater growth in the Aboriginal business ecosystem.

The CHAIR: I wonder if I could ask about another of your recommendations, which goes to some of the issues you raised in your opening statements. Recommendation 1 in the NSW Aboriginal Land Council submission was about requiring a whole-of-government approach to supporting the priority reform areas in the Closing the Gap Implementation Plan. We have been having ongoing discussion and questioning in this Committee around what needs to be driven centrally by government and what can be devolved. Could you explain a bit more why you think that it needs this whole-of-government or more central approach in order to implement the Closing the Gap reforms?

YUSEPH DEEN: I can respond in particular to the question, given the challenges we have had in the Closing the Gap framework. There's a reason why there is priority one to five, around genuine partnership, around building the capacity of the ACCO sector, around transformation of government agencies and, to the credit of the New South Wales Government, pursuing economic participation or self-determination in Aboriginal communities. What we found, from not only a NSWALC perspective but also a CAPO perspective—and I'll get Sharif to chime in as he sees fit—is that there's a framework there. The New South Wales Government and CAPO have signed up to the national agreement. We have a jurisdictional agreement.

The challenges at present are that not only the current Government but the previous Government signed up wilfully to the Closing the Gap arrangement. What we found at a ministerial level is that Ministers lean into their priority reform areas and the target areas. The ministerial class believe in the need to pursue those targets and priority reform areas because it will create meaningful change or facilitate meaningful change in the Aboriginal community. Unfortunately, once Ministers leave the room we have challenges with the New South Wales public service. That goes directly to priority reform area three, transformation of government agencies. Business as usual is very difficult to move from, what we've found for the New South Wales public service.

Where we saw a whole-of-government approach work, or an elevated approach work, was the previous Premier's priority framework where the targets or goals were elevated out of any particular government agency and handled by the Premier's Department. The unit within the Premier's Department had the imprimatur of the Premier and the secretary of the Premier's Department to ensure that there was a whole-of-government approach to those priorities. We see that the Closing the Gap framework, including the procurement practices of government and the policies, will benefit from a similar sort of approach that would be elevated out of any particular government agency and located within the Premier's Department. It would have the imprimatur not only of Ministers but of the Premier to ensure the full implementation and the meaningful intent that is supposed to occur under Priority Reform 1 around genuine partnerships to ensure that we have transformation of government agencies, a new way of doing business and that we don't revert back to the business-as-usual practices of the public service.

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SHARIF DEEN: I'll add some additional thoughts. We're four years into the current 10-year Closing the Gap agreement and one of the key things that we've noticed in the time so far is that there is a clear disconnect between the mandate that's provided by the Premier and Cabinet and by the elected representatives, and the way in which implementation is approached at a bureaucracy level. One of the key elements that we can see is that for a whole-of-government transformation and whole-of-government initiatives to have carriage, they need to be housed and driven by a central agency. It's widely known that within government, the bigger agencies and the bureaucracy will not necessarily take direction from what they deem to be a small project team in the bowels of another agency that doesn't outrank them, so to speak. The idea of Closing the Gap needing to be driven from a central agency, such as either the Premier's Department or the Cabinet Office, is that it comes with the mandate of the Premier and the Cabinet and then it's centrally able to drive implementation of what's been agreed.

Similarly, taking a whole-of-government approach to procurement means that you'd have central coordination or drive of implementation of the APP and the Government's procurement policy and it would stop being treated as a small, discrete piece of work. Generally, procurement departments will look at Aboriginal participation or the Aboriginal Procurement Policy as something just that is for the Aboriginal people in a pocket that they would deem to be related to Aboriginal outcomes rather than treating it as a broader part of the economic policy approach of government and being more than just a niche or specialist industry, I guess.

Ms ABIGAIL BOYD: I want to start by talking about the types of Aboriginal businesses that are receiving contracts on the basis of being a First Nations business. For example, PwC now have an arm called PwC Indigenous Consulting. I understand 51 per cent of it is owned by a couple of First Nations people and then 49 per cent is still owned by PwC. Obviously, that's a very different type of organisation to some of the ones that you've already mentioned in your answers to the Chair. Do you think that when we're talking about those sorts of big offshoots of other non-Indigenous players in the market, we're still having the same flow-on benefits when it comes to local engagement? What's your view on that?

YUSEPH DEEN: I guess the range of Aboriginal businesses—and taking the point about 51 per cent or 50.1 per cent owned by an Aboriginal party—is broad, and what we've found, obviously, in the government sector is that the main types of contracts that are offered have been in the infrastructure space. So we're talking about the tier 1s and the tier 2s, and even the tier 3 contractors. However, there are other opportunities in the space, including the smaller businesses—they might offer catering, it might be a one- or two-person operation. I appreciate the question might go to the social benefits. The way NSWALC views the Indigenous business environment is that because of the flow-on effect, whether it flows on to one or two Aboriginal people or flows on to one or two other Aboriginal businesses there is still a flow-on effect from a social benefit point of view.

The challenge, I guess, is that without a clear framework for a social impact tender, some businesses, obviously, would present themselves as providing social or environmental impact when they do not. We don't particularly have means of measuring that. Obviously, people do talk about the notion of "black cladding". That is where you will have a business that's predominantly controlled by non-Indigenous interests and the Indigenous side of that business may just be somebody's name on a business registration paper. That's an issue. But from a social return on investment point of view, if the business is predominantly Aboriginal, our view is that to understand what the flow-on effect is from a social benefit point of view, more work needs to be done around creating metrics around that.

Ms ABIGAIL BOYD: Sharif Deen, did you want to speak on that as well?

SHARIF DEEN: Yes, thank you. Just to add to that, some of the strong feedback from Aboriginal communities across the State, and particularly business owners, is that one of the challenges around some of the contracting is that they will see a situation like the one you have shared where, on paper, it's 51 per cent owned by Aboriginal people, but the test for community is whether or not the control and the economic benefit derived from that arrangement is equal. Yuseph alluded to it in his response. There are situations that a business is put forward as being 51 per cent Aboriginal-owned, but when you scratch beneath the surface all of the key decisions are not made by the Aboriginal owners and the economic benefit is not derived by the Aboriginal owners. When I say "derived by", what I mean is that you might have 51 per cent ownership but you may only derive 5 per cent to 10 per cent economic benefit. It's a lot harder to see how that benefit then flows onto the Aboriginal community. There are some of those grey issues that people in community themselves raise, around whether or not the ownership reflects where the benefits flows.

To the other part of your question, there is a broad cross-section of businesses that do benefit from contracting. But, as Yuseph pointed out, at this point in time there's a lot of concentration on those big capital expenditure projects—the capital works projects—and those sorts of things. Then there are other pockets where people are engaged for one-off contracts but not necessarily significant pieces of work.

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Ms ABIGAIL BOYD: When we're talking about the social benefits as well as the economic benefits of Aboriginal procurement policy, it's not just the money going to somebody who is a First Nations person but also the participation element where we are increasing Aboriginal employment, where we are also capturing the skills and expertise of Aboriginal people into government work. When we look at the 2020 review of the New South Wales APP, one of the things that they came out with was a recommendation or a finding that there was a lot of box ticking, but there wasn't meaningful participation being formed. Is that your experience as well? Is that meaningful participation aspect lacking in NSW Procurement?

SHARIF DEEN: The point you raise about meaningful participation, in feedback from community and businesses, that's the element that the CAPO submission is around. That's what we're referring to in terms of building the capacity and capability of the sector. If there was that meaningful engagement, it would not only be the benefit derived from the initial contracting interaction, but the ability of the businesses engaged to grow but then also support other businesses to grow.

The other point I would make is that when Aboriginal people look at economic prosperity, our definition of economic prosperity is about the whole community and not about just us as individuals. So that point you raise around meaningful engagement, the economic prosperity benefits in the Aboriginal community would be more far-reaching through meaningful engagement because it goes beyond the individual, or the business contracted, and it goes beyond their family. It goes to extended family, to extended community. Again, the statistics that you raised earlier around Aboriginal businesses are more inclined to engage other Aboriginal businesses, so on and so forth, that flows through. That's in reference to your point about that meaningful engagement as well.

YUSEPH DEEN: I'd add to the last point around what Sharif mentioned is the flow-on effect of greater engagement and more meaningful engagement. As I mentioned earlier, 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. Besides wanting to be an NRL player or a Matilda player, kids start to aspire to becoming successful business owners as well.

The CHAIR: I wanted to ask specifically about Aboriginal community-controlled organisations in social services. In particular, when we look at homelessness services and domestic and family violence services, my experience is that there is a real lack of funding going to those community-controlled orgs even in areas that are predominantly Aboriginal community. When there's a pool of funding being delivered, for example, to homelessness services, what are the barriers to ACCOs getting in and how do we ensure a greater proportion of local organisations on the ground are given that funding?

YUSEPH DEEN: Sharif, I might defer to you on that.

SHARIF DEEN: Yes. I don't have the statistics in front of me, but one of the things that has been raised in terms of contracting arrangements—there's a mix of issues. Some of the issue is contracting arrangements are seen as an opportunity in some regards to cost shift. When organisations are engaged, they don't necessarily come with any cream, for want of a better word, that would enable an organisation to build or grow its capacity. I have seen situations where organisations that are providing specialist homelessness services are doing it in addition to their core business, and they're doing it out of a sense of responsibility and obligation to their community to be the provider of those services.

The contracting arrangements don't necessarily give that organisation the ability to invest in its capacity to grow or develop as a provider of specialist homelessness services, for example. Quite often there are costs incurred that are absorbed by the organisation in terms of administering programs. There is that element that has been raised and experienced by organisations. Again, without having the expertise in the family violence area, those same sorts of experiences are raised where Aboriginal community-controlled organisations seek to grow and want to be able to build and expand their capabilities to deliver more services. However, there isn't funding included or provided for growth, for want of a better phrasing of the answer.

YUSEPH DEEN: If I can just add, there's a reason—as in a previous response—why priority reforms exist around building the capacity of the ACCO sector. That is, in the Closing the Gap space, small Aboriginal ACCOs have, for a long time, had to compete with non-Indigenous, large not-for-profits. Those not-for-profits, regardless of whether there's an intent or it's in their mission to deliver benefits or services to Aboriginal communities, still make business decisions; whereas, as Sharif pointed out, Aboriginal ACCOs do it because there's a need in the community. When you compete against the large-scale not-for-profits like Oxfam or whatever the other NFPs are, they obviously have the understanding and the sophistication to know how to maintain their business model, whereas if Aboriginal ACCOs or Indigenous ACCOs are to keep their head above water, they

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require not only the general capacity to be able to do that, but governments that are looking for those ACCOs to be delivery partners for services need to get their head around the fact that there's financial capacity that comes along the way as well. If you want to deliver a meaningful service out in community through the expertise and knowledge of Aboriginal people, then it needs to be demonstrated through the delivery mechanism, and that includes the right level of funding for those ACCOs as well.

Ms ABIGAIL BOYD: That is excellent feedback. In order to ensure that we have those beneficial downstream effects, governments should be prepared to pay a premium when it comes to outsourcing those sorts of services to ACCOs instead of to these major players. Is that basically what I am hearing?

YUSEPH DEEN: Yes. We get outcompeted by the big NGOs—that's the word I was trying to find. Aboriginal ACCOs have specific expertise and knowledge of their communities that should be recognised in the amount of contract dollars that are being delivered. Pay for the expertise and knowledge as well as the ability of Aboriginal businesses or ACCOs to be located within the community to deliver those services.

SHARIF DEEN: I was just going to add, it is not even necessarily paying a premium. One of the key reasons that we talk about partnership and shared decision-making under Priority Reform 1 of Closing the Gap is that, if there are government commitments to transferrable shift services to be delivered by either Aboriginal businesses or Aboriginal community-controlled organisations, part of the negotiation and the contracting arrangements is understanding the best way and the most appropriate way that we are going to set up for success if we are going to transition services. There have been experiences in the past where a decision is made to transfer delivering to Aboriginal organisations and the organisation is then flooded with workload or case load without the requisite time to ramp up their ability to grow their workforce and deliver. So the capability is there to do the work, but the capacity and capability from a human resource point of view and a critical mass point of view is not there.

We don't talk about it, necessarily, as paying a premium. It is more about working in genuine partnership to map out the upskilling, the on-ramping and the growth over time to achieve the end goal. That is where big non-Aboriginal NGOs are able to outcompete ACCOs. It is that they already have capacity. Quite often—I shouldn't say quite often, but there are examples where a non-Aboriginal NGO has outbid an ACCO and then has sought to engage the ACCO that they have outbid to deliver the service in the local community at a reduced rate. So they want to pay them less to use their experience and expertise in their community and their knowledge of their community. Those are issues not so much about paying premiums but about appropriate resourcing to build capacity and growth over time.

The Hon. DAMIEN TUDEHOPE: Is there not currently a review of the Aboriginal Procurement Policy taking place? Are either of you aware?

SHARIF DEEN: Yes, there is the current review which is due to be launched, delivered or tabled in July 2024.

The Hon. DAMIEN TUDEHOPE: And what do you see will be contained in that review in terms of the representations that you have made here today?

SHARIF DEEN: I can't recall details, but the revised policy has been shared with NSW CAPO, and we do note that there are a number of recommendations that have been included. If it suits the Committee, I can take the detail on notice and provide a more detailed response based on our understanding of what is going into the revised Aboriginal Procurement Policy, if that is helpful.

The Hon. DAMIEN TUDEHOPE: That would be helpful. Would you anticipate that a number of the issues that you have addressed here today will be dealt with in the new policy?

SHARIF DEEN: We believe some of the issues will be dealt with. I would be able to address in detail which issues we would see have been dealt with, but there are a number of issues that we understand are seeking to be addressed based on that feedback from not only CAPO but Aboriginal businesses and Aboriginal communities.

The Hon. DAMIEN TUDEHOPE: To the best of your recollection, can you identify some of the highlights that will be addressed by way of changes to the existing Aboriginal Procurement Policy?

SHARIF DEEN: Unfortunately, I can't recall details, sorry. I can have a look through some of our submission and look for the key call-outs, if that's helpful.

The Hon. DAMIEN TUDEHOPE: The existing procurement policy, of course, had some targets relating to the employment of full-time employees. I think the target was 3,000 full-time Aboriginal employees. Was that correct?

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SHARIF DEEN: I can't say yes or no to whether that is correct. I can't recall the targets at this point. Sorry, the targets talk about 3,000 full-time equivalent employment opportunities supported and that the APP aims to support an estimated 3,000 FTE opportunities for Aboriginal and Torres Strait Islander people throughout NSW Procurement activities.

The Hon. DAMIEN TUDEHOPE: Has that target been met?

SHARIF DEEN: To the best of my recollection, I think it has been met.

The Hon. DAMIEN TUDEHOPE: There are a number of iterations of the procurement policy in terms of the contract levels which are identified, and there are goods and services and construction. One of the things that has been set up for those who are seeking to contract with the Government but can't meet their obligations in relation to Aboriginal procurement is contributions to the Aboriginal Participation Fund.

SHARIF DEEN: That's correct, yes.

The Hon. DAMIEN TUDEHOPE: Are you aware how much has been contributed to that fund?

SHARIF DEEN: I'm not aware of how much has been contributed to that fund. One of the issues that has been raised by organisations and communities is that, where that money is contributed to the fund, those resources are then provided to Training Services NSW. Effectively, paying the fine doesn't result in achieving the desired ends through another means. A criticism has been that an organisation will quite happily take the contract, pay what is recently referred to as a fine in terms of contributing to the Aboriginal Participation Fund and there is still no benefit necessarily directly derived by community. That has been an issue that has been raised through feedback.

YUSEPH DEEN: There is a disconnect between the fund and the flow-on effect to Aboriginal communities, essentially.

The Hon. DAMIEN TUDEHOPE: If you were going to make changes to the procurement fund to address some of the deficiencies you see in it, what changes would you make?

SHARIF DEEN: One of the initial changes that was suggested or that would be made is that, rather than the funds being diverted to Training Services NSW for that organisation to make decisions, one of the improvements would be implementing arrangements that would see that there be direct engagement potentially of Aboriginal registered training organisations, if you are going to use them for training, but also looking at other opportunities to be able to leverage that fund to engage Aboriginal businesses directly. One of the criticisms of how participation targets are met is that there's a lot of training that is offered, rather than meaningful employment. An enhancement to the fund would be to use the fund to directly engage people in meaningful employment or engage businesses to do actual work, rather than looking at additional training.

The Hon. DAMIEN TUDEHOPE: That's a bit circular. Would you agree that, if you were going to use that money to engage Aboriginal businesses, there have to be contracts for Aboriginal businesses to tender for.

SHARIF DEEN: Yes. It's a good point. There would have to be contracts for Aboriginal businesses to tender for.

The Hon. DAMIEN TUDEHOPE: Isn't it better to use the participation fund to make sure that we have more people who are skilled to be able to take advantage of tendering opportunities?

SHARIF DEEN: There has been that argument in terms of building capacity for more people. Some of the challenge that we've referred to already in evidence is the contracting arrangements—having more people tendering doesn't necessarily overcome the barrier of how contract packages are put together. It could certainly be used to build capacity in the Aboriginal business community. We'd suggest that work could be done in partnership in terms of designing it so that it achieves the desired end rather than just a non-targeted approach.

