

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**

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At Macquarie Room, Parliament House, Sydney, on Wednesday 3 July 2024

The Committee met at 9:15.

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. Damien Tudehope

PRESENT VIA VIDEOCONFERENCE

The Hon. Emily Suvaal

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The CHAIR: Welcome to the fifth 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. 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. I also note that the Hon. Emily Suvaal is attending and joining us online. We may get questions from her as well.

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Ms RACHEL REILLY, National Manager, Ethical Clothing Australia, affirmed and examined

Ms ELIZABETH MACPHERSON, National Senior Vice-President (TCF), CFMEU Manufacturing, affirmed and examined

Ms ALISON RUDMAN, NSW District Secretary, CFMEU Manufacturing, affirmed and examined

The Hon. ANTHONY D'ADAM: Chair, I wish to put on record that I know Ms Rudman—I worked with her at the MEAA—and that I was formerly an official of the CFMEU, manufacturing division.

The CHAIR: Thank you for that disclosure, Mr D'Adam. I welcome the witnesses. Thank you for making the time to give evidence and for your submissions. Would any of you like to start by making a short statement?

RACHEL REILLY: Yes. I'd like to make a short statement and, if the Chair allows, I would like to also make a statement to something that was noted in another submission as well, as part of the opening statement.

The CHAIR: Sure.

RACHEL REILLY: I would like to acknowledge that I am also on the lands of the Gadigal people of the Eora nation and note I normally reside on the lands of the Wurundjeri people. Firstly, I'd like to thank the Standing Committee on Social Issues for inviting Ethical Clothing Australia to provide evidence today as part of this inquiry. This is such an important inquiry as it intersects with multiple public policy areas across a multitude of sectors, including local jobs and economy; sovereign and local manufacturing capabilities; safeguarding human rights, including the protection of labour rights; and mitigating modern slavery risks—just to name a few.

Ethical Clothing Australia's subject matter expertise is around local textile, clothing and footwear—or the TCF industry—and, more specifically, business transparency and the protection of labour rights of local workers through our accreditation program, which has been running for more than 23 years now. Australian TCF businesses who have made a commitment to manufacture all or some of their products locally are extraordinarily proud of this commitment, and so they should be. But times are tough. In part, the cause of this is decades of offshoring and current economic pressures. The consequence of this pressure has led to the loss of local manufacturing capabilities, skills shortages as we face an ageing workforce and the inability to compete with offshore manufacturing price points, which often engage exploitative labour practices which, as the Office of the NSW Anti-slavery Commissioner notes, distorts markets—a market distortion which has been sustained for close to half a century.

To this end the New South Wales Government has enormous purchasing power through procurement, which can aid in addressing some of these challenges. However, in order to address distorted markets, we need to protect the hardworking women and men who are locally making TCF products, such as uniforms and PPE, and elevate those businesses who have committed to doing the right thing. Ethical Clothing Australia believes we can support the New South Wales Government to do this as we have a ready-made solution with the framework and subject matter expertise to deliver a program which provides strong labour market governance in the local TCF industry. In fact, our code of practice is already embedded into multiple legislative instruments specific to New South Wales and could be considered a co-regulatory framework.

However, due to the voluntary nature of our code and limited incentive by the New South Wales Government for businesses to opt in, there has been a stagnation in New South Wales businesses becoming accredited. By adopting a policy which mandates procurement of TCF products to be locally procured and a business tendering for a contract with the New South Wales Government to have Ethical Clothing Australia accreditation, the New South Wales Government incentivises businesses to become accredited and, in doing so, we can collectively ensure the rights of more garment workers in New South Wales are protected and respected and existing Australian workplace laws are adhered to. Through a policy such as this, we can recharge the local industry, support local business, all the while protecting the people who are making our clothes.

I will turn to making a statement about something that was provided in a late submission to the inquiry. In the submission by the Australian Fashion Council, they note that the Ethical Clothing Australia accreditation program may be disadvantageous to local manufacturers and hold them to a higher standard of social and labour compliance than other accreditation or audit schemes that are used offshore. The AFC further note that the New South Wales Government should ensure that its accreditation requirements hold manufacturers to an achievable standard.

We have met with representatives of the AFC, including the CEO and the board, to outline how their statement is not factual and could be bordering on advocating for unlawfulness, with a request to withdraw this information from evidence. There hasn't been follow-through action with this request. Subsequently, as the

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spokesperson here today on behalf of the Homeworker Code Committee, which is the governance body of Ethical Clothing Australia and—I think of great importance to note—a multi-stakeholder governance framework, which includes representatives from industries such as Business NSW, accredited businesses and also representatives from the union, we do want there to be a factual record of evidence in relation to this matter.

The Ethical Clothing Australia accreditation program and the code of practice which underpins it, and which businesses voluntarily sign on to, is based on existing Australian workplace laws, specifically the Textile, Clothing, Footwear and Associated Industries Award 2020. This higher standard which the AFC have noted the accreditation holds businesses to is simply existing workplace laws. The accreditation, therefore, cannot be considered a higher standard, nor would we expect any business operating in Australia to consider meeting existing workplace laws an unachievable standard. Lastly, we do not believe the New South Wales Government would consider it disadvantageous for a business to have to abide by laws and, more specifically, laws designed to protect people and their rights.

ALISON RUDMAN: We welcome the opportunity to address the hearing today. We won't seek to retell our whole submission, but I will make some brief opening remarks. We are the union for members in the forestry and timber supply chains, including end-use products like timber windows, doors, furniture, frames and truss, and, of course, paper products. We are also the union for textile workers. That can include textiles like carpets used in the fit-out of buildings; it can also include clothing and footwear and, in particular uniforms. Finally, that textile worker responsibility also makes us one of the unions who represent people working in those large industrial laundries that, in turn, provide products to hospitals, disability centres and aged-care providers. Our interest in procurement comes directly from our members because it is directly linked to the job security of our members.

Indeed, again this year, how to secure jobs was one of the top three concerns in our statewide members' survey. We ask members to tell us more about their job security concerns, and this is what they had to say: For timber workers working in the timber supply chain, particularly in the softwood sector, working security comes from being largely reliant on private building plans; for members in the clothing sector, working security comes from the loss of skills and hours that occurs when their employer is reliant on specific fashion retailers; and for members in industrial laundries, working security comes from working wholly on linens for the tourism sector because, as I don't have to tell anyone here, it has been a rough and unstable couple of years for that sector. In each of these sectors, a reliable government contract would make a tremendous difference to ensuring these workers have secure hours and jobs that allow them to support their families. It would also mean that New South Wales Government money is being used to support jobs that feed back into our economy.

This is the proposition that we've put forward in our submission: New South Wales Government money should be used to support good jobs and good work for the workers of New South Wales. In order to do that, we would submit that the Government must ensure: one, robust conditions of participation with a focus on ethical procurement and labour standards throughout the supply chain; two, full, fair and reasonable access for local industry; and, three, a clear and transparent weighting system for local benefits, including benefits for workers. We would welcome further discussions on those issues.

The CHAIR: Ms Reilly, I might go back to you from your opening statement. I wanted to clarify for evidence, the Ethical Clothing Australia accreditation standard is a standard which checks textiles and footwear businesses simply against existing labour law as spelt out in the Fair Work Act and in the appropriate award and WHS legislation. Is that correct?

RACHEL REILLY: One hundred per cent correct.

The CHAIR: So simply what's expected.

RACHEL REILLY: Simply what is expected.

The CHAIR: I want to start with Ms Rudman. The submission of the union makes a number of recommendations, and I want to ask for a bit more information. You mentioned in your opening statement developing, potentially, a weighting system for local content. Can you explain a bit more about what you think this would look like and why that's important for the members you represent?

ALISON RUDMAN: Yes, absolutely. The approach taken will obviously be highly dependent on whatever the final system or changes are that are recommended by this Committee. However, there are examples from other States that show us what is possible. The Queensland Government has introduced a local benefits scheme where a weighting of up to 30 per cent is applied for significant projects. Similarly, the South Australian Government has an employment contribution test where a weighting of up to 15 per cent to 20 per cent can be applied. It's a really simple idea. It's saying that, actually, we should be rewarding good employers and ensuring the security of good employment relationships for the people in New South Wales.

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The CHAIR: Following up on that, I think in one of your recommendations and certainly in your submission you talk about perhaps one of the things that needs to be done is clarification about how these weightings work in relation to fair trade agreements. It has been a theme over the course of the hearings and submissions we've heard. I wonder if you could explain a bit more about why you've included that. Also, given that there are, as you've cited, other States and Territories that do this, I presume this has been considered elsewhere.

ALISON RUDMAN: Absolutely. It's a consideration right across the board and it's a consideration that is obviously being considered at a Federal level as well. I won't pretend to give a legal view on how those things should work. However, I would draw the Committee's attention to pages 14 to 16 of our submission where Dr Nick Seddon speaks in some detail about how this could work, and obviously they are an expert in these matters. Similarly, I would note that small to medium enterprise exemptions have been a feature of Australian trade policy. Indeed, they even feature in the US free trade agreement that was negotiated back in 2005 by John Howard. We would suggest that they're a fairly non-controversial element of our free trade and our trade policy.

The last thing that I would note is that, for businesses, it's really important that if we're asking them to do things and to assert certain things, those things are being measured, and weighting is a practical measure of that community value that their work is bringing in. It has worked in other States and there are other States doing it, so we're not being asked to reinvent the wheel here. There is a consistent policy framework that this work would simply slot right into.

The CHAIR: Ms Reilly, we have been looking at other jurisdictions and considering what happens, as Ms Rudman has just been pointing out. In your submission, you talk specifically about the Victorian Government's guide to procuring uniforms. I wondered if you could explain what the approach is and then the strengths and what you see as the weaknesses of the approach that the Victorian Government has adopted.

RACHEL REILLY: As part of Buying for Victoria, the Victorian Government issued the *Guide to procuring uniforms and personal protective equipment* in 2018. As part of that guide, it requests that businesses register for the ethical supplier register. To be able to apply for the ethical supplier register, you need to be either applying for or accredited by Ethical Clothing Australia, to incentivise businesses to be compliant with Australian workplace laws and to ensure that the Victorian Government is purchasing ethically manufactured PPE and uniforms. The Victorian Government holds and manages that ethical supplier register but they liaise with us to confirm that the products which a business is listing are, in fact, accredited. So there are those checks and balances that are in place there. It's an excellent idea, I think, in trying to drive local procurement and also making sure that that local procurement is ethical.

The weakness, to your question, is that there is the caveat "wherever possible". To what Alison has said, and I believe similar to New South Wales Government, there's a valuation weighting that's attached to procurement. While local and ethical is quite high up there, often the end price point is what drives the decision-making. Our accredited businesses most certainly provide feedback that they are losing out to offshore manufacturing due to price point. We would consider this to be quite a simplistic way of looking at what government procurement can provide because, even though the price point might be higher in Australia, it is that reinvestment back into the economy while also providing people with safe and secure jobs as well as a range of other benefits.

The CHAIR: Speaking of Victoria still, you noted that the ECA has been undertaking research for the Victorian Government about the social return on investment through procuring through your organisation. Do you have any preliminary findings yet, and what criteria are you using to determine social returns? Is there anything that we could see on that?

RACHEL REILLY: We haven't kicked off the research as yet. We've just finalised the business that's going to be undertaking the research for us. I understand there was a submission from Social Traders as well which spoke to what procuring from social enterprises can return to local economies. We do have quite a few social enterprises that are accredited with Ethical Clothing Australia. So that will be one of the areas that we look at, but also looking at areas around gender equality as well as modern slavery risk mitigation.

The CHAIR: That is actually one of the questions I wanted to ask. This might be for all the panel. Obviously, New South Wales is a bit different in that we do have a Modern Slavery Act, which sets us apart from other jurisdictions and which is particularly pointed at government supply chains. I wondered how you saw that working in the TCF sector and how it might assist us in the implementation of that Act.

RACHEL REILLY: As in Ethical Clothing Australia accreditation?

The CHAIR: Yes.

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RACHEL REILLY: Yes, absolutely. I firmly believe that, unlike the Victorian policy where there is that caveat, adopting that policy that truly mandates the local and also ensuring Ethical Clothing Australia accreditation is the benchmark. It can support the New South Wales Government to really mitigate those modern slavery risks. We do know that the global TCF industry itself is a high-risk industry, and that is noted in the Commonwealth Government's most recent modern slavery report. Based on the Fair Work Ombudsman's research and based on our own audits, we know that there does still continue to be noncompliance in the local industry. So adopting policy that preferences Ethical Clothing Australia accreditation and local, we do believe that it could truly support the New South Wales Government in this specific sector to mitigate modern slavery risk, which I know is also part of the New South Wales Government procurement policies in itself.

The Hon. ANTHONY D'ADAM: Ms Rudman, one of the dilemmas is the question around enforcement and where there's an ethical requirement in relation to, say, best-practice industrial relations. The union is not a party to the contract, and so they're dependent on the agency who is a party to the contract to actually enforce the provisions of the policy. I note in your submission that you talk about an efficient procurement dispute resolution system. I wonder whether you might be able to elaborate on how you see that working.

ALISON RUDMAN: Absolutely. I think that this really operates at both a macro and micro level, to be honest. At a macro level, there does need to be systems in place that mean that there is a clear process for people who have concerns about how a particular contract is operating to raise those concerns with someone other than the decision-maker about the particular contract. There ends up, at times, being an absurd situation where the person who has determined the contract is also then the person determining was it okay to award that contract and was it compliant.

I would also say that at a micro level there is a need for that enforcement system to involve co-regulation because of the type of workers who are impacted. For example, I think of an industrial laundry that we deal with—not accredited by Ethical Clothing Australia. There have been people in and out of there. I'm aware that SafeWork had attended that work site, but it was only when a worker who had done similar work and who spoke the same language attended that workplace that those workers felt comfortable enough to say that the women actually didn't have toilet doors. They had shower curtains separating their stalls. This was something that only came out when there was a worker-to-worker discussion. I don't think anyone here would be comfortable thinking that workers in New South Wales, particularly not workers who might be working on government contracts, were working in a situation where women were being forced to use toilets without doors.

Ms ABIGAIL BOYD: Thank you all for coming and giving your evidence today and for your very informative submissions. Could I start with you, Ms Reilly. I wanted to tease out the accreditation process. Some basic questions to begin with: How do you go through the accreditation process? What do you do to ensure compliance? Do you charge a fee from the people you're accrediting?

RACHEL REILLY: Great question. Ethical Clothing Australia is the administrative side of the accreditation program. We have a contract with the relevant union of the time to be able to execute the actual accreditation or the compliance audit itself. The reason why that is particularly powerful and enables us to do those compliance audits is that it draws on the existing powers the union has under the Fair Work Act—so rights of entry—to be able to go on site and request all the relevant documentation. So it's that real, on-the-ground, bottom-up auditing process.

As I mentioned in my opening statement, the audit is based on existing workplace laws, which primarily includes the Textile, Clothing, Footwear and Associated Industries Award 2020 and National Employment Standards, and OH&S laws as well. Compliance officers go out; they check the principal business and the complete supply chain. It is actually under the award that that complete supply chain needs to be compliant. Once a principal business contracts another business, that then becomes—there are obligations there. It's an annual audit that is undertaken, and the reason it's annual is that we know over time compliance can slip, and so the compliance officers are out on the ground meeting with the workers each year.

They work from a collaborative process, which means that, to pass the audit, they must remedy any breach of existing workplace laws. The compliance officers work with them to remedy that, rather than it being a punitive approach or fining them or whatever it might be. Once all issues are remedied, they pass the accreditation and can display the Ethical Clothing Australia trademark and apply for things such as the Ethical Supplier Register, among other things.

There is a fee attached to it. We would say that the fees are very low, and the reason the fees are very low is we have had support from governments over the years which enables us to really subsidise that fee cost. For example, for a sole trader, it's sitting just under \$400—\$300 to \$400. If you get up to a business that—as an example, we have a business that has 70-plus workers, has 22 supply chain members in their supply chain and has in those supply chains an additional 350 workers. Their annual fee is just under \$7,000.

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Ms ABIGAIL BOYD: When you are going through that accreditation process, are there some suppliers that just can't meet the accreditation process? Are there some that are turned away?

RACHEL REILLY: Yes, sure. Great question. Again, I come back to the point that it is a collaborative process. The compliance officers will do whatever they can to get breaches remedied and noncompliant businesses across the line. If, essentially, they refuse to comply with Australian workplace laws, they can't remain either accredited if it's the applying business or, if it's a supply chain member in a business's chain, then that accredited business or applying accredited business must remove that supply chain member.

Ms ABIGAIL BOYD: So when the AFC says that there's this kind of higher burden, they're not so much talking about the actual laws applying to them, but that process of actually having to open themselves up to scrutiny to check they're complying with the laws. Is that effectively what the complaint is? So you wouldn't get people coming to you who weren't really very keen on you checking that they were compliant with workplace laws.

RACHEL REILLY: You know, actually, I think a lot of our businesses are really proud of their transparency. I think that's the difference: It's what business model are people choosing to adopt. Is it a business model that values their workers and wants to make sure they're doing the right thing? They will proudly talk about the work they're doing and open up to being audited. In actual fact, we've just recently done a customer satisfaction survey. Our more satisfied customers, and who believe that it's an easier process, are the businesses that have been with us longer, because they're used to it, they're familiar with it and they know what they need to do. It is complicated, and the law is complicated because the supply chain structure in the TCF industry is incredibly complicated. It's there to really protect those incredibly vulnerable workers down the supply chain. In answer to your question, I can't assume what they're thinking, but I do know that the opposite is also true.

Ms ABIGAIL BOYD: We have spoken a lot in this inquiry already about why we need to go beyond just saying, "Well, they're in Australia so they'll be complying with our laws." The reality, in my understanding, is that you cannot actually rely on employers to do the right thing; it doesn't work like that. You need to have some sort of enforcement or compliance component there. I guess that answers that question. The point of the accreditation is that you've actually had unions going onsite checking that the compliance is there and having a process to encourage them to keep that compliance, otherwise they'll lose that accreditation every year. What would be the impact, in your view, of us mandating that procurement if the textiles field had to be only with accredited suppliers?

RACHEL REILLY: I believe that we would have a more compliant local textile, clothing and footwear industry and the rights of workers would be protected and, more specifically, outworkers who are very far down the chain and very prone to experience of exploitation. I only see it as a benefit. There's no additional burden that's being requested or placed on businesses. Again, by stipulating existing Australian workplace laws, I think, we would have a more ethical and transparent industry as a whole.

Ms ABIGAIL BOYD: That would then presumably only accredit local suppliers so it wouldn't necessarily mean local content would be mandated for textiles as well.

RACHEL REILLY: Correct. Coming back to the structure in which our program operates, which draws on those existing powers under the Fair Work Act for the union, we can't do any offshore accrediting; it is only Australian businesses. We do have different levels. We have 100 per cent majority made specific product lines, so it doesn't preclude businesses with offshore manufacturing operations. It just means that we will only accredit the products that are made locally. Coming back to the ethical supplier register, where those checks and balances are in place, we make sure that what a business is listing on the supplier register is actually what we're auditing so that they're not benefiting from their accreditation falsely.

Ms ABIGAIL BOYD: So supply chain is completely understood and there is not an overseas component to that.

RACHEL REILLY: Correct, yes.

Ms ABIGAIL BOYD: I will come to you, Ms Rudman. In your submission, you very helpfully set out a bunch of really great stuff, particularly in relation to the issue around trade agreement obligations and the misconceptions around that. The other misconception that you highlight at the beginning is in relation to misconceptions around value for money. Could you talk more about what that looks like in practice and what the recommendations are around that?

ALISON RUDMAN: Absolutely. I will let the recommendations in the submission speak for themselves, but I think it's a really practical approach that—as a government, allowing government money to go into processes where there might be exploitative labour practices are costs that show up in other places. There are

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costs that show up in the health budget and there are costs that show up in the housing budget. When we're thinking about value for money, it is really critical that those social outcomes that we know come from good employment are one of the considerations of the government and that that is actually given an appropriate weighting so that businesses who do the right thing are, indeed, being rewarded for being good employers.

ELIZABETH MACPHERSON: Can I add something to that? I think I speak on behalf of the TCF area because my everyday job is the national compliance officer. I manage the people that do the compliance nationally, including New South Wales. Just touching on that for a moment, we do scrutinise all the way down the supply chain. The person that's applying for ECA or an accredited brand always has the choice. It's a very collaborative approach. If we raise with them that there is a problem within their supply chain, that sits with them. They can go back and try and work with that supplier to correct those problems. It actually gives us a bit of leverage about trying to fix it for those workers. And then that company can decide whether "Yes, I've been able to work with that company and we're moving forward" or "There's no way we can fix this." They're the ones making the choice, not us.

On the value for money, this has been a hot topic for some time, in other States as well. One of the things that needs to be pointed out is the false economy of buying an item offshore. I'm talking about uniforms in particular. We had some police from Victoria come and speak to us directly about their uniforms because the uniforms were bad. They'd be struggling with a crook and their pants would tear, or the fabric was causing chafing. It was really poorly made, and they were having to be replaced three or four times a year. We've obviously got manufacturers that make that sort of gear in Australia. We were trying to talk to that government about how, given that you're replacing it four times a year, given that the quality is a problem for the people who are doing their job and that we know that the industry can provide those garments, it might be a higher premium per piece but you're not replacing it as often and people feel comfortable in the garments.

And it's the life of the garment, so it's sustainability and it's about waste. All of these other environmental things need to be taken into consideration when we're talking about buying local versus buying offshore. That's the closed conversation that needs to happen and needs to be broadly discussed about what are the benefits of buying local. Yes, it's about workers and secure jobs and supporting our industry and the workers in it, but it's also about saying, "All right, there's a much bigger discussion that needs to be had around environmental consequences, sustainability and life of garment." Those are the sorts of challenges that need to be thought of as well when they're weighting towards Australian-made products.

The Hon. DAMIEN TUDEHOPE: That's a good segue, Ms Rudman. You made some observations and you said the evidence is not yet in, but what do you say is the social return on investment? What are the factors that you say comprise the social return on investment?

ALISON RUDMAN: That is a really good question. I would not claim to be the expert on it. I think you'll be hearing from experts later today in supply chains. There are some elements that have been set out already about the experiences of workers who are also residents of New South Wales. There are elements about the environmental component as well. I think there's proper measure of value for money, as Ms Macpherson just set out, and I think there is also compliance with Australian standards. My extended family are nurses. They work in scrubs and they deal with young people, children and babies. I really, really think that most people would agree with me when I say that I want to have confidence that if they're told they're in flameproof scrubs, they're in flameproof scrubs, because the last thing I want is for them to discover whether or not the material is actually what it says it is when they're trying to get children and young people out of hospitals in a crisis.