The Hon. DAMIEN TUDEHOPE: Would you make any recommendations in relation to changing the current caps in relation to the various obligations in respect of tendering? The \$7.5 million—have you made a recommendation in relation to that?

SHARIF DEEN: There have been recommendations to be more ambitious. There are a number of targets that are met and comfortably met, so there are recommendations to look at either expanding the targets or having stretch targets to encourage greater growth.

The Hon. DAMIEN TUDEHOPE: In terms of the discrete way that we currently deal with Aboriginal procurement policy, would you see any dangers in moving Aboriginal procurement policy into a framework which

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is specific to local content, ethical supply chains and environmental outcomes? Or is it better to keep Aboriginal procurement policy as a discrete policy of government?

SHARIF DEEN: In the short term, it would be ideal to keep it as a discrete policy while it's seeking to address shortfalls or gaps in the marketplace. Ideally, it would get to a point where Aboriginal procurement naturally forms part of the broader procurement practices of government. But, in the short-to-medium term, while it's seeking to address inequities or seeking to take an equitable approach to building the Aboriginal business community, keeping it as a discrete policy enables government and community to track the outcomes and the targets of participation levels. If it's transitioned away from its current format, it may decrease accountability, which is not necessarily the intent.

The Hon. DAMIEN TUDEHOPE: I accept that. Yuseph, I was very interested in the suggestion you were making about having a model which correctly identifies the benefits to Aboriginal communities in various areas. You gave the example of Nowra. You said that an area which has an Indigenous population of 10 per cent should be seeking to have a greater participation rate than an area where the Indigenous population is significantly lower. On one hand, you are advocating for a whole-of-government model. On the other hand, you are potentially advocating for a model which is local, in the sense that it takes into account the locality of the area which is getting the benefit of the contract to make sure that community is properly serviced by the delivery of that contract. Is there a disconnect between having a whole-of-government approach to Indigenous procurement or Aboriginal procurement, and yet on the other hand you say that the local area where you are seeking a procurement is better served by a devolved model which takes into account the population in that area?

YUSEPH DEEN: No, I don't necessarily see a disconnect. I don't approach it from that point of view. There is nothing preventing a whole-of-government approach that has a two-tiered or two-pronged approach. First of all, a discrete policy as previously advocated should be centralised and elevated so that there is an imprimatur being delivered by Cabinet or by the Premier. But within that policy, it should take into account the differences or the variances in Aboriginal population. When the policy was established, it took a percentage that was reflective of the Aboriginal population in New South Wales or Australia. What we are saying is that in some pockets, particularly in regional areas, that population is greater.

In terms of the implementation of the policy, it should take into account the variances in the population. But if there is 7 per cent or 10 per cent, as an example, in terms of Aboriginal populations, it should be reflected in the implementation of that policy. Those local targets would be designed to ensure that local businesses—which predominantly would mean that there is a better than even chance of a greater number of Aboriginal people and a greater number of Aboriginal businesses in those localities to take greater advantage of the policy being implemented. Again, I don't necessarily approach it from the point of view that there is a disconnect.

The Hon. DAMIEN TUDEHOPE: One of the points you were at pains to make is that you have ministerial commitment to Aboriginal participation and the procurement policy, but the implementation at a bureaucratic level, for want of a better word, is a bit lacking. Is that potentially solved by better training for those who are implementing procurement policy? Either of you can answer that, I assume.

YUSEPH DEEN: I would suggest, yes, capacity and capability build is always important in the evolution of the implementation of policy. Our experience, from not only the State land council but also our CAPO experience, is that it also comes down to meaningful intent as well—that is, having incentives within the structure to ensure that people are implementing the policy while people are abiding by the intent of Cabinet or the Premier.

The Hon. DAMIEN TUDEHOPE: Is there any manner in which we measure community outcomes? One of the things you were at pains to say is that you don't measure necessarily by the benefit to the particular organisation which receives the tender, but more generally you should measure the benefit to the community. How do we measure that?

YUSEPH DEEN: Social return on investment, social impact assessment.

The Hon. DAMIEN TUDEHOPE: Should that be part of the tender process?

YUSEPH DEEN: I would suggest it would be part of the policy process.

The Hon. DAMIEN TUDEHOPE: Or part of the policy?

YUSEPH DEEN: Yes.

The Hon. DAMIEN TUDEHOPE: And the tender process?

YUSEPH DEEN: Yes—the short answer is yes, provided that there is capacity.

The Hon. DAMIEN TUDEHOPE: Sharif, do you want to add to that?

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SHARIF DEEN: Yes. It has come from various communities and organisations across the State in that being able to measure the social impact and demonstrate the outcomes achieved and identified and realised in community is not given enough weighting or credit. Building in social impact assessments and outcomes assessments is part of the process that we believe would potentially assist in better decision-making that would see better outcomes for community.

The CHAIR: Thank you both very much for appearing today, and for your submissions. The secretariat will be in contact with you in relation to the question taken on notice and any supplementary questions.

(The witnesses withdrew.)

(Short adjournment)

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Ms AMANDA ROSE, Chief Executive Officer, Entrepreneurial and Small Business Women Australia, affirmed and examined

Ms MEL FLANAGAN, Founder and Director, Nook Studios, affirmed and examined

Ms SOPHIE BROWN, Communications Adviser, Nook Studios, affirmed and examined

The CHAIR: I welcome our next witnesses. Thank you for being here and for your submissions. Would you like to start by making an opening statement?

AMANDA ROSE: In the true spirit of small business, I'd like to table my submission as my opening statement. I'm happy to go straight to questions to optimise the Committee's time.

MEL FLANAGAN: I would like to make a statement. Thanks for the opportunity to provide evidence. As you know, Nook Studios is a social enterprise as well as a female-owned business. Our mission is to help governments and organisations clearly communicate complex information to communities, to be transparent and to redesign information systems and governance practices to be more open and accessible. We design civic technology, which is a term that's very well known around the world—and funded in places—but not in New South Wales. This involves helping governments design better policies, data systems and services using participatory design and open-source technologies. Most of our work involves simply explaining environmental and natural resource, energy and infrastructure project data, plans, legislation and approval processes, as well as economic and social impacts.

For the last 12 years I've been actively advocating for the Government to open procurement processes and improve the ways government contracts, engages, makes and collaborates with small businesses and creative and cultural organisations. There is a lot New South Wales can do to make it safe for the public service to innovate and deliver real social value. Our 40-page submission is the tip of the iceberg. We were invited to collaborate with the Yuwaya Ngarra-li, a partnership between the Dharriwaa Elders Group of Walgett and UNSW, and produced a policy paper called *Creating Better Futures with Contracts*, which hopefully you've all read. We are about to publish a second paper called *Making Government Finances Make Sense for Communities*, which expands on this work to cover budgets, revenues and leading examples of the way government data can be made more accessible.

As suppliers, we've worked on many high-profile projects—but you might not have heard of us, because there is nowhere for people to go to find out about who contributed or what was involved on government projects, what role they played and what they delivered. This lack of recognition is a problem for all small businesses and social and community enterprises. Firstly, providing a way for people to find a list of suppliers on a project should be easy. It's possible; the Government has the data. We noted that recommendation 3 of the interim report stated:

That the NSW Government reduce the threshold to \$100,000 ... to ensure greater transparency of government procurement activities.

This threshold needs to be lower—at least \$30,000, or \$10,000 to match other jurisdictions. Otherwise, the New South Wales Government and the public will never know the real amount of spending going to small businesses, what they are in fact delivering and the true impact of old and new policies. Government contracts are the perfect way to fuel home-grown innovation and help local businesses and community organisations to survive, thrive and grow. Procurement should not just be about a buy-sell relationship. It should be about developing open, respectful trading relationships; fostering partnerships to deliver genuine social and economic development; public value and good; and better environmental impacts. To be successful, this requires an opening of the mind and changing of processes—a massive cultural shift—and a willingness to start over, fund and contract differently. We are optimistic that New South Wales can do this and look forward to continuing to contribute to make it happen.

The CHAIR: Nook is a female-founded business and you're obviously appearing today with the Entrepreneurial and Small Business Women organisation, so I wondered if you could each answer whether you think there are particular challenges or barriers for women-led or dominated businesses in engaging with the procurement process?

AMANDA ROSE: Yes. I could talk on this all day, but, firstly, female-owned businesses instantly don't think that procurement for government is for them because they see a lot of, say, male-dominated businesses kind of get it easily and they talk about it. They also think, "Maybe a \$250,000 contract, or \$150,000, is too big for me. Maybe I won't do it very well. I haven't done it before—because we all know they'll think I have to be 100 per cent experienced in this before I go ahead with it." Then they go to a webinar about how to tender for government, then they look at all the documentation, then they look at the insurances that they need, then they look at the references. The time that that takes to be able to learn it, go through it, and in the back of their mind they're

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thinking, "Well, it might just go to the people that have always got it"—whether that's true or not. But the whole process is quite daunting for them.

Then there's no guarantee—think of a small business owner. They're spending a week on a tender. That's a week that they're not earning money in their business. They don't win that tender and the feedback they get, if they don't win it, is quite generic as well, which doesn't help with being able to incentivise women to be able to go for it a second time—what can they work on? The overloading of information—the information is there. There's no doubt that government has a lot of information there and there are providers and webinars, but it's not a clear ecosystem pathway. It's not calm. There's no reassurance of, "Yes, if you go for this, we'll help you with tender writing as a component so you're not paying for it out of pocket"—because that's the reality of it. When you think of, say, 63 per cent of businesses that have used the government service Business Connect as sole traders, if they're going for a tender and they miss out, they've not only lost the opportunity to get money; they've lost the opportunity that they've just spent working on that tender.

MEL FLANAGAN: We work a lot with government. We haven't had a New South Wales Government contract since COVID, I would like to add, because of different policy changes. I think being a woman hasn't been a barrier, but what is the barrier is what we can charge for. Traditionally, men and male roles get charged out a lot. It's acceptable to ask for \$2,000, \$3,000, \$5,000 a day for particular services, whereas we are constantly basically not able to charge for our skills and our experience, particularly when you've been in business and delivering this kind of unique work for a long time. A lot of the work that we do, which is design and technology and working in transactional information service and transformation design, it's very much a male-dominated area. There are a lot of women who work in this space. A lot of us are designers and, again, that recognition for design as a process and that kind of respect for creativity, particularly creative and cultural organisations, it's really around the rates that we're paid. There's an inequality in terms of that.

In terms of getting access to and going through a tender and the procurement practices and processes, they are really daunting. For small businesses, it's really impossible. The amount of time that is spent on pulling together a whole bunch of information, most of the time for someone like us—we're a small unique niche organisation. Procurement wants to go apples and apples. That's the whole way it's set up, which is you want to be able to compare apples and apples. We hear this all the time—that you can't compare apples and oranges—but imagine being a small female business which is a social enterprise. We're an apricot. No-one knows there is an apricot out there. Often, they don't know what they need, and they don't know what they don't know. For us, that is a big challenge. It's not necessarily that we're a woman-owned business—it is just that the opportunities for a unique kind of organisation is a lot less.

The CHAIR: It sounds to me that there is a gendered aspect to the pay for particular types of roles in particular services provided.

MEL FLANAGAN: Absolutely.

The CHAIR: Ms Rose, you mentioned in your submission an example about Western Sydney Women being named on multiple tenders as self-conscious about follow-through. We have had a previous witness here this morning talk about something similar. Could you explain this a bit more?

AMANDA ROSE: Some, I would say, are purely incidental and accidental that they don't follow through, but some are deliberate. Where they are going for a specific tender—and in the tender they will say that you need a certain amount of reach of community or of particular groups to be able to say, "Yes, once I get these funds I can reach 5,000, 20,000 or 100,000 people." So they list partners as part of their tender. Some require actual references and partnership letters from people, which is great. That might be included. Even though the person is aware of it, it doesn't necessarily mean if they win the tender they will actually get that work as part of the partnership.

If you are willing to partner with someone, and you are maybe even in the budget, they might win the tender and say, "We've decided to go a different way." Maybe you don't know or you've forgotten or you have to push back. There are also times where people will suggest or say in the tender "we will work with this organisation"—Western Sydney Women or different groups—but then they will win the tender and you didn't even know you were mentioned in that or, if you were mentioned, they don't contact you again. There needs to be more transparency, like a reference check in general of what this tender says.

When you think about it—for someone like Western Sydney Women or Entrepreneurial and Small Business Women Australia—we've got a really good reach. We've got over 13,000 members, and our reach is quite large. If someone puts down that name it looks great on paper and the Government thinks, "Great, because we really need to get this program out there and they've got these partnerships"—but no, they don't. What often happens is they will reach out to you after the fact and say, "Let's collaborate on delivering this", and then the

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collaboration is, "We're not going to give you any money from this tender. We just think this is great for your women, so you should be doing it."

The CHAIR: I shouldn't laugh, because it's a cynical and awful practice. Because of this experience, you've recommended in your submission the implementation of some kind of post-award verification process. You mentioned a reference-check-type arrangement. Do you have any other particular suggestions as to what that might look like or any other aspects that you suggest might need to be verified post-award?

AMANDA ROSE: If I take a step back from that, I think a lot of people that go for tenders are utopian and say what needs to be said to secure the tender. It's not really commercially viable, and it needs to be treated as a genuine business. You wouldn't go for a contract with someone and say you've got 10,000 customers when you don't. I think that's where the problem starts. If there are systems in place where they sign an agreement saying that everyone they've mentioned has been notified and is aware of this, and then, in the check afterwards, including them in the budget. If they're going to include partners for collaboration and reach, then a portion of the tender fund should go to that organisation. A lot of them are small and they're relying on the fund. They've got a reach and they've got a niche area. They should get a portion of those funds and that should be part of the process.

It is checking after the fact and doing regular check-ins. Some organisations genuinely get stuck and say, "Okay, we've got the tender, but this is not working the way we thought. We need help." They need commercial help. They need someone with commercial experience to come in and say, "This is how you get the reach, and this is how you partner with that organisation", instead of just, "Can you collaborate with us and send this to your market?" It needs to be treated as a commercial opportunity for those that they are partnering with. Checking on those reference checks and actually talking about that—also in the budget, when you do progress reports, to say which of those partners have been paid, what was the payment and what did they do for you. It's actually smart to be able to do that. It is having that in the acquittal process.

The Hon. ANTHONY D'ADAM: Following up on that, where there is a dispute between partners within the tender process, what's the mechanism for trying to resolve that without recourse to litigation? Is there a mechanism? Does the procuring body, the department or the government entity have a role in that process?

AMANDA ROSE: For starters, a good mechanism is for the person not to lie. The second would be to have someone just pick up the phone as you are reviewing tenders to say, "Hi. Your organisation has been listed as a partner for this tender. Are you aware of that? If you are, has there been a discussion in relation to that?" It's quite simple. If that starts happening, people will stop adding people's names to tenders without them knowing. What happens is they will add the name to it or hint that we have all these relationships. They might have relationships with these people, but these organisations aren't aware of it. They're insinuating to the Government that we have their customers and their clientele as our reach. Then, after the fact, if they do need that reach, they will say, "Hey, can you work with us?", but not pay for it. Really, it's insulting to the micro small businesses that their name is being used to secure a lot of money, and then they want them to collaborate without paying them.

MEL FLANAGAN: Having worked on a number of government contracts and projects, when something doesn't go quite right, there are very few places to go. Putting aside collaborative contracts or someone putting a tender in on your behalf, we've been on projects where there has been some pretty bad behaviour from people hired by the Government as contractors to deliver something, and it's really hard to provide feedback, particularly as a woman, about that bad behaviour. You end up becoming a troublemaker if you step up or say something. We were really lucky because as part of the open Government Community of Practice, we met a lot of people in procurement, and through the Australian Information Industry Association. There were events where we met people in procurement, became trusted and got to know people.

So when things got heavy and things were not right, we had someone to go to who we knew. Being someone who is outside and not having those connections, I can't imagine how difficult it would be. It's was hard enough for us, but I can't imagine how difficult it would be for others. There has been talk about the centralisation or devolving of procurement. The central aspect and having someone who is nurturing this, and having somewhere for small businesses in particular to go, is absolutely essential. Being able to have that and being able to provide constructive feedback about behaviours or how businesses, or specific individuals, have been treated, is really important. You don't want to have to get to the Small Business Commission for that, because that's not what it's for.

Again, working with departments and them having the freedom to be able to do what's fit for purpose for them is equally important. Having a go-to for someone would be a really great resource and a service to everyone, and it would make it a lot easier. The other thing that I would like to say is that working in agile projects, you generally get to the end of the project and you say, "How was that? What did we do? What would we do better next?" It's not an evaluation; it's a retrospective. The amount of times that we've been on projects—the Future

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Transport Strategy being a massive one—for the Government and everyone involved, the value that would have been derived from having that retrospective would have been invaluable.

The CHAIR: The title of one of the sections in your submission is "The competition myth". As you would know, one of the key arguments around procurement and how you do it is whether it should be competitive because that allows the market to flourish and get the right outcome et cetera. Why do you claim that it's a myth?

MEL FLANAGAN: Because most of the contracts go to, as people have been talking about, the tier 1 contractors—the big businesses, who have the lawyers, who have the procurement professionals, who can sit around and spend hours, days and weeks putting together all of the information that's required for tenders. As small businesses and social enterprises, we can't. We don't do tender. I will be quite clear: Most of our projects come through word of mouth and recommendations, because people hear about what we do. They don't know what they need. They know they need someone like us. They can't really find us on the panels. They can't find us through any list of what's been previously delivered. It all comes through word of mouth. We always get onto projects quite late because they don't know what they need, so we get parachuted in to start pulling people together and trying to get things over the line for specific deadlines.

People don't know we exist. They're not writing requests for proposals. They're not thinking about projects with content designers and content strategists—the kinds of innovative ways we're thinking about things or transparency when they go in. It's not until they get too late in a project that they go, "We're actually missing something." Again, that's why a lot of the advocacy we do is around helping governments understand how to make things better, be more collaborative and figuring out what you need to bring in so it's not just one throat to choke, as they say—like one primary contractor. You can bring in a whole bunch of different people with different skills at different times on a project.

The CHAIR: We have heard from various witnesses about difficulties for SMEs in accessing procurement, also that there's a fear in a devolved system that you have a lot of different people dealing with procurement. There's potentially a fear amongst some procurement officers of engaging in innovation or with small businesses that aren't known. Do you have any comments about that? Maybe I'll start with Ms Rose first.

AMANDA ROSE: Ninety-seven per cent of businesses are small businesses and only 2.5 per cent are medium size. There's a massive skew for medium and large businesses to be able to get a lot of contracts. Small businesses aren't in the discussions; they aren't being discussed around certain tables. Even if it's in government, if you're in a department and you know your regulars that do really well and the names that you know really well, there needs to be an effort to go outside of that. So we recommended having different people on panels—people that have succeeded and small business have succeeded on tenders on the panel—to be able to spot small businesses that have the potential. They might not tick all the boxes but they've got the innovation. They've got that X factor that might mix well with that particular tender.

Also breaking tenders down—for example, there might be a million-dollar tender. Breaking that down into five different tenders allows small businesses to enter into the space or having a requirement if you do succeed as part of your tender process to get that million-dollar one. If it's a medium-size business or large-size business—that's great because they've got the functionality and they've got the reputation—they have to help X amount, like you do with the large infrastructure tenders, where there's a percentage that goes to Indigenous, a percentage that you have to have of women in leadership—say, it's 30 per cent—as part of implementing. The same should be done with small businesses and, from our perspective, small businesses that are 100 per cent owned by women, not ones that are 50 per cent or fifty-fifty because usually they're just signing documents and there's a male co-founder that's really getting the work and doing the work. We want 100 per cent female-owned businesses. Break down the tenders. Have people on panels that can identify this. Work with those businesses to get them on board and have for the larger tenders a requirement that they have to bring those people on board.

MEL FLANAGAN: I would like to add something very briefly, if I may. The notion that we're not well known comes back to that people can't find us and they can't find out about us. If you go into a thing called Tendertrace, which is a great New South Wales innovation where it has all the contracts from State and also some Federal, if you do a search for us, you'll only find the things that are over \$50,000. You won't find any of the 12 projects we've done in New South Wales, for example. Similarly, when you look for suppliers, the information is just not there and we don't have that recognition like the big consultancy firms do, or those big design firms, who get the majority of those contracts. Most of the people that are doing that work are graduates who are getting paid double what we get paid. They learn as they go because they're riding on the brand of a big organisation which is trusted, like the PwCs—the big four and all the rest of them—who are buying up small businesses and masquerading as small businesses.

There is this notion that it's okay for other big businesses to learn as they go and put someone into a project, but it's not okay for us. This experimentation is happening, it's just not happening in an equal and equitable

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way. The other thing that I would say about the innovation piece is there are some amazing innovations that have happened in the New South Wales Government. There are amazing, positive stories; there is just nowhere for those stories to live and for them to be shared. If there is anything that we really need to start doing, it's telling the stories of government in a different way around how things can be done differently and have been successful, so people lose that fear of experimentation, and we can actually just start doing things a little differently.

The Hon. DAMIEN TUDEHOPE: There is a small and medium enterprise business procurement policy, is there not?

MEL FLANAGAN: Correct.

The Hon. DAMIEN TUDEHOPE: And you're pretty familiar with what that policy is?

MEL FLANAGAN: There are a lot of policies that are in procurement. Yes, I have read a lot of them over the years and I've been—yes, there is a small business policy.

The Hon. DAMIEN TUDEHOPE: It requires agencies to prioritise contracts under \$3 million to small businesses.

MEL FLANAGAN: Yes.

The Hon. DAMIEN TUDEHOPE: You're agreeing with that policy, are you not?

MEL FLANAGAN: Yes, but what is a small business? If you go and look at the—yes, correct. I didn't realise it was under \$3 million but, as I said, procurement processes and policies have changed over time. If you do the analysis on what small businesses are getting the majority of government contracts, a lot of them are recruiters.

The Hon. DAMIEN TUDEHOPE: I agree. If agencies prioritise small business for contracts up to \$3 million, is that level sufficient, in your view?

MEL FLANAGAN: No.

The Hon. DAMIEN TUDEHOPE: What do you say it should be?

MEL FLANAGAN: I think it depends on what kind of product or project is being delivered. I think \$10 million. It's low.

The Hon. DAMIEN TUDEHOPE: So the actual cap of \$3 million may or may not be right, depending upon the sort of contract being tendered for?

MEL FLANAGAN: Correct.

The Hon. DAMIEN TUDEHOPE: I accept that. The next issue you identify is a transparency issue in terms of those people who are able to tender, and your concern is that no-one can find you.

MEL FLANAGAN: Well, there is that—and, again, that's access to information.

The Hon. DAMIEN TUDEHOPE: And no-one can find your history?

MEL FLANAGAN: Yes. Again, it comes back to access to information so there is transparency. The information is there, the data is there, it's just not in formats that people can really use.

The Hon. DAMIEN TUDEHOPE: So it's a format issue, is it?

MEL FLANAGAN: It's a design and format issue, I think, and accessibility.

The Hon. DAMIEN TUDEHOPE: The Buy NSW website lists suppliers and contractors, and you can register on that site, can you not to be a supplier to the New South Wales Government? And I take it your organisation is registered with Buy NSW?

MEL FLANAGAN: Yes, we are.

The Hon. DAMIEN TUDEHOPE: And yet you say being registered doesn't necessarily give you any advantage. Is that right?

MEL FLANAGAN: No. I mean, it gives us the advantage that we are a preferred—we've gone through a process where we've been validated and we've got the insurances and all the rest of it, but people don't go looking for us on that website.

The Hon. DAMIEN TUDEHOPE: So that's a problem you identify with the agencies not using the website, is it?

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MEL FLANAGAN: It's partly that, and we've done some work with NSW Procurement on this, just to be clear, in about 2015. That was around looking at eligible buyers and the social impacts of government procurement. Those systems are very archaic. They're not really designed to help people find information. It's more around the approval process—"you're here, you're on the list, tick".

The Hon. DAMIEN TUDEHOPE: You'd like to be able to go to the Buy NSW website and be able to identify businesses, more readily, who provide services to government.

MEL FLANAGAN: Exactly.

The Hon. DAMIEN TUDEHOPE: And yet you say that, at the moment, you do get contracts with the government by word of mouth?

MEL FLANAGAN: We get it through word of mouth. Again, I cannot estimate the value of in-person events, most of which are actually prohibitively expensive for small businesses. But those kinds of events where it's bringing people from government departments together with small businesses are invaluable, because it's really around those in-person connections that you get. Then someone will go and find us, or it's the storytelling. I think that a part of the challenge is—for example, we're a social enterprise. There's no tick for us being a social enterprise. There's no tick for us being a female-owned business. If someone's looking to really think about their social impact and diversity, they can't tell that those are aspects of our business.

The Hon. DAMIEN TUDEHOPE: I think we're potentially in agreement with that. We can expand the categories of information or data which is available on the Buy NSW website for the purposes of making sure that you have visibility on that site for the sort of services that your organisation may supply.

MEL FLANAGAN: Exactly. Coming back to being a creative organisation—and I mentioned in our paper about things like there are the categories that are under professional services and then there's the advertising panel. For creative and cultural workers, there's nowhere really for us to shine and be seen to be doing what we're doing and for it to be recognised. We're kind of smooshed into the—you're kind of over here in a category that sits under something like the ICT scheme. I think there's an issue with that in terms how we're categorised and the language that's used. It definitely could be improved.

The Hon. DAMIEN TUDEHOPE: The Buy NSW website does have a supplier hub on it, does it not?

MEL FLANAGAN: Yes.

The Hon. DAMIEN TUDEHOPE: Are you registered with the supplier hub?

MEL FLANAGAN: Over the years, I've been engaging with that website and had some usability issues with it, which we've provided feedback to the department.

The Hon. DAMIEN TUDEHOPE: Have you recently checked whether they've addressed any of those issues?

MEL FLANAGAN: No, not recently. I've been on to our profile. I've been on to try and find—we don't go looking for tenders on there. We just don't. The tender notices that we get via email are really not designed—we just don't get communicated information that's actually designed for us. There's a whole piece of design work that needs to happen with making that experience much better.

The Hon. DAMIEN TUDEHOPE: I'm not leaving you out, Ms Rose. If you want to jump in and comment on any of this—

AMANDA ROSE: I will if I need to.

The Hon. DAMIEN TUDEHOPE: There are other opportunities, are there not, for tendering with the Government. In fact, the NSW Small Business Commissioner runs a tendering program, does he not?

AMANDA ROSE: Yes.

MEL FLANAGAN: I'm not aware of that.

The Hon. DAMIEN TUDEHOPE: That's a program designed to assist people to tender for work with the New South Wales Government.

AMANDA ROSE: Yes, and it was actually based on a meeting that I had with him quite a while ago, advising he should do that. But the issue isn't that—

The Hon. DAMIEN TUDEHOPE: There are a whole lot of modules that are incorporated as part of that program.

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AMANDA ROSE: There are, and they're great. There's a lot of programs out there that help people with tendering, but a webinar and a few modules isn't enough for someone who has never been in this space before. I think it's more the fact of if someone is in a position to be able to tender and has the experience and track record—to be able to put a criteria in their tender to bring along a small business owner for a component of that. It's quite overwhelming for a small business owner to straight off say, "Great, I'm going for this massive large tender." But if they can be a part of it—just like with infrastructure joint ventures where with the SME component they've got to do a certain amount of local SMEs. They go and find the local SMEs to be involved—so if we can get the medium-sized and large companies to be required to bring in a particular type of small business, in particular female-owned.

The Hon. DAMIEN TUDEHOPE: I've got a few more issues that I'll come back to. Is it your submission that this Committee should be making a recommendation that there ought be targets in relation to female-only small businesses?

AMANDA ROSE: Yes. They did female-minority-owned small businesses in New York City, and they dedicated \$10 million over 10 years to be able to boost it. It's a direct link to a woman's financial independence, especially when more women are starting small businesses than men. It's not saying that we should alienate others, but it's more about helping facilitate what barriers they're already facing in business and to help them. It cost them \$30,000—time and effort wise and hiring people—to even be able to go for a tender. Having that component would make people think a little differently. It would also influence things like the supplier buying New South Wales supply components to see which ones are women and say, "Great. Here are 100 per cent female-owned businesses. Let's consider them."

The Hon. DAMIEN TUDEHOPE: Why couldn't you include as part of your tender that you're a female-only business?

AMANDA ROSE: Absolutely.

The Hon. DAMIEN TUDEHOPE: You want the Government to have a target. In the same way we have an Aboriginal procurement policy and we have a social enterprise procurement policy, you want a further target for a female-only procurement policy?

AMANDA ROSE: Yes, 100 per cent female owned.

The Hon. DAMIEN TUDEHOPE: Is that the proposal?

AMANDA ROSE: Yes.

The Hon. DAMIEN TUDEHOPE: The additional things you can do in terms of tendering opportunity, of course, is the Business Connect programs.

AMANDA ROSE: Yes.

The Hon. DAMIEN TUDEHOPE: Do you engage in them?

AMANDA ROSE: I know about Business Connect quite well. There are a lot of advisers that are on Business Connect that come to me for advice on business. My concern is that not many people know about it. In one of my community Facebook groups there are over 13,000 people. They are always asking for advice. They don't even know Business Connect exists.

The Hon. DAMIEN TUDEHOPE: Do you tell them?

AMANDA ROSE: We tell them, obviously. I tell them about Service NSW. The problem is that you might have a service and I don't think the money currently invested in that service is best utilised to be as impactful for small business as it could be. For example, when you track the amount of people that use it, it's quite high. There are a lot of people that do use it. You can see it on their website. But there's no tracking on the profitability of a business that has help from that. When it comes down to it, when small business gets assistance in starting and running, if they're not profitable, they're going in the red. If it's a woman, which is what I care about, their financial stability is at risk.

The Hon. DAMIEN TUDEHOPE: We do have the Small Business Commissioner.

AMANDA ROSE: Yes.

The Hon. DAMIEN TUDEHOPE: We have Business Connect, who provide tendering advice, and there's the Industry Capability Network, is there not, that also provides free procurement advice?

AMANDA ROSE: Yes, it does. You can provide advice as much as possible, but unless someone is hand-holding someone through it, it won't be effective.

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The Hon. DAMIEN TUDEHOPE: What I'm trying to establish is that there are plenty of organisations out there that do, in fact, provide assistance for people to get advice about how to successfully tender for projects with the New South Wales Government.

AMANDA ROSE: That's correct.

The Hon. DAMIEN TUDEHOPE: The evidence that I think you are providing to us today—and this from you, Ms Flanagan—is that you say that there ought to be more data available about suppliers so that agencies can understand what you do and the benefits that your organisation provides so that the data is there. Is that right?

MEL FLANAGAN: Yes, that's one aspect. We spend a lot of time with procurement because we're open contracting advocates. We work globally on this stuff. Sophie would have something to say about the female-owned businesses as well. We have the capabilities; it's just about the capacity as well. When tenders are written, people don't necessarily really know what they need. A lot of the work we do is we go in very early and help people figure it out, because they don't know how to write a brief and they don't necessarily know what they need to know.

The Hon. DAMIEN TUDEHOPE: But a lot of these organisations do provide that level of assistance, don't they?

SOPHIE BROWN: I think the fact that there are so many organisations may be a part of the problem. To give you an example, I spent the last eight years looking at procurement reforms around the world and how different governments have dealt with some of the issues we've been looking at here—value for money, competition, how to improve participation of small businesses and minority- and women-owned businesses. There's a couple of great examples where they have been succeeding, particularly in this area of minority-owned and women-owned businesses. One of them is Colombia, where their data system—their contracting data—is completely open, down to the smallest contracts. Even during the pandemic they were putting their contracts online within 24 hours of awarding the procedures.

As a result of that, because it's open data, it means that other people can reuse that data in a way that's useful for different audiences. In the case of small businesses, what they have done is create a website where they have used the previous contracts to predict which upcoming tenders are going to be relevant to small businesses, and they're tagged particularly as being relevant to small businesses. Another example is Paraguay, where they have a platform where small businesses can provide feedback on open tenders. So you're taking advantage of all of this knowledge of suppliers who have a vested interest in making sure that the procurement system is working effectively, and they're actively providing feedback on how tenders are run. It would solve this issue we've been talking about where women businesses are being included in the tenders without their knowledge, and I think there's a lot of potential to, first of all, make the data that the New South Wales Government has on procurement more transparent, but then also to repackage it in ways that it's most useful for different suppliers.

The Hon. DAMIEN TUDEHOPE: I understand that. Again, I go back to the fact that that is what Buy NSW does, in a sense, to try to bring small businesses together with agencies for the purposes of delivering outcomes for small business. I think your evidence is the same as Ms Flanagan's. That is to say that there needs to be a greater enhancement of the dataset available on that site for the purposes of making sure that agencies know the complete capability of the business involved.

SOPHIE BROWN: Absolutely.

The Hon. DAMIEN TUDEHOPE: Isn't telling them what your capability is part of the tender process?

AMANDA ROSE: Can I just get back to the data? When you mention all the services out there providing help on the tendering process—the free services—the data point is really important because it would be good to know, out of all those webinars and all those systems that the Government has funded, or even not-for-profits—especially government—to help people with the tender process which one actually led to a successful tender. Because you can run as many webinars as you want on how to tender for something, but every tender is different and everything is unique, so unless it's personalised help for that particular one. That data would be important too.

The Hon. DAMIEN TUDEHOPE: There is, in fact, the NSW Procurement Service Centre, which provides that sort of feedback.

AMANDA ROSE: Not for Business Connect it doesn't.

The Hon. DAMIEN TUDEHOPE: Not for Business Connect but, generally, for a business, it will provide that level of advice.

AMANDA ROSE: I meant for the services that are provided, funded by the Government, which ones are actually effective.

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The Hon. DAMIEN TUDEHOPE: Which ones are effective?

AMANDA ROSE: Yes. For example, if there's feedback from small business on this particular—if 20 people do the "how to tender to government" webinar but none of them actually succeed in that tender, that would be powerful information to know and to be able to give feedback on.