The Hon. DAMIEN TUDEHOPE: Is there any social return on investment which would assess the social return in a country of origin, for example?

ALISON RUDMAN: Again, I would probably draw you to the experts on that.

The Hon. DAMIEN TUDEHOPE: Would you agree with me that there can be social returns in circumstances where products are purchased overseas?

ALISON RUDMAN: There is a set of measures that I'm not best placed to advise on. I think you'll be hearing from experts later today and they'd be far better placed to discuss that. Every investment decision that we make has an outcome. The difference is, as a government, can we be confident in that outcome?

The Hon. DAMIEN TUDEHOPE: I am assuming that work practices is something that you would take into account as something which is a social return. Is that right?

ALISON RUDMAN: Sorry, I didn't quite—

The Hon. DAMIEN TUDEHOPE: The quality of the workplace that people were involved in is a social return, is it not?

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ALISON RUDMAN: If people are involved in good employment, where they're fairly remunerated, they're safe and they've got a voice on the job—

The Hon. DAMIEN TUDEHOPE: If a product was being produced overseas and it was being used to feed families overseas, is that a social return to those families?

ALISON RUDMAN: Well, it would depend how it's being produced.

The Hon. DAMIEN TUDEHOPE: On the face of it, if we're feeding families in other countries, is that a social return?

ALISON RUDMAN: But that's not what we're discussing here. What we're discussing here is how do we make sure that we are—there is a question about being a best customer and there is a question here about how do we make a social contribution and what is the impact on Australian families. Asking me to speculate on a hypothetical producer overseas isn't something that I'm able to do.

The Hon. DAMIEN TUDEHOPE: But it may be something that you would take into account, is it not, for the purposes of ensuring that we are getting a social return on the investment?

ALISON RUDMAN: I'd draw you back to my earlier comment, which is that there are certain criteria that would make sense for consideration, and that is certainly one of the things that you would consider. But without knowing more about that particular producer—it sort of proves the point that we're making, that we need to know what's happening in those workplaces before we can say that there is a social return on that investment. On the information given, I can't speculate on that.

The Hon. DAMIEN TUDEHOPE: You'd agree that there is a requirement in relation to NSW Procurement for considering procurement contracts for organisations to ensure that anti-slavery obligations are being complied with?

ALISON RUDMAN: Sorry, I can't speak to how that's enforced across the board. I can say that there are still significant issues in the industries that we represent, but I wouldn't be qualified to speculate on every industry that's out there.

The Hon. DAMIEN TUDEHOPE: It is part of the current New South Wales procurement policy, is it not, that people who procure from the New South Wales Government comply with anti-slavery laws?

ALISON RUDMAN: Could you take me through some of the steps taken to ensure that compliance?

The Hon. DAMIEN TUDEHOPE: We've got an anti-slavery commissioner, have we not?

The CHAIR: It has no compliance power.

ALISON RUDMAN: Sure. Again, no compliance power is there. I can't speculate on the compliance. If you tell me that it's listed in the policy, I'll take your word on that. But in terms of the actual compliance, that's what we're talking about today—that there are real issues with the compliance.

The Hon. DAMIEN TUDEHOPE: Do you want to contribute to that, Ms Macpherson?

ELIZABETH MACPHERSON: I do. We are part of IndustriALL, as the TCF component, and we—

The CHAIR: Sorry, Ms Macpherson, you may want to explain what "IndustriALL" is for those of us who aren't in the union world.

ELIZABETH MACPHERSON: Sorry. IndustriALL is a group of manufacturing unions that come together nationally and look at what's happening globally within those industries. We fit within that. The national TCF secretary of the union I belong to is part of that and contributes to that regularly. We're aware of major breaches with high, well-known companies or brands internationally.

The Hon. DAMIEN TUDEHOPE: Do you bring that to the attention of the Anti-slavery Commissioner?

ELIZABETH MACPHERSON: No.

The Hon. DAMIEN TUDEHOPE: Why not?

The CHAIR: He only deals with the public sector.

ELIZABETH MACPHERSON: Because it's an offshore operation that we are dealing with separately in Victoria. When it becomes an issue globally, we engage with our international comrades in trying to rectify what is actually a much bigger problem. It's hard to make our local industry compliant; I can't even begin to imagine what it's like offshore. We already know that some of the international auditing processes are self-auditing

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and ticking boxes. With ECA, it's very deep-dive scrutiny into making sure the full supply chain is ticking all the boxes. To your point about are we happy or are we satisfied that there's full compliance happening offshore? No, we're not. It's no secret what's happening offshore in relation to the TCF industry in particular. Again, I'm with Ms Rudman: I don't know what your processes are in relation to the program that you spoke of, but we know that there's major exploitation of workers globally in the TCF industry.

The Hon. DAMIEN TUDEHOPE: Ms Reilly, how many organisations are accredited with you?

RACHEL REILLY: It oscillates a little bit but, at the moment, around 120 businesses. That's both brands and manufacturers. We have 17 accredited in New South Wales.

The Hon. DAMIEN TUDEHOPE: How many of those are small to medium enterprises?

RACHEL REILLY: Generally, in the TCF industry in Australia, a majority are considered small to medium.

The Hon. DAMIEN TUDEHOPE: What do you define that as?

RACHEL REILLY: I will have to get back to you on the exact figure.

The Hon. DAMIEN TUDEHOPE: In terms of ensuring that those organisations, when they are contracting with the New South Wales Government, comply with their obligations, you say that they should be mandated to obtain a certificate from your organisation, in some cases costing \$7,000 for the purposes—before they are allowed to contract with the New South Wales Government.

RACHEL REILLY: I come back to my opening statement around—it could be considered that we are a co-regulation in terms of the fact that we support the New South Wales Government to ensure that existing workplace laws are met. In terms of some of your questions there around social return on investment, if you work out that that \$6,000, \$7,000 fee is covering that amount of workers, it works out to be about \$20 per worker that it's costing that business to ensure that they're not then being charged other penalties that they could incur for noncompliance or breaches under other commissioners or laws.

The Hon. DAMIEN TUDEHOPE: In terms of New South Wales's obligations—and companies'—to comply with their obligations under free trade agreements, what advice have you obtained in relation to that?

ALISON RUDMAN: I'm happy to take that on notice.

The Hon. DAMIEN TUDEHOPE: No, I'm asking Ms Reilly.

RACHEL REILLY: It's not anti-competitive to provide a framework to make sure that workers rights are protected. In particular, just drawing your attention to the structure of this local industry, which has primarily women working from their homes, and that the structure of this law is to really prevent the exploitation of those workers, so I don't see their program as anti-competitive or something that would be—

The Hon. DAMIEN TUDEHOPE: But if the New South Wales Government is issuing a contract, say, for police uniforms—and I think it was Ms Rudman or Ms Macpherson—do they have some obligation in relation to a contract, say, for \$1 million to comply with international free trade agreements?

RACHEL REILLY: I can hand over to—

The Hon. DAMIEN TUDEHOPE: I'm happy for Ms Rudman to take it.

ALISON RUDMAN: We put this in our statement and I would draw your attention back to pages 14 to 16 of our submission because it's not inconsistent with our obligation. There have always been exceptions around procurement. Mr Howard, when he was Prime Minister, had exceptions around procurement. Most other States have a scheme. They've managed to do it. They've managed to put it in place. So whilst we aren't in a position to give you a legal opinion on that, it's not our qualification. We would put to you if every other State government can do it, and if indeed it has been a feature of our trade policy for going on two decades, ultimately New South Wales Government money can be used to ensure good jobs for people in New South Wales—if that is the decision that members of Parliament decide to make.

The CHAIR: Thank you all very much for appearing today and also for your submissions. The secretariat will contact you in relation to any of the questions that you took on notice, or indeed if there are supplementary questions. Again, we thank you for your appearance today.

(The witnesses withdrew.)

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Mr MARK MOREY, Secretary, Unions NSW, affirmed and examined

Mr TODD PINKERTON, Director of Campaigns and Strategy, Unions NSW, affirmed and examined

The CHAIR: Welcome to you both. Thank you for making the time to give evidence and for your submission. Would you like to start by making a short statement?

MARK MOREY: Thank you very much for the opportunity to appear today and to provide a submission. Unions NSW represents nearly 600,000 union members across the State, many of whose livelihoods are directly and indirectly determined by decisions of the New South Wales Government, the largest employer in the southern hemisphere. The New South Wales Government spends more than \$40 billion annually on goods, services and construction through procurement services. This is roughly \$5,000 per New South Wales resident. The volume of contracts affords the New South Wales Government significant influence and responsibility for developing the industry make-up of New South Wales, investing and supporting the growth of strategically important capabilities, such as our domestic manufacturing industry, as well as a clear responsibility to ensure that taxpayer funds are used to ensure best practice labour rights and standards.

Unions NSW made 14 recommendations in our submission to better tailor procurement processes of the New South Wales Government towards social and economic development. We made recommendations in reference to three main points of our submission. Firstly, we commend the New South Wales Government's commitment to mandating local content in procurement contracts. Any effort to undo the ideologically driven and ultimately financially irresponsible approach of the previous Government to pursue offshoring at any cost is greatly welcomed. Unions NSW believes there is a great value in a "build and buy local" approach when it comes to government procurement. Such an approach contributes to the economic and social wellbeing of the very people whose taxes are funding these projects. Moreover, in recent years we have seen the failures of the previous Government in our case studies on personal protective equipment and the delays associated with the delivery of the new intercity fleet.

Secondly, this commitment must extend to labour rights and standards. We believe the taxpayers of New South Wales do not support their funding being used to undercut their own wages and conditions, nor to fund companies with a proven track record of wage theft or exploitation. Moreover, from our conversations with the business community, there is a desire to stop the New South Wales Government allowing bad employers to win contracts by undercutting the costs of companies with proven track records of delivering projects while maintaining the wages and conditions of a productive workforce.

We have recommendations that, following this inquiry and its findings, the New South Wales Government should engage in a tripartite consultation around a framework to ensure procurement funds improve the wages and conditions of New South Wales residents, not undermine them. Finally, these recommendations must be supported through the creation of a standalone statutory entity to set strategic directions for procurement policy; to police and enforce compliance with the terms of the government procurement contracts; and to be a general advocate for New South Wales and its citizens to be the primary recipient of the benefits of government procurement.

In conclusion, the procurement practices of government agencies in New South Wales need to be re-evaluated to better support our local economy, domestic manufacturing and social development. It's time to level the playing field in procurement. Companies who do the right thing by employees are too regularly outbid by companies paying the bare minimum or less. We need a procurement policy that encourages investment and job creation, not a race to the bottom. Thank you for your time and attention. We look forward to discussing our submission further with you.

The CHAIR: There are a number of recommendations that I'd like to ask about, but I will jump into the one that I expect is going to excite the most interest from other members of the Committee: the consideration of something equivalent to the ACT's Secure Local Jobs code and, particularly, what I note in your submission—and in other unions' submissions—has been referred to as the two-gate model. I wondered if you could speak a bit to that and also to the concern that has been aired a bit about whether this imposes some kind of additional business burden, because we already have laws that should be adhered to and are adhered to. I wonder if you could start with that, Mr Morey?

MARK MOREY: The first thing to say is that the procurement processes in this State and across government departments are devolved, so every department is doing something different. We see a process by which the two-gate is, firstly, are the employers a good employer? That's a simple threshold. Are you paying proper wages? Are you not killing or maiming your workers in the workplace? Are you looking after your workers? Are you obeying your statutory legal responsibilities? We would see that as once an employer or a

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business is certified with that, that should be on a public record that is displayed. It should be something that businesses are proud of. It's something that is a selling point for those businesses. So that would be the first gate.

The second gate, once you're qualified, you stay on a register. How long you stay for is yet to be discussed or consulted around, but the second phase of that is when you do tender—one of the things we find with particularly businesses who are doing the right thing is they are actually outbid by businesses who are not doing the right thing. That is a discussion we constantly have with business organisations. We want to take things like wages out of contention so that it is a level playing field. The second part is very much about, if you take the wages out of it, it's then what are you going to do when you win the contract, in terms of not just providing the service or the goods, but how is what you're doing going to assist the industry in which you work? How is it going to assist in ensuring there are good jobs?

Also I think there's a process there for Government to say, "If we're giving you substantial money, what are you going to do in terms of increasing skills in New South Wales? What is your apprenticeship and training scheme? Is there diversity in that? Are you targeting women, First Nations people, people of non-English-speaking backgrounds? How are you actually doing that?" I think there are a number of businesses who trade on being ethical businesses. I think this is no bigger burden than that, but what it does provide in the second part is a regulatory opportunity for government to hold those people who are funded to account.

The CHAIR: That's very helpful. I wonder if I could go to a couple of your other recommendations about weightings—again, another issue that has raised interest among Committee members. I think you make two recommendations early on to do with the kind of discussion you've just had about public good considerations and the other about local content. You are, I think, suggesting a 50 per cent requirement. I wonder if you could talk a bit more about these and why these percentages in particular have been arrived at, or how they've been arrived at?

TODD PINKERTON: I'm happy to take that, Chair. Obviously, we're very supportive of the Government's commitment around a 30 per cent weighting on local content. We think that's a much-needed step in terms of developing industry and directing procurement contracts and developing supply chain capacity across New South Wales. We made the recommendation with respect to major contracts, or much larger contracts, about having much more ambitious targets. We've drawn on that for some research that's come out of the McKell Institute, in particular, with respect to what might be an affordable target. Obviously, we're very committed to working with government a lot on how to deliver those weightings and those targets and making sure that the weightings, as they develop, are reflective of the capacity that is growing in the economy in terms of manufacturing. We think, then, there are very good, ambitious targets and weightings so that we make sure that we're directing as much of the procurement money into New South Wales, and the Australian economy more broadly, for the benefit of New South Wales workers.

The CHAIR: There's so much in your submission that it's hard to get through it all, I know, but I'm particularly captured by some of the case examples you gave. Some wouldn't be what we would normally be thinking about when we're thinking about procurement—take the 7-Eleven Opal card case. I think it's useful to have some of those cases on record from your evidence. Can you talk a little bit about why you chose those cases and why they're particularly important in our considerations?

MARK MOREY: The 7-Eleven one I was involved in when they were getting rid of the ticketing jobs, ironically, back in my other job. What we saw there was a risk to government. Government removed a whole lot of jobs in ticket sales. Offices were gotten rid of on stations. They moved to allowing 7-Eleven to take up, contract and distribute Opal cards. As we know, 7-Eleven then became one of the greatest wage theft cases in this country. It wasn't a one-off. It was systematic. We know that franchisees were sharing notes on how to do it. The Government is putting its money into that company to distribute its products. There is a significant risk to the brand of the Government but also concerns around the way in which that organisation treated its workers. I don't think the Government should be putting its money into an organisation that's basically ripping workers off.

The CHAIR: So the concern there is it's rewarding an organisation that's failing to comply with basic labour standards?

MARK MOREY: It's doing that but also what it's saying is that if you're an employer and you're unethical and you're prepared to undercut other employers, those employers who are doing the right thing are at a significant disadvantage because they're not being rewarded with those government contracts. What you're saying is, "We will provide contracts to anyone, despite their behaviour." In fact, the race to the bottom of the cheapest distribution product means that people are pushed to actually cut and break laws to deliver a service and be competitive.

The CHAIR: Another one of the examples, which I thought was interesting, was around Amazon Web Services. I have had concerns in the past about Amazon Turk, which is a gig platform of Amazon. One of the

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issues that came to me when I was reading that was something like Amazon Web Services—I mean, sometimes you're facing a market where there aren't a lot of alternatives. What are the suggestions or the considerations there?

TODD PINKERTON: I'm happy to take that. I think in that case, particularly where there's a duopoly or monopoly in the market, there has to be a consideration about what your competitive options are with going with services that Amazon Web Services might provide. For this, we're not suggesting that that contract should be removed but rather that the Government has responsibility, when its procuring a good or a commodity from a company, that they do require there to be good labour rights and standards across their supply chain. We've chosen those two case studies because they are the most typical procurement contracts. We often think about procurement as manufacturing or building trains. Rather, a very broad definition of procurement should mean that we have good leverage opportunities to try to raise the rates and conditions that ensure safety in the New South Wales labour market.

As I said, both of those are very good examples of where there isn't due consideration and that because we're buying X product from X part of the business, we really don't care about what is happening at the other end of it. I might add in respect to the 7-Eleven example—one of the reasons we raised that is it's a good example of where this commitment to ensuring labour rights and standards, or a view about ensuring employees are treated well, clearly was failing under the previous Government. The union with coverage, the SDA, wrote to the Minister of the day and is still waiting for a reply from the Minister with respect to the issues that were raised about 7-Eleven from the ABC and the *Four Corners* report. They're both good examples of where we have to think broadly about procurement and about whether we would make sure there are some commitments around freedom of association, labour rights and standards, and work health and safety.

MARK MOREY: Can I add to that also? In terms of then enforcing rights in those situations, we would see it as not a situation where you just cancel the contract—that provides uncertainty—but we would see where you've got a jobs code and a regulatory body overseeing that, that it's a point system: Every time there's a breach or something, you lose a point and your points decrease, much like your licence. Every time the point decreases, there's an opportunity to make a public statement about what that company is actually doing and why those points have been taken off. So there are significant PR opportunities in shaming, if you like, those businesses to adhere to the contracts and the obligations they have. I think that's particularly important when you've got a monopoly or duopoly that you're dealing with.

The CHAIR: In addition to that is the opportunity to correct the fault, to make sure it doesn't happen again, so the shaming is actually to make sure that the right thing is being done.

MARK MOREY: Yes.

The Hon. ANTHONY D'ADAM: I wanted to ask about how you envisage the secure jobs commission operating and whether the compliance element of its overarching mandate would be done by the commission or by other entities. What kind of standing would people have? Which kind of organisations might be able to bring a complaint to the secure jobs commission?

TODD PINKERTON: There's a similar model in the ACT where they have a secure jobs register with the commissioner. They handle the certification of the codes. I think they provide both the Ethical Treatment of Workers Evaluation to get certified—though I believe companies can also go through an independent audit to provide that as well. In terms of enforcement and compliance, we would see that the commission would have staff required to look into those things, but also standing for organisations like registered trade unions to also bring evidence or issues of complaint where they might see breaches with the code.

That's why it's very important that the companies that are certified under the code—it's a public register, so there is an incentive or a capacity for transparency and making sure that the books are correct and that wages are being held up to. We don't want to be in a situation where people get certified with the code and then go away and breach it, but they've managed to get themselves on the register. There has to be some level of compliance. As Mr Morey said, our view is that you don't want to be in a situation where, where there is a breach, you pull the contract. We don't want to be in a situation where we're causing workers to lose their jobs because one of them has been the victim of wage theft. Rather, there has to be a points system or a system by which you have multiple levels of strikes—three strikes in terms of when you have a breach—so there is a capacity to rectify that.

Ms ABIGAIL BOYD: Thank you very much for being here and for your really interesting submission. Something that's coming through in a lot of the submissions is a failure to consult with the end user of products that we're procuring, whether it's hearing from people that the uniforms aren't right or that the PPE isn't the type of PPE they would have got, down to, of course, the train scenario. Can you talk to us about what the recommendations are for ensuring that we capture the expertise of the end user in our procurement decisions?

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MARK MOREY: I think the first thing we'd say is, for those organisations which have industrial instruments between them, there are obviously clauses around consultation and working with your workforce. I think there are significant savings to be made through consulting with your workforce on the purchase of end products. I know there are a number of iterations around—certainly when I was involved in rail with the RTBU—uniforms. They were a constant area of concern. I think one year uniforms were purchased from Bangladesh, and that was really problematic. The quality of the uniforms wasn't there. They caused itching and scratching and those sorts of issues. So they get changed because the product is not made for the purpose it's set out for—it's not effective.

I think, particularly with the workforces and the public sector workforces, they are very in tune with their work environments—what does work, what doesn't work—and in the day-to-day operations that they are involved in. Similarly, in the large private sector organisations where there are significant consultation processes in place, those organisations benefit from only having to purchase things once, and they're purchased fit for purpose when they actually get them. I think that's a really important part of how you make procurement work, by ensuring that, throughout the line of delivering the product, everyone is effectively consulted, and that ensures you get a better product at the end of the process. That may take a little bit longer, but I think, as I said, you get a better product and you save yourself money and time in the long run.

Ms ABIGAIL BOYD: That consultation piece within designing the scope of the tender as well as at every stage as we go—a more collaborative approach.

MARK MOREY: It's a collaborative approach to how you deliver the services and the products.

Ms ABIGAIL BOYD: We have been looking at the ACT jobs codes, the Victorian one and what they have in Queensland and comparing and contrasting. Do any of them cover grants? I know this is not quite procurement, but it's the giving of government money for stuff. For instance, just recently we had the Net Zero Manufacturing Initiative announced—\$275 million worth of grants. I don't know if that has minimum labour standards or best practice labour standards attached to it. Do any of those other codes cover grants? Should we be looking at that?

TODD PINKERTON: We might have to take that on notice, but, from my understanding, they don't cover grants; they cover the direct procurement of goods, services, labour hire and construction. I take your point that procurement, as most broadly defined, is money for things that the Government spends. Maybe that is a consideration. But our view would be that the details of the coverage of the Secure Local Jobs Code—and there are a variety of questions that would have to be addressed—should be subject to a tripartite consultation to resolve those things.

MARK MOREY: I think one of the things about having active coordinating rather than just doing it one-off with different departments is that you can actually have a strategic objective or a strategic plan as to how you want to spend that money. A lot of money, I think, can be wasted in grants. In certain areas of, for example, the community services sector, there are a lot of grants there. It doesn't provide job certainty. There are issues around those sorts of things, so it would be good, if you're going to procure those sorts of services, to do it on a basis where there's long-term certainty around how you provide that money. Sometimes just one-off grants here and there are not providing certainty for people or organisations. So I'm not sure grants are always the best way to do things, but you certainly need someone who's coordinating and thinking strategically about how those things are provided.

Ms ABIGAIL BOYD: Coming back to that piece on compliance, as we've said before, there has been this prevailing political view that you just set the rules and then companies will comply and that's the end of the story. There's not just the checking that they're complying but there are also the consequences for not complying, and I think that's one of the benefits of building in accreditation and compliance schemes within government procurement. Can you explain for the Committee's records why companies don't necessarily comply and why they see it as a cost of business, and have you got some examples of that?

MARK MOREY: I think it's a mix of things. Particularly in the hospitality sector, it's a business model—underpaying, not paying the correct wages, cash in hand and those sorts of things, where you see exploitation of workers. We talked before about good businesses versus businesses who are undercutting and not doing the right thing. I think some businesses are driven to cut corners and not pay properly simply because of the competitive environment they are in. That's why we've got the idea of you taking wages out of the procurement process, and it's about the services that you're getting. There's less pressure on businesses to cut corners. They've got more certainty and then there is a penalty if they are breaching those commitments to the Government. The process we've set out is not a high bar to get over but, as Mr Pinkerton said, if you're going to issue accreditation, there needs to be a process where people are checking in to make sure that those businesses are doing the appropriate things with the Government's money.