The Hon. DAMIEN TUDEHOPE: I accept that, potentially, that data about whether the program is successful is something that government needs to examine, but I want to go one further. There is the Business Concierge service, which is also available.

AMANDA ROSE: Yes. I also worked with the Government on helping put that together. I know the content is there, and it's great.

The Hon. DAMIEN TUDEHOPE: So there is no shortage of the ability for small businesses to be able to get access to the best ways that they can achieve outcomes by contracting with government. Would you agree with that as a proposition?

AMANDA ROSE: No, I wouldn't, because just having the information available on a website doesn't mean it's going to work. You have the actual tender itself, how it's designed, how it's broken up, the amount of money people need to spend to be able to get the insurances—the professional indemnity—before they can go for the tenders and all these other barriers that are in place.

The Hon. DAMIEN TUDEHOPE: But that's what the concierge service does, is it not?

AMANDA ROSE: It does to a degree, but you still have to pay for all these things and spend your time and your business to get there.

The Hon. DAMIEN TUDEHOPE: You are always going to have to pay for it.

The CHAIR: Ms Flanagan, you wanted to respond.

MEL FLANAGAN: Yes, I do. Thank you for that provocation.

The Hon. DAMIEN TUDEHOPE: I'm not trying to provoke you.

The CHAIR: He does not have to try.

The Hon. DAMIEN TUDEHOPE: It just comes naturally.

MEL FLANAGAN: It comes back to the thing where often—as you say, yes, that's what tendering is all about. It's about explaining what you do. Yes, I totally agree with you. But when we're dealing with requests for quote and when we're dealing with tenders, we need the apples. They don't know they need the orange and they don't know they need the apricot. That's the thing. These things are written in a way where they make it really hard to respond because they don't actually really understand what it is that they need to know. They're often very technical or, like in the instance of design, it's really about the output. The thing you are going to deliver is going to be a website as opposed to the journey that you need and all the research and engagement that needs to happen before that. It's kind of a making process that also needs to be really well thought through in different circumstances.

The CHAIR: I want to return briefly to this idea about information and having information. I wondered what your thoughts are on whether information is sufficient for groups that have experienced barriers to participation and whether information in and of itself manages to overcome those barriers.

MEL FLANAGAN: When we started working with NSW Procurement, it was on the back of our first experience as a small female business working with government. I had no idea what procurement meant. I had no idea what the processes were. At that time, in 2012, things were in flux; there was a new policy being introduced. We pitched to government, because we had been making process pathways, "Let's make some process pathways to help small businesses understand how to engage, what they need to do and each of the different steps just so people can get people prepared." Those policies are pages and pages. They're tens of pages long. You start reading one policy to another from the procurement and the Act through to the framework, through to the small business and through to the social enterprise. It's an overwhelming amount of information. We actually just want a clear guide on how the hell do I do this thing.

The Hon. DAMIEN TUDEHOPE: There is a SimpleQuote process, though, is there not?

The CHAIR: Mr Tudehope, thank you for your contribution, but I'm going to Mr D'Adam.

The Hon. ANTHONY D'ADAM: Ms Brown, you spoke about your knowledge of the international experience. I was particularly curious about the completely open data process that you mentioned. What kind of

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arguments are put against that proposition? Could you elaborate on the why? Where is the point of resistance in terms of embracing that?

SOPHIE BROWN: The biggest one is commercial confidentiality. There is an organisation called the Open Contracting Partnership, and they have a fantastic report that's called Mythbusting Confidentiality. I think that's the name of it. It goes into some of the main arguments that are used for non-disclosure. As open government advocates, we are not saying, "Open everything all the time." There are obviously cases when it's not going to be appropriate to disclose some information. What we're talking about is recommending that the default is open and that there are exceptions where it's not made transparent and then those exceptions are also justified.

The Hon. ANTHONY D'ADAM: That commercial-in-confidence approach obviously has an impact in terms of impeding collective learning. These organisations are benefitting from engagement with the government procurement process. Is there an obligation, in terms of knowledge-sharing, that should be built into the procurement process?

SOPHIE BROWN: Yes, I think so. Absolutely. Part of the discussion is always in that spectrum of what is the public benefit versus what is the private interests as well—the privacy—and having that debate. It depends on the particular circumstances and the jurisdiction. There were cases even during COVID where there were civil society organisations that went ahead and one lawsuit is asking for pharmaceutical companies to make their patents public because if there was a greater public interest—we're not saying that that's appropriate all the time, but I think that's a debate that needs to happen on a smaller scale depending on the sector and the contracts involved.

MEL FLANAGAN: Can I just add to that? We talk about data and we talk about information. Understanding how different government departments or projects have been approached is one of the valuable things that has been locked away in all of this information at the moment that's sitting in these databases. Again, you go in and it's being able to go, "What did a project take? Who were all of the different people who were involved?", and also, "Who else is out there that we can be working with?" It's not just about us working with government; it's about other collaborators as well who are also servicing government and supplying to government. There's this trove of information that is not really accessible in New South Wales at the moment and could be.

To that point about how helpful is it for people to go and find the data and information, if you can go and find who did that and what it cost—that's why, if you're not capturing something like a \$30,000 contract in those data systems, we're not really being able to find information and find out the cost of things or what something took. It's extremely difficult for small businesses to go, "What do I charge for that? I don't know what to charge."

When you're really new to a situation, there's no guidance in terms of what my day rates should be, what the budget levels are. That's the other thing that came up this morning with Kylie: Being transparent about what budget you have to spend is so important, because otherwise we spend our time putting together proposals not knowing, is it a \$150,000 cap or is it \$300,000? When they say they want to do community engagement, can we talk to three people? Can we talk to 100? All of that time money costs. To get a real sense of what the budgets are and what the limitations are is really necessary so we're not wasting time either.

The Hon. ANTHONY D'ADAM: Are you arguing that all the learning that comes out of a project should be in the public domain?

MEL FLANAGAN: Correct. Absolutely. Our next policy paper has a lot about that, which we're looking forward to sharing with you.

The Hon. ANTHONY D'ADAM: Is it also your proposal that contracts at a certain level would have to have some sort of mandated evaluation process? Earlier you were talking about the utility of that kind of evaluation, and it's just not occurring in many circumstances.

MEL FLANAGAN: It's not at all. Like I said, the retrospectives, just as a team when you're working with government teams—because this is also about building capabilities and capacity within the public service as well. We work with; we don't work for. That arm's length that often happens as a supplier is really not serving anyone, particularly in the kind of work that we do. That sort of learning and development is a really important part of that process, but there absolutely should be evaluations and retrospectives. We're learning around what projects took, who was involved and what was involved, so then that can be applied to the next budget. Otherwise, we're not learning. Everything gets to the end of the contract and all that information disappears. Budgets are being done and they're still underbudgeting certain roles and certain skills or they don't know what they necessarily need to know.

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The Hon. ANTHONY D'ADAM: Can I ask you one further follow-up question? In a sense, that learning doesn't just disappear; it's retained by the entity that's undertaken the contract. That gives them a further commercial advantage, doesn't it, in terms of future contracting, and really embeds an incumbency advantage in terms of procurement process.

MEL FLANAGAN: Correct. Yes, absolutely.

AMANDA ROSE: Unless the tender itself—say it's a repeat tender that changes a requirement. You go, "What worked before I now can't implement again because the exact same tender for a particular industry might have changed" and so forth. I think there's power in sharing that intel, especially through acquittals. I'm always sharing intel if there was a tender: "This is what worked. This is what didn't work." That's important to give to other people in the tendering process, but also those others who win—to say, "Did you know that this organisation did it this way, and this is what worked?"

MEL FLANAGAN: Can I just add to that? It was something that Kylie mentioned this morning, which is the variation dance. We've come across that a lot. This is one of the barriers for us for tendering. We put something in. We put in the real true costs of what we think we're going to deliver. Every single time, we've been undercut by hundreds of thousands of dollars because other organisations know how to get a variation, and that's not how we work. We're like, "We're being asked to deliver something. We're going to give what we think it is."

In one instance, there was a \$130,000 job that someone got \$30,000 for. They cannot have delivered that project for \$30,000, but they're an organisation that relies on variations. Therein lies why the information and that data is really important, because we can go, "That's what the tender said and that's what was in the information that's out there but, actually, it cost \$1 million more than that." Those variations and amendments to contracts are really important. Otherwise, we're not learning and we're still not delivering the good things we should be doing because they're being underfunded. We're not understanding how—we're making things and we're not learning around how we could be doing things better.

The Hon. DAMIEN TUDEHOPE: There is a process with NSW Procurement called SimpleQuote, is there not?

MEL FLANAGAN: You're a trove of information. SimpleQuote—no, I don't know what that is.

The Hon. DAMIEN TUDEHOPE: SimpleQuote or one word is the process that NSW Procurement have adopted to take away from that problem relating the complexity of all the things that you've got to go through when delivering a quote to the New South Wales Government. I'm just suggesting to you that the issue which you have identified may have been addressed already in some of the procurement policies.

MEL FLANAGAN: We've been doing this advocating for years now, since our first. The New South Wales Government has been incredibly responsive to a lot of the suggestions that we've made. When we're working with them, we're always giving feedback. You're putting in a quote for something. The ICT, that's our world. It's really ICT and community engagement.

The Hon. DAMIEN TUDEHOPE: Did you participate in the round table?

MEL FLANAGAN: I participate in round tables all the time.

The Hon. DAMIEN TUDEHOPE: The ICT round table that was conducted, I think, two or three years ago?

MEL FLANAGAN: Yes. I have been on open data steering committees. I have been at many, many procurement events. I contribute all the time.

The Hon. DAMIEN TUDEHOPE: That set a 25 per cent target, did it not, for small businesses in relation to quoting for the New South Wales Government for ICT contracts?

MEL FLANAGAN: Yes. Again, it comes back to how those tenders are approached. Again, we don't find tenders; people find us and ask us to submit a quote or be part of a project. It's very rare that we'll find a tender that's actually really suitable for us. That's just the reality of the nature of the work that we do. I think the other thing that has really shifted for us is COVID, where the New South Wales Government started employing a lot more people internally in terms of service design—which is fantastic. It's really great. But it has led to an exclusion of small businesses to deliver niche specialist services who can also complement and support those teams.

It comes back to do you need someone to deliver a project, or do you need to get a specialist in to help support the public service to deliver something. And that's where that kind of recruitment barrier comes in where small businesses who traditionally would put in a team or a person to help support the public service are no longer

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able to do that because recruiters, who are "small businesses", are really—that's the avenue and there are barriers for us being able to do what we do. We haven't had a contract with the New South Wales Government since COVID.

The Hon. DAMIEN TUDEHOPE: Ms Rose, you identified a circumstance where businesses that win tenders actually then seek to engage other small businesses and then don't want to pay them for—

AMANDA ROSE: Yes, correct.

The Hon. DAMIEN TUDEHOPE: Can you identify a specific example of that occurring?

AMANDA ROSE: No, because I'm not here to throw people under the bus. I just want to be very clear that, whether it's deliberate or not deliberate, these practices happen. I think that's why, if we make it part of the tendering process—yes, it's a given they're going to collaborate with other people, because they need to. But to make it a requirement of that actual tender that they're going to have to submit, with progress reports and acquittals, to say that the people you said you are partnering with, or X amount—just like with large tenders, to say X amount have to be small and medium businesses that you're going to use to partner with you, and that you budgeted for that, and people can track that actually happening.

Often people, whether they get excited and they think, "I know that person; I'll add them to it" or "This sounds like a great idea", they add names and then everyone wants to collaborate. Now, the small business owner has very limited time, very limited resources, but usually a really great community—"Let's collaborate. This is great for your women in your community." They're like, "That's great. That's going to take three people to promote that and do this and that." So there are 50 hours of work that no-one is paying for. I think make it a criteria, if they partner with people, that a portion of the funds goes to that small business or that sole trader that is helping them—like you would a graphic designer. You don't go to a graphic designer after winning a tender and say, "Could you design this for free?" No, you wouldn't. So they shouldn't be doing it in order to reach a community.

The Hon. DAMIEN TUDEHOPE: In terms of designing the tender, you would design the tender to ensure that the person tendering identified all those people who they were potentially going to partner with or collaborate with for the purposes of delivering the tender project.

AMANDA ROSE: They do. Sometimes they do identify and they have references. Sometimes they mention names and that business doesn't know. It is more the fact of ensuring that a specific amount of the budget is dedicated to allocate to those small businesses that they need to help deliver whatever it is that they've won.

The Hon. DAMIEN TUDEHOPE: I find it perplexing that someone wins a tender to do particular work and then uses people who are not being paid to deliver the work.

AMANDA ROSE: Welcome to the small business community and being a woman! Because that's exactly what happens. This is why I'm here—

The CHAIR: Can you talk a bit more about that to Mr Tudehope!

AMANDA ROSE: But this is why I'm here, because this needs to stop. Whether people mean it in a deliberate way or not, there needs to be mechanisms in place to ensure that people are being paid for what they're doing.

The Hon. DAMIEN TUDEHOPE: I appreciate that you don't want to throw people under a bus, but if that is occurring, notwithstanding that we may be welcomed to the world of small business, that is something that we should be addressing as part of the tender process, potentially. If in fact people are winning successful tenders and using people to carry out that tender who aren't being paid—

AMANDA ROSE: The thing is, I think some people genuinely win it and think it's easier than it actually is. They think, "We can do this."

The Hon. DAMIEN TUDEHOPE: But why the reluctance to throw someone under a bus, though? If that's what they're doing, quite frankly that's wrong, is it not?

AMANDA ROSE: Because I'm not that type of person.

The Hon. ANTHONY D'ADAM: I think Ms Flanagan wants to make a contribution.

MEL FLANAGAN: I would love to add to that. It's not necessarily just small business or female businesses that are being subjected to that. You would have heard from our colleagues in Aboriginal procurement that it's the big charities that are getting those contracts and then going to the small ACCOs and the community organisations going, "Hey, can you come and deliver this thing? Oh, by the way, we're not going to pay you as much." We've come across an instance where there was a large charity—and, again, I won't name names—who

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have got millions of dollars from the New South Wales Government to deliver to Aboriginal communities. They then expect Aboriginal community members—because they're a volunteer organisation in delivering their services, said charity—to work for free to deliver the vouchers and do the thing. It's happening a lot. It comes back to the way that contracts are designed for that big primary, and not collaborative contracts, where you've got people coming in and delivering aspects of the work that needs to be done, or the project or the program. It's something that really needs to be unpicked, I think, because there are different examples of it in different places.

The CHAIR: As much as I wish there was more time to hear Mr Tudehope tell women-owned businesses how to overcome their barriers, it is unfortunately time—

The Hon. DAMIEN TUDEHOPE: I ask you to withdraw that. I am not telling them how to—

The CHAIR: I withdraw. It is time for us to end this session. I thank you very much for the evidence you have given here today. The secretariat will contact you in relation to any questions you have taken on notice or any supplementary questions for you. Thank you again for appearing before us today. The Committee will now break for lunch. We will be back at 1.30 p.m.

(The witnesses withdrew.)

(Luncheon adjournment)

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Mr CHRIS GAMBIAN, Executive Director, Australians for Mental Health, sworn and examined

Ms DIANA BURGESS, Project Manager, Construction Industry Culture Taskforce, affirmed and examined

The CHAIR: Welcome, Mr Gambian and Ms Burgess, to our inquiry. Thank you for making the time to give evidence and, Mr Gambian, for your organisation's submission as well. Would you like to start by making a short statement, starting with you, Mr Gambian?

CHRIS GAMBIAN: Thanks, Chair, and thanks to the Committee for the opportunity to say a few words this afternoon. Australians for Mental Health is a grassroots organisation dedicated to shifting the policies, norms, attitudes and behaviours that drive mental ill health and achieving those conditions that make it possible for Australia to become a place where mental health thrives. We're not a service provider or professional body. We are everyday Australians who need things to be different when it comes to mental health. Members of Parliament hardly need me to explain what harm is caused by excessive or antisocial working hours—toxic working environments and cultures that are inherently antithetical to good mental health. This building is an exemplar of how not to do things, if you want to promote wellbeing. Whilst solving that particular problem is beyond the scope of this inquiry and probably well above my skill set, the case example is nonetheless a useful one. Like sittings that go long into the night in this place—

The Hon. DAMIEN TUDEHOPE: I like this man.

The CHAIR: That is now on transcript, Mr Tudehope.

CHRIS GAMBIAN: I thought you might—in the construction industry, the routine of working a six-day week is not grounded in any particular necessity. It's culture: We've always done it that way and so we always do it that way. But what does dad or mum never being home on Saturday morning do to family life? What does it do to relationships? What does extreme pressure to deliver against impossible time frames and budgets do to working relationships? How does that incubate cultures of bullying and harassment? What does family relationship breakdown, working relationship breakdown—to say nothing of just the lack of sleep—do to mental health? If we always do what we've always done, we'll always get what we've always got.

In construction, to use the example we're focused on today—but similar stories exist in other industries—we're losing one person every two days to suicide. That is to say, on average, someone in the construction industry will have died yesterday and another will die tomorrow. These deaths are tragedies, to be sure, but they are also highly preventable. Unlike many of the vexed issues of public policy I've given evidence in this building about in the past, this one should bring us together. Mental health challenges know no class, no gender, no race, no geography. In construction, the crisis is true as much in the white collar jobs of the industry as in the blue collar and oftentimes, without the representation of trade unions in the white collar roles, the problem can be much, much worse.

We are working with the Australian Constructors Association and the culture taskforce, unions and mental health service providers alike because this is an issue on which there is a lot of agreement. As a major purchaser of goods and services, the New South Wales Government has an enormous opportunity and, we would suggest, responsibility to drive better mental health outcomes in its approach to procurement. We've heard the nightmare stories: projects that were designed based on political timetables and budgets and not on what it's actually going to take to deliver the job; and requests for tenders that go out just in time for the Government decision-makers to go on their Christmas holidays, which mean big teams have to cancel theirs. Not for any good reason—that's just how we've always done things.

In an era when one in three Australians describe their mental health as either poor or very poor, we must do better. We must consider the risks to mental health as well as the opportunities to improve it. That must be as important as other assessment criteria in procurement and, when we do, the payoff is huge. In an instant the entire State budget can be mobilised in the battle against mental ill-health. Mental health is not just an issue for the health department. When treatment is needed, it takes every department and agency doing their bit to improve mental health across the population. We're never going to adequately fund treatment when government is also funding the harm. Thanks again for the opportunity to speak today.

DIANA BURGESS: Thank you for the opportunity to give evidence before this Committee. Procurement is a critical lever for driving change. On behalf of the CICT, I would like to thank you and the New South Wales Government for the focus on procurement reform as a means of addressing significant issues that are being faced by society. I am here representing the CICT, which is a partnership between the New South Wales Government, the Victorian Government, tier 1 construction companies—represented by the Australian Constructors Association—and academics. Our membership has also recently expanded to include the Federal Government, the South Australian Government and the CFMEU.

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We have the objective of creating a more sustainable industry by improving our culture or the experience of our workforce when they are on our sites. We aim to do this by embedding a culture standard into procurement processes within each Australian jurisdiction and thereby creating a minimum standard of cultural experience for people within our industry. The challenges for the construction industry are many. We are an industry that is under pressure. Despite being a critical industry for Australia, contributing around 8 per cent GDP and employing nearly 10 per cent of the Australian workforce, we have a burning platform that requires a significant focus on cultural reform. The burning platform comprises a pipeline of about \$230 billion of infrastructure nationally and a shortfall of 229,000 workers in the public infrastructure space. Those numbers don't mean very much when I just read them out like that. However, that 229,000 worker shortfall is actually more than the existing workforce that we have in infrastructure. It is quite a significant burning platform that continues to become worse and worse with time.

The ability to deliver against the pipeline of projects will depend upon the industry's ability to attract new workers, retain our existing workers and make sure that they are able to work in a sustainable and healthy fashion. The culture of the industry and the experience of workers within the sector is one which faces significant challenges. Mental health is our first key focus area and the biggest area of opportunity for improvement within the sector. A worker in the construction industry is six times more likely to die from suicide than in any workplace-related incident. We have double the national average of suicide rates within our industry. These stats alone give you a stark picture of what it is that we are seeking to address through this procurement reform piece.

Gender diversity is another critical issue facing our industry. We alienate more than 50 per cent of the working-age workforce within our sector. The infrastructure sector has 14 per cent female representation. That has increased by 4 per cent over five years. Less than 2 per cent of onsite roles are held by women. There is a significant gap in terms of gender diversity within our sector as well. Additionally, construction has the largest median total-remuneration pay gap at 31.8 per cent on the latest WGEA data. So it is a worsening state when it comes to gender diversity. Indeed, attrition is also a significant issue within our sector. The NSW Building Commissioner recently released a report from research that it did in January that found that up to 61 per cent of the total workforce that we currently have in the sector is considering leaving.

This is mainly due to reasons such as work-life balance and an inability to reconcile what is the ask of working in this industry with what they're wanting to do with their lives and their families. So, significant risks in that space. The CICT commissioned research into what the national cost of the culture of the construction industry sits at, which came in at just under \$8 billion. That includes costs related to workplace injuries, mental ill-health, suicide, long working hours, lack of productivity and lack of diversity within the sector. There is absolutely a business case here, as well as an ethical case, for the need for change.

The final challenge we face is the attraction of the next generation of worker. The CICT has commissioned research of a group of gen Z school leavers who were experiencing a work-based training program within the industry. About 200-odd kids came through—part of the COVID cohort. The school leavers reported significant gaps in what the industry offers in terms of careers, which influenced their decision-making. While most participants indicated they enjoyed the work that they were undertaking, they chose not to consider a career in construction due to challenges with working hours, gender diversity, colleagues that they can get along with and the general working environment. If we want to attract the next generation of worker into our industry, as our current workforce starts to age, this becomes an even more critical issue that we need to address.

What is our solution? Through our research, the CICT identified the three key challenges that we're seeking to address through our culture standard. We believe that through partnership between clients and contractors, and leveraging the procurement process as an implementation method for change, we will be able to get traction on these issues, not just within our lifetimes but within the next five years. One is long working hours. The hours of work in the industry are excessive. They result in high turnover, absenteeism and stress-related leave. Six-day weeks and 80-hour weeks are commonplace within our industry and are inherently unsustainable, and I would put to the Committee that they are unsafe as well.

Lack of diversity, and a failure to attract and retain a diverse range people, narrows our talent pool that we can draw upon and reduces our capacity to deliver projects. Additionally, this disadvantages sectors of our general population by limiting careers and opportunities for people within the sector, which is a significant employer of people within New South Wales. Not only are they not attracted to the industry but they are also missing out on gainful paid employment when we are absolutely desperate for people in this space. Thirdly, there is wellbeing. Research shows that stress levels and suicide rates amongst construction workers are double the national average. Mental ill-health, fatigue-related incidents and things that result in absenteeism on sites are commonplace on a day-to-day basis. It's a significant factor that we can address through cultural reform.

The culture standard has been built around those three pillars and places requirements on the contractors and clients for driving a positive and inclusive culture on their projects. We've piloted the culture standard on five

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projects within New South Wales and Victoria, and we've just released our interim findings. The full report is due at the end of this year. In terms of key outcomes, the pilot projects implemented a five-day week with 50-hour caps on projects. We had 84 per cent of salaried and 61 per cent of waged workers indicating a preference for that method of working—a five-day week compared to the six-day week. The numbers have subsequently improved since the interim findings, as more and more people get experience of working under those conditions. They see the flow-down benefits that it's having to their families and their lives more generally.

Effects on pay have been minimal. Workers consider those effects outweighed by the benefits of having increased time to spend with their family and friends, and to maintain their own health and wellbeing. Productivity has been shown not to be adversely affected by the implementation of working hour caps. In fact, many projects have anecdotally noticed improved outcomes from having a rested workforce. The CICT are working on a cost-benefit analysis and productivity modelling of this to be able to prove that in a more substantial way as part of the final reporting. Participants across all pilot projects perceive their health and wellbeing as being well supported by their managers. There was good engagement from the workforce in various programs implemented throughout the pilots to support mental health, manage occupational health risks and manage fatigue throughout delivery.

Due to structural issues impacting our industry, challenges with the industry's culture can only be resolved through a partnership between clients, contractors and our unions. Having the right procurement requirements in place to influence the priorities and approach the projects from an early stage in their development is a key lever in driving change. Investment here will support the sustainability of the industry through improving attraction and retention, improving quality of life and wellbeing for those working in the industry, reducing incidents of mental health and suicide, and enhancing the productivity of the industry. That, in turn, will have flow-on benefits to society more broadly, such as improving employment outcomes for diverse workers and enhancing the family experience for those who have family members working within our industry. It will also have flow-on cost impacts regarding mental health management for the State.

The next step for the CICT is to finalise our research and publish the results; develop implementation tools, assets and guidelines for the industry and clients; and engage with all the different jurisdictions across Australia and key stakeholders on our findings. In this case, the CICT commends the leadership of the New South Wales Government and their commitment to the objectives of the culture standard as being a founding member of the CICT. There is absolutely momentum for change within New South Wales, which demonstrates a commitment to improving outcomes not only for our workforce but for society more broadly. We would be happy as a CICT to share our findings and support this Committee in any way.

The CHAIR: Mr Gambian, the submission from your organisation discusses embedding mental health and wellbeing factors in value for money considerations evaluating tenders. How would you propose that this might work? What would procurement officials be looking at to assess that?

CHRIS GAMBIAN: There are a couple of things that need to happen. One is that the process of assessing the risk to mental health and wellbeing in any particular project is critically important. That is the risk of how the project itself is commissioned as well as the risk inherent in the delivery of the project itself. Once we've established what it is we're trying to mitigate, it is the responsibility of anybody who wants to put in a bid to speak to how they propose to manage those risks in the same way that they would propose to manage any other risk in a project. What we've heard from particularly builders that we've been speaking to is that those considerations have to be given due weight because it would be counterproductive and arguably inequitable, if one builder who has a particularly strong commitment to mental health and wellbeing proposes fairly substantial measures to try to mitigate those risks and another is much more modest in their approach.

If the only consideration ends up being things like delivery timetables or final cost, we would argue that delivery timetables and final cost won't necessarily be negatively impacted by mental health and looking after mental health. But if we create a situation where there is a disadvantage in the assessment phase for having good mental health policies then we're back to square one. We've identified the risks but actually you're still rewarding the people that don't take the action. We would say that financial cost, obviously, needs to be a key consideration, but so does the embedded value of the project proposal, which includes things like mental health and wellbeing. Not having suicides on a project is a significant value offering that needs to be recognised.

The CHAIR: Ms Burgess, could I ask a bit more about the culture standard? To be honest, for me, something called a "culture standard" seems a little amorphous. Could you articulate a bit more? You've spoken about the three key areas, but how is that operationalised? You've said that there are five projects. How is that operationalised in those projects across those three areas?

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DIANA BURGESS: The culture standard itself is composed of those three key focus areas with the intention that it's embedded in procurement practices. Very early on in a project's life cycle, these are being considered and implemented as part of the program of works.

The CHAIR: With these five pilots, was it part of the procurement process that these were put out to tender knowing that they would be pilots or was that negotiated subsequently?

DIANA BURGESS: For some, yes, but for many of them it was retrospectively implemented as well. That is part of the cost-benefit analysis framework. We're trying to understand how much it cost them in terms of time and money to implement the culture standard in this way, and that's showing very negligible time and cost impacts for those that did have to be retrospectively applied. However, the position of the CICT is that it is embedded in procurement up-front so that these changes don't happen in the downstream. In fact, it reduces the ability of the construction industry to tender based on time and cost around its people's wellbeing. Instead, we're forced to innovate on other aspects while that baseline is set by the culture standard.

The standard has three key areas. Time for life is the critical area that we're putting forward as part of the culture standards being the first domino, essentially, to knock over to enable greater mental health and wellbeing and greater diversity on your project. The standard puts forward an ideal of a Monday to Friday work week with 50-hour working caps for all individuals working on that project, be they salaried, waged, direct employed or subcontracted.

Where that is not possible—and in many cases it is not possible—a project can run 24/7; however, the human beings on that project are working five days, with two consecutive days off, with 50-hour caps on the hours that they are working. That is necessary for projects that involve things like tunnel-boring machines that run 24/7. So there are projects where that is the case. Coupled with those hours and days caps are the flexibility requirements. Every individual on that project is to have access to flexible work arrangements, and that is to enable people who have caring responsibilities, be that for children or for older people, people who need to go to doctors, people who may have sporting commitments, to be able to accommodate their lives in addition to their work environments.

The second aspect of the culture standard, our diversity and inclusion pillar, has an initial focus on gender, given it is our biggest area of opportunity for the sector. We put forward a requirement for having female representation in decision-making roles within the project, having appropriate shortlisting and hiring practices in place to enable females to be considered for these roles, having gender pay gap mitigations on our projects and having what we call the inclusive workplace environment requirements. They are around things like providing appropriate amenities for a diverse workforce, ensuring no offensive materials or language onsite, completing the culture safety continuum piece of work, which you can do at procurement, and showing as part of your tender documentation what you are going to be doing to further improve the inclusivity of your workspace for your diverse workforce.

In our mental health and wellbeing space—an initial focus on mental health as, again, our biggest opportunity there and programs in place to support good mental health, as well as address poor mental health, that are accessible to all individuals working on that project. Coupled with those programs is access to mental health first aiders—again, accessible people who you are working side by side with, people who you can have a conversation with so you don't necessarily have to reach out into central offices. They're the people working next to you who can offer you support.

In addition to that mental health space, we have managing health risks as a key requirement under the culture standard. In the construction industry, we are quite good at identifying and managing safety. It's usually identified very early on and costed and programmed, and with very well-thought-out plans for addressing safety risks. We don't do the same for health, be that exposure risks, musculoskeletal—anything that could be a health impact for that particular project. That goes to Mr Gambian's point, as well, around needing to be bespoke to the needs of that project and the people who are working on that project, and the contractor is the best placed to be able to identify what those risks look like and the mitigation strategies that should be in place. But those are going to be addressed up-front as part of procurement so that they can be fully considered by both the client and contractor, with mitigations put in place from the outset to manage them.

Our final requirement under the wellbeing space is for healthy fatigue-management programs to be put in place. The delivery of a construction project is quite cyclical. There can be periods of high delivery and then periods of quiet delivery. That's not something that we can necessarily fix as a Construction Industry Culture Taskforce, or indeed as a client or contractor; it's just the nature of building projects. However, the culture standard puts forward that when you do have a high-delivery period, such as an occupation, you have recovery opportunities embedded in your program to allow people to reset and come back to the office or back into the worksite in a rested and fatigue-averse manner. So that's the idea behind the culture standard; those are its components. It is

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really critical that it's considered up-front in a procurement process so that it can be embedded at the early stages of the project, with both the client and the contractor holding each other to account for achieving those outcomes throughout the delivery period of a project as well.

The CHAIR: When you started with that answer, you talked about the standard essentially becoming a baseline in the industry.

DIANA BURGESS: Yes.

The CHAIR: I note the multi-stakeholder nature of the taskforce. Is it envisaged that the standard be mandated in construction?

DIANA BURGESS: That is the objective of the CICT, absolutely—that this is a ticket to play, essentially. You have to comply with the culture standard in order to tender for government-funded work; that's the end objective.

The CHAIR: Obviously, we've been talking throughout this inquiry about policies we have and enforcement or otherwise. Does the taskforce have any thoughts about enforcement mechanisms? It's one thing to have something in a procurement policy and quite another to ensure that it happens.

DIANA BURGESS: Yes, the implementation of the culture standard is something that's absolutely critical to get right. It's not something we want lip-service paid to or a kick-and-flick exercise. In fact, it may go so far as to implement competition within the construction sector as well, so it has to be rigorous—our implementation regime around this. How we are, as a CICT, envisaging this rolled out is in a staged manner, with various jurisdictions dipping their toes in running pilots and perhaps rolling this out on projects of particular scales with particular tiers of construction companies in the initial phase before cascading this down into the smaller tiers of work. That's to enable both the clients and the contractors to build the maturity and the expertise in being able to implement this effectively.

We're also as a CICT developing a series of metrics and measures to enable adequate transparent reporting so that we can make sure we are being held to account for what the industry puts forward as part of their tendering documents. Whether or not there will be downstream ramifications for nonconformance is a matter for the States to consider as part of their regulatory regime. But, from the CICT perspective, it does need to have a certain element of rigour to it to ensure compliance with the culture standard and outcomes from noncompliance—equally balanced, however, with celebration of success and the sharing of those learnings more broadly across industry as well.

The CHAIR: When you talk about reporting, do you mean reporting up to the agency that's doing the work?

DIANA BURGESS: To the client, absolutely—the owner of the head contract.

The CHAIR: Mr Gambian, about the enforcement piece, in your submission you talk about looking at a potential supplier's back record. Do you want to talk a little bit about that and maybe also this consideration of enforcement post-award?

CHRIS GAMBIAN: Given that mental health or psychosocial injury has been a hot topic of public conversation over the last year or two, I think there's a risk that organisations that have a questionable track record are suddenly reformed when they are bidding for a valuable project. 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 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, not what is written in a document. As for progress reporting, it's a similar sort of story. Fine words—we've seen it many times: policy statements that go to the beautiful working environment, the culture that we're trying to create here and the morning teas that celebrate being okay and the EAP posters up on the wall. But there's a story underneath all of that in a workplace that goes to what is actually happening in this workplace.

We know that—particularly excessive hours, bullying and harassment—those sorts of things that do cause psychosocial injury tend to be the hardest things to raise. Somebody who is physically injured at work—if somebody breaks a limb or has an accident of some kind, it is more plainly obvious that has happened. It is less

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so with psychosocial injury. So a regular compliance regime, we hope, would mean businesses are incentivised to create constructive working environments—we would argue working environments that are partnerships between workers and the business—so that everybody can play a role in creating mentally healthy and safe workplaces.

The CHAIR: In your opening statement you spoke about how, in construction, it's not just tradies on the worksite; there are other components of the workforce. I wondered if you could speak a bit about any differences there or why the same kind of things applied. We're talking about construction here today, but your organisation must be considering this, I would imagine, in other sectors.