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Ms ABIGAIL BOYD: In other jurisdictions, is there a capacity for unions, workers and others to make complaints directly to whoever is running those codes?

TODD PINKERTON: In the ACT model, yes, there is standing for registered unions to bring evidence of issues or evidence of noncompliance, hence why it's really important that there is a public register of certification. There is, I believe, a high-level summary of the second-gate procurement process—the industry participation plan about commitments around job creation, apprenticeship and training, as Mr Morey said. So there is a role for workers to say, "I understand this company got the contract. They have made this breach. I'd like to have it investigated." There's a real opportunity for the secure jobs commissioner to look into those things. A variety of people should have a capacity to bring those complaints or that evidence of noncompliance forward.

Ms ABIGAIL BOYD: When you get an example like the 7-Eleven one where, again, it can be seen as just a cost of doing business: What's the worst that's going to happen? You have to pay a small fine and pay back the wages. It doesn't put them out of business. Would they have been knocked out of government work under the ACT code for that?

TODD PINKERTON: Quite possibly. If their breach had reduced the number of points, the deduction of points would be counted against them for future procurement contracts. So if you have a history of noncompliance after being certified, that can count against you when you're being considered for additional government contracts.

Ms ABIGAIL BOYD: Right.

TODD PINKERTON: That being said, the ACT secure jobs code is limited in the industries that it covers. I don't know if the 7-Eleven example would have been covered under the industries that are covered under the ACT one. But that question of the industries and the size of contracts that would be covered under the code is something that we think should be worked out through consultation.

MARK MOREY: Why we put that example is because it's so egregious. When you have the penalty system, where there is a case that is as egregious as 7-Eleven, then you've got an argument to just terminate the contract. But then you have the terms on which you can terminate the contract. Many of these contracts are very long, very difficult and very complex, and these basic rights for people and workers—this behaviour is not written into those contracts, so it's very hard to terminate them. But that's an exceptional example where it's so egregious that we would think the contract would just be pulled.

Ms ABIGAIL BOYD: That's another aspect, then, to the recommendations.

MARK MOREY: Yes.

Ms ABIGAIL BOYD: We've seen a lot of those, particularly bus privatisation deals and all the rest of them that have had this in-built inability to terminate when we really should be. So that would need to flow through.

MARK MOREY: On the flipside of that, you've seen a number of businesses with wage theft who have self-declared to the Fair Work Ombudsman, "We've made a mistake," or "We've realised this." It's creating that behaviour where you don't have to prosecute every business to get an outcome. Businesses realise there's a level of behaviour that's tolerated by the community and expected by the Government. So when they make a mistake, they'll self-disclose rather than try to hide and cover it up, and I think that's a much healthier environment to be operating in.

Ms ABIGAIL BOYD: The scheme we were hearing about before, with the Ethical Clothing Australia scheme for textiles, obviously there has been a need to establish that scheme. There's a significant effort involved in people actually then carrying it out and doing the compliance, and we're having the unions go in and having to ensure that compliance. Is there a need for government to not just fund or give some resources to those schemes, but would you see the secure jobs commission taking on some of that role or some of that work for? Or do you think those schemes would still exist within it?

MARK MOREY: I think where those schemes are working, you would have a collaborative approach. If they are working, there would be no reason to reinvent them. I think one of the roles for the regulator to have would be to make sure there are industry panels where there's consultation with union representatives, workers and employers for those specific industries. Every industry is slightly different, so there is nuance in how you actually regulate and what's required. For example, with the last evidence given, if you had a clothing and footwear panel, you would have all those people plus the employers on working collaboratively around ensuring that they set those standards which are appropriate to that part of the industry. I think one of the things you can't have is simply just a blanket approach to how you actually do it. Having said that, there are fundamental basics in that, but I think the nuance around how that's implemented is going to be important.

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The Hon. DAMIEN TUDEHOPE: "Local" means what?

MARK MOREY: "Local" means people who have businesses, small to medium to large, in Australia.

The Hon. DAMIEN TUDEHOPE: Australia, not just New South Wales?

MARK MOREY: We're realistic about this and the capacity of manufacturing in New South Wales. We see this as a long-term option to develop the capacity within New South Wales, but acknowledge that some of these products may have to be sourced from other parts of the country.

The Hon. DAMIEN TUDEHOPE: It could mean New Zealand, though, could it?

MARK MOREY: Well, you could. I mean, they were almost in the Constitution, so you could probably include them. But I think for us, our focus is—and particularly our experience in COVID is having the manufacturing capacity in New South Wales and in Australia when there is actually a crisis.

The Hon. DAMIEN TUDEHOPE: If, in fact, it is someone in another State, how would you see that working, with ensuring compliance?

MARK MOREY: I think one of the things about the Federation is once we have some of the schemes across States, there is an opportunity to have a national scheme. We've seen that through workers compensation—workers comp, sorry—work health and safety, those sorts of areas where you can have a scheme that's taken from a series of States and made national.

The Hon. DAMIEN TUDEHOPE: Effectively, what you're advocating for is some sort of national scheme?

MARK MOREY: No, I'm answering your question. What I'm advocating for is a scheme.

The Hon. DAMIEN TUDEHOPE: Would you advocate for a national scheme?

MARK MOREY: I think there's one in operation currently. We don't have one in New South Wales, so until we get one up here and running and seeing and learn from that, it's very difficult—

The Hon. DAMIEN TUDEHOPE: So you'd agree with me, would you, that in the event that a corporation seeks to tender for a New South Wales procurement contract and it was an interstate corporation, then there may be difficulties in ensuring compliance in New South Wales?

MARK MOREY: I wouldn't think so.

The Hon. DAMIEN TUDEHOPE: Your organisation, for one, wouldn't have access to the workplaces of that organisation, would they?

MARK MOREY: No, but our affiliates would, and through the national offices of the—

The Hon. DAMIEN TUDEHOPE: So what you would say, though, is that this policy should mandate some sort of national approach to compliance.

MARK MOREY: In our submission we've taken it as New South Wales based, but what we have said is there's a need, as we set this up, to have a tripartite approach to it—for government, business and Unions NSW to work through those issues and how we actually manage that.

The Hon. DAMIEN TUDEHOPE: Have you had any tripartite meetings in relation to establishing this sort of policy?

MARK MOREY: No.

The Hon. DAMIEN TUDEHOPE: Why not?

MARK MOREY: Because—you may think I run the government; unfortunately, I don't. Many of my members would like me to run the government, but it's up to the Government to convene those sorts of things.

The Hon. DAMIEN TUDEHOPE: I'm not convinced I would.

MARK MOREY: However, we have been speaking to business groups and we have been speaking to the Government about it.

The Hon. DAMIEN TUDEHOPE: So you have been speaking to them.

MARK MOREY: Not tripartite or in one room together, no.

The Hon. DAMIEN TUDEHOPE: But you have had one-on-one conversations with them.

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MARK MOREY: We've been talking to a lot of people.

The Hon. DAMIEN TUDEHOPE: What's been their response?

MARK MOREY: Very supportive.

The Hon. DAMIEN TUDEHOPE: They've supported—

MARK MOREY: The business community that we've been speaking to is very supportive, particularly of two areas: firstly, ensuring small- to medium-sized businesses can grow and, secondly, that there is a level playing field for when those businesses do tender for government work. Thirdly, they don't necessarily want to tender for the huge contracts, but they want to tender for the smaller contracts that enable them to grow and deliver the products. They're very excited about ensuring that their members don't have pressure from rogue employers undercutting the market.

The Hon. DAMIEN TUDEHOPE: So the certification process, if what you've just told me is right, would not cut in until a particular level, so that you do give opportunities for the growth of small businesses.

MARK MOREY: We understand that there's a series of contracts that are put out by the government. One of the things that business says to us is those small- to medium-sized businesses struggle when they tender to get those contracts. We're very keen to see—and we know that many of the innovative businesses are small- to medium-sized businesses.

The Hon. DAMIEN TUDEHOPE: Correct.

MARK MOREY: They're the ones that have got to grow or work with other businesses to set up a consortium. We would really like to see that the way in which government procurement is done is not only getting services but nurturing those businesses to grow.

The Hon. DAMIEN TUDEHOPE: So the certification process would give exemptions, for example, to small to medium enterprise businesses for contracts below a certain amount.

MARK MOREY: We'd be open to that, and one of the things we'd like to see is a tripartite approach where government, business and the unions come together to work out where that threshold actually is.

The Hon. DAMIEN TUDEHOPE: I accept that, and the ACT has that model, does it not, where there is an exemption for contracts up to a particular amount?

TODD PINKERTON: Yes, there's a value threshold on the contract, and it's limited to certain industries, depending upon a variety of factors that they determined.

The Hon. DAMIEN TUDEHOPE: From your perspective, what would that threshold be?

MARK MOREY: It'd have to vary, and that's why you need to have those discussions. If you said you were going to have a \$10 million threshold for manufacturing organisations, that would work. The previous group and Alison from the TCFUA—if you set a \$10 million threshold for people who are making garments, that would just wipe out any ability to actually regulate that industry and make sure that people are actually meeting the requirements. When I said earlier that there would have to be industry groupings where the nuance of these things are worked out, that's a great example of where you need to actually do that. It can't be a one size fits all; you've got fundamental principles that operate as part of the code, and then there are nuances that you need to build into that.

The Hon. DAMIEN TUDEHOPE: The ACT model is one which issues certificates for a fee, is that right?

MARK MOREY: That's my—

TODD PINKERTON: My understanding is there is a fee for the certification.

The Hon. DAMIEN TUDEHOPE: Are you aware of what that fee would be? We heard earlier that the fee payable in relation to the ethical clothing can be as much as \$7,000 for accreditation.

TODD PINKERTON: I don't believe the fee is as high as that, but I might have to take that on notice and come back to you about the exact fee and what the costings around the auditing are.

The Hon. DAMIEN TUDEHOPE: Does the code as implemented by the ACT also include subcontractors?

TODD PINKERTON: Yes.

CORRECTED

The Hon. DAMIEN TUDEHOPE: So if, in fact, there was a large construction contract, the tenderer for that contract would then have to certify that each of the subcontractors was complying with the secure jobs code.

MARK MOREY: Yes.

TODD PINKERTON: I believe that is the case in the ACT model.

The Hon. DAMIEN TUDEHOPE: Would each of those subcontractors themselves have to apply a certificate?

TODD PINKERTON: My understanding is that the certification applies to—and I'm not an expert on construction supply chains—the lead contractor, the one in receipt of the contract itself. If they subcontract out, I believe the onus is on the lead contractor to ensure compliance with their certification for the work that they subcontracted out.

The Hon. DAMIEN TUDEHOPE: Would you be seeking, in terms of compliance, if such a structure was set up for the compliance, to include compliance by subcontractors?

TODD PINKERTON: We would believe that subcontractors carrying out work on behalf of a contracted or certified entity in receipt of government money should be compliant.

The Hon. DAMIEN TUDEHOPE: Even if the subcontractor is a small subcontract of, potentially, \$10,000 or \$20,000? You would want to be able to ensure compliance by that subcontractor?

MARK MOREY: I think it's really important—

The Hon. DAMIEN TUDEHOPE: Is this the model?

MARK MOREY: Two things. One is that there is a nuance to every industry and we would like to work through that with government and business. Secondly, I would say to you that those contractors that you're talking about in construction are the very people that kill workers on sites and they are unregulated. It is an industry of cowboys and people die. This threshold we're asking for is not—what life is it worth, in this example of construction? Because—

The Hon. DAMIEN TUDEHOPE: There are all sorts of laws—

MARK MOREY: Hang on—

The Hon. DAMIEN TUDEHOPE: There are all sorts of laws which deal with that already, are there not?

MARK MOREY: Exactly.

The Hon. DAMIEN TUDEHOPE: In fact, we've just passed, I think, an industrial manslaughter law.

Ms ABIGAIL BOYD: Finally.

The CHAIR: We did, yes.

Ms ABIGAIL BOYD: You didn't do it when you could have done it.

The Hon. DAMIEN TUDEHOPE: We were waiting for a national approach. The Parliament has just passed it. That is the law which deals with the issue which you're raising. What I'm saying to you is that, in relation to the national jobs code, why should individual subcontractors potentially providing subcontract services of \$10,000 to \$25,000 be subject to compliance checks by auditors or some sort of compliance organisation which is set up and funded for the purposes of carrying out this work?

MARK MOREY: We're open to that discussion around how that compliance operates, because we haven't seen it operate here. As Mr Pinkerton said, we're not experts on the construction industry and how it operates. But I think there are ways in which we can ensure that the principal contractor is responsible for the subcontractors it has engaged and that there is a behaviour by contractors who are tendering for large government contracts to actually do that work and assist their subcontractors to meet the compliance.

The Hon. DAMIEN TUDEHOPE: No argument about that, Mr Morey.

MARK MOREY: That's all we are asking for.

The Hon. DAMIEN TUDEHOPE: I'm just asking about the compliance component.

CORRECTED

MARK MOREY: They need to be compliant. The point there is that the ACT code allows us—not only is the employer obligated to raise concerns but the way they've set it up is that where there are concerns industrial organisations or other parties involved in the industry can raise them through the commission.

The Hon. DAMIEN TUDEHOPE: Correct. Part of the ACT is that suppliers must also submit a Labour Relations, Training and Workplace Equity Plan. Is that also part of what you would be requiring as part of the certification process?

MARK MOREY: I'm assuming everyone would have one, wouldn't they?

The Hon. DAMIEN TUDEHOPE: Is this what you require?

MARK MOREY: It's about saying that you're going to pay people properly and provide a safe work environment—they're the two major things—and agree to any industrial requirements you have under the law. That's not a very high bar.

The Hon. DAMIEN TUDEHOPE: And you would want quarterly compliance checks?

MARK MOREY: That is up to the commission that sorts it out and what resources they have.

The CHAIR: Thank you, Mr Morey and Mr Pinkerton, for attending today. If you took any questions on notice or if there are any supplementary questions, the secretariat will get in touch with you and you will have 21 days in which to respond. We very much appreciate your submission and your appearance. We now have a short break for morning tea before coming back for the next round.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

Ms VERONICA BLACK, Lead Professional Officer - WHS, NSW Nurses and Midwives' Association, affirmed and examined

Mr DAVID RUSSELL, Member, NSW Nurses and Midwives' Association, sworn and examined

The CHAIR: Thank you both for appearing today and for your very interesting submission. I note, Mr Russell, that you're appearing today in your capacity as a member of the NSW Nurses and Midwives' Association.

DAVID RUSSELL: Correct.

The CHAIR: Before we begin with questions, would you like to start by making a short statement?

DAVID RUSSELL: In my current role I help to coordinate a team of five to manage the procurement of around 543 different medical consumables across a New South Wales major public hospital intensive care unit with an annual budget of around \$2.4 million. I manage approximately 1,984 ICU biomedical assets from a procurement, compliance, contract and replacement point of view, with a total asset value of around \$5.6 million, under the director of intensive care services and the director of biomedical engineering. I'm also the work health and safety accreditation coordinator for the service, responsible for reporting on and maintaining compliant practices, planning and items under the Australian Commission on Safety and Quality in Health Care requirements.

I'm a 13-year critical care nursing veteran with a masters in critical care, but I have also gained proficiency in procurement, contracts, compliance, work health and safety and strategic asset management. So far I've negotiated and fulfilled 11 large-scale service and capital contract procurements from suppliers for the hospital I'm at and for the district for the healthcare standards and work health and safety compliance, and I've implemented around 30 small-scale procurements in the last 2½ years. This often requires detailed analysis of current needs, risks, negotiations, approvals from the chief executive and the district director of assets and maintenance.

As a registered nurse working in procurement, I'm well placed to understand how poor procurement practices and decision-making directly impact both patient care and the safety of workers. Additionally, my role enables me to determine cost-saving areas and massive gaps in procurement at an organisational level. Although I'm happy to answer questions relating to procurement more broadly, I'm unable to answer questions about my current workplace. I've been supported to attend this hearing by my management team.

VERONICA BLACK: Thanks for the opportunity to address this parliamentary inquiry. Unlike Dave, who is here with me today, my role is not focused on procurement. However, my team regularly deals with issues that are arising from a lack of consultation and poor procurement decisions when those things pose risks to the health and safety of our members and to patients within the public health system. I'd like to highlight some key areas of procurement that I'll be able to speak to and where we've identified some significant issues. The first is in relation to procurement of PPE. Our reliance on overseas supply chains left our members at serious risk during the early stages of the pandemic. What we were finding was that decisions about PPE use were driven by availability of PPE rather than a proper assessment of risk and of what PPE was required to be used, compromising the safety of healthcare workers and patients.

Secondly, in relation to systems and buildings, I can talk about inadequate consultation with workers and their representatives coupled with poor planning and short-term cost-saving measures, and how that has resulted in facilities and systems that are not fit for purpose. This often necessitates expensive retrofitting to meet the required standards and delays the provision of important services to the New South Wales population. I can talk about statewide health procurement policies and the clear need to improve the policies to strike a balance between things where procurement should be centralised and local decision-making. Effective procurement should consider both the broader strategic goals and the specific needs of local health facilities. There is currently a great deal of duplication, inefficiency and gaps in expertise that are leading to poor outcomes in procurement decisions.

Finally, I would like to talk about staffing. Procurement is not limited to goods; it also includes ensuring that we have an adequate and sustainable workforce. New South Wales is currently facing a significant nursing and midwifery staffing crisis, leading to an over-reliance on the use of overtime, excessive use of agency staff and a dependence on the goodwill of nurses to work short-staffed, and that goodwill is running pretty low at this stage. This situation negatively impacts the safety of both staff and patients. New South Wales nurses and midwives are the lowest paid in the country despite living in the State with the highest cost of living. The recent decision to award Victorian nurses a 28.4 per cent pay increase further exacerbates this issue. Without an appropriate increase in wages for nurses and midwives in New South Wales, we will continue to struggle to attract and retain a sustainable health workforce. Therefore, we urge the New South Wales Government to provide a 15 per cent pay

CORRECTED

increase to nurses and midwives. By addressing these critical areas, we can improve procurement practices to ensure the health and safety of healthcare workers and patients. Thank you for considering these points in your inquiry.

The CHAIR: I wondered if I could ask a question of you, Mr Russell—you said you won't speak specifically about your work placement, but generally. One of the concerns raised in the submission is about non-clinical staff procuring items, which might lead to the wrong items being procured. Maybe, Ms Black, you might have examples of this as well. Can you talk a bit more about this? I think HealthShare is also discussed in relation to this in your submission.

DAVID RUSSELL: Yes, certainly. Under the current model, anyone with access to the procurement system in the hospitals can purchase items, and the decision to purchase those items tends to be quite anecdotal. Obviously, approvals follow a strict process under the delegation authority manual, but the people who approve those purchases in the system usually have no idea what the items are, what they're used for, whether it's appropriate or not or whether the quantity is appropriate or not. So, in the end, we rely on clinicians to inform what is the appropriate item and how many of that item we need. In the system I'm a part of, a lot of the time that's ward clerks and support officers making those decisions and doing those procurements. For the most, I feel that there is diligence from those people to do the right thing and to check in with clinicians and with managers, but certainly a large amount of the waste can be attributed to that problem. I have to say, though, that there's a much larger problem in senior clinicians making procurements that are completely inappropriate and in quantities that are completely inappropriate. I could highlight a couple of big examples, if you'd like me to.

The CHAIR: Yes, please.

DAVID RUSSELL: In the wake of COVID, we were given additional funds, obviously, for surge capacities in case things flared up again. That was a substantial amount of money. In one situation, a senior staff specialist decided they needed to buy \$140,000 worth of emergency trolleys across the district for no reason other than he thought that might be helpful. Also, over \$120,000 of these isolation booths, which a company said worked great for protecting workers against infected patients, were purchased and brought to the hospital. When they were implemented, infection control immediately flagged them as inappropriate, and they've been sitting in cold storage ever since. The third example from that would be a senior clinician decided we needed 30 Fisher and Paykel Airvo 2 units, which are a few thousand dollars each. While this was considered to be a surge item in case things flared up, those items have been sitting, brand new, in cold storage at my hospital for two or three years now, doing nothing. Those are examples of senior clinicians. I can give you two more quick examples.

The CHAIR: Sure.

DAVID RUSSELL: One is a senior staff specialist felt they wanted a VR system for medical education that allowed medical officers to train on ultrasound. It cost \$10,000 and he was given immediate approval because he's a senior clinician; he asked one person and they said yes. That sat behind my desk for seven months in a locked box, doing nothing, and was recently, I think, used once. Another senior clinician said, "Can I please have a television on a wall to show my latest bulletins?" The cost of that was \$14,000. Because they're in a high position, the approver said, "Yes, for sure." It's been in screensaver mode now for four months on the wall, and that's my tax money on the wall, doing nothing.

The CHAIR: Ms Black, this goes to the tension between centralised versus local procurement. As you said, there has to be some kind of appropriate balance between them both. Have you got any further comments about that and how it currently works?

DAVID RUSSELL: I do. I feel that, at the moment, there is a massive misbalance between the procurement of essential life support items and the procurement of non-essential, would-be-nice-to-have items. The essential items we need, like dialysis circuits, ventilator circuits, enteral feeds and IV lines, we're having to constantly battle the system in order to get sufficient quantities to places like emergency departments, ICUs and OTs. This is because the system is so convoluted, especially with the recent changes made in my district. I had to chase a whole bunch of approvers to get these items. None of these approvers really know what they are and how many we need; they just have to click a mouse button.

Then there are other items, like the examples that I just highlighted, like the \$10,000 VR system and the \$14,000 television, which are nice-to-haves but not necessary for supporting our acute care community, and they're just approved. It's, "Yes, cool. Have it. No worries." There's no battle. I feel there's a huge imbalance there. We need to have a better system in place to allow us to have that flow through of essential items efficiently, quickly and appropriately checked, and the nice-to-have items to be double-checked. Do we actually need it or are we wasting taxpayers' money?

CORRECTED

VERONICA BLACK: I've found that there are a couple of areas where decision-making has been devolved to a local level where it's probably not appropriate. One of those examples would be in relation to duress alarm systems that are used around the State. At a statewide level, there's a policy from the Ministry of Health that says that any personal duress alarms that staff are wearing—these are the buttons that they press if they are being assaulted or attacked and need security and other people to come in a hurry. We've got a statewide policy that says, "This is what functions need to be associated with the duress alarm", but then each and every health district is responsible for making their own decisions about which duress alarms they purchase. We recently did a quick audit—a phone around with a list of the features that the duress alarms must have according to the statewide policy. We found 10 different duress alarms; none of them met all of the features of the required policy.