CHRIS GAMBIAN: Yes, that's right.

The CHAIR: Are there any learnings that are across that should be taken into account?

CHRIS GAMBIAN: We are particularly focusing in at the moment on construction, partly because of the existence of the Construction Industry Culture Taskforce and the work that's already been done in the sector. We're looking to support that. There is a fair bit of cooperation already happening between unions and service providers and industry itself. For us, it's a good place to start this work. It's also a sector that is in dire need of this work. As Ms Burgess was outlining earlier, 9 per cent of the workforce, 20 per cent of the suicides. Construction is not just the same as everywhere else. It is a particular problem. It does make the problem a more urgent focus area. In terms of the white collar-blue collar question, from our discussions with both unions and employers, the nature of blue-collar work tends to be very well unionised and there's a strong health and safety regime in place already. It's much more regimented in terms of hours of work, albeit the six-day working week, which we think is potentially a pretty big source of the problem.

Actually, the existence of services like Mates in Construction or Incolink and other service providers at the site level means that while there is still a massive problem in that area, it is probably more attended to than in some of the white-collar jobs—engineers, project managers, architects—where, as Ms Burgess outlined, there's this huge problem in terms of being able to attract workers to the sector, but much more of a culture where you just need to tough it through and get it done. The request for tender comes on Christmas eve—"Oh well, that's Christmas done." That is less of a case in the blue-collar jobs. But if you're in some of those white-collar professions, it's a much more unregulated environment. We would say that a lot of the focus does need to go into some of those areas where traditionally we don't spend a lot of time thinking about workers' health and safety.

The CHAIR: Ms Burgess, do you have anything to add to that in terms of the different cohorts within the workforce?

DIANA BURGESS: It's very interesting. The different stressors that apply to waged and salaried workers are quite apparent, and Mr Gambian has identified some of those. A key one impacting the waged workforce that doesn't necessarily impact the salaried workforce is around job security. The culture standard itself isn't a silver bullet to address all issues impacting the industry, but job security is a really big issue that does impact negatively on the waged workforce's mental health and wellbeing, and that is, "Where's my next job? I'm employed for six months to do this on this particular job and then what?" It creates a level of stress that isn't necessarily borne out from the salaried workforce. It's a significant issue, I think, for the blue collar, and it's something that I know the unions are very active on around the casualisation of the workforce and where to next for the next job that is inherent in that waged workforce.

But both waged and salaried have pressures that they experience as part of their jobs, as part of working within this industry. They're just different causes that we can address. That's why the CICT's approach, the culture standard approach, is non-prescriptive as to what the programs are that you should be rolling out, as long as they're supportive of mental health and addressing negative mental health. It allows the construction company to step back and look at the demographics that they have in front of them, and what the specific needs of their workers look like. It may be a high Indigenous employment group or it might be a high wages workforce. They have a very different need in this space. We can't blanket one size fits all; it needs to be bespoke to the workforce that is apparent in front of you because of those issues. Every individual presents to us differently in the workplace. We have to take them as we receive them, and that means having a different approach, day by day.

The CHAIR: We have talked about the aim being to have a mandated base but then a bespoke approach. When we were talking, for example, about the lack of diversity, you were talking about the culture standard encouraging HR processes that are more inclusive and that kind of thing. There's no target set with regard to participation by women or other groups?

DIANA BURGESS: We do have targets for female position holders in decision-making roles, absolutely, but we don't mandate what should be in your shortlisting requirements, in your actual processes—just that they should be enabling X, Y and Z to occur. The other more prescriptive element is our time for life around

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the five-day week and the 50-hour cap, but there's many ways you can skin that cat. We don't tell you how to do that. It's going to be different for each project. It is going to have different needs, different programming requirements and, in fact, different innovations that we don't want to stifle by being too prescriptive.

We set that threshold of five-day and 50-hours caps, allow the contractors to look at what would work best for that build, for that piece of horizontal infrastructure or for that particular workforce that will get that result within the time and cost parameters that have been set forward. There's a very delicate balance between prescription of targets and enabling innovation, which is something that our industry is actually quite good at when given the scope and the remit to be able to do so.

The CHAIR: Playing devil's advocate for a minute, again, less in the wellbeing and hours space but more in the gender diversity and diversity space, if it's a question of just being able to show that you have a process in place, more cynical actors might be able to develop a really excellent process that ticks the boxes. Has there been any thought around how you would avoid gaming when it is not linked to an outcome?

DIANA BURGESS: Yes, absolutely. The implementation and the reporting requirements behind this are quite considered. As part of the tender documentation, you will need to show what your process is so that the client can have transparency over what that looks like. You will need to show what your gender statistics look like. You will need to disclose your gender pay gap and what steps you are taking to mitigate that as an organisation as part of your tender documentation. It does compel quite a bit of information sharing and transparency in the up-front, which can then be monitored throughout the delivery of that project as well.

Again, it's not a silver bullet for addressing all issues. We don't set standards or targets for participation of women at various job roles—just in that decision-making role. That's very intentional so that we're encouraging role modelling of women in those decision-making roles within the project, enabling that career pathway up and encouraging the building of those careers. But, in terms of managing the overall reporting of that, that is something that we are developing as part of the implementation regime for the culture standard.

The CHAIR: So you are looking at that, and you look at your report at the end of the year.

DIANA BURGESS: And how to make it robust. Yes.

The Hon. DAMIEN TUDEHOPE: Was this an initiative of the former Government?

DIANA BURGESS: Yes, absolutely, of the New South Wales Government under Gladys Berejiklian.

The Hon. DAMIEN TUDEHOPE: I think there was a 10-point plan.

DIANA BURGESS: Yes, from Infrastructure NSW. They released a 10-point commitment to the construction industry.

The Hon. DAMIEN TUDEHOPE: In the work that you have done to date—and this is potentially something for you as well, Mr Gambian—as part of a tender process, not just for construction projects, if you were producing a requirement for wellness outcomes which encompass the culture initiatives, do you envisage that would impact on the potential number of firms that would actually be part of the process, or do you think it would be enhanced?

DIANA BURGESS: The ways that we are measuring the mental health outcomes on our pilot projects are around things like participation rates, on feedback through our surveys and through organisational data. We are engaging with the tier 1 and tier 2 contract construction companies as part of the pilots, and they have quite sophisticated resources and measurement parameters already in place that we can leverage as a CICT. What we are conscious of, though, is when this does start cascading down to the other tier of construction companies, how equipped they will be to be able to address those issues. As part of our implementation pathway, we're developing resources and guidelines in which we hope to be able to convey downstream what the asks actually are and make sure we're not putting in place too much administrative burden.

The Hon. DAMIEN TUDEHOPE: This tender process is already reasonably complicated.

DIANA BURGESS: Absolutely.

The Hon. DAMIEN TUDEHOPE: And adding another layer—not that it's undesirable—means someone throws up their hands and says it's too hard.

DIANA BURGESS: Absolutely. In a six-week tender period, it is an ask. The challenge is that it's the only lever that we have to be able to drive change through the supply chain from that head contract point. 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

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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. What is working well, however, is stakeholder engagement across these tier 1 and tier 2 construction companies who are all quite keen to see something happen in this space and partner with their clients and with their unions in order to achieve an outcome. There is a willingness there and a will to do something like this in this space that I think will mitigate any concerns when it comes to the tender box entries.

The Hon. DAMIEN TUDEHOPE: This is a piece of work you are no doubt doing. The use of the word "mandatory" would be potentially something down the track after you've completed this work. But would you exclude, say, small businesses from this process or would you want small businesses to also have to comply with this wellness process as well?

DIANA BURGESS: The intention for the culture standard is that it's applied from the head contract— whoever is your contractor at that head contract point. That generally tends to be the tier 1, 2 and 3 for the infrastructure projects run from government. However, the intention is that that head contractor would support it cascading through the supply chain. It would eventually touch the small to medium enterprise businesses. But they would have the head contractor's support to be able to address reporting requirements and education to get that information to flow back up and meet their reporting requirements to their client. So, eventually, yes, I think it will touch the lower tiers of construction companies and the smaller business enterprises. However, they should be supported at that point by their head contractor and by the guidance documentation and assets that have been developed in order to make sure that that's not too onerous to bear for their organisations.

The Hon. DAMIEN TUDEHOPE: Potentially, as part of a tender process, a tenderer should potentially be required to disclose their workers' compensation history.

DIANA BURGESS: Not under the culture standard.

The Hon. DAMIEN TUDEHOPE: To Mr Gambian's point, if there is a firm which has a significant history of psychosocial claims being made by employees, that would be a red flag, would it not?

CHRIS GAMBIAN: I would have thought so. I can probably say a couple of things about that. One is, really, in that regard, only asking to have a consistent approach with other claims that a prospective bidder might put into a tender proposal. If they're making assertions about finances or if they are making assertions about track record on delivery, all of those things would logically and quite rightly be interrogated. In that respect, we're suggesting that the same standard be applied.

In terms of the broader question of—I try to avoid using the term "wellness" in this context because we are not talking about deep breathing here; we are talking about psychosocial injury and risk that in some cases leads to suicide. Every employer in New South Wales has had an obligation to look after health and safety at work for 40 years. We know a lot of employers, when it comes to psychosocial safety, are nowhere near close, including this place. Yes, there will need to be change and, yes, for some that will be harder than for others. But I think two things are true. One is that employers and prospective bidders of these projects need to have considered these issues and need to have a plan in place. But I think the broader point that needs to be made is that government has a role in creating the environment in which that even becomes possible in the first place.

What employers have said to me and what industry has said to me is that there's a lot of will to drive change and no one business can go it alone. They can't collude and fall foul of trade practices laws and just say, "We're only going to bid on, for example, a five-day working week and a 50-hour cap." That in itself would be illegal. We need government to make the rules of the game and create the environment where it's possible— whether it's a tier 1 builder or a local carpenter—for someone to be able to create a mentally healthy and safe working environment in the first place. That goes to things like how do we design the projects in the first place, how much budget do we allocate to these things, what do we say about timelines and what do we say about reporting back and accountability.

There's another broader political point that's worth considering that we haven't gone to in the submission, which is even the conversation that goes on in this place about delivery of projects is relevant to that stuff. When a project is behind time—and I'm not talking about any particular project here, or any particular government for that matter—there's a real risk that, out of panic, a government says, "Let's start cutting things." What do you start to cut? You cut all the embedded value. You don't necessarily cut how many pylons the bridge has.

The Hon. DAMIEN TUDEHOPE: I hope not.

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CHRIS GAMBIAN: You hope not. But you do start to cut things that have enormous value that might be invisible in the public debate or the political debate but are vitally important for the people delivering the project.

The Hon. DAMIEN TUDEHOPE: In one sense, you're right: The politics obviously would play into that because the criticism that governments get for delayed projects or whatever is significant. I suppose at some stage there has to be some policy adopted in relation to what looks like the culture change that we're going to adopt as something which is identifiable in the industry. You've identified five days and 50 hours as two things which you, potentially, are wanting to adopt currently. What does the final model look like?

CHRIS GAMBIAN: I might leave Ms Burgess to answer for herself. We deliberately stop short—I agree with you: I think we will need to eventually have some guidelines on this stuff. We stopped short at proposing what those guidelines would be, partly because I don't think we're qualified to make those suggestions. I think the culture taskforce has done a lot more work in that regard. I think the unions have got views about these things. What we're aiming to do over the next period is bring people together and hammer some of that stuff out.

Of course there is contention about what's going to work and what's the best way to do things. We don't profess to have the definitive answers on any of those things. At the moment, our work is nowhere near well developed enough. Our expertise is nowhere near deep enough to be able to say those things. However, I would say that the work that has been done in the culture taskforce, the work that Mates in Construction have done, the work that the ACTU and Unions NSW have done that starts to contemplate some of these issues is both very good and very aligned. So I don't think we're going to find it very hard to find some pretty strong consensus pretty quickly.

The Hon. DAMIEN TUDEHOPE: I will come back to you, Ms Burgess. I know you've got a view. However, you do, in your summary of recommendations at paragraph 4, make this observation:

That before any contract is awarded to a prospective supplier:

- The supplier's mental health and wellbeing risk assessment and mitigation plan be evaluated by a suitably qualified person ...

Is that a step that you would want to include in the tender process?

CHRIS GAMBIAN: Yes, absolutely. Whatever the guideline ends up being and whatever we think is going to work, there is a—

The Hon. DAMIEN TUDEHOPE: You would include that as part of that guideline?

CHRIS GAMBIAN: I think there needs to be a role for mental health expertise. Otherwise, you've got a bunch of people who might have expertise in procurement, in finance or in big infrastructure builds who have no particular expertise in mental health. I have no particular professional background in mental health. You might look at something on a piece of paper and go, "That roughly looks okay. We'll tick that off. That seems fine." But you would never in a pink fit do that in the specifics of how a bridge was going—you would want an engineer to look at it before you signed off on how the bridge was going to get built. The same should apply when we're talking about a strategy around mental health risk mitigation. Someone who knows enough about mental health, whether that's a psychologist or a psychiatrist or a social worker—someone who understands this stuff needs to play a role, otherwise it's the blind leading the blind.

The Hon. DAMIEN TUDEHOPE: It comes back to the point I raised earlier. Your next point states:

- the supplier's track record in relation to mental health and well-being matters be evaluated, including at least:
 - the number and nature of accepted workers compensation claims for psychosocial injuries resulting from bullying, harassment, excessive workloads or exposure to other psychosocial hazards ...

Do you have any material in relation to that already?

CHRIS GAMBIAN: Sorry, I don't understand.

The Hon. DAMIEN TUDEHOPE: Any evidence in relation to the extent to which that exists as a result of workplace issues?

CHRIS GAMBIAN: The extent to which there are workers' comp—

The Hon. DAMIEN TUDEHOPE: You've identified that you want to be able to satisfy:

- the number and nature of accepted workers compensation claims for psychosocial injuries resulting from bullying, harassment, excessive workloads or exposure to other psychosocial hazards ...

Is there any data?

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CHRIS GAMBIAN: I don't have that data from any particular company. But in the same way that if you were going to award a multimillion- or multibillion-dollar contract to a particular company, you would look at the financial history, you would find out if they'd declared bankruptcy in the past, you would do some due diligence on the veracity of the particular business—or at least I hope we would—the same is true here. We know that workers comp psychosocial injury claims are going up. They're the fastest growing area for claiming in the workers comp system. I think it is a basic bit of due diligence to establish if a particular company has a particularly bad track record. That may not end up being a disqualifying fact, but it is something that I think public officials need to be aware of going in.

The Hon. DAMIEN TUDEHOPE: Ms Burgess, I'm interested in your views on this.

DIANA BURGESS: As the CICT, we do have a structure for our culture standard that we would put forward as being a model that could be implemented.

The Hon. DAMIEN TUDEHOPE: A set of guidelines?

DIANA BURGESS: A set of guidelines. Three pillars, with requirements under each one of those as the rules of play, if you like, as well as a set of guidelines for how to go around implementing that from a construction company point of view, as well as assessment and waiting guidelines that we're currently developing for clients to consider what does "good" look like when it comes to something like a healthy program to be able to support that.

The Hon. DAMIEN TUDEHOPE: Have those guidelines been consulted with the industry generally?

DIANA BURGESS: They are being consulted with the industry at the moment.

The Hon. DAMIEN TUDEHOPE: And your report, which you referred to earlier, will that include material relating to the level of consultation with the industry?

DIANA BURGESS: Absolutely.

The Hon. DAMIEN TUDEHOPE: In respect of those guidelines?

DIANA BURGESS: Absolutely. The final report at the end of this year will be our research outcomes. But the end product for the culture standard will be a completed culture standard with the consultation background as to what went on there, what the contentious points were and why it has landed in this way, as well as the implementation pathway and resources to be able to implement effectively. That's the package we would like to present back to the various jurisdictions as an option for being able to leverage procurement to drive cultural change for the sector.

The Hon. DAMIEN TUDEHOPE: Does it include the recommendations made by Mr Gambian in relation to some potential objective quantifiers relating to levels of claims and the like?

DIANA BURGESS: We do have slightly different requirements envisaged as part of the culture standard than what has been put forward by the Australians for Mental Health submission. However, we will be considering what reporting aspects should be integrated as part of the culture standard to be implemented throughout the delivery of the construction project. If it becomes apparent that we need some reports around injury frequency rates for mental health, that may be something that we consider as part of the ongoing implementation. But as it currently stands, it is slightly different in terms of the requirements within the standard versus what has been put forward in the submission before you.

The Hon. DAMIEN TUDEHOPE: Are there any construction companies that, having worked with you, have adopted so-called best practice standards in respect of the way that they engage in contracts?

DIANA BURGESS: We don't like to use words like "best practice".

The Hon. DAMIEN TUDEHOPE: Why? I'd think you would—

DIANA BURGESS: Because it implies that there's a top bar. We have a baseline as part of the culture standard. We have been very fortunate, as part of our pilot projects, to work with some construction companies that are very forward-thinking and rapid adopters in this space, and quick movers. In fact, several of them, as a result their experience with the culture standard, have adopted it more broadly within their business operations voluntarily—not through compulsion—because it makes business sense to them and they can see the outcomes for their people. Absolutely, we see this as an iterative process where there isn't a best but a constant improvement that happens throughout the life cycle of the culture standard and for the people working within the industry as well.

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The Hon. DAMIEN TUDEHOPE: Effectively, the stakeholder group that you are working with at the moment are tier 1 and tier 2 contractors.

DIANA BURGESS: Yes.

The Hon. DAMIEN TUDEHOPE: Would you propose extending that consultation to other—

DIANA BURGESS: We have consulted already with industry bodies that represent the other tiered construction companies. What we'd like to do is to be able to reach further into the supply chain and even into the private sector to be able to start having these conversations, so we have one approach for the industry as a whole instead of potentially creating a two-speed economy within construction, where government projects are run one way and private-sector projects or different, smaller projects are run a different way. That wouldn't be good for the people who are operating within our industry. The idea is consistency, although that is somewhat utopian in its hope. We have already been engaging with the industry associations that do represent the different tiered construction companies as part of this process as well.

The CHAIR: I think it's a legitimate question that Mr Tudehope might have been alluding to earlier. When we start to include all different aspects, if it's a culture standard or whether it's mental health, we've been speaking with smaller businesses—we've had representatives from smaller businesses in here—about how they navigate the procurement system. This is a question to both of you. For the Government, getting quite practical, if we're to forward these standards or these requirements, what would be very practical ways that we could assist an implementation whilst acknowledging that, particularly, smaller businesses don't have the resources or the capacity to devote too much time and energy to it? How could we as a government consider that?

CHRIS GAMBIAN: I think that's a terrific question. There are two things. One is in the design of the tenders themselves—there could be a lot of guidance just in the design of the tender itself—and the existence of a requirement to do a risk assessment. The existence of that part of the form that you have to fill out is in itself really valuable. I think there's another piece, which goes a little bit to Mr Tudehope's question there about assessing expertise, but there being resources available to prospective suppliers within government to give guidance on what is possible, what is good practice—building up that body of knowledge, increasing capacity within targeted industries. Obviously we're talking about construction, in particular, but you could say this across the board. I think there's a useful role for government to play there, which is a very minor investment compared to the enormous sums of money government has to pay when it doesn't work.

DIANA BURGESS: From my point of view, I think the New South Wales Government has already done a fantastic job in a different program that it has run called the Infrastructure Skills Legacy Program within this State, which set up a very good model for supporting the implementation of a new policy throughout the construction space. It involved a staged rollout, requirements that ramped up over time, project officers that supported the construction industry to be able to get across what those requirements really meant and firm up the reporting obligations. I'd be more than happy to share some further information on that program with you or put you in touch with the people who put that program together. But there's absolutely a model for how this can be done well to create that willingness to buy into what is essentially policy change from industry and get the leadership of the industry behind this as a driving point. I couldn't recommend the Infrastructure Skills Legacy Program enough to the Committee for its review.

The CHAIR: Thanks very much. If there are no further questions, thank you both very much for your evidence today, for taking the time to appear and, indeed, for your submission, Mr Gambian. The secretariat will contact you in relation to questions on notice—I don't know if there were any—but also any supplementary questions. Thank you both very much again.

(The witnesses withdrew.)

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Ms JODIE HOGER, Disability Advocate with Lived Experience, affirmed and examined

The CHAIR: Thank you for joining us today. I'm Sarah Kaine, Chair of the Committee. With us today in person we have Anthony D'Adam from the Government. I have with me as Deputy Chair Ms Abigail Boyd from The Greens. I have Ms Rachel Merton and Mr Damien Tudehope from the Opposition, and online for some of the time is Ms Emily Suvaal from the Government. We welcome you and thank you for making the time to come and give evidence. We very much appreciate it. Would you like to begin by making a short statement?

JODIE HOGER: Yes, thank you. I am using some assistive technology, so I have a screen reader speaking in my ear and as I speak for parts of my presentation today, so if I hesitate it's because I'm listening to this thing jabbering in my ear at the same time. As I said, my name is Jodie Hoger. My pronouns are she/her and I live and work on beautiful Dharawal country, the land of the Wodi Wodi people, and I am a proud disabled woman. I personally use identity-first language because my disability is absolutely a critical part of who I am.

My background is that I have worked more than 28 years as a public servant. Throughout my entire career I've worked in tertiary education, or post-secondary education, for supporting people with disability as well as strongly advocating for employees with disability. In the past five years I moved into a role where I implemented the disability inclusion action plan for my agency and supported the formation of the disability employment network within my agency. I've moved into spaces. I am a committee member of the Disability Council NSW and I also am co-chair of the public service of New South Wales disability employment network, DENconnect.

I suppose to support the work that I've been done, I have been recognised in that space and over the last 12 months have received both recognition from my agency by being awarded the staff award for diversity and inclusion. This year I was awarded by TAFE Directors Australia the bronze medal for the Heart of Inclusion and Empowerment. For me, I always say to people it's about changing the world one person at a time. Hopefully in this space I have the opportunity to extend that circle of influence to you in relation to looking at how can a whole-of-government procurement plan ensure that we are not only meeting our legislative obligations for people with disability to be able to fully participate in the State of New South Wales but also, for me, it is about how do we ensure we do that for our employees of New South Wales as well, and can we go beyond that?

To start off with, it is really important to understand that we're supported by the conventions on the rights of people with disability. Out of the convention on the rights of people with disability, the New South Wales Government has adopted the social model of disability which basically says that it's not my disability that's the problem; I don't need fixing. Let's just remove all the barriers that actually stop me from fully participating in my world in whichever way that looks like. There are eight guiding principles that came out of the convention on the rights of people with disability, the CRPD, and I am going to read at least some of them to you.

One of the things to think about with disability is that it's a natural part of humanity. It's the club you can join at any time or in any stage of your life—disability doesn't discriminate. We have an ageing culture as well, and so disability can become more prevalent with our ageing population. When we're looking at statistics, nearly 20 per cent of Australians live with disability. Disability can be something that's visible—I can't hide that I can't see because I walk in with a really groovy purple cane which has just arrived from America—or it can be non-visible. Non-visible disability can include things like dyslexia or other types of neurodivergence, mental illness or medical conditions.

It is really important to make sure that you don't just think of disability as ramps and lifts, particularly from a procurement perspective. The area that I'm particularly passionate about is the digital environment and procurement that is connected to the digital environment. For me personally, as a screen reader user, my whole world revolves around technology. If it doesn't work or I can't access it, it's not like I can just jump onto something else to perform that task. For me, as a blind woman and a professional blind woman, it's the digital environment that creates the most barriers that get in the way of me living my best life.

When we get to the convention, you've got respect for inherent dignity and autonomy. This is basically people with disabilities being able to have agency over who they are, how they want to be and how they interact with the world. The word "dignity" is so critical because you can have what you might consider to be access and inclusion, but if someone who uses a wheelchair needs to access a building using a ramp at the loading dock at the back of the building and everyone else gets in through the front of the building, that is not dignified access and inclusion.

Principle two is non-discrimination. That seems self-explanatory, but it's also really important to consider the bias. For example, in the procurement space, assume that we are going to purchase a product to use for a reporting tool and at the moment there is no-one that you're aware of who has a disability or uses assistive technology who needs to use that tool. You say, "There's no-one with disability who needs to use it, so it doesn't

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matter if it is not accessible." It is not okay to be thinking like that, because you are creating employment barriers for people who might want to work in that space or who may move into that space. Ultimately, regardless of whether it's potentially one person or 1,000 people, access and inclusion is access and inclusion. How many people with disability who may use that particular product or service does not matter.

Principle three is the really critical one for this particular inquiry. It is that people with disability have full participation in society. I truly think that that's one of the principles that absolutely underpins why I have come to present to you today. Principle four is respect for difference. No two people with disability are the same. Tomorrow, if you meet another person who is totally blind like myself, we are still going to have very unique and individual experiences of living with blindness, so don't put us into boxes. I have massive issues around the language that's used with labelling and disaggregated data around disability, because it still has to be respectful. We have to be seen as individuals, not numbers or statistics. I have been known to say, "I'm not your diversity statistic." It's something that really needs to be at the forefront when we are discussing this.

Equality of opportunity is principle number five. Principle six is accessibility. For me, that's a massive piece aligning with access and inclusion when it comes to procurement. Principle seven is equality of people and that's when we have to look at the intersectionality of people with disability who also live with other diverse identities. It's very much a forefront in our legislation moving forward, in the New South Wales Disability Inclusion Act. It's a key element of disability inclusion action plans. It's an element of disability that is still new. Knowing that quite often it can multiply disadvantage, it is very important to make sure that you have those intersectional lenses over the work that you're doing.

The last one is respect for the evolving capacity of children with disabilities and respect for the rights of children with disabilities to preserve their identities. When we're looking at the legislation that we have, the United Nations convention on the rights of people with disability, we also have the Australian standards on accessible ICT procurement, which is endorsed by both Federal and our State Government, along with the other pieces of legislation. We've got the Disability Discrimination Act. There is a piece under review at the moment—an addendum, I think they might call it, to the DDA—around digital accessibility as well. All of this supports why the procurement of anything that is connected to the digital environment is just so critical.

I'll stop there. Hopefully, I've got enough notes in my little phone here that I'm able to respond to your questions. I've been involved with a lot of spaces. There's so much happening, particularly with digital accessibility, or the digital procurement space, within New South Wales that are resources to be tapped into. What's missing is that whole-of-government approach. Particularly with the Australian standards on ICT procurement, whilst we have them, there's no strategy in place to ensure that the whole of the New South Wales Government know about them and know how to implement these strategies. There's no accountability in place to ensure that we're actually doing it and holding the vendors, or the people that are providing those services, accountable in relation to accessibility as well.

The CHAIR: I wanted to ask a bit about the standards that you mentioned that the governments have signed up for. I should note that at any stage if there are questions that you'd like to answer and don't have the answer directly here but would like to provide, you can take those questions on notice and provide it later. I know the Buy NSW website has a section on government accessibility standards for ICT for vendors whose current products don't meet accessibility standards. It suggests that vendors outline where their products fall short or provide a product road map of later releases demonstrating when those standards will be met, but I also understand there are issues around version changes and updates that occur as well. I wonder if you could respond to that process of vendors in some senses justifying not having the appropriate accessibility of their products.

JODIE HOGER: Certainly. One of the gaps that we currently have—and it's twofold—is there are not enough recognised accessibility professionals, full stop. So that creates a gap in this space. The other piece is that we don't create that very clear expectation of the vendors around "this is actually what we expect". This is globally as well. It's really come out from the United States because they've been, in many ways, further down the line, or on the journey, in this space. Particularly with government, we have a lot of influence and buying power.

If we say that your product must be accessible and meet this standard—you have the WCAG, the web consortium standards, where you're looking at 2.2 now as a guideline for digital products that hang off the digital environment. If we create the expectation, the vendors will step up because they are going to want the contract. So I think part of it is ensuring that in the documentation that we prepare—the contractual agreements, the tenders that are going out—we are very clear on what we expect from a digital product. A lot of resources have already been developed to support the language to go into all of those procurement practices or processes that are being developed by Accessibility NSW.

The other side of it is that we really need to promote accessibility specialists as an important commodity, so that people are encouraged to get the qualifications to be accessibility specialists, that government agencies are

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very clearly employing identified accessibility specialists. These people could then support the processes involved with the agencies, either developing in house—because the standards for accessible procurement is build or buy. If you're building something in house, these standards still apply. I think that with the vendors, if they are able to develop a road map of how they can incrementally improve the accessibility, then how do you hold them accountable for that? I don't believe that this is possible at the moment, but if they can only apply the accessibility incrementally via a road map, then you pay them incrementally via that road map so that they still have the impetus to keep going and to keep improving their product, rather than going, "You've paid us—so, sorry."

When it comes to updates, things break all the time. That is like, welcome to my world. Something gets updated and all of a sudden my screen reader on my work computer is not working, or something that I used to be able to do, suddenly I can't. Again, I think these are the sorts of things that you build into the contractual agreement, so that there is that continuation of—as the product is improved, the accessibility testing and assurances are part of those incremental improvements. That is part of the agreement that you have with that vendor.

The CHAIR: I note that in your opening statement you talk about a lack of knowledge about ICT accessibility and the standards. It probably should have been my first question. Before we can procure it, we need to understand what is digital inclusion and accessibility. What does it look like?

JODIE HOGER: Anything that touches the digital framework. A classic example of what not to do is that we had—I always get confused now with MFA and MFD. Photocopier machines were rolled out a few years ago across the New South Wales public service. They had a touchscreen, and they weren't accessible. I still can't use my photocopier in my building. I can print to it, but I can't copy from it and I can't scan using the product. Even though they're photocopy machines, they are connected to our digital network, so they come in under these Australian standards. It's anything that has a touchpoint, whether it's a kiosk—I have a list on my phone—your security system or swipe cards. It's anything that is going to be connected to the digital environment.

The CHAIR: I understand that there is an Accessibility and Inclusivity Toolkit through Digital NSW to help agencies build and buy accessible products. Have you got any comments on that? Do you see that as being effective? Does it need to be changed?

JODIE HOGER: It's fabulous. Just in the last week they have actually released a new module on accessible digital procurement. The modules that are part of that suite I think absolutely should have a critical priority right across the whole of our public service to support access and inclusion in the digital environment. There are modules even on how to create accessible information. Certainly with the new module on procurement, it is critical to this particular inquiry. The difficulty is that Accessibility NSW was funded for two years and they are coming to the end of that funding. Who is going to take responsibility and carriage for the continuation and upkeep of these really critical resources that already exist? It is not like the wheel has to be reinvented or resources need to be put into the development of these products. They are already there. How do we make sure we don't lose them and how do we make sure that—obviously they are widely available already, but how do we make sure that people know about them, and not just in pockets?

For example, in my agency and a number of other agencies, we have been able to bring across the modules and make them available within our own capability hub so that it is easy for our employees to access the training. But part of it is that communication piece, and determining the priority. From my perspective, anything to do with disability access and inclusion should be mandatory training. I obviously have an extreme bias around that because it not only makes my life easier, but for the people who I support and who I consider that I serve within New South Wales, it makes everybody's life easier. It means that people can have agency over what they do. As it is for me at the moment, I have amazing workplace adjustments. Part of that is that I need admin support to mitigate some of the barriers that I experience within accessing certain elements of my digital workplace environment. Utopia is that people with disability don't need that type of support because we can just do it, and do it independently and with dignity.

Ms ABIGAIL BOYD: Thank you for sharing in such comprehensive detail what it means to actually provide accessible services and products. From my perspective, I am constantly frustrated that there isn't more priority given to people with disability, disabled people, within government policies and programs. It is perhaps of no surprise that within government services we also still have significant obstacles to overcome. You have covered so much. I want to touch on how, when we look at the products and services used within government and the use of our procurement dollars for within department and agency goods and services that—the photocopier is a really good example. This is a long question, but I will get there, I promise. When we look at the average population of New South Wales, the statistics are telling us that between 5 per cent and 6 per cent of people have a disability that requires some adjustments to be made, but for the past 10 years within New South Wales we have had less than 1 per cent of the public sector workforce being people with disability who require adjustments to be

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made, which has always indicated to me that we are not making sufficient adjustments within the public sector in order to get more people with disability in. Can you comment on that? Are there obstacles for people coming into the public sector and staying there because we do not have these accessible products and services?

JODIE HOGER: People that know me know I've got pretty strong opinions. Firstly, I identified data across agencies in New South Wales, and you are looking at around—certainly in my agency, for example, it averages around 2.4 per cent of people that identify in their diversity data that they live with disability. Yet, on the PMES, it is sitting at 9 per cent. So there are more people with disability in the workplace than actually identify themselves. For me, part of that is a cultural thing, so it is about narrowing that gap. People are there, but why aren't they asking for adjustments? Why aren't they feeling psychologically safe to share that they live with disability? There are two different pieces of work there. Definitely, when we are looking at procurement—obviously procurement is not just the digital environment. You are looking at the physical environment. You are looking at what systems do you use, even with the recruitment process?

I have applied for a number of jobs over the past couple of years now, and the "I work for NSW" website itself is so clunky with a screen reader that what might take a sighted person one hour to do might take me three hours to do. That's a barrier, and I am an advanced screen reader user. I have been using a screen reader for 30 years. If someone has just acquired their blindness or low vision or they are new to using the screen reader, then that's going to take even longer. That is looking at accessibility versus usability, and shows why user testing by people with disability who use assistive technology in particular is so critical when we are looking at the accessibility piece.

I think, too, for me, one of the things that is very positive is that in New South Wales, out of the EY report with the disability review, we are now looking at a statewide workplace adjustment passport, and we have got a draft now of a workplace adjustments policy that has come out of the PSC. I think that they're the sorts of things that are going to really support people being able to feel confident to apply for roles in the New South Wales public service and to keep their roles. Even simple things like a server needing to be—you are going to have two hours of downtime because the software that you use needs to be updated on the server. For me, if it was my screen reader reading software, I can't just jump on another computer and continue to work. I can't work for those two hours. I think it is a very complex situation.

One of the issues is that a lot of the adjustments that people require would go through the Job Access process, and that can be quite clunky, and then actually organising the assistive technology. I think that it is complex. One of the issues that I have is that we don't have enough leaders in the public service who openly identify as having lived experience of disability—and I think that's part of the problem—and that we don't have leadership programs to support emerging leaders and established leaders with disability in being able to move forward in their career.