What we see is actually more extreme than that. Sometimes, within one local health district, there'll be multiple types of alarms that don't talk to each other. Other times, there'll be multiple kinds of alarms within the one facility. For example, you may have a hospital with mental health nurses with one kind of duress alarm that works in the mental health unit, and then an emergency department with another kind of duress alarm that works in the emergency department. This is really problematic when you've got mental health nurses who need to go up and do part of their work in the emergency department and then go back to the mental health unit. It means that from the moment they leave the doors of the mental health unit, go up to the emergency department, however long they're in the emergency department and then on the way back, they don't actually have any duress alarm functionality because the two alarm systems don't talk to each other.

It's also a problem because we have members who work across multiple facilities. When each of the duress alarms function slightly differently, it means that people don't necessarily know how to deploy the duress alarm that they're using on this particular day in this particular facility. Rather than a system where each local facility seems to be making up their mind about which alarms they want to get and none of them are compliant with the statewide policy, a system where there was centralised decision-making that says, "These are the features that they need to have. These are the alarms that have these features. Purchase one of these", or, "purchase this one that actually works across the State", would be a much more effective use of money and actually provide something that's fit for purpose.

Ms ABIGAIL BOYD: Thank you, both of you, for coming along and for your really interesting submission. You've already touched on a few of the case studies that are in the submission. Within Health, it's the most devolved of the departments within government because we do have this local health district structure. In the examples that you were giving, Mr Russell, around where 30 of something have been purchased but only one is being used, is there a capacity to share across LHDs? Is there a way that you can say to another LHD, "We've got more of these than we need"? Does that happen?

DAVID RUSSELL: As that side of decision-making is above my level, I can't directly comment on whether or not that does happen, but from my experience, it does not. The heads of department do communicate effectively across the district about their needs, but this type of overspending tends to occur on a districtwide basis. And so, of the one item, everyone's either got too much or too little of the same item, if that makes sense.

Ms ABIGAIL BOYD: So HealthShare does some purchasing across the board but that's only for certain bits and pieces. That's for the more commonly used items; is that correct?

DAVID RUSSELL: The system currently has a central procurement system, where they get as many of the items that clinicians say they require into a centralised system and so that minimises the delivery delays, the approval delays and keeps the healthcare system running as efficiently as possible. So that's good, but the problem remains that the decisions about what is needed and how many are needed is still not really governed. There's a lot of poor decision-making, in my opinion, around that and a lot of money wasted around that as well.

An example of that might be last year in my department alone we spent just over \$114,000 on SpO2 single-use finger probes. We have reusable finger probes but the company has convinced clinicians that they should use the single-use because the technology's better even though it's pretty much identical. In an analysis I did it showed that we would only have to spend \$24,000 instead of over \$100,000, just in my department, on finger probes. The same thing goes for blood pressure cuffs, pill cups and a whole bunch of single-use items which are completely unnecessary, not evidence based and not in policy to use as a single-use item. These are non-invasive items that are still procured in mass quantities, and the companies absolutely love it. Our central distribution system just continues to allow that to happen because they do what they're told.

Ms ABIGAIL BOYD: I guess this is a question more for the department of health, but I understand that HealthShare has an arrangement with each LHD where they're paying a certain amount. They basically operate like little businesses within each LHD and so, if you've then got more of a product that you need within one LHD, it's probably quite difficult to transfer that across to someone else's account on the other LHD.

CORRECTED

DAVID RUSSELL: Yes.

Ms ABIGAIL BOYD: I'll make a note to follow that up with the department. What I'm hearing very clearly is that there's not much consultation with end users as to what products we should be procuring. When a product is basically made obsolete by new technology, how easy is it to get the central procurement arm to not just keep reordering the same thing but actually to listen—that now there's a new way of doing things or a new product that's made that type of product obsolete?

DAVID RUSSELL: There are processes in place to see new technologies coming on board. At the local level you've got the clinical products teams and at the higher level you've got people like HealthShare, but they generally only act on advice from, as far as I'm aware, the vendors. So we wouldn't change technologies unless the vendor directly approached someone like me or if they directly approached HealthShare or the clinical products teams. There are cases where we've been ordering the same product for 17 years and we should've switched to a new product, like, four years ago but that information was never transmitted.

Ms ABIGAIL BOYD: As an example, we heard in the context of, I think, a different inquiry from people who were advocating for hospitals to go back to using curtains or screens that could be laundered, as opposed to the plastic or single-use. I don't know the terminology, apologies.

DAVID RUSSELL: Yes, single-use plastic.

Ms ABIGAIL BOYD: They were saying that there was an obstacle because once you are using that particular type of product, then you continue to tender for that product and the people who were offering a different way of doing things weren't getting a look in. Is that your experience as well?

DAVID RUSSELL: That's definitely my experience. The clinical products team and HealthShare will respond to whatever we decide to consume. So if we start consuming single-use plastic curtains, they'll say, "Right, that's State priority. We're going to get them on tender, get them on contract and get the supply chain running, store it in the central warehouse and get it to them." Of course the company is super happy, and we just keep doing it out of almost tradition. But it wouldn't be too difficult for certain people to point out that we should be using a different product and then that could be fed into the system instead. That's not too difficult to do but nobody really does it, I don't think.

Ms ABIGAIL BOYD: Looking at staffing, I'm particularly interested in the use of agencies to move nurses around into particular hospitals. We've seen the inefficiencies that's created in the space for doctors' agencies. Is it the same in nursing? How many different agencies does the New South Wales Government use and is it effectively pushing up the staffing costs?

VERONICA BLACK: I'm not sure how many agencies are in use, but we are getting reports of increasing use of agency staff. They're in a range of different contexts. First of all, there are permanent positions that haven't been advertised. They're vacancies that are within the existing staffing complement that aren't advertised, often for months on end, because of budget cycles. Decisions are made to pay agency staff instead, even though that's more expensive, because it comes out of a different pot of money and so it's accounted for differently. We get those kinds of examples regularly.

We also get situations where nurses, due to some of the inflexibility around current rostering arrangements and whether or not that works with their work/life balance—particularly when talking about the majority of women who've got childcare responsibilities or responsibilities for ageing parents. We're finding more and more of our members who are resigning from positions in public health to take jobs with agencies where they'll be paid more and have more say around the hours that they're able to work.

Then, there are settings that are just very difficult to employ people in because they're environments people maybe don't want to work in or known to be just less desirable areas for people to move to, and so we've got some hospitals that are running entirely on agency staff. You'll go in and there'll be one or two permanent staff. Everyone else is agency staff and they'll come on fly-in fly-out contracts for a couple of months because there's not enough to incentivise people to move to those areas permanently.

The Hon. DAMIEN TUDEHOPE: Mr Russell—correct me if I'm wrong—your evidence is there are some procurement contracts which work well for a devolved model and some contracts that don't.

DAVID RUSSELL: Yes, I would definitely agree.

The Hon. DAMIEN TUDEHOPE: So a proposition which said, "We should have a centralised government procurement agency", may not work well for some local area health districts.

CORRECTED

DAVID RUSSELL: That's a very high-level question, sir. Centralised means, potentially, good governance over costs and efficiency, but different units have different requirements. It's going to be hard to have bespoke consumables to different areas with a central model like that, if that makes sense.

VERONICA BLACK: Another example would be things, like the duress alarm systems, that you want a certain standard to be applied across the board. These are things that should be managed centrally. Things like purchase of milk, it might make more sense to buy milk from Norco, if you're in the Northern Rivers, than to stick with the contract with whoever else might be the supplier of milk to New South Wales.

The Hon. DAMIEN TUDEHOPE: Correct, and sometimes it can be very beneficial for local businesses to be able to contract with their local hospital.

VERONICA BLACK: Yes, but I think that decisions need to be made about which things fit in which category, because I don't think that the balance is right at the moment. Another example that we had was one local hospital who, in their mental health unit, continued to have issues where patients were smashing through the glass to the nurses' station—very high-risk patients and high levels of violence. Every time they were smashing through the nurses' station, the hospital would just replace the glass with the same glass that was in there before. When I raised the fact that, clearly, this glass was not fit for purpose and went into details about the kind of glass they were using, they were using a six-millimetre glass that was appropriate for a residential apartment. The kinds of impacts that glass in a residential apartment might have are quite different from a high-risk mental health unit where people are picking up a chair and using that to try and physically smash through something.

The argument that I was getting back from the health district about why they didn't replace the glass with something different is, "Our supplier says that this is the best possible glass." Then I had to send them a whole lot of information about the fact that this wasn't the best possible glass and, in fact, it wasn't the glass that was recommended for this kind of setting in the health facility guidelines and, really, they should have a 12- to 14-millimetre glass, not a six-millimetre glass. Then we had endless debate about that until finally—

The Hon. DAMIEN TUDEHOPE: But a local supplier could have provided the 14-millimetre glass, if in fact that was the decision.

VERONICA BLACK: What they said to me was that the local provider couldn't provide 14-millimetre glass.

The Hon. DAMIEN TUDEHOPE: Okay, but if they couldn't then it should be outsourced from another supplier, in the event that a local supplier couldn't provide it.

VERONICA BLACK: But because they were just taking advice from the supplier they were saying, "No, this is the best possible glass." It took putting quite a lot of evidence in front of them about the fact that it wasn't suitable, it wasn't the most appropriate and it wasn't all that was available, and here's what they should have—

The Hon. DAMIEN TUDEHOPE: A hospital that needs printing done—should it use a local printer or a Sydney printer? Say it was a hospital in Wagga?

VERONICA BLACK: I'm not really focused on printing; I'm focused on issues where—

The Hon. DAMIEN TUDEHOPE: But as a question of procurement, though, in health, would you support a policy which says that local procurement policies should, in fact, be supporting local businesses as a matter of principle?

VERONICA BLACK: Where that doesn't cause impacts with the safety and quality and appropriateness of the purchase product.

The Hon. DAMIEN TUDEHOPE: So printing probably fits within that sort of category, does it?

VERONICA BLACK: I have never had anyone speak to me about printing. My role is really about safety, so no-one contacts me about that.

The Hon. DAMIEN TUDEHOPE: But if, in fact, I was to tell you that hospitals in regional areas were getting their printing done in Sydney, would you have any problem, as a matter of principle, saying that they should be getting that work done by a local printer?

The Hon. ANTHONY D'ADAM: Point of order: The Opposition should be directing its question to the expertise of the witnesses before the inquiry—

The Hon. DAMIEN TUDEHOPE: They've made a submission.

CORRECTED

The Hon. ANTHONY D'ADAM: —rather than directing questions that are clearly outside the area or the remit of the submission that's been provided.

The CHAIR: I ask you, Mr Tudehope, to be mindful of the expertise and the submission that the witnesses did make and, perhaps, draw you back to that.

The Hon. DAMIEN TUDEHOPE: Then I will put it to you, Mr Russell—you're a procurement officer.

DAVID RUSSELL: Yes.

The Hon. DAMIEN TUDEHOPE: As a matter of principle?

DAVID RUSSELL: It's difficult to comment on that, sir, because any large-scale or small-scale purchases by the hospital systems need to be subject to a governance model. It's difficult to implement a governance model on local businesses individually. Obviously, if there was a governance model in place over the things being supplied to the hospital, then of course it sounds more cost effective and helpful to the local community to use local businesses, yes.

The Hon. DAMIEN TUDEHOPE: It sounds it. In relation to the issue that you raised in respect of emergency monitors, why wouldn't that be solved within the hospital environment?

DAVID RUSSELL: Sorry, which emergency monitor issue were you talking about?

The Hon. DAMIEN TUDEHOPE: The buttons that you press—duress monitors.

VERONICA BLACK: Duress buttons.

DAVID RUSSELL: I'll refer to Veronica for that.

The Hon. DAMIEN TUDEHOPE: Wasn't it the responsibility of a purchasing officer to purchase uniform duress monitors?

VERONICA BLACK: All I can say is that there's a statewide policy that says, "These are the features of the duress alarms." But when we go out and see what's happening in reality on the ground in the different health districts, the alarms that are being purchased do not meet those requirements.

The Hon. DAMIEN TUDEHOPE: So is that solved by having a purchasing officer who is buying a particular duress model that is uniform?

VERONICA BLACK: I believe so. I think having a uniform duress model across the State means that if you're working in Campbelltown Hospital today and then you're working in Blacktown Hospital tomorrow, you know how that alarm works, that it works across the site and that it works whether you're in the emergency department or in the mental health unit. That's a much more sensible approach to the purchase of life-saving equipment.

The Hon. DAMIEN TUDEHOPE: The example that you gave—you were surprised, in a local health district—does that include within one hospital?

VERONICA BLACK: Yes.

The Hon. DAMIEN TUDEHOPE: Isn't the real question what was going on in that hospital where a purchasing officer was buying a variety of duress monitors that didn't talk to each other?

VERONICA BLACK: That's one question, certainly. But the other question is, why is it that when you go across multiple local health districts the alarms don't comply with the statewide policy? When you look at that, clearly it's difficult. You've got people in those LHDs that don't have the requisite level of knowledge or experience about how to ensure the alarms meet the functionality. It would be better to have that centralised with someone who does have knowledge and experience of the different alarms to go, "This is the alarm that meets the requirements and that we can make sure that our staff, whether they're working today in Blacktown and tomorrow in Campbelltown, will know how to use it and can rely on it having the functions that it needs to have."

One example would be some alarms have what they call a man-down function, or a person-down function, and some don't. They're all supposed to have that, so if you think that it's got a man-down function and you're relying on someone coming, and they're not coming, that's a problem. We have had situations where members have been unable to use the duress. They've been down on the ground and no-one's found them for three or four hours when they've had, say, a medical emergency or something, and that man-down function should have worked.

CORRECTED

The CHAIR: Thank you very much. We are at the end of time. I thank you both for appearing today and for the submission. If you took any questions on notice or if there are supplementary questions, the secretariat will be in touch and you have 21 days to provide a response.

(The witnesses withdrew.)

CORRECTED

Ms NAOMI BROOKS, Director of Public Affairs and Communications, CFMEU Construction and General Division, affirmed and examined

Ms RITA MALLIA, State President, CFMEU Construction and General Division, affirmed and examined

The CHAIR: Welcome to you both. Thank you very much for making the time to give evidence and for the submission from the union. Would you like to start by making a short statement?

RITA MALLIA: I'll be brief. I think we've set out in our submissions in detail the kind of rigour we'd like to see around procurement in construction. Obviously, the construction industry is a pretty important part of the economy. It's a major employer across many trades and sectors and it's also a place in which people can train, upskill and also where we can have more diverse participants, particularly in respect of First Nations people and females. However, we don't think the rigour around procurement really sets a very high standard or sends a positive message to subcontractors and contractors doing State Government work, utilising taxpayers' money, or gives value for money to the taxpayer and, more broadly, New South Wales as it currently stands.

Jobs are poorly regulated. They blow out of budget. Contracts are under-tendered and all sorts of problems occur, which end up being the problem of the State Government in terms of having to dish out extra money to ensure completion of projects. We really need a reworking of all the rigour around procurement. We need proper standards set. We need proper compliance enforced. Certainly, the CFMEU is keen to be part of that process to ensure high-quality jobs, non-exploitation of workers, the recognition of people's rights but also, at the end of the day, good-quality products for the people of New South Wales.

The CHAIR: I might begin, then, by asking you, Ms Mallia, about the CFMEU's experience more specifically with businesses complying with procurement policies, and why it is you have the concerns you have.

RITA MALLIA: I think there are things written on pieces of paper and policies which require contractors to do the right thing. It all looks great while it's sitting on the shelf, but what really happens out there in the real world is quite different. It starts from the tendering process, where people tender for projects well below the proper value of the project when you take into account proper labour costs, ensuring that high standards of safety are met, that programs are going to be met. Then down the track, as times start to blow out, people start being injured—perhaps there's a fatality—the job's not finishing when you're expecting it to finish, particularly in the civil space where we've got a lot of experience now with a lot of civil infrastructure work. You just end up with a race to the bottom.

So it starts badly because of the quality of the tender process. It's the culture, which it basically supports, in under-tendering to win the work. Those who actually want to do the right thing can't win the work, so everybody is pushed to cheat. Then you end up with these problems halfway through and towards the end of projects which end up costing the taxpayer extraordinary amounts of money. We've seen that on the Snowy Hydro. We've seen that in infrastructure projects in New South Wales. That's really replicated in a lot of other types of non-civil projects.

That's our experience. You have high insolvencies in the construction industry, particularly in the subcontractors. You have high levels of people breaching safety. Our officials are on projects every day dealing with, sometimes, really basic safety issues and, other times, very serious safety issues. But if the standards had been set at the beginning, if the expectations had been set at the beginning and if the cost involved was truly reflective of what is required to do these things properly by way of looking after employees on the project but also broadly to deal with the quality of the product, you would probably avoid a lot of these issues. It's a system which kind of encourages cheating, as we see it at the moment.

The CHAIR: In your submission you speak about—and we've heard about it in other submissions and evidence—the ACT Secure Local Jobs Code and how it might work. There's consideration of both weighting aspects of the tender process but also this two-gate tender process. Could you explain the difference but also what each of those things do, in your opinion?

RITA MALLIA: I'm going to defer to my colleague who helped us put that submission together.

NAOMI BROOKS: We're huge advocates of the two-gate tender process. This is a model that has been developed over time from what was originally a conventional weighted process. What we found was that when you weighed factors that weren't about the direct cost or timelines, it wasn't really clear or transparent about how you weighed these things against each other. Say if you have a business that has a history of safety breaches and workers have died on their site, it necessitates quantifying human life against a contract value or serious substantial breaches to wages and conditions against a contract value. So we were trying to find a way that fundamentally

CORRECTED

met the public's expectation around value for money whilst still complying with what the Government is trying to achieve with broader social need.

This two-gate tender process is a process that was developed as a repercussion of the weighted system essentially not working very well and there not being transparency about how the weighting actually functions. A company first needs to be audited to be granted a certificate. That can look at the entire history of that company. Obviously, we're very deeply invested in construction, but it also could look into, for instance, tax compliance or anything that could cause reputational risk to the Government. Then once they're granted a certificate in any kind of tender process, there's a two-gate system where the first gate is looking at whether there have been breaches of the Secure Local Jobs Code in the ACT.

For instance, if a principal contractor is employing subcontractors that also don't have a certificate, then that would be a breach of the certificate. It's important, in construction in particular, to make sure that there is compliance down the supply chain. If it's just focused on the principal contractor, you're realistically looking at the white-collar jobs in construction and you're not actually looking at the blue-collar workers and some of the lower paid workers as you move down that supply chain.

It will also look at any kind of legal proceedings against a company and if there's been any finding against the company, and points can be docked from the certificate. Then, at the second stage, you can look at the overall certificate and whether, say, for instance, a company still has 100 points, which is the total value of the certificate, compared to a company that might have 10 points and be limping over the line to the second gate process. Then you can genuinely look at value for money and timelines.

The Hon. ANTHONY D'ADAM: I might put on the record that I'm a financial member of the CFMEU. I wanted to ask about the role that you see the CFMEU and other unions playing in the procurement process.

RITA MALLIA: I think we have a lot of knowledge about who the players are and also how they conduct themselves. Because our officials are on the ground, we're also negotiating enterprise agreements with companies. We have a pretty good sense of who the quality builders and subcontractors are, versus those who are not and those who are more likely to cheat. I think there is a lot that we can contribute to ensuring that good quality and that intelligence around who's in the industry, where they come from, what their pattern of conduct has been, how they have operated, and how they have operated in terms of their insolvency industry. Obviously the industry is still quite prevalent with phoenixing and companies disappearing one day and appearing the next. It continues to occur for all sorts of reasons. We have pretty good knowledge around that.

Obviously we have very good knowledge around safety. We have our officials out there monitoring safety, dealing with safety issues and trying the best we can to ensure that people are safe on these projects. I think there is a lot that we can add to the Government's capacity to identify who is worthy of a certificate and to get through this process and who isn't, and then, during the life of the project, to be part of that process of monitoring. It's all well and good to get through the process and get the certificate and get the contract, but, of course, you do need a compliance arm and you need to be assessing that contractors, subcontractors and principal contractors are doing what they're supposed to be doing in terms of their obligations to the State, their employees and the general public. I think there is a role that's very important.

Obviously our preference is for good union jobs and companies with enterprise agreements. Those with enterprise agreements tend to be the more compliant ones. They're not necessarily 100 per cent compliant, but there is a rigour around that. That makes compliance a lot easier to monitor and enforce. Of course, we want to ensure that workers have every right to join their union and to have that proper representation on the job to ensure their safety, to ensure they're getting their wages and conditions and that they get home safe to their families every night. There is a real partnership with the unions and the CFMEU. In the past we've had those partnerships with government agencies to ensure that, one, we avoid the problems, but also, if there are problems along the way, so that they can be addressed, rather than it all becoming a very big problem towards the end of the project.

Ms ABIGAIL BOYD: Thank you very much for your submission and for coming along. I want to go back to the ACT code. Can you talk about how that has permeated beyond just government work? Has it lifted standards across the board in the ACT?

NAOMI BROOKS: Yes, because the certificate applies down the entire subcontractor supply chain and takes into account if there are breaches of the code across their business operations. If you have a business that is consistently underpaying workers and there is a proceeding against the business and it is found that that has occurred, then that is a breach of the code. In terms of using procurement as a really strong mechanism to transform the industry, to make it more economically stable and to make sure that workers are paid well, the ACT system is excellent at achieving that outcome.

CORRECTED

Ms ABIGAIL BOYD: Presumably there aren't many companies in this area that operate in the ACT that don't also operate in New South Wales.

NAOMI BROOKS: Yes, that is absolutely accurate, at least in the Queanbeyan region and the southern part of New South Wales, and then with your tier 1 and tier 2 contractors, they're operating around the entire country.

Ms ABIGAIL BOYD: When we are talking about potentially applying something like the ACT code here in New South Wales, it appears to me that it wouldn't be a particular burden on companies because they're already complying with the ACT code. Would that be correct?

NAOMI BROOKS: I think that would be accurate. Then you also have a range of different procurement codes in other jurisdictions as well. Victoria also has I think what is called the Fair Jobs Code, which was based off the ACT two-gate tender process. They are also far more explicit with having targets around diverse workforces, in particular with women. I would say that the Victorian model is the best model when it comes to having high standards for encouraging women into construction. Once your tier 1 builders adopt these models, it starts to be rolled out across their business across the country.

Ms ABIGAIL BOYD: There are a couple of aspects of your submission that touch on issues that we've been talking about in other parts of this inquiry. The first one I wanted to talk about is in relation to the subcontractors. We see this a lot in the construction industry where we have a principal contractor who might be up to standard but then that seems hard to get through to the subcontractors. In the submission, it talks about putting an obligation on the principal contractor to ensure that the subcontractors are doing the right thing. What would be the alternative to that? Is the idea that if the subcontractor is found to be doing the wrong thing, the principal contractor then has points taken off them or is less likely to receive work in the future? How would that work?

RITA MALLIA: I think it has to be driven by the principal contractor because subcontractors come and go. They obviously need to comply but the driver of what happens on these projects has to be the principal contractor. They're the ones ultimately responsible to the government to deliver the project. If they're saying to the government, "This is the model. We're going to subcontract these packages out to these people to do this work", then there must be some real teeth in the obligation that they have to ensure that they deliver and also ensure that those that they're subcontracting to are complying. What we've seen a lot in New South Wales is we have these sorts of standards: Principal contractors obtain a statutory declaration from their subcontractors confirming that they've paid all their wages and conditions, their premiums to WorkCover et cetera. But then they haven't, and there isn't really any punishment or consequence of just accepting the statutory declaration, taking that at face value and paying the money that has to be paid for the next stage of work, and the reality is that the subcontractor hasn't met those obligations.

So you do need to have a robust system that puts some responsibility on the principal contractor. It has to mean something because unless it means something, you'll just end up with these paper processes that look like they're ensuring these people are doing what they're doing. As you know, in construction, there's a lot of subcontracting to subcontracting to subcontracting. Then when you get into the fit-out stage or the less organised structure stage of projects, sometimes you have no clue who is on these projects. The principal contractor is the gatekeeper, and they ought to have real responsibility to ensure that the standards are applied across the project, over the life of the project. That's good for workers; it's good for the State. It's good for the budget and it's good for the ultimate product that's delivered to New South Wales.

NAOMI BROOKS: Also, if you're thinking about the Government's aim for small and medium enterprises to also be eligible for procurement, in construction, realistically, that happens down the supply chain. They're not likely to be the company that is tendering directly for a project from the New South Wales Government. If anything, you have more small and medium enterprises operating in construction than you do in, I would presume, almost any other industry. But in order to make sure that operators down the supply chain who are small and medium enterprises are able to be in a strong financial position and pay their workers well, and not have liquidity issues where they need to phoenix or do any other dodgy operation in order to reform because their finances don't stack up, you need to make sure that small and medium enterprises in construction also have an equal playing field where they're not being undercut. It's essential that it goes down the supply chain in construction if you're actually going to make sure that small and medium enterprises don't have liquidity issues.

Ms ABIGAIL BOYD: If we're putting the responsibility on the primary contractor, in terms of the contractual obligation between the government and that primary contractor, would we be asking them to take active steps to ensure compliance?

RITA MALLIA: Yes.

CORRECTED

Ms ABIGAIL BOYD: Then are they reporting back to government, or is that for their own purposes?

RITA MALLIA: I think they should be taking active steps and they should be showing the government or the government agency that's what they're doing. We're seeing that in other spaces. A lot of these principal contractors put a lot of effort into promoting that they have a diverse workforce, but they're not employing those extra women directly. They're not employing those Indigenous workers directly. They're requiring their subcontractors to carry that labour, because most of the labour on the job, at that level, is done by the subcontractors. They will report back the great achievements. There have been good achievements on that front, on a lot of government projects. So if they can do that for the good news, they can certainly be doing it to ensure that the employees on those projects—whoever they are—are paid well, that the safety standards are met, and that the subcontractors are doing what they're contracted to and receiving proper payments.

We do sometimes have a security of payments issue and money doesn't flow as it should, and that you don't have a situation where people are having to corrupt the system with rectifications or asking for amendments to their contract and meet costs that were unanticipated. There really needs to be an active oversight by the principal contractors, and they need to actively show that these things are happening as well as they can on the project. It would really, I think, improve things no end for that to occur. The subbies will comply because they want to win the work. They'll be held to account. They'll have to tender for jobs correctly, too, to make sure that they're factoring in all of these obligations, rather than trying to undercut each other and cheat to try to win the work and then worry about it later.

The Hon. DAMIEN TUDEHOPE: Would you see your organisation as having some role in the certification process?

RITA MALLIA: I don't think we would have a role in the certification process because I think it's up to the Government to decide at the end of the day who they contract to. But, certainly, we would have a role in providing whatever intelligence we have in terms of what we know about the history of these companies, about their breaches or non-breaches, the safety standards, and then we would certainly have a role in the monitoring once they win the work because—

The Hon. DAMIEN TUDEHOPE: So you will have a role in compliance?

RITA MALLIA: We have rights under the various Acts, whether it's safety or industrial, to ensure that there's compliance with respect to employees, and we would consider to do that work—

The Hon. DAMIEN TUDEHOPE: This would give you an additional right, would it not, to access a site to establish compliance with the terms of the certification?

NAOMI BROOKS: May I talk to the Secure Local Jobs Code in the ACT to answer that? It doesn't provide an additional right in terms of workplace access; that is not what it does. How it works is you have an independent registrar, who is a public servant, that issues the certificates according to how the Government establishes the way to measure that company. Then any party—another business, a union, an individual worker, a concerned consumer—could report what they think might be a breach to the registrar, and the registrar, an independent public servant, would make an assessment. So there is no additional work site access or right that is granted through this process.

The Hon. DAMIEN TUDEHOPE: It would only arise in relation to potentially if a member reported back to your organisation some issue. Is that right?

RITA MALLIA: We have a broader capacity under the Fair Work Act or the Work Health and Safety Act to independently ensure that there is compliance with our enterprise agreement. It doesn't necessarily take a member to initiate the complaint. We also deal with the industry regularly. We have contacts with principal contractors and subcontractors. If subcontractors are financially in trouble, it's often to the union that they turn to. We've got a lot of knowledge that doesn't even necessarily require us to access the site, as you envisage it, to be able to assist the Government in ensuring that ultimately these certificates are complied with.

The Hon. DAMIEN TUDEHOPE: You in fact also call for the code to apply to public-private partnerships, do you not?

RITA MALLIA: Anywhere where there's government money being spent, we think that this code should be complied with.

The Hon. DAMIEN TUDEHOPE: That includes grant money?

RITA MALLIA: Yes.

NAOMI BROOKS: Yes.

CORRECTED

The Hon. DAMIEN TUDEHOPE: You would expect it to apply too?

NAOMI BROOKS: Yes.

RITA MALLIA: Any taxpayer money.

The Hon. DAMIEN TUDEHOPE: In relation to the work being done in relation to the delivery of the renewable energy infrastructure, you would expect it to apply in relation to that, would you not?

RITA MALLIA: Yes.

The Hon. DAMIEN TUDEHOPE: Have you had any discussions with the Minister for Energy in relation to that?

RITA MALLIA: Our branch hasn't, no, not at this stage.

The Hon. DAMIEN TUDEHOPE: Would it act as an impediment, potentially, for the delivery of renewable energy infrastructure?

RITA MALLIA: I don't think so. It obviously attracts considerable government money. We have seen what has happened to the Snowy Hydro with various blowouts in terms of budget and the conditions in which workers in that project have to live under. I think that it's a pity there wasn't a code before these big projects were tendered that are already happening in that space. It's not an impediment. In fact, it will guarantee that those who contract or tender for the work will be able to do it properly, within budget, safely, ensure that the employees on those projects and workers on the projects get paid, and deliver according to their promise.

The Hon. DAMIEN TUDEHOPE: So the contracts being entered into by the Government or, in fact, being guaranteed by the Government, you would expect that they would have to go through the Gateway process—

RITA MALLIA: Yes, I think so.

The Hon. DAMIEN TUDEHOPE: —for the purposes of delivering those projects?

NAOMI BROOKS: This doesn't speak to our coverage, but the ETU, which we operate very closely with on worksites, is deeply invested in the renewables rollout. Their greatest concern is that they are 40,000 electricians short to deliver this work. At this point in time, you have projects being rolled out that have no apprentices on those sites, and you cannot build the rollout unless you have apprentice electricians so that you can build that 40,000 workforce. Something like the Secure Local Jobs Code or a Secure Australian Jobs Code could deliver the workforce needed to do this work.

The Hon. DAMIEN TUDEHOPE: So that could, in fact, delay some of those projects, could it not?

NAOMI BROOKS: Why do you think it would delay the projects?

The Hon. DAMIEN TUDEHOPE: If you don't have the labour available to be able to fill those positions.

NAOMI BROOKS: If you don't have the appropriate workforce, it is, of course, challenging to deliver any kind of project. But something like a Secure Local Jobs Code assists in making sure that there is adequate labour coming through to deliver these projects.

The Hon. DAMIEN TUDEHOPE: Do you also see that, as part of the procurement policy, there should be policies to support local small businesses? Do you agree with that as a tenet of ensuring the delivery of local components in the procurement process?

NAOMI BROOKS: You might note in our submission that we talk about security of payments as an issue. We would say that the biggest issue in construction is making sure that companies are paid for the work that they have already completed. In construction—and I'm not so bold as to speak beyond construction—we would absolutely love for there to be a security of payments framework so that companies are paid.

RITA MALLIA: It supports those businesses. And whether they're small businesses, big businesses, local businesses in regional areas or a lot of these bigger projects that might end up being, in terms of the area that you're talking about—I mean, we don't want to see those businesses be put in a difficult position. If the standard is lifted at the top, it's going to be lifted for them.

The Hon. DAMIEN TUDEHOPE: A lot of construction businesses are going broke at the moment, are they not?

RITA MALLIA: Some are, yes.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Why is that?

RITA MALLIA: There are lots of reasons. I think it's a lot of under-tendering, where the projects have been tendered at costs that are unreasonable or unrealistic, so you get to a point where there isn't the money to do the work. There's certainly the security of payments issues, which still arise, where people don't get paid for the work that they do. There are people who take on too much financial burden, and then they don't have the business acumen to actually turn that into a profitable business.

There are a myriad of reasons why companies fall over, and the CFMEU has been making submissions around the security of payments space. I've been with the union for nearly 30 years, and we've been making those submissions about ensuring a proper payment system and ensuring that people are tendering for the proper value of a project and that they're kept to account. There are lots of reasons why these companies fail, and it's generally because the cash flow fails. That starts at the beginning. They're all—not all, but many are having to cheat to win the work and then aren't able to deliver the work. There isn't anything in the system to ensure that they can deliver the work.

The Hon. DAMIEN TUDEHOPE: And sometimes delays are an impediment to being able to have proper cash flows, are they not?

RITA MALLIA: The way and the speed in which things are being built—in this day and age, delays don't seem to be the massive issue. The schedules that are in place at the moment see construction projects delivered in extraordinary, record times. Sometimes there can be delays, but it's not really about the delay; it's just the structure in which people win the work and then subcontract out the work. It's a model that's unsustainable if the cash isn't going to where it needs to be or if it's not sufficient for these companies to deliver and survive. And there's a lot of tax roting and all sorts of other things, and reasons why companies go bust. The tax office has obviously taken a particular interest in construction in recent times in that regard as well. But the schedules are pretty tight. They really do deliver these projects very quickly.

The CHAIR: Thank you both for appearing and for your submission. If there were any questions taken on notice or any supplementary questions, the secretariat will be in touch and you will have 21 days to respond.

(The witnesses withdrew.)

CORRECTED

Ms MEL GATFIELD, NSW Secretary and National Director, Food and Beverage, United Workers Union, affirmed and examined

Mr AARON JONES, Political Coordinator, United Workers Union, affirmed and examined

The CHAIR: Would you like to start by making a short statement?

MEL GATFIELD: Thank you, Chair, and thank you, Committee. I am the secretary of the United Workers Union and I am joined by Aaron, our political coordinator. With us today we also have Milena Petrovic, who is a United Workers Union member and a school cleaner at Randwick Girls High School. She has worked there under a number of different contractors for the last 24 years. Our union represents workers in a range of industries—logistics, food and beverage manufacturing, casinos, hospitality, early childhood education and care, aged care, cleaning, and security. As you know from our submission, we really wanted to use this opportunity to focus in on cleaning and security, despite those other sectors also being affected by procurement.

Cleaning and security are highly labour-dependent services that the New South Wales Government currently spends hundreds of millions of dollars a year contracting for. Both in security and cleaning, we have got systematic issues with compliance related to workplace rights and entitlements and the mistreatment and exploitation of workers. There are a number of reasons why these two sectors share those issues: vulnerable workforces, commercial pressure to minimise labour costs, the prevalence of precarious forms of employment, and diffuse accountability throughout the supply and property management chain. Indeed, in May this year the NSW Anti-slavery Commissioner said that he had heard in his role from cleaners and security workers who suffered various forms of modern slavery here in Sydney and in regional New South Wales and that some of those workers appear to be working under current contracts by the New South Wales Government.

We welcome the findings and the recommendations in the Committee's first report. We think the current approach to procurement is not working and needs to change. In our submission we made a number of recommendations. In summary, we believe that agencies should consider direct employment rather than contracting as a first port of call as a means of supporting quality jobs and delivering more effective services. If services are contracted, we need to include enforceable labour standards within the contract terms. We want compliance with industry best practice codes of conduct within prequalification steps. We require job security on the change of contracts. We think that there is a real opportunity that buildings leased for government office space could participate in the Cleaning Accountability Framework and we believe that there should be an independent unit within government to investigate and enforce contractually obligated labour standards. Finally, we think that all contracts should be available in a searchable online database.

The CHAIR: Thank you for your submission. Welcome, Milena. Thank you for making the time to be with us today. We appreciate it. There is a lot to cover and not a lot of time. I want to start with one of the areas that I am particularly interested in, which is cleaning. You mentioned CAF, which the rest of the Committee might not be familiar with so I might get you to explain it a bit. There are aspects that I would particularly like you to focus on. One is the use of a pricing schedule within the contract cleaning sector as a way of ensuring that, within a tender, there is enough money to pay workers their legal wages. Could you talk about that and then perhaps think about how that could be applied in procurement and maybe even to other sectors like security?

AARON JONES: I'd be happy to. The Cleaning Accountability Framework is an organisation that has existed for just on a decade which was set up by the union along with property investors, other stakeholders in the industry and contractors. It operates as both a top-down and a bottom-up mechanism to ensure compliance and to combat some of the risks that Mel mentioned about modern slavery. It works and, as you mentioned, the pricing tool is really a critical part of this. That sort of embeds the sufficiency of contracting from the start—that when a building manager or a building owner is tendering for their services, that they're using a pricing tool that says, "To comply with modern award obligations and with all other worker entitlements, as well as considering industry standard productivity rates for cleaning, this is the minimum cost that would be required to clean your building, so if you're receiving bids from a company that are less than that, then something is wrong."

The CHAIR: Could I clarify that? What it essentially does is it says, "It takes this much time, reasonably, for a cleaner to clean this amount of office space."

AARON JONES: That's right.

The CHAIR: "This is how much that time costs." That is the minimum that must be included in terms of pricing, otherwise you can pretty much say that that contract doesn't account for wages.

AARON JONES: That's right. That contract, that bidding there, is either not understanding their full obligations or is assuming that they are going to make it up somewhere else.

CORRECTED

MEL GATFIELD: Or they are not delivering on the scope of the contract. So what the Government—in this scenario, if you are procuring for cleaning and you are paying for a certain standard of cleaning, if you don't have that schedule there, you are not going to get what you are paying for.

The CHAIR: In other words, it is a mechanism for whoever is putting out a contract to say, "This is the absolute minimum cost that must be in this contract, otherwise someone is trying to compete based on undercutting labour standards."

AARON JONES: That's right.

The CHAIR: Can you explain how that has worked in the private sector?

AARON JONES: The accountability framework, like I said, has been in place for about a decade. There has been a significant amount of buy-in within the private sector from property managers and from owners and investors that are looking to have their building certified to meet these obligations and to ensure that they are not in breach of any modern slavery issues, and also as part of their overall ESG framework to ensure that they are acting as a responsible owner and that they're investing in a responsible way.

The CHAIR: I know I am a bit focused on cleaning, and I notice that you talk about insourcing and school cleaning. You mentioned the requirement to consider insourcing before contracting for services in your submission. Can you say more about how you would see that operating, and what services you could see this impacting were it to be implemented?

MEL GATFIELD: I think what we are saying is that there has been a culture in cleaning at least for the last 30 years that it has been outsourced in most of the government. There are very few areas where cleaners are directly employed, and the same with security guards. We think that this is an opportunity for each agency, when they are considering what they are doing, to actually have to consider insourcing at the start and to use things like the pricing model to actually say, "Are we getting bang for the bucks that we're spending? Because it is a huge amount of money that we are spending."

The Hon. ANTHONY D'ADAM: I place on record that I worked with Aaron Jones in a previous capacity.

The CHAIR: I should place on record that I was on the CAF steering committee.

The Hon. ANTHONY D'ADAM: It seems like I have had some dealings with a lot of people in this inquiry. I want to ask about some specific examples where the absence of transparency in terms of the contracting arrangements has been an impediment in terms of enforcement. I particularly want examples of where you had difficulty enforcing basic labour conditions with a contractor.

AARON JONES: Currently, we find it extremely difficult to actually access the full contracts. We can access the summarised information, see what the cost is, who the company is, but terms within those contracts are very important to how the work is actually carried through and extremely relevant for our ability to represent workers and to bargain with those employers. We are at a complete asymmetry of information when we are sitting down to bargain with an employer that is under a multi-year contract and they know what the cost of it is, they know what any indexing terms are, and we are not privy to that. It is both difficult for us to improve conditions and also difficult for us to see what the actual terms are to verify that they are delivering on that service.

The Hon. ANTHONY D'ADAM: You're supporting the proposition from Unions NSW around an equivalent to the ACT secure jobs code. One of the elements in your recommendations is around greater consultation with workers, delegates rights and support for bargaining. Could you talk a little bit about why that's critical?

AARON JONES: Yes, absolutely. Firstly, it enables us to be present in the workplace, speaking to workers about issues and about safety concerns, and to establish the consultative mechanisms with the employer as well to deal with issues on the job, and then for us to be able to bargain in terms of support for freedom of association and collective bargaining. When we have enterprise agreements in place, it gives us another mechanism to actually enforce those standards. Through something like an equivalent of the secure jobs code, if we are establishing labour standards in addition to, say, the modern award standards where we're able to bargain and reflect those in an enterprise agreement, it gives us an ability to enforce them.

MEL GATFIELD: Can I just add that if you think about cleaners, they're often the invisible workforce. They start before we start work, they're there after we finish, cleaning up, and they're often on their own. And security guards are often only in ones or twos. So having a voice is a really important part of this as well.

The CHAIR: Could I go to one of the other themes that we've been looking at throughout the inquiry, which is that policies exist, and we can read them and they sound very good, but they're not necessarily enforced.

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What's been your experience in terms of government contracts and the enforcement of mandatory conditions that already exist in those contracts?

MEL GATFIELD: It's been a real struggle. If you look at the whole-of-government cleaning contract over the last 30 years, the standards that are expected from the cleaners and the contractors that employ them have risen. At the same time, the amount of cleaners employed has diminished. Understanding what's in the contract when it is completely confidential has made it extremely hard to talk about what is the scope of work. When we surveyed our members recently, they had a ridiculous amount of time to complete all of the tasks that were expected of them but they didn't have the time to do it. If you want to enforce what is in this contract and what is in the scope of it, you need to be able to have some transparency about it. So that would be one area that I'd point to.

Ms ABIGAIL BOYD: Thank you for coming and for your submission. When we're talking about procurement of contracts that are not completely but almost all labour cost, in what circumstances would a government—I'm really struggling to understand how a government could outsource that cheaper without it resulting in wages being lower than what the Government could provide in a direct employment situation. Do you think inherently the idea of privatising these sorts of services, like cleaning services, is always going to result in a pushing down, or a suppression, of wages because that's the only way that it can be cheaper than government doing the employment itself?

MEL GATFIELD: As you say, there isn't that much equipment that you need to set up a cleaning company. I think that's right. The experience that we've had of private contracting in cleaning is that it's a race to the bottom. The contracts are done on cost and it's a minimum amount that people will tender for, and how that plays out is what cleaners are expected to do in the time that they have. There are a whole lot of other practices that we've talked about where vulnerable workers—you don't need to be able to speak English proficiently to clean. You are often cleaning on your own in a workplace, so there are a lot of opportunities for bad things to happen.

Ms ABIGAIL BOYD: If we were to take all of the cleaners back and have them directly employed, how many are there?

MEL GATFIELD: There are approximately 7,000 cleaners across the whole-of-government cleaning contract in New South Wales. You've got about 2,200 schools, all of your offices, courthouses, police stations, some ambulance stations and some other government buildings. There are a lot of cleaners.

Ms ABIGAIL BOYD: You can imagine a situation where a government is outsourcing labour when there are one or two people who are also working for a company and doing other things. But when we're talking about a workforce of 7,000 people, it strikes me that there are quite a lot of inefficiencies built into outsourcing that. Sorry, I'm baffled by why that decision was ever made. Do you think that the decision by government to outsource that many jobs has pushed down the wages and conditions of cleaners across the board—in non-government work as well?

MEL GATFIELD: Yes, I think that's right. I think that definitely has had that impact on the workforce. You have to remember that most of these jobs are part-time. Especially in regional New South Wales, we have a number of members that are cleaning a school in the morning and then going to the courthouse and the police station later in the day, and that creates a decent amount of a job. Yes, I think that there has definitely been that impact.

Ms ABIGAIL BOYD: Have we got any jurisdictions that haven't outsourced? What do the wages and conditions look like in those States? Do you have any data comparing?

MEL GATFIELD: In Queensland, Western Australia, Tasmania and the ACT, cleaners are directly employed. They have collective agreements that pay over the award. They have standards of quality. The cleaning standards are quite transparent and everyone understands. There is consultation about the work that they do. There are a lot of places that you can look around Australia where there's a different system.

Ms ABIGAIL BOYD: Was it the ACT that reversed it recently?

MEL GATFIELD: Yes, in 2020, I think.

AARON JONES: Yes.

Ms ABIGAIL BOYD: Have we seen any impacts from that in terms of raising the wages and conditions across the board?

MEL GATFIELD: Yes, definitely in wages and conditions, in security of hours and in knowing that you don't have to apply for your job every time a contractor loses the contract or the contract comes up for re-

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tender. That has been a really big issue for cleaners—consistently having to go through that process. We've heard from the department of education in the ACT that the cleaning standards have improved.

Ms ABIGAIL BOYD: What do you think the impact on government has been? Has it been some massive cost to them versus when they used to outsource it?

MEL GATFIELD: You should talk to them. I don't believe so.