I found that, as I moved up into management, I needed to use Microsoft Power BI. It was still very new in my agency. It is really challenging to create accessible Power BI reports. As I have moved into management, the products that are being used, in theory, can be accessible but are really clunky to use and no-one can show me how to use it with a screen reader because we don't know anyone else who uses a screen reader that uses that particular product so I have to work it out myself. That is a huge cognitive load on top of me doing my job. That creates barriers for people to progress through a public service career. I suppose that's how I would respond to that question.

Ms ABIGAIL BOYD: It's an incredibly good answer and I think it shows just how those obstacles actually impact on productivity and then ultimately on whether or not people want to be part of the public sector. In terms of the purchasing power of the New South Wales Government when we are looking at digital products, presumably, when the Government does a tender for laptops or any type of software or anything like that, there must be opportunities then to ask for accessible features to be put in. Do you see this as a way of the New South Wales Government driving the development of more—if we started demanding more accessibility, then we could drive development?

JODIE HOGER: Yes, absolutely. Amazing things come out of hackathons. Innovation has come about as a result of disability. You have the typewriter and you have speech recognition. There is so much that has come out of disability innovation. I think that what happens is that, like with pram ramps or kerb cuts, it was designed for one purpose from a disability perspective and so many people appreciate being able to use a pram ramp, if you are a mum with a pram or you have a trolley or you have mobility issues where stepping is really challenging. For a whole heap of reasons, pram ramps or kerb cuts are great.

It is the same in the digital environment. By really creating this expectation and getting people to step up, you will find that not only will it support, say, someone like myself but people who don't live with disability will find those levels of convenience in using those products as well. I think, by creating that expectation from an

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expense perspective as well as a productivity perspective, you would have wins in both of those spaces. The biggest thing when it comes to looking at the dollar—and we all do, right?—is that it costs. I have the data on my phone here. If something has to be remediated and made accessible after it has been built, the cost is like 30 times more than if you had made it accessible in the first place. We call it building in, not bolting it on. When you build accessibility in, you save so much money at the other end because bolting it on costs a lot of money to try and make something accessible retrospectively.

So it makes sound business sense to actually build the accessibility in and have that expectation than to buy something and then end up with an employee or someone in the community that says, "I can't access that." Depending then on the capacity of that person—believe me, their energy levels—you end up with reputational damage. You can end up a human rights complaint. You can end up with a fabulous employee leaving your agency because it's all just become too difficult, or you could end up with someone in our community who becomes very isolated and disengages because it's too hard to access that particular service or product that we are providing.

The CHAIR: Ms Hoger, you have given us a lot of food for thought. To conclude, if you were to give us one takeaway when we're considering the procurement system, the \$42 billion we spend annually, what would be your one takeaway about digital, or any other inclusion and accessibility issues?

JODIE HOGER: I never have just one.

The CHAIR: Okay, top three.

JODIE HOGER: At the end of the day, we are legislated. We actually have to be doing this. This isn't a "nice to do" if we've got the money or the time or the inclination. We actually are legislated to do this. For me, it's not negotiable. The other piece is, though, it's my fundamental human right. It's my fundamental human right to be able to access information. So whether that's in Easy Read or braille—I've got the braille affirmation here—the technology that I use to be able to access information, whether it's being able to access my local goods and services, education, employment—it's a fundamental human right. I think what's really critical is, when you marry the two together and you look at the number of people in our population who do live with disability, then it's a no-brainer.

The information and how to implement these processes is already there. Treasury are also doing a lot of work in this space. I'm on the Commissioner's employment review steering committee. We had a presentation just this week around procurement. Treasury's procurement team is doing a lot of work in how to implement and change the processes using the resources from Accessibility NSW. You're going to save money by ensuring that products—you are considering that access and inclusion piece. My final comment is "Nothing about us without us." Please don't make decisions on what you think I need. Have people like me at the table. That is the most important message because, historically, when we're not at the table, decisions get made and processes get implemented that don't actually align with what we need and what we want as people with disability who live in New South Wales. So, please, nothing about us without us.

The CHAIR: That seems like an extremely good point on which to end your evidence, Ms Hoger. We thank you very much for joining us here today. I don't think you took any questions on notice, but if you did or if there are supplementary questions, the secretariat will get in touch with you and you will have 21 days to respond. Again, thank you so much for making the effort to be here with us and for sharing your experience.

JODIE HOGER: It was my pleasure. Thank you.

(The witness withdrew.)

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Mr JOHN GELAGIN, Chief Executive Officer, CareerSeekers, affirmed and examined

The CHAIR: Welcome, Mr Gelagin. Thank you for joining us today. Would you like to start by making a short statement?

JOHN GELAGIN: My name is John Gelagin. I am the CEO of CareerSeekers, which is a small, not-for-profit social enterprise. It supports people from refugee backgrounds to start their professional careers in Australia. To understand what CareerSeekers do, if you think of the ubiquitous taxi driver that you get chatting to that you find out was a chemical engineer in Syria and is now driving a taxi in Australia or stacking shelves in Australia, we work to support those people to start and to restart their professional careers in Australia. We receive no government funding. We generate most of our own revenue through the services we provide, and we bridge the gap between working with people from refugee backgrounds and the corporate sector and the large employers. We twist the arms of large employers to encourage them to give people from refugee backgrounds an opportunity to start their professional careers in Australia.

We're small but very successful. We work with something like 350 people a year to get them an initial 12-week paid professional internship, and then more than 90 per cent of those people then secure ongoing professional work with their employers. We work with employers like Macquarie Bank, IAG, Aware Super, CPB Contractors, Mentia, and a range of others—around 70 employers in total. That is a quick summary, and then in terms of—should I jump into continuing to talk a bit about social procurement?

The CHAIR: Yes, please do.

JOHN GELAGIN: We operate on the eastern seaboard, so we're Sydney, Melbourne and Brisbane. The social procurement regime in Victoria, in particular, has had a significantly positive impact on the take-up of the services that CareerSeekers provides, and that has enabled us in no small way to forge fledgling relationships with employers because they had social procurement obligations under the regime in Victoria. Many of those employers initially signed up in a ticking-the-box and a compliance mindset around bringing on people from refugee backgrounds into their organisation, but quickly found that the people that we were connecting them with had much to offer in terms of their contribution to a talent pool at that organisation as well as building the diversity and inclusivity of their organisation and helping the company to make a significant contribution to an important social issue. Often those relationships we have with those companies are continuing outside the social procurement regime, but it's the social procurement regime that initiated their interest or their commitment to taking on people from refugee backgrounds on some of these large infrastructure projects in Victoria.

One other specific bit to mention there that has helped significantly is that the breadth of the social procurement regime in Victoria has been significant. Typically in New South Wales infrastructure projects, there are still social procurement obligations for Indigenous people—maybe for young people as well. Those things are admirable, and they're obviously significant groups of people to support. Usually in New South Wales we find that refugees don't fall within the definition of the groups of people that are afforded support through social procurement. What's happened in Victoria is there's been another element to that social procurement regime, to give companies the opportunity to support priority jobseekers—a broader group of disadvantaged jobseekers who might be present in a particular geographical location. That's meant that some of those companies, when they have been unable to meet their commitments through the other targets in that social procurement regime, have been able to connect with CareerSeekers and other organisations to support those other priority jobseekers.

The CHAIR: I might ask a little bit with regard to the examples you've given with the Victorian scheme and this idea of what's "priority jobseeker" et cetera. I note that in your submission you don't make any explicit recommendations. One of the things that we are interested in, I guess, is you're pointing to other schemes, to other examples. Are there explicit aspects that you would suggest to us that we consider in New South Wales?

JOHN GELAGIN: I think the attractiveness of the notion of a priority jobseeker—and the definition of the priority jobseeker and the categories of people that can be considered to be a priority jobseeker are included in the Victorian procurement regime. I can't remember the exact categories that are included; refugees and asylum seekers is one of the groups. But by having a relatively broad definition, it affords the company that is trying to comply with that procurement obligation some flexibility to suit the needs of the community and the area within where that project is taking place.

We've certainly heard of extreme examples where sometimes those procurement targets are narrow. It might be a metropolitan project with a high requirement for Indigenous employment opportunities. The company cannot find a sufficient number of Indigenous people to meet that target. It can ensue, sometimes, in a farcical situation where they're going out trying to hustle and find people from outside the area and bring them into the area, relocate them into the area in order to try and meet those targets. It's not really meeting the notion

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of a social procurement regime trying to achieve improved social policy outcomes. It seems like that's a counterproductive result. Having that broader and more flexible definition gives a much-increased chance of companies adhering to and meeting those targets, which I think is a good thing, as well as suiting the nature of the situation or the geographic location in which that project is taking place.

The CHAIR: You spoke about the types of organisations in which CareerSeekers tends to place people, and you noted Victoria. In New South Wales, does CareerSeekers just deal with the private sector or do you have engagement with New South Wales government agencies or through contracts?

JOHN GELAGIN: Yes, we have some engagement with New South Wales government—much more with Victorian government. But mostly the placements that we're talking about under these procurement contracts are with the private sector who have been successful tenderers on Victorian government contracts. We do independently have a range of people from refugee backgrounds placed with Victorian government departments. That's not connected with the social procurement obligations; that's connected with us forging a relationship with Victorian government. We have a fledgling relationship with the New South Wales Government, which we'd love to grow, but that's outside the scope of the social procurement regime.

The CHAIR: You spoke about, and I note in your submission and from doing a bit of googling, that you often support professionals or mid-career professionals. We have a lot of workforce shortages across New South Wales. Do you have a sense of where you have people, or in what areas you have people seeking work? Are there particular hotspots or particular professions?

JOHN GELAGIN: No. It's very broad. If you think of the range of professional occupations, we have people applying to our program across the range of university degrees that come out of university. Typically, we can't support people in the medical-sciences world as a general proposition. Putting that to one side, then we are working with people across the breadth of different areas that you would expect—certainly, engineering, construction, project management, IT, finance, law, accounting, business, science, arts—the whole remit. We certainly see lots of people with law backgrounds. If we had more employers, we could find more roles for people with law backgrounds. At the moment—despite the talk about shortage of engineers—it's not easy to find homes for people with civil engineering backgrounds. Some of the Government reductions in spending, in Victoria in particular, have dampened demand for engineers, so there's a significant supply of people coming to Australia with existing qualifications, or indeed, gaining those qualifications at university, that are struggling to find professional employment in Australia.

The CHAIR: With regard to your organisation, CareerSeekers, in terms of government procurement, it's not your organisation that seeks to engage directly. It's more that in circumstances where there are social procurement requirements—for example, Victoria is the example that we've been talking about—then you facilitate contractors along the chain and being able to fulfil those requirements.

JOHN GELAGIN: Absolutely. We're a conduit; we're a broker. We spend a lot of time preparing the participants to set them up for success with a workplace. We spend a lot of time with the employer to set them up for success to bring someone from a refugee background into their organisation. But, absolutely, we're a conduit or a broker or a connector between the people from refugee backgrounds and those companies.

The CHAIR: And you're funded by employers, who accept those.

JOHN GELAGIN: Yes. We're charging the employers a program sponsorship fee to participate in the program. I guess one of the points to make here is that in terms of the social benefit that an organisation like CareerSeekers delivers, it's substantial at no social cost or no public cost because we're able to work closely with those employer partners to get fees from them to underpin the cost of the program.

The CHAIR: Where do you get your participants? How do they find you?

JOHN GELAGIN: Typically, it's through word of mouth. We've had 1,500 people over the past five years from Syria, Afghanistan, Ukraine, parts of the Middle East—they tend to be close-knit communities. People who arrive in this country on humanitarian visas all find out about the CareerSeekers program from other members of the community and then connect with us that way. Typically, it's not a challenge for us to find people from refugee backgrounds who want to join our program. The biggest challenge is finding employers that will get onboard.

Ms ABIGAIL BOYD: Thank you for everything you do. It's super interesting. I think the Chair has asked all of the questions I was going to ask, so I don't have anything else at this point.

The Hon. DAMIEN TUDEHOPE: In summary, I think your submission is that in relation to a procurement policy, you would in fact add a provision in relation to the procurement directions or guidelines that agencies consider priority job seekers. Is that correct?

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JOHN GELAGIN: Yes. It is probably twofold. One is, yes, the strong social procurement regime in Victoria has been an effective model and we are looking at that and building upon that.

The Hon. DAMIEN TUDEHOPE: You have a fairly broad definition of what a priority jobseeker looks like. In any event, the model which you're urging on the Committee is that when we're looking at procurement policy—the current Procurement Board directions, of course, do have mandatory provisions relating to skills, training and diversity, but that generally applies to substantial contracts. I suppose that we're looking at contracts over \$100 million for the requirements relating to that level of training, skills and diversity. Is there a floor that you would put under those contracts where you would impose that procurement obligation?

JOHN GELAGIN: I don't think I'm equipped to advise on that. I understand that on "small" projects, it's challenging to impose additional requirements and costs on the companies involved in delivering those contracts. I will leave that to the Committee's discretion to work out where that is. I think in the modern world, and hearing the lady speaking to me beforehand, these are things which are more important and should be built more into the fabric of the way we do things on a day-to-day basis rather than just limited to those particularly large contracts.

The Hon. DAMIEN TUDEHOPE: I wonder how you would structure the requirement. The requirement as part of the tender process would be that the preferred tenderer will give priority to the priority jobseekers.

JOHN GELAGIN: I think the way that I've seen it work well—

The Hon. DAMIEN TUDEHOPE: Or would you make it mandatory?

JOHN GELAGIN: Yes, I think make it mandatory. I'm not across the ins and outs of this, but some of the Victorian regime rewards companies that then meet those obligations. They report back to the relevant committee or board to say, "Yes, we've achieved these obligations." That then leads to them getting some remuneration back. Yes, I think a mandatory commitment or obligation to achieve employment outcomes for targeted groups—and it can be done in a tiered way.

The Hon. DAMIEN TUDEHOPE: That's right, and the point I was making to you before, would it be that the mandatory provision would apply to contracts over and above a particular amount?

JOHN GELAGIN: Yes.

The CHAIR: Clearly your organisation works very closely with refugees and asylum seekers in trying to rebuild careers et cetera. You have given us examples from Victoria. Are there out-of-the-box suggestions that perhaps you haven't seen implemented or are in another jurisdiction that you think would be useful for us to understand or consider?

JOHN GELAGIN: In the context of?

The CHAIR: In the context of leveraging procurement for better outcomes for refugees and asylum seekers.

JOHN GELAGIN: I don't think, beyond the things that I've suggested—making it a more mandatory regime. The way the New South Wales regime, to my one-step-removed view of it, feels is like it's been a more optional approach to take, or that, at least, it depends on the way the procurement has been structured as to the specific obligations that are going into individual contracts. Digressing a little bit away from your question, we've been working with people on the WestConnex project and people on the M7 project, and they've had quite different procurement obligations. On one of those projects, CareerSeekers can assist them to meet those procurement obligations, and on one of the projects they're less interested in speaking to us because it doesn't help them meet their social procurement obligations.

The CHAIR: You're talking about WestConnex and the M7, two transport projects with quite different expectations or mandates about what they need to do.

JOHN GELAGIN: Absolutely.

The CHAIR: I can't remember which one you said. With the one that you have been working with, can you tell us a bit more about what you've been doing there?

JOHN GELAGIN: On the WestConnex project, part of the social procurement obligation includes people facing socio-economic disadvantage. That gives some flexibility to be able to support those social procurement obligations by bringing to the table the people that we're working with, whereas the M7 project doesn't have that same sort of flexibility.

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The CHAIR: So they have some kind of social procurement aspect, but it's not broad enough to allow your new scope.

JOHN GELAGIN: Yes.

The Hon. DAMIEN TUDEHOPE: But it wouldn't be mandatory, would it, in that instance?

JOHN GELAGIN: It's not mandatory to deliver the outcomes for people facing socio-economic disadvantage. My understanding is it's to achieve a range of different employment outcomes for a series of groups of people, one of which is people from socio-economic disadvantaged. When there's a specific requirement around a specific group of people and they are unable to meet that requirement, then there are other ways that they can still achieve that social procurement outcome.

The CHAIR: In terms of case examples, asking about New South Wales as I did earlier, you have had engagement where big projects have had, as part of their procurement arrangements, the need to fulfil certain requirements, even if it's voluntarily by that project.

JOHN GELAGIN: Yes.

The CHAIR: Are there other examples? I'm thinking of where we might go and have a look at what they've done.

JOHN GELAGIN: That's the only one I'm aware of, but I could probably do some digging and get a better understanding of some of the projects that we've been involved with and what the contractual arrangements have been.

The CHAIR: That would be good. If you could take that on notice, it would be interesting to know other case examples that we have had in New South Wales where we have included them, for us to consider.

JOHN GELAGIN: Yes.

The CHAIR: Mr Gelagin, thank you so much for appearing before us today and for your submission from CareerSeekers. We appreciate it. The secretariat will contact you in relation to that particular question that I asked on notice and also if there are supplementary questions from the Committee.

(The witness withdrew.)

The Committee adjourned at 15:35.