Ms ABIGAIL BOYD: We will. As you say, if you're introducing procurement into areas where the cost is primarily labour and we've seen this downward pressure on wages and conditions as a result, there's the suggestion of at least putting a base amount and saying, "If you are paying your workers properly, it would at least be this cost, and all bids need to be above that." Should we also then be saying that if you've got that, you then compare it to if it was a direct employment? It strikes me that that is a stepping stone to ending the privatisation of these services because, if government is required to compare it to a direct employment, then it would probably be cheaper. Is the suggestion that we have both of those things—that we say that you need to have at least this minimum amount for the bid, but also that we need to be comparing it to a direct employment model?

AARON JONES: I think so. That makes sense. If you have standards established for particular industries for government procurement that these are the minimum rates that we would be requiring contractors to pay, and to price accordingly when they bid, it would make sense that you're comparing that to the cost of insourcing—that you're not comparing the minimum wage to the cost of an irrelevant industrial instrument but that you're comparing it based on a standard that you're setting for your government procurement.

Ms ABIGAIL BOYD: Playing devil's advocate, would that then limit the ability for workers in those industries to further increase their wages, for instance, because, even though you've set it at a certain level, say that there's a bargaining process for a 10 per cent increase, you would still be bound by that contract? Or would you build into the contract the ability to increase the amount that is paid by government as you have to increase to cover—

AARON JONES: Yes, it's a good question. It gets into some of the details of bargaining under that kind of framework. We've seen that, in contracting, the modern award acts as both as a floor and a ceiling. Wages is an easy example. If you were to require wages, say, 6 per cent above that—that's the figure that we have for our safeguard policy, which has been adopted for the security industry in Victoria by the Victorian Government—there's value in bargaining within that framework because it gives you that means to actually have those rates enforceable and to have an industrial instrument that sets those rates and gives you the process to defend those. Whether there is a margin to negotiate above that, I think that is going to come down to the employer and the context at the time, but there is value in having an enterprise agreement that reflects those rates in itself. You would be setting a new standard, potentially, but that standard is higher than where it is. You're setting it at somewhere that you would be otherwise precluded from bargaining to.

In terms of indexation through the contract, I think that's a really important part of it—that you actually have the ability for an employer to provide increases through the life of their contract. You could look at different models of doing that so that there is scope to have enterprise agreements that include agreements, whether that's looking at a CPI or a wage price index plus indexation or something else. I think you could include that within the standards.

The Hon. DAMIEN TUDEHOPE: How many members are there in your union?

MEL GATFIELD: Nationally?

The Hon. DAMIEN TUDEHOPE: No, in New South Wales.

MEL GATFIELD: In New South Wales, around 30,000.

The Hon. DAMIEN TUDEHOPE: There are 30,000 members of your union. And you're affiliated with the ALP, are you not?

MEL GATFIELD: Yes, we are.

The Hon. DAMIEN TUDEHOPE: The amount which you contribute to the ALP each year is how much?

MEL GATFIELD: I—

The Hon. BOB NANVA: Point of order: I'm not entirely sure that this is relevant to the terms of reference of the inquiry, or to government procurement.

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The CHAIR: While we do give wide latitude, Mr Tudehope, I'm struggling to understand how that does refer—

The Hon. DAMIEN TUDEHOPE: Well, I'll come to that. In relation to procurement contracts, would you see it as a process where membership of your union would be something which would be desirable for the purposes of certifying compliance by a particular organisation if the employee workforce—

MEL GATFIELD: Sorry, I don't understand the question.

The Hon. DAMIEN TUDEHOPE: If the employee workforce of a particular contractor to the government was unionised, would it, in fact, lead you to say that that should be a certified or preferred contractor for the government?

MEL GATFIELD: Not in that order. Our aim is to improve the working lives of, in this scenario, cleaners so we would want them to be involved in the union, but the standards that we would accept the contract to be held to are about basic workplace standards.

The Hon. DAMIEN TUDEHOPE: Let me break it down. If we have a process which says that, as part of procurement, each contractor should be certified in terms of workplace practices, would you see that as part of the Gateway process to contracting with the government?

MEL GATFIELD: No.

The Hon. DAMIEN TUDEHOPE: You wouldn't?

MEL GATFIELD: No.

The Hon. DAMIEN TUDEHOPE: What would you see?

MEL GATFIELD: Well, I think part of the Gateway process is the standards and the history of that contractor. The previous person that you had from the construction union—the issues in cleaning especially are quite similar. There's lots and lots of subcontractors and there's been lots and lots of phoenixing so what you would want the board to look at is the history of that company to see how compliant they have been with a number of different laws.

The Hon. DAMIEN TUDEHOPE: So from your perspective, of course, that would be ameliorated to a greater degree if the workforce of that particular contractor was heavily unionised.

AARON JONES: I'll just add a particular point that's relevant to cleaning and security: that a cleaning and security company doesn't have a standing workforce ready on reserve to fill a new contract that they win. What is often the case is—

The Hon. DAMIEN TUDEHOPE: They take over an existing contract.

AARON JONES: They take over an existing contract and, largely, the existing workforce are the workers that they recruit from. Mel mentioned the importance of job security on contract changeover, which is something that's extremely important—that those workers actually have job security when a new contractor takes over. It's just important to clarify that we're not looking at a notional workforce that is coming in, that is separately unionised to an existing workforce.

The Hon. DAMIEN TUDEHOPE: It would be an existing unionised workforce, potentially?

AARON JONES: Potentially, which then speaks to the standards that would apply, whichever contractor was awarded the work.

The Hon. DAMIEN TUDEHOPE: What are the contributions of an employee to your union by way of union fees?

MEL GATFIELD: It's around \$14 at the moment, depending on where you're working and how much you earn.

The Hon. DAMIEN TUDEHOPE: In terms of the industry, what proportion of the industry is unionised?

MEL GATFIELD: I think you would say about 20 or 30 per cent.

The Hon. DAMIEN TUDEHOPE: Do you agree with that, Mr Jones?

MEL GATFIELD: It changes between the subsectors of the industry—some more, some less.

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The Hon. DAMIEN TUDEHOPE: In terms of the employee workforce that is currently supplying services to agencies of government, whether by way of direct employment or contract employment, what percentage is unionised, would you say?

MEL GATFIELD: Again, it's higher. There will be some areas where it's sitting at 60 to 70 per cent, and there will be other areas where it's at 10 per cent. The whole-of-government cleaning contract really struggles. Over the years, it has struggled more and more with finding cleaners to clean schools and government properties in the city, in the northern suburbs and in the eastern suburbs and now even out to the west, as people can't afford to live in these places. They have to travel further and further away. What we've seen is more and more international students being employed by the contractors or by subcontractors to try to fill the gaps. That has created lots and lots of issues.

The Hon. DAMIEN TUDEHOPE: That would remain an issue even if they were directly employed.

MEL GATFIELD: It's an issue for Sydney, isn't it, that it's a very expensive city to live in and essential workers like cleaners need to be able to find somewhere to live.

The Hon. DAMIEN TUDEHOPE: The component of the workforce that is providing services to government agencies at the moment—the 10 per cent—would be, potentially, the part which is harder to service, so to speak.

MEL GATFIELD: And higher turnover of cleaners.

The Hon. DAMIEN TUDEHOPE: The 70 per cent, where would they be? They would be more in regional areas?

MEL GATFIELD: Yes, where people don't move around so much and have been cleaning—we've got members who have been cleaning their schools for over 30 years. They used to be government employees and they've now been working under the contracting system. You've got more stability in those areas.

The Hon. DAMIEN TUDEHOPE: Is it the case that the provision of the requirement for permanency generally brings with it an increased likelihood that they would join your union?

MEL GATFIELD: I don't know.

The Hon. DAMIEN TUDEHOPE: In terms of the process for contracting with the government, Ms Boyd has indicated that it intuitively suggests that, if you were contracting with the government, it would be cheaper than potentially contracting with a private contractor. I think you agreed with that, did you not?

MEL GATFIELD: Well, I think that—

The Hon. DAMIEN TUDEHOPE: If you don't have the administration costs of a company seeking to not only provide the services but also make a profit, you would intuitively suggest that, in those circumstances, it would be cheaper to be employed directly by the relevant agency.

MEL GATFIELD: I don't know whether it would be cheaper, but there's existing infrastructure that you need to manage a massive contract like the whole-of-government cleaning contract to make sure that cleaners are turning up and doing all of that. There's some infrastructure that government would need to have as well as the contractors have.

The Hon. DAMIEN TUDEHOPE: In place to actually administer a contract as well.

MEL GATFIELD: Yes.

The Hon. DAMIEN TUDEHOPE: That's the point I was going to—

Ms ABIGAIL BOYD: Without profit.

The Hon. DAMIEN TUDEHOPE: Sorry?

Ms ABIGAIL BOYD: With no profit, though.

The Hon. DAMIEN TUDEHOPE: So the administration and the increase in the bureaucracy for managing that workforce would be an added cost of including that workforce, would it not?

AARON JONES: I'll jump in on that point. Currently, with the whole-of-government cleaning contracts, you have it broken down into nine regions. Cumulatively, this year they're valued at \$518 million. You've got a significant amount of that money going to the profits, administration and management of those different contracts. You're re-creating systems within each of those contracts. So within each company that holds those contracts, you're re-creating—you have an HR system, you have a management system.

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The CHAIR: Thank you both very much for appearing today and for your submission. We do appreciate it. Again, Milena, thank you very much for making the time to be here with us—we appreciate it—and the work that you do on our behalf. The secretariat will contact you with questions on notice and supplementary questions and you will have 21 days in which to respond. Thank you again.

(The witnesses withdrew.)

(Luncheon adjournment)

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Mr LUIGI AMORESANO, National Research Officer, Automotive, Food, Metals, Engineering, Printing, and Kindred Industries Union (Australian Manufacturing Workers' Union), affirmed and examined

Mr IGOR NOSSAR, Former Adviser, International Transport Workers' Federation, and Independent Scholar, sworn and examined

The CHAIR: I welcome you both. Thank you for making the time to give evidence today, and for your submission. Would you like to begin by making a short statement?

LUIGI AMORESANO: Yes. Thank you to the Committee for the invitation and the opportunity to present our submission on government procurement practices in New South Wales. Today with our submission we aim to emphasise the critical importance of appropriately defining the concept of what is "value for money" in government procurement. Value for money, in our view, must never be misconstrued as simply achieving the lowest price in circumstances where the lowest price has been derived from breaking the law. Instead, we believe that value for money encompasses a holistic view that considers the entire life cycle of the procured goods and services, including the governmental cost incurred as a result of their economic, social and environmental impacts.

Our approach advocates for a procurement model that ensures fiscal responsibility while strictly adhering to legal standards, particularly concerning worker pay, conditions and safety. Our submission underscores a zero tolerance policy toward any practices that circumvent or avoid this minimum legal standard for those doing the government work. Government procurement should preferably, in our view, actively promote health and safety, not just for the workers within the supply chain but for the broader community as well. This includes fostering an environment where the promotion of health, social development and sustainability are prioritised along with cost effectiveness in government procurement.

What we propose with our submission is a robust system of supply chain regulatory oversight where suppliers are contractually obligated to disclose pertinent details to nominated third-party agencies, including Australian trade unions. This nominated agency must be chosen on the basis they are best positioned to monitor compliance with labour law. They should also be chosen on the additional basis that they are capable of ensuring that ethical standards are upheld throughout the supply chain. The model we propose not only safeguards workers but also, potentially, the broader community. This model also aims to foster a culture of compliance within the provision of goods and services for government procurement, as well as proactive cooperation.

In our submission, we have also highlighted successful precedents where trade unions have been effectively third-party monitors and various national agreements with major retailers, which are also provided or referred to in the submission. These models demonstrate the viability and benefit of our proposed model. In closing, we advocate for pilot trials of this procurement model in specific Australian industry sectors. These trials will allow us to refine the protocol and demonstrate the model's effectiveness before broader implementation. By doing so, we aim to set a new standard in government procurement that delivers value for money without risking reliance on law-breaking and illegality. Thank you for your attention.

The CHAIR: Mr Nossar, do you also have a statement?

IGOR NOSSAR: Yes, I do, Chair. Before making my opening statement, I'd first like to seek the Committee's indulgence to briefly deal with a housekeeping matter relating to the formatting of our submission. The final portion of our submission consists of a number of legal instruments and explanatory texts for those instruments which have been referred to in the main prior body of the submission. We request the Committee's approval for us to provide the Committee with a reformatted version of the existing submission in which those legal instruments and derivative explanatory material referred to in the existing main body of the submission has been separated into distinct, clearly identifiable appendices. We believe that such a reformatting of the submission would aid the Committee and other interested stakeholders in more easily accessing the contents of the submission. I will leave that for your consideration.

The CHAIR: Yes, thank you.

IGOR NOSSAR: I come to the Committee with my colleague firstly with a history of involvement in the oversight and regulation of contract networks more generally and supply chains in particular. This results from my experience in a variety of industries where supply chains are prevalent and has led to the insight, which is certainly not confined to me, that any attempt to secure compliance within supply chains must harness the commercial power and legal authority of the lead firms in those supply chains. As we are today dealing with government procurement, that is a reference to the commercial power and legal authority of the government procurement agencies.

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The model that Mr Amoresano is referring to is a tried and tested model in the context of a number of industries already, specifically in the area of textile, clothing and footwear. I believe you've already had evidence at the beginning of this morning's hearing in relation to the circumstances in that industry, but those circumstances which have led to rampant noncompliance with legal minimum standards for the workers working in that industry are replicated across a number of other industries as well.

This model effectively has three elements. Those elements are, first, they deliver the ability for the lead procurement agency, in this case government, and assist the government procurers to track the flow of their work through the various layers of supply chains through to the ultimate locations where the work is performed and the workers who are performing it. That tracking capability relates both to the locations where the work is performed but also to the intermediary parties and their commercial arrangements between themselves. The second element of the model is a capability to crosscheck the information that's derived from tracking the flow of work in order to ensure its accuracy, especially in situations of rampant black market operating. Thirdly, this model is built around an obligation for the tracking agencies to report back to government about what has been found in the supply chain in order that there can be a prompt, low-cost, effective remedy to the problems of illegality in relation to the minimum standards for workers rather than expensive bureaucratic and other legal processes.

The CHAIR: Thank you very much, Mr Nossar. If I could begin, you note in your submission, and I think Mr Amoresano referenced it in his introduction, a proposed government procurement model. Could you please detail this step by step and how it would work—make an explicit recommendation, I guess.

IGOR NOSSAR: Happy to. Firstly, this model is guided by a need for fiscal responsibility to ensure that there's no misuse of public funds, so efficiency is the order of the day. In addition to that—because of my own personal experience of advising businesses in relation to their supply chains—it's also guided by the need to minimise bureaucratic requirements as well. So, practically speaking, the first-tier suppliers to government of goods and services are required to enter into contractual arrangements, which are based, by the way, on longstanding precedents that have already been in practice in various Australian industries for the better part of a quarter of a century. Those first-tier suppliers are required to disclose to government to whom they further give out work, and they are required to enter into contractual arrangements with government whereby the work that is given out also places obligations on the parties that receive it to further report when they further give out work.

That's the basis of the tracking aspect of the model. This is done on a very low-cost basis of a simple notification at regular intervals, such as every six months, to report back a list, as it were, of parties to whom the work has been given, with information about the locations of those parties, their identity and contact details. Those contractual obligations entered into by the government procurement agency would also require the parties that receive that government work to make available, upon request by the government's nominated monitors, of the contractual arrangements for that giving out of work, including the pricing and the volume of goods or services that have been contracted. That's the simple basis of the tracking mechanism.

The CHAIR: You may have had a look at other submissions or, indeed, heard the evidence of witnesses this morning talking about the example of the ACT Secure Local Jobs framework. I wondered if you had any reflections on what you proposed in light of the suggestions regarding that style of framework?

IGOR NOSSAR: Thanks for this opportunity to address that. Mr Amoresano and I are very clear in our submission that what we're proposing is not in competition with other approaches such as the ACT one or various ones put forward by various organisations in relation to a variety of industries but are, rather, complementary in a certain key way. The function of this model is simply to ensure that the law is not being broken in regard to the work done as a result of government procurement contracts. Various aspects of, for example, certification that have been proposed—we're not in any way disagreeing with them.

Rather, we're proposing a model which, in a sense, underpins the various other models in terms of providing—and in one particular respect, I actually should nominate that most of the models that your Committee has been referred to are, in a sense, complaint-based or reactive in relation to breaches of law, for example. We're proposing a model for proactive inspection of the circumstances of contracting out of government work, which is not waiting for something to go wrong but, rather, is proactively checking that the right thing is being done in relation to compliance with minimum standards. In that sense, the model we're proposing is different but complementary to those other models.

The CHAIR: When you talk about something being complaint-based, one of the mechanisms that has been referred to has been this two-gate mechanism, which is a pre-certification, if you like, before then being eligible to go into a tender process. That still fits within your broad—

IGOR NOSSAR: I think all the submissions that we've seen from a variety of trade union organisations are complementary to the model that we're proposing, rather than being inconsistent or competitive with them. I'd

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draw attention to the fact that the model we're proposing is, within those contractual arrangements—which we're quite happy to give you specific information about—a two-tier structure which is, firstly, to ensure that the law is not being broken in the provision of goods or services of the Government, but then the second-tier aspect is, through joint agreement between government, the third-party monitors and the relevant industrial actors—specifically, employers and businesses—to try to develop best practice models.

An example in cleaning might be the Cleaning Accountability Framework; in relation to the textile, clothing and footwear industry, it would probably be Ethical Clothing Australia's code of practice—but a best practice model which would assist government in relation to their approach to the range of initial tenderers. Once again, what we're proposing is not inconsistent or competitive with the other suggestions such as the two-gate model—in a sense it fits in with it—but it proposes another way of approaching the preference for tenderers in that a best practice model developed for a particular industrial sector would be one of the bases for choice of tenderers.

The CHAIR: I think this probably goes to that part that you're talking about in terms of the post-award compliance and enforcement. You mention—and in your submission you mention—a role for both unions and other stakeholders. I'm anticipating what might be a criticism of that is that's a third-party involvement that you don't need, and perhaps there might be some questions as to the legitimacy of those third parties being involved in the process. How would you respond to that suggestion or criticism?

IGOR NOSSAR: Firstly, to clarify—because the use of the term "stakeholder" almost inevitably leads to the phrase "multi-stakeholder initiative", for example—what we're proposing is that the tracking mechanism is not a classic multi-stakeholder initiative; it's a regulatory adjunct to government procurers to ensure that they're informed of where their work is being done, by whom and under what conditions. It's proposed that the implementation of this model is done strictly on a step-by-step basis. I think there's a famous saying that the best way to eat an elephant is one spoonful at a time. We're not proposing a holus-bolus rolling out of this model across all of government procurement; we're proposing a step-by-step implementation, with prioritisation for sectors which are characterised, on the one hand, by high risks of exploitation to vulnerable workers and high costs of that exploitation—such as, for example, sexual harassment in highly feminised industries—and, on the other hand, sectors which also potentially pose risks to the broader general community as being the first pilot examples.

In relation to the question of legitimacy, I suppose the best way of addressing that is to say that I've been actively advising major employer groups for the better part of a quarter of a century. I think, if you ask around, you won't hear any criticisms about me as not acting in good faith. The goal of my activities has always been to come up with a model that is certainly viable from a business perspective and yet ensures that the law is not being broken or driven by one fundamental imperative. This is why it has, in a sense, been accepted so widely by business organisations and individual businesses: It recognises that there are a lot of businesses that want to do the right thing. They don't want to either break the law or benefit in their supply chain contracting practices from law-breaking further down the supply chain, but they are often themselves stumped about what they can do about it.

One particular example I remember was international corporation Reebok, where the organisation I was working with, which was then the Textile, Clothing and Footwear Union, presented information to Reebok about what was happening in their supply chain. They frankly didn't believe it, and they called in their supply chain manager to the relevant meeting. After we finished our presentation, he said, "I think you know our supply chain better than we do." That was then the basis for them talking to us about an arrangement—and this is the basis of the model—for government to leverage the existing capacity of good-faith third-party monitors to track the flow of work and crosscheck the information so that businesses that want to do the right thing can ensure that there isn't illegality in their supply chains, to the best extent possible. I don't see why the Australian Retailers Association, the transnational Nike corporation, Reebok or a variety of other companies would have adopted this model if they'd been concerned about that legitimacy aspect. I can't think of a better way of addressing that issue.

The CHAIR: Mr Nossar, you provided a number of appendices to your submission, which you referenced in your opening statement, and peer-reviewed articles and industrial awards. It was quite a weight of documents. Could you please, very briefly, point out to us why they were attached?

IGOR NOSSAR: I'm happy to and, by the way, one of the reasons we're asking for your indulgence about reformatting is because they're all jumbled at the end. If we can separate them out for you, they'll probably be easier for you to access. The reason they're included is they are specific examples of this kind of model being adopted across a range of industries by profitable, high-profile companies or associations of profitable, high-profile companies, such as the then Australian Retailers Association. That's the first reason they're included. They are included as examples of the adoption by those businesses or business associations of this model incorporating a tracking mechanism whereby those businesses and associations express to us that they didn't

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consider themselves a commercial police force and didn't want to have to do that work. They were also, of course, mindful that if there was any alternative, it would probably have to be commercial consultancies, which are extremely expensive for them.

So, in a sense, what was being proposed to them was a low-cost—in fact, it was no-cost for them—option of finding out what was happening in their supply chain, because the third element of the model that I refer to, after tracking down the flow of work and then crosschecking the information, was the obligation on the third party monitor—in this case, a trade union—to report back to the lead firm about what had been found. The goal of that was so that simple communications between the lead firm and parties further down the supply chain provided what I refer to in scholarship as a commercial remedy mechanism, whereby there was a prompt rectification of the issue that didn't require extensive prosecution, preparations and court cases, which would simply lead to fines that, at best, would be considered a minor cost of business and, at worst, would be an excuse for companies to pull the plug and then phoenix as new operators.

Ms ABIGAIL BOYD: Thank you very much for attending and for your really interesting submission. I want to pick up on one of the questions the Chair was asking in relation to the role of unions. It's beneficial, by the sounds of it, to have unions helping with that compliance piece. Where do you see the value of unions? This is not from me or from my colleagues here, but we do hear a lot from some others about how having unions involved will increase costs for business and that it's a negative in a system. Can you tell us about the benefits of unions and having them help with compliance?

IGOR NOSSAR: I can. Also, at this point, I'd like to define that, in relation to that tracking mechanism, it is based on an existing model that's still a valid legislative instrument in this State. That gives me the opportunity to say that there's an ongoing inquiry being conducted by the Modern Slavery Committee into that ongoing legislative instrument, which is the New South Wales Ethical Clothing Extended Responsibilities Scheme 2005. That has been operating for the better part of two decades. In that model, there are not only powers for the union but also for the State inspectorate. What we're proposing is that that's a very good precedent for the model that we're suggesting as well too. So we're not speaking about union monopolisation; we're talking about both the relevant trade union and the relevant State inspectorate—or Federal, in the case of the FWO—also being empowered and then having the discretion as to whether they're going to exercise those powers.

In the situation where the experienced trade union organisations are also in a position to help train the inspectorates how to utilise the information that's derived from this tracking mechanism as well—that's just a footnote. But in relation to the benefits of trade unions, I think there's a huge amount of evidence on the record that in relation to industries characterised by what I referred to before—that is, high risk of exploitation of vulnerable workers, who are then faced with the high personal cost of that exploitation, often in circumstances which lead to hazards and risks for the general public—that in those circumstances, trade unions have shown a greater ability to penetrate the black market situations and know what's actually going on. There's an intelligence surveillance benefit to trade unions in precisely those priority sectors. I stress that that's information that's already available. The model that we're proposing is to build on that capacity to find out the specifics of what's actually happening in particular supply chains.

Ms ABIGAIL BOYD: On page 8 of I think it's your paper that's attached to the submission, there's a discussion about—you use the example of long-haul freight transportation. It's not quite supply chain, but it seems to be touching on the concept of suppliers obviously using the transport system or exerting control over aspects of the transport system to work out what their preferences are. I don't want to reword what you've written, but the way I took it was you could have a supplier who could choose to have freight moved by rail because they thought that that was better for the environment or whatever, as opposed to doing it by road. So you've got the power of suppliers to shape social outcomes in terms of not just subcontractors but also the choices it makes. Can you talk more about that, particularly in relation to the transport network? I find that really interesting.

IGOR NOSSAR: One thing I should stress from the beginning is that we're proposing a model that creates a tracking capability, initially for a specific reason—that is, to determine what's happening to vulnerable workers in high-risk supply chains. That tracking mechanism is not necessarily confined to that one role. Once it's achieved, it can be utilised in a whole variety of ways in relation to any contract network or supply chain. Whether you're concerned about the minimum legal standards of workers or, in animal welfare situations, what happens to livestock in transport supply chains, this same mechanism enables State Government procurers, or lead firms, to know what's going on throughout their supply chains. In a sense, by doing so, it creates a need-to-know obligation on those leading firm parties, whether they're government in public sector procurement or effective business controllers in private.

We think there's value in this approach much more broadly than just in relation to the protection of vulnerable workers in supply chains. As Mr Amoresano referred to in his opening statement, we emphasise a

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concept of value for money which is not simply confined to the contract price for procurement—although that's crucially important both for government and for the businesses concerned—but a holistic assessment of government costs because illegality in supply chains can lead to, for example, injury of vulnerable workers who, often in black market situations, will not be covered by workers compensation. The cost of that is going to end up on government, whether through default provisions in workers comp schemes or even under Medicare. That's a direct governmental cost of that illegality, which is in addition to the costs that are suffered and the damage suffered by the workers concerned. Mr Amoresano's statement referred to the costs not only relating to social costs—costs of social impacts—but also environmental impacts.

This is a longwinded way of getting around to the question you were asking about, which is that you can not only track the impacts on people; you can track the impacts more broadly on environmental circumstances or, as I said, animal welfare, among other things. You can locate where goods end up, especially if those goods have damaging consequences themselves through pollution or functional problems. So there's a consumer benefit that's available from this same mechanism as well, stressing always that we're not looking for a gold-plated, more costly model. We're talking about a low-cost or no-cost model, leveraging existing capacities, with strictly defined protocols jointly agreed by all parties on a step-by-step basis.

But if you look down the track at a successful rollout, step by step, through initial pilots—which we propose for domestic industry but which, as our submission goes into, are fully capable of being extended internationally, which is particularly important given international economic competition aspects as well—there is a capability through this to give government the ability to deliver more bang for buck across a range of separate issues. If I could just use one example—I know I've been very wordy and taken up a lot of time.

Ms ABIGAIL BOYD: No, it's great. Thank you.

IGOR NOSSAR: If you're talking about healthcare supply chains, the people who are affected by that are not only potentially vulnerable workers on insecure arrangements, but it's also a question of patient care, whether in aged care or in public or private hospitals. Furthermore, there are very intriguing statistics about the impact of the current set-up in health care in terms of climate change. There's specifically an organisation that we refer to on the very first page of our submission which is based in the United States, Health Care Without Harm, which has done excellent research about the way modern healthcare practices can be reconfigured, often at lower cost than currently, to achieve environmental benefits in terms of minimising pollution and also minimising climate change consequences through the release of greenhouse gases. If you've got a government that's trying to achieve a variety of different outcomes, such as protection of working people but also climate change transition—and also protection of patient care—this tracking mechanism, we believe, gives a way of potentially getting all those benefits through one mechanism.

Ms ABIGAIL BOYD: If we think about green exports and being able to export products to the rest of the world, importers want to see that we've got proper green credentials behind them—even things like green steel and stuff. I guess having this in place, where we're able to track our own supply chains very easily, makes it easier to export products to the rest of the world.

IGOR NOSSAR: I think definitely. I look at the case of the European Union requirements: firstly, the separate jurisdictions in the European Union in relation to modern slavery—for example, the French statutes, which impose very severe penalties for wrongdoing being found in supply chains—but also the forthcoming European Union directives relating to costs being imposed on goods imported into the European Union, precisely along the lines of the criteria that you've been discussing now. By knowing what's happening in the supply chain, a business in Australia or a government that's providing exports or assisting exports will be able to fine-line the system of production in order to minimise the chances of falling afoul of those kinds of directives.

The Hon. DAMIEN TUDEHOPE: Mr Amoresano, have you read the current procurement policy framework?

LUIGI AMORESANO: I had a look at it.

The Hon. DAMIEN TUDEHOPE: How does it set out the objectives in terms of procurement policy? Do you recall?

LUIGI AMORESANO: Not necessarily.

The Hon. DAMIEN TUDEHOPE: Procurement policy under the current Government has a number of features, including various items like value for money, fair and open competition, easy to do business, innovation, and economic development, social outcomes and sustainability. Most of those are policy positions you would agree with?

LUIGI AMORESANO: Yes.

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The Hon. DAMIEN TUDEHOPE: If you had a look at this policy, what about this policy would you be changing?

LUIGI AMORESANO: How that policy is enforced now.

The Hon. DAMIEN TUDEHOPE: So enforcement is the only issue you would change with this policy position at the moment?

LUIGI AMORESANO: We have also proposed what we believe is value for money.

The Hon. DAMIEN TUDEHOPE: How would you change the requirements relating to value for money? There is an explanatory note relating to value for money. What positions would you adopt to change what currently exists in relation to value for money?

LUIGI AMORESANO: I might have to have a better look exactly, but I can say that we believe—

The Hon. DAMIEN TUDEHOPE: Would you do that on notice for me?

LUIGI AMORESANO: Yes.

The Hon. DAMIEN TUDEHOPE: Would you have a look at the current procurement policy and identify the issues? It talks about supplier conduct and it talks about probity and fairness and fair and open competition. In terms of the policy framework which currently exists, what do you say should be changed or altered to encompass the strategy which you are seeking to adopt?

LUIGI AMORESANO: It might.

The Hon. DAMIEN TUDEHOPE: It might; it might not either. This might be a document which you fundamentally embrace, although I take into account some of the observations by Mr Nossar in respect of following the compliance with a framework and then it may stop, potentially, to make sure, "Well, are you complying with the terms of the agreements which you enter into with the tendering agencies?" But this is a document which is the current strategy adopted by the Government. I would have thought that would have been the starting point.

The CHAIR: If I could intervene, I think Mr Amoresano said that he would be prepared to take that on notice, Mr Tudehope. Please move on to the next question.

The Hon. DAMIEN TUDEHOPE: This is the starting point, is it not, for a submission relating to procurement practice?

LUIGI AMORESANO: In our view, the starting point is how you enforce it. Words are words and stay on the paper like that.

The Hon. DAMIEN TUDEHOPE: Your model for enforcement—and I think Mr Nossar tends to agree with this—is that the enforcement provisions would by and large be conducted by the trade union movement.

IGOR NOSSAR: Can I clarify? I think I said by a combination of third-party monitors, including the trade unions and also specifying State inspectorates and also the Fair Work Ombudsman as well.

The Hon. DAMIEN TUDEHOPE: And that would be a fee-free process, would it, for the purposes of a tendering process?

IGOR NOSSAR: May I respond?

The Hon. DAMIEN TUDEHOPE: Whoever.

IGOR NOSSAR: Thank you. This is very specific and practical. The examples that I've cited in the past were all on a fee-free basis, by the way. Because of the time limitation, would you like me to explain?

The Hon. DAMIEN TUDEHOPE: Please do.

IGOR NOSSAR: The organisations concerned who pioneered the model were very keen to work against black market operators whose business model was breaking the law, which was destroying the commercial viability of legally compliant companies, and thus saw it as in the interests of their organisation to do this.

The Hon. DAMIEN TUDEHOPE: Could you achieve potentially the same result by beefing up the office of the Anti-slavery Commissioner?

IGOR NOSSAR: To be very practical, I don't think at this point the Anti-slavery Commissioner's office has the expertise.

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The Hon. DAMIEN TUDEHOPE: I meant if you beefed up the expertise of the Anti-slavery Commissioner, is that—

IGOR NOSSAR: If I could take you back to the earlier testimony, it was that the reason why this was being done by unions is that they have an accumulated intelligence surveillance expertise about what's happening in those black market sectors. As far as I know, that's not a capability that the Office of the Anti-slavery Commissioner has currently. In order to get them to that point, are you going to require the same decades of experience and training as those other organisations? I just don't know the answer to that.

The Hon. DAMIEN TUDEHOPE: With due respect to the trade union movement, I am sure in a majority of operations of the trade union movement there are times when, of course, the trade union movement hasn't acted with sufficient probity.

IGOR NOSSAR: Are you asking about our model or are you asking about history in general?

The Hon. DAMIEN TUDEHOPE: Generally. You've adopted the trade union movement as an organisation which could monitor compliance.

IGOR NOSSAR: I think I have to be clear about what I said. We're talking about specific trade union organisations chosen on a specific basis. I don't think our model has said that all trade union organisations are holus-bolus going to become nominated third-party monitors.

The Hon. DAMIEN TUDEHOPE: From your answers to questions from the Chair, you haven't necessarily examined the various secure job codes which have been adopted by the ACT and Victoria and are under consideration in Queensland. That's correct, isn't it? You haven't?

IGOR NOSSAR: To state my position and my history, I was actually involved in the initial negotiations that led to that ACT code, but I'm not familiar, at the moment, with its current provisions. I haven't kept up to date with that.

The Hon. DAMIEN TUDEHOPE: You're not advocating that the Committee make the recommendation that we should adopt the ACT model?

IGOR NOSSAR: Once again, to be very specific, I said that what we're proposing is not competitive to those models; it's complementary in the sense of focusing on that compliance with legal minimum standards. That's what I actually said. To be very specific, we haven't said you should adopt the ACT model. We have said that we're proposing this very specific model.

The Hon. DAMIEN TUDEHOPE: Yes. One of the priorities you have adopted in relation to that is to minimise cost.

IGOR NOSSAR: In terms of the structure of this model?

The Hon. DAMIEN TUDEHOPE: Yes.

IGOR NOSSAR: Absolutely, yes.

The Hon. DAMIEN TUDEHOPE: If the ACT model was a model which increased costs for both the establishment of a bureaucracy and for compliance, that would not necessarily be a model you would support?

IGOR NOSSAR: Once again, I have to be very specific so I'm not being ambiguous or misconstrued. When we say "minimise cost", we say, "Minimising costs as long as the minimisation is not based on law-breaking". The model we've proposed is precisely focused on ensuring that there isn't that law-breaking. To amplify, in relation to the ACT model that you're talking about, before I could answer your question, I'd have to see whether any cost increases associated with the ACT model are, in fact, designed to minimise the law-breaking and, if you didn't incur those costs, you'd then allow that law-breaking to happen. I'd need that information before I could answer your question.

The Hon. DAMIEN TUDEHOPE: As that grows, it's very complicated. Effectively, if you adopt the ACT model and you wanted to minimise costs, you would be doing so in a circumstance where you would be saying to those people, "In terms of complying or being a successful tenderer, it would be a minimal cost to you to be a successful tenderer if you are an organisation which has got no history with potentially breaking the law or other issues which are identifiable in relation to you."

IGOR NOSSAR: I've got a problem in answering your question on the following basis: I've been precisely involved in industries where companies that have a good track record of compliance—and thus, according to your question, would be one of those companies that you just referred to—have been pushed by commercial imperatives into relying on law-breaking within their supply chain. I don't think it's possible to say,

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"We've got a company here that's got this track record; we can assume that track record goes into the future." Because that company, which may even be an ethical company, might be subject to commercial pressures from unethical competitors—in fact, even black market operators—which forces what was formerly an ethical company with a good reputation into increasingly relying on illegality in their supply chain.

The Hon. DAMIEN TUDEHOPE: How does your model minimise corruption risks?

IGOR NOSSAR: Which particular corruption risks?

The Hon. DAMIEN TUDEHOPE: Corruption risks both by suppliers and those people who are seeking to benefit from contracts.

IGOR NOSSAR: It's funny you ask me that because one of the first major, high-profile Australian businesses that I was involved with ended up, through their involvement with us, discovering that one of their procurement officers was, in fact, on the side engaged in corrupt practices with subcontracted suppliers. They found out because our tracking and crosschecking mechanism revealed the truth about that officer's behaviour, which wasn't known to that high-profile business.

The Hon. ANTHONY D'ADAM: Good question, Damien.

The Hon. DAMIEN TUDEHOPE: Well, to that—

IGOR NOSSAR: In fact, there was an Australian Federal Police aftermath to that. Sorry, please continue.

The Hon. DAMIEN TUDEHOPE: In fact, it's an important component of this whole process, however, and part of the existing procurement policy framework is to minimise corruption risks. That's why I asked you to—

IGOR NOSSAR: To give you on notice, yes.

The Hon. DAMIEN TUDEHOPE: —on notice look at that policy. Where do I find in your framework a process for specifically identifying issues which create corruption risk?

IGOR NOSSAR: In my other answers I was referring to the fact that this particular model has much wider implication than simply in relation to the conditions of vulnerable workers. It's a tracking and crosschecking and reporting-back mechanism, which means that various forms of illegality, including corruption, which inherently rely on invisibility, concealment and an absence of transparency, are overcome by that tracking, crosschecking and reporting back.

The CHAIR: Thank you both very much for appearing today and for your submission. The Committee will consider your request.

IGOR NOSSAR: Thank you to the Committee for considering our submission.

The CHAIR: If you took anything on notice or if there are supplementary questions, the secretariat will be in contact. You have 21 days in which to respond.

(The witnesses withdrew.)

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Dr MARTIJN BOERSMA, Associate Professor, Work and Organisational Studies, University of Sydney Business School, affirmed and examined

Dr CHRIS WRIGHT, Associate Professor, Work and Organisational Studies, University of Sydney Business School, affirmed and examined

The CHAIR: Welcome and thank you for making the time to give evidence. As we have been doing today, I disclose that I have worked with both Professor Boersma and Professor Wright in my time as an academic. Would you like to start by making a short statement?

MARTIJN BOERSMA: I'll make one on both of our behalf. Thank you for the opportunity to present evidence today on behalf of myself and my colleague Chris. Government procurement represents a substantial portion of the economy and provides a unique opportunity to drive significant social and economic benefits. The power of public procurement can, and should be, harnessed to promote decent work, local employment and sustainable development. In line with the UN Guiding Principles on Business and Human Rights and the Sustainable Development Goals, it's crucial for government procurement practices to integrate social considerations. In New South Wales, we have made commendable strides towards transparency and accountability, which is exemplified by the New South Wales Modern Slavery Act; however, there is still more room to leverage public expenditure more effectively to foster local job creation and regional economic growth.

Our submission makes several key recommendations. We argue for establishing centralised procurement oversight. We argue in favour of lowering the threshold for contract disclosure, prioritising local suppliers, integrating social procurement clauses and potential supplier debarment as well. I won't go into too much detail because you've probably read the submission. Our recommendations are designed to ensure that procurement practices not only deliver value for money but also promote social and economic development. By prioritising local content, enhancing transparency and embedding social considerations into procurement processes, we can create a more equitable and sustainable future for New South Wales.

The CHAIR: I will begin with your first recommendation. There has been a recurring theme in our hearings and evidence about the various benefits or otherwise of centralised or decentralised systems. You're talking about centralised procurement oversight. Some would probably argue that this already exists in the framework. There is a procurement board. I think Mr Tudehope has with him the policy framework. There is this centralised system already. Why do you think that hasn't been adequate? What might need to change?

MARTIJN BOERSMA: I did read the report from June of this year. There are a lot of dimensions there which highlight the current shortcomings of the NSW Procurement Board, which can be summarised in terms of lack of effective oversight, transparency issues, data collection issues and ineffective self-attestation, which is another issue. Broadly, it's about striking a balance between the devolution of procurement and centralisation. Ultimately, a part of that has to do with the lack of expertise of procurement officers as well, which is something that I got from the report, which is a suggestion made in your report as well. There's the need for improved feedback mechanisms for failed tender processes. There's a range of items there where—without wanting to criticise too much the work that they've been doing—there is euphemistically "room for improvement", if you will. Those 10 items that are mentioned in the report highlight that very well.

The CHAIR: A related issue that we have been canvassing a bit—and I think the last witness mentioned that a policy that is just words on paper doesn't really mean much in reality. Do you think enforcement is an issue? Do you have any thoughts on enforcement? This might be for both of you. I know Professor Wright has also worked in this area.

MARTIJN BOERSMA: Definitely. I mentioned, for example, the New South Wales Modern Slavery Act before, which is very commendable but, at the same time, suffers enforcement issues. There obviously are requirements for government agencies or publicly owned companies to take reasonable steps to make sure there is no modern slavery in a particular supply chain, but the stick is not really there, or the follow-up is not really there. As Mr Amoresano also mentioned, there is a need to operationalise these policies and procedures in a way that actions them more clearly and results in actual outcomes, rather than just having a procurement policy there. I think that a centralised approach can enable that.

The CHAIR: Professor Wright, did you have anything?

CHRIS WRIGHT: One of the things that we state in our submission is regarding social procurement clauses and the ways that could be strengthened, or that the Committee could consider strengthening that, including around workplace representation. I mention this regarding enforcement because the challenges around enforcement have grown considerably over the past decade or so in Australia, including in the areas that are often contracted out by government: cleaning, security—these types of business services, for example. I would just note

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that effective enforcement is increasingly recognised within the academic research literature as being a multi-pronged approach—that government has a role to play but so do the trade unions and so do, indeed, employers and employer associations. That's something that I think the Committee could consider—the inclusion of representation mechanisms within social procurement to ensure that workers are effectively represented and that concerns that they might have regarding whether their labour rights are being enforced or whether the terms of contracts regarding labour issues are being enforced are then raised through appropriate channels. That is one way—inclusion of clauses relating to worker representation—that the enforcement issue could be addressed more effectively.

The Hon. ANTHONY D'ADAM: I just wanted to jump in because that was the question I was going to ask you about. The position of the State historically, certainly for the last couple of decades, has been one of ambivalence about worker voice, and you're advocating for a much more proactive advocacy of that as a public policy objective. I was involved, from the trade union side, in the process of privatisation of the corrective services—the privatisation of jails. It was certainly an objective of the employer at the time to use the privatisation or the outsourcing of that service as a way of weakening worker representation, weakening the influence of the union in the workplace and undermining the conditions of employment. I want to ask you to perhaps elaborate on why you think it is actually beneficial to have a shift from ambivalent to overt support for unionisation and worker voice.

CHRIS WRIGHT: Sure. Thanks, Mr D'Adam, for the question. Worker representation is important for a range of different reasons: to enable people to have a say in the decisions that affect them at work as a fundamental principle of ensuring that organisations function in a democratic way but also because the research evidence suggests that these have social benefits and also economic benefits as well. There's been extensive research done within Australia, in Europe and in North America. Some major reports by the OECD produced within the last few years have drawn attention to the positive impact that worker representation mechanisms can have upon employee satisfaction and upon employee retention. People who are represented are more likely to stay in their jobs longer. This can have positive impacts upon productivity, both directly and indirectly. More satisfied workers are more productive workers. Workers who are more satisfied stay in their organisations longer, and that reduces hiring and training costs for organisations as well.

For those reasons, among others, these are clauses that should be considered, and they're relevant to procurement because in North America some of the recent changes to procurement policy introduced by the Biden administration that have had consequences for local and State government procurement have also included worker representation mechanisms too. There was a report produced two days ago by David Peetz, a professor at Griffith University, for the Australia Institute's Centre for Future Work which drew attention to the benefits that I've outlined in terms of worker representation mechanisms, including highlighting the benefits it can have for workplace health and safety. The evidence supporting these mechanisms is overwhelmingly supportive, and I think that the Committee should take this into account in considering how it can use the powers of the New South Wales Government to ensure that procurement produces positive social and economic outcomes.

MARTIJN BOERSMA: Can I add to that really quickly? I think another thing that's important to note there is there has been a lot to do around supply chains: How do we make sure that there's no labour standards noncompliance in supply chains? From the middle of the 1990s onwards, there has been an approach of code of conduct and auditing, which is usually company-led. Recent academic developments and papers have emphasised very strongly that worker representation mechanisms, admittedly both union and non-union, but incorporating worker voice in those code of conduct and auditing processes makes all the difference with regard to enforcement—coming back to that previous question—and making sure that you're not just creating some sort of paper trail, but that there's actual substance where work conditions have been verified by the people on the ground. Whether that's union or non-union, I think that worker voice component is absolutely essential in that regard.

The CHAIR: Professor Boersma, I know that you work in the modern slavery space and a question posed to the previous witness was, in terms of compliance, couldn't we just beef up the office of the Anti-slavery Commissioner? Isn't it the case—forgive me, I'm going to defer to you on this—that the legislation in New South Wales at the moment doesn't allow for a compliance mechanism with regard to that function? So it wouldn't be possible, without changing the legislation, to give the commissioner—

MARTIJN BOERSMA: I'm not entirely sure of that, but I do definitely want to second the opinion expressed by Mr Nossar in saying that the capabilities in this area have traditionally aligned outside the office. I recognise that the office of Commissioner Cockayne has only fairly recently been established. I think that he is reaching out to many different organisations to form collaborative approaches to the issue, but I don't think that, naturally, that would sit within his office—or a beefing up, I think is the term I heard before. I think that there are other institutions—whether that is NSW Industrial Relations, for example, or whether that is incorporation, potentially, with the union movement and other agencies that have been more active in this space over a long

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period of time. I think the compliance question would sit there more naturally than with the office of the Anti-slavery Commissioner. That said, I think there's definitely a role to play for his office, but I don't think that the central onus of compliance should sit there.

The CHAIR: Yes. In fact, as far as I know, there is a compliance and inspectorate function within government already. Professor Wright, you've done work looking at—I think you call it "ecosystem"—skills, industrial relations and location and how they all need to fit together in order for us to be able to fill skills gaps and anticipate skills needs. I wonder if you could speak to that, particularly with regard to the role that government procurement might play in creating the type of ecosystem that does actually allow us to train the workers that we need for the future.

CHRIS WRIGHT: Yes, "skills ecosystem" is the term that I've done work on—and building upon the work of others. It's a complex policy objective because, as you alluded to, there are many different policies and many different levels of government that feed into this, with the objective being how do we ensure that we have mechanisms in place that allow skills and workforce needs to be addressed efficiently. That's a complex equation because you've got training—vocational and higher education—and industrial relations regulations that affect the quality of employment and therefore the attractiveness and therefore the supply of workers going into jobs. Immigration policies as well are increasingly important—always an important part of the ecosystem around skills, but increasingly important in recent years. Regarding what role procurement could play in this, in several jurisdictions procurement plays a very important role.

One notable example is from Switzerland, which is recognised as having a very effective system for vocational education and training. In Switzerland the cantons, which I guess are the equivalent of State governments, have training and apprenticeship targets as part of their social procurement policies. It's one of several criteria that governments can take account of when they're awarding contracts. There was a study done in 2014 by Mirjam Strupler Leiser and Stefan Wolter looking at procurement policy mechanisms that gave preferential treatment to firms that trained apprentices. The authors found that these policies have a tangible increase in the number of firms who train apprentices and create incentives for firms to offer training places. They did this without compromising training quality.

In the Swiss context the increase is relatively small, in terms of the quantity of training being provided. But this needs to be seen in the context of a system that is already very effective, that is much better than Australia's systems—including, I dare say, the New South Wales system—at encouraging people to complete apprenticeships. If a similar mechanism was developed in the Australian or New South Wales context, a well-designed policy, I would suggest, would have the potential to deliver more significant impacts in terms of the quality and the quantity of training increase that would be provided. That's perhaps the most notable example of how procurement can be used to increase training quantity while maintaining training quality.

The CHAIR: Do you think you might provide, on notice, that paper to the Committee?

CHRIS WRIGHT: Sure, I'm happy to.

Ms ABIGAIL BOYD: Thank you for being here and for your submission. It is fantastic. The Chair has done her usual thing of stealing some of my questions, but I will persist. Similar to the previous set of witnesses, we sometimes get this negativity around the involvement of unions in procurement, and in the system as a whole, as being somehow bad for business and for the economy. Can you talk us through the benefits of unions? Are unions themselves, or the encouragement of greater unionisation itself, a social good? What does the evidence show us?

MARTIJN BOERSMA: That's a very good question. I teach industrial relations at university; I have done at UTS and elsewhere. One of the things I always tell my students is that when you read about unions in the newspapers the story is always very adversarial. It's seen to be in continuous conflict with employers. But the fact of the matter—and it's much less sexy as opposed to the reports in the newspapers—is that there have been lots of collaborative approaches there as well. Indeed, the multi-stakeholder model to approach labour standards noncompliance, particularly in industries where we've seen a long history of noncompliance—for example, the cleaning industry, which is the industry that I myself am very familiar with. There, the union has come together with the peak body in the cleaning industry, the major cleaning companies and the Fair Work Ombudsman to try and resolve this issue, which individually they've not been able to, which is basically undercutting and, ultimately, labour standards noncompliance in various forms.

The realisation on the part of unions, as well as the realisation on the part of business, was that the problem in the industry was systemic and neither actor could fix it by themselves. So they came together to try and resolve it. They have been doing that now for 12 years. Indeed, it's a very vexed issue, so they're making incremental progress towards resolving the issue. But I think that's one example that deviates from, I suppose, the

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common narrative of unions always being adversarial towards having a very constructive working relationship together with business. That's something that's not emphasised enough in the media landscape, hence commonly a view is adopted that unions are just there to agitate. Obviously that's part of what they do sometimes, but the collaboration model has been proven to be very valuable.

Just to quickly add to that as well, again in terms of worker representation and worker voice, they're obviously, I suppose, the originals in doing so. I think the recognition there as well is that, in having work representation through union voice, we can address these issues, I suppose, in a much more direct way—labour standards noncompliance and other social issues. So, yes, I think that the typical characterisation of unions is misrepresented there.

Ms ABIGAIL BOYD: If unions are helping with that sort of compliance piece around workplace laws, I would imagine there is evidence that noncompliance is damaging to businesses and to the economy as a whole. Does it then track that having unions in there to help enforce workplace compliance can be beneficial for industries?

MARTIJN BOERSMA: Absolutely, and one of the reasons why—again, coming back to the cleaning industry—the involvement of the union was very much welcomed is because a lot of the cleaning contractors felt that they were competing in an unfair playing field because a lot of the other dodgy cleaning contractors, to call it that, were dragging the market down with them. There was a desire on the part of the companies that wanted to do the good thing, or at least be legally compliant, to say, "What can we do to stop the dodgy contractors from undercutting the rest of us because we're obviously missing out on work here?" The involvement of the unions was very helpful there.

I'm not going to bore you with the specifics of the cleaning industry, but effectively, what they did—again that multi-stakeholder framework is for the bottom of the market in terms of tendering cost. It indicated that if you would tender below a particular point in time, then it was more likely that you were going to be noncompliant, so either you were overworking people or you were not paying them their entitlements. Again, that could not have been achieved without that multi-stakeholder approach including the trade union.

CHRIS WRIGHT: I might just add, if I may, there's no system of effective labour standards enforcement anywhere in the world which doesn't involve unions playing a prominent part. The countries where enforcement is recognised as being very effective are the Nordic countries, for example. Unions are very much front and centre of the system, along with employer associations, in jointly working towards enforcement and to creating a level playing field. The countries where non-enforcement and wage theft and noncompliance with labour standards is a significant problem of public policy are the United States, Canada, the United Kingdom and, increasingly, Australia. The fragmentation and the decreased effectiveness of these systems has coincided with union decline.

To restate earlier, it's not just unions who are saying this. It's academic researchers and it's the OECD which has changed its view on this. In 1994 it produced its job study which concluded that unions and collective regulation were economically detrimental. In 2006 it revised this to say that certain forms of collective regulation can be positive. In 2019 it completely changed its views from 1994 finding that unions are beneficial socially and economically, including for productivity. There have been other studies by economists in the United Kingdom and elsewhere finding that unions have a positive impact upon innovation. There's a strong business case. If we look at unions might be bad for certain businesses, but not for the businesses that high-income countries like Australia need to build their economies around, which is high productivity, high innovation business models. The evidence is overwhelming and conclusive.

Ms ABIGAIL BOYD: It was a bit of a leading question because I've done my own research on that as well and I've read a lot of those papers around the drive of innovation and how vital it is to have that union pressure, particularly in periods of transition of economies, to really build that innovation.

CHRIS WRIGHT: Yes. There's a paper by an academic, Wolfgang Streeck, who uses the term "beneficial constraints" that unions can encourage businesses to do things they might not do of their own accord but that ultimately lead to higher productivity outcomes. I think that the characterisation and negative association with unions is very much a historic one from when the labour market, the industrial relations system and the economy was very different to what it is today, when representation was much higher, when unions' behaviour was different to what it is generally characterised today. I think it's not a relevant reference point, looking at periods like the 1970s. So much has changed in the labour market that it's essentially an outdated characterisation, not one that reflects current reality.

CORRECTED

Ms ABIGAIL BOYD: The bit about the worker voice—I know we've touched on this already a bit—and the impact of greater worker voice on worker wellbeing and how that impacts on productivity, can you talk around that as well?

CHRIS WRIGHT: Without wanting to completely repeat my answer to Mr D'Adam, basically I think the link is more satisfied employees are typically more productive, but also they have higher retention, which lowers training costs, which lowers staffing costs and which can positively impact productivity. I think that's the causal chain in how the research establishes the positive impacts.

Ms ABIGAIL BOYD: And presumably greater wellbeing in terms of then reducing the impact on social services, on health systems and everything else as part of that?

CHRIS WRIGHT: Indeed, yes. I mean, there have been studies highlighting the positive impacts that union representation can have on employee health, including wellbeing, which will have positive impacts along the lines you suggest.

Ms ABIGAIL BOYD: This was just a chain of questions leading you to the conclusion that unions are a social good. Thank you for indulging me.

The Hon. DAMIEN TUDEHOPE: The Aboriginal procurement policy adopted by the New South Wales Government is a policy position, of course, which does demonstrate social benefits from the use of procurement, does it not?

MARTIJN BOERSMA: Yes.

The Hon. DAMIEN TUDEHOPE: And you'd agree that, to the extent that you were characterising a circumstance where procurement was used for the purposes of benefitting those employers that provided training or apprenticeships, Aboriginal procurement policy would be another example of how that currently works with the New South Wales Government?

MARTIJN BOERSMA: Yes, we've included that in our submission as one example of a procurement-connected policy that can result in positive social impact.

The Hon. DAMIEN TUDEHOPE: Similarly, the small and regional business policies are again examples of policies which governments can adopt for the purposes of ensuring the delivery of social outcomes?

MARTIJN BOERSMA: Sure. There's a few examples in there, both from New South Wales as well as elsewhere, where we outlined how that could be achieved.

The Hon. DAMIEN TUDEHOPE: Is there a point, though, where you actually crowd out the space?

MARTIJN BOERSMA: Yes—where to stop? No, that's a fair question. I think that we deal with these issues as they come up. I remember back in 2017 having discussions around modern slavery with corporate governance experts. They were looking at me funnily, saying, "Surely that's not an issue that we need to consider." Obviously, here we are now, and the NSW Modern Slavery Commissioner is about to appear. So I think we shouldn't rule out any particular approach there or any particular social issue, in terms of how we can address that. Again, modern slavery was one. If we had talked about that in the social procurement context, I don't know, seven years ago, everyone would have looked at it funnily, but now we are. I don't think it's a question about crowding out the space. I think it's, I suppose, responding to issues as they arise.

The Hon. DAMIEN TUDEHOPE: But in relation to current New South Wales procurement policy, it requires agencies to take into account modern slavery as part of the supply chain, does it not?

MARTIJN BOERSMA: Yes, it does. Commissioner Cockayne has made some good strides. They've introduced—

The Hon. DAMIEN TUDEHOPE: He's going to be here shortly.

MARTIJN BOERSMA: He is. Trust me, he'll tell you all about it.

The Hon. DAMIEN TUDEHOPE: One of the things that you adopted was a buy local policy, and you were referencing the Tasmanian Buy Local Policy. I think the policy was a benefit of 25 per cent to Tasmanian businesses or the Tasmanian economy. Is that correct?

MARTIJN BOERSMA: I'll take your word for it. I'm not intimately—

The Hon. DAMIEN TUDEHOPE: It's part of your submission.

MARTIJN BOERSMA: It's in there to demonstrate the fact that something akin is already happening in other jurisdictions. I'm not intimately familiar with the policy itself.

CORRECTED

The Hon. DAMIEN TUDEHOPE: If you wanted to benefit local jobs in New South Wales you could, in fact, do a similar thing by increasing the weighting you give to economic benefit to New South Wales.

MARTIJN BOERSMA: That's right, yes.

The Hon. DAMIEN TUDEHOPE: That could just be part of a procurement policy.

MARTIJN BOERSMA: I would say so, yes.

The Hon. DAMIEN TUDEHOPE: Governments could do that tomorrow if they wanted to.

CHRIS WRIGHT: Governments are doing it not just in Australia but in other jurisdictions as well. In the United States it's happening as well. There's a risk that if the New South Wales Government doesn't follow, then perhaps New South Wales businesses get left behind.

The Hon. DAMIEN TUDEHOPE: In fact, if the Government wanted to do this sort of stuff, it doesn't require a great inquiry to do it.

CHRIS WRIGHT: I'm not sure what the question is.

The Hon. DAMIEN TUDEHOPE: I'm just saying that the process to go through can be adopting 30 per cent benefit to New South Wales as part of your procurement policy. You don't necessarily need to be told to do that; a government committed to doing it could just do it. The Tasmanian Government did it.

CHRIS WRIGHT: Through a process, and by establishing specific guidelines that are transparent.

The Hon. DAMIEN TUDEHOPE: There's already a policy in New South Wales, is there not, for 20 per cent weighting in favour of local content?

CHRIS WRIGHT: I'm not actually sure what the line of questioning is, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Do you agree with me that the current procurement policy in New South Wales is a 20 per cent component weighting in favour of local content?

CHRIS WRIGHT: Sure.

The Hon. DAMIEN TUDEHOPE: Then if you had a political determination to increase it to 30 per cent, you could just do it.

MARTIJN BOERSMA: This comes back to the previous question that was asked, and I suppose this comes back to the key point of your question with regard to whether we need a big inquiry and a long report on whether to deal with this. I think what the report has uncovered is a number of shortcomings over the agencies that are ultimately meant to enforce this. I wish it was as easy as waving a wand and doing that tomorrow, but I think the shortcomings that the report has highlighted in approaching this need to be addressed first in order to enable a change in policy, to be honest.

The Hon. DAMIEN TUDEHOPE: You and I can agree on that.

MARTIJN BOERSMA: Good.

The Hon. DAMIEN TUDEHOPE: To the extent that you have a procurement policy, there do need to be opportunities for ensuring that the policy is being properly administered, and to the extent that there are supply chain issues, you'd need a mechanism. How do you see that mechanism being put in place? What's the structure of it? What does a proper compliance structure look like?

MARTIJN BOERSMA: Obviously you've heard a version by Mr Nossar before. I think that's one approach to take. I think, to refer back to something I said before in terms of an incremental process, from my experience in working in industries that have been quite problematic with difficult supply chains, I think it's oftentimes building on what you have. I mentioned the code of conduct and auditing before. We shouldn't throw it out altogether because it has been a system that has not really been delivering all that much. What we do is see how we can improve that. If we can improve certification efforts, if we can improve auditing through, for example, worker voice mechanisms to try to get not just a paper trail of someone saying that they're complying with this, that and the other, but people who know whether there is noncompliance or not and verifying that, that makes those efforts more robust.

Other things, which Commissioner Cockayne will talk about now, are model contract clauses and other co-regulatory initiatives that can unfold. I wish that I had one distinct approach and could say, "That would be it." But we've seen all the bits and pieces of fine-tuning of the current system, whether that is multi-stakeholder approaches, worker voice mechanisms or standard contract clauses which, together, can help facilitate that incremental process towards improvement.

CORRECTED

The Hon. DAMIEN TUDEHOPE: Is the establishment of a new bureaucracy for measuring the compliance something you would advocate for?

MARTIJN BOERSMA: I don't think it's necessarily establishing a new bureaucracy. As a matter of fact, I think that by centralising procurement we can actually get rid of a lot of red tape, because we are getting rid of a lot of potentially duplicative processes that are happening across the board. I mentioned before the level playing field. One of the things that's mentioned in the report that I read is with regard to the barriers to entry to small and medium enterprises, which I think is something that can be greatly facilitated by centralising procurement oversight. So I don't think we necessarily create a new or larger bureaucracy. I think what we're doing is looking at where we can have the most strategic impact in changing our procurement practices, and that's done more through fine-tuning than it is through creating entire new processes.

The Hon. DAMIEN TUDEHOPE: I wanted to pick up with you and explore the nature of the contract that exists because, generally, what happens with a procurement contract is there's a contract between an agency and a supplier. So if agencies wanted to embark upon enforcement, they would do so internally through enforcing the terms of an existing contract, which I think you've suggested should have more robust terms, in terms of compliance. Rather than set up a new bureaucracy—

MARTIJN BOERSMA: Yes, but that assumes that there is a level of knowledge amongst procurement officers, amongst all those agencies—

The Hon. DAMIEN TUDEHOPE: Correct.

MARTIJN BOERSMA: —which is not necessarily the case, I believe, especially with new legislation coming out with regard to modern slavery. Commissioner Cockayne will tell you about his efforts to try to reach out to all the different government agencies to educate them about their requirements. Obviously, if you have a more centralised approach—and I'm not arguing everything necessarily should be centralised but that we need to find a balance between centralising and devolving—then we could be more confident about the expertise and capability building required in order to enforce the different types of social dimensions of contracts, rather than relying on procurement officers that sit devolved across different agencies who might not have that skill.

The Hon. DAMIEN TUDEHOPE: You made a passing reference to certification. What's your vision or view of what constitutes certification?

MARTIJN BOERSMA: That's a good point. Again, I refer back to my experience with the cleaning industry. What that multi-stakeholder initiative did, initially—and still does, to a degree—was certifying individual office buildings to ensure that working conditions for cleaners are acceptable. That's a very labour-intensive way of doing that. A different approach that they're now taking, again in response to listening to concerns from the market, businesses and cleaning companies, is to say, "We can pre-qualify particular contractors first. So we engage with the cleaning contractors. We ask them to provide evidence of the way in which they do business"—to frame it like that and to say, "We certify them prior to doing an audit of the building that they work in." That streamlines the process. It gives them a tick of approval, even before we audit their buildings, to say, "This company doesn't have any major breaches in terms of working conditions for X number of years. This company doesn't have any major breaches in terms of organisational health and safety in the preceding years."

The Hon. DAMIEN TUDEHOPE: Do you reduce the pool of potential businesses that want to engage in the—

MARTIJN BOERSMA: No. As a matter of fact, it creates more points of differentiation in terms of competition. Speaking to the cleaning industry, all tendering contracts sit at the same level—the minimum amount of profit margin they can make while still being legally compliant. So there's very little to differentiate these companies. We found if you introduce other, potentially social, dimensions as points of differentiation—and also environmental—then those might also become decision points for contractors to engage.

The Hon. BOB NANVA: To be clear, in the current procurement assessment processes in New South Wales, you'd agree that there is no framework for public officials to consider direct and indirect social and economic benefits against up-front contract costs when determining value-for-money propositions?

CHRIS WRIGHT: The current guidelines seem quite vague, from my reading of them, regarding—

The Hon. DAMIEN TUDEHOPE: Sorry, what was the answer to that?

CHRIS WRIGHT: Essentially, yes, I agree: The current guidelines appear quite vague in terms of how they treat social procurement targets.

CORRECTED

The Hon. BOB NANVA: On that basis, is it fair to say value for money is more often than not interpreted as being based on price and not much else because price is a clear, finite measure against which to assess a contract?

CHRIS WRIGHT: I think so, yes. That would be my reading of it.

The Hon. BOB NANVA: But price is not necessarily value for money?

CHRIS WRIGHT: No. Price is relevant, of course. It's a factor that should be taken into account. It's up to the Government about what criteria it sets, but I believe that there should be a great emphasis placed upon training and upon decent work conditions, like decent wages and secure employment, given that these are challenges that exist within New South Wales and Australia. These are things that governments can and should use their procurement powers to try to address.

The Hon. DAMIEN TUDEHOPE: In terms of the current procurement policy, do you accept that there is a requirement relating to compliance already with work health and safety regimes, in terms of the people who are tendering with the New South Wales Government?

CHRIS WRIGHT: Yes.

The Hon. DAMIEN TUDEHOPE: You do? So a component which requires additional certification that you do has already been addressed in the current procurement policy, has it not?

CHRIS WRIGHT: I believe it could go further.

The Hon. DAMIEN TUDEHOPE: It should go further?

CHRIS WRIGHT: Yes, I think it should, beyond work health and safety.

The Hon. DAMIEN TUDEHOPE: Tell me how.

CHRIS WRIGHT: Training targets, given that that is an issue of poor outcomes in New South Wales regarding training.

The Hon. DAMIEN TUDEHOPE: Yes, I accept that.

CHRIS WRIGHT: Ensuring compliance with industrial instruments. There should be, I believe, clauses stating clearly that all businesses that gain tender contracts should be compliant with relevant industrial instruments that relate to those areas of—

MARTIJN BOERSMA: If I can add to that very quickly, I think it's also a discussion about responses of risk versus rewards. I think oftentimes, in terms of the term "comply", compliance is seen in the negative. In order to use proper procurement as the lever to improve conditions, we could also frame it in terms of a reward. Rather than having to comply at the risk of not being awarded, you might also be rewarded by demonstrating that you are better than your competitors. Again, this comes back to that point of differentiation that I mentioned before.

The Hon. DAMIEN TUDEHOPE: You'd do that by loadings, wouldn't you, or weightings?

MARTIJN BOERSMA: Yes, that's one way that you could do that.

The CHAIR: Thank you both very much for appearing today and for your submission. I think you have taken a couple of things on notice. If there are supplementary questions, they will also be provided to you by the secretariat, and you will have 21 days to respond. Thank you again for appearing.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

Dr JAMES COCKAYNE, New South Wales Anti-slavery Commissioner, affirmed and examined

The CHAIR: Welcome, Commissioner. Thank you very much for taking the time to give evidence and for the submission as well. Would you like to begin by making a short statement?

JAMES COCKAYNE: Thank you so much to you and the Committee for the invitation to give evidence today. A few years ago the UK Home Office developed a methodology for assessing the socio-economic impact of modern slavery cases in that country. It considers, for example, the health care, law enforcement and other socio-economic impacts of these cases. If we apply that methodology to the estimated modern slavery caseload in New South Wales, we arrive at a figure of around \$9.6 billion. That is, over their lifetime, the modern slavery cases now estimated to be in New South Wales will cost this State around \$9.6 billion. That's the size of the negative externalities imposed on our economy by tolerating modern slavery, including illegal forced labour practices in the production and distribution of goods and services, here and abroad, that we consume. That's before we even consider the negative impact of tolerating modern slavery in our extra-jurisdictional supply chains.

Modern slavery is, in that sense, like the global heating caused by carbon emissions: It's an unintended by-product of the way we organise the production and distribution of goods and services in our economy. Like carbon, it will take a system-change approach to price the true costs of tolerating illegal labour practices back into our economic systems. In New South Wales I would argue we're blessed, thanks to parliamentary action over the last few years, to have some of the strongest tools available to achieve this system change.

The Modern Slavery Act 2018 in New South Wales, and related 2021 legislation, made it a legal requirement for more than 400 agencies to take reasonable steps to ensure that they do not procure goods and services made with modern slavery. They have to report on this annually. The NSW Anti-slavery Commissioner independently monitors this reporting and can raise concerns with Parliament, and the New South Wales Auditor-General also has an independent modern slavery audit power.

Over the last two years I've worked closely with these entities to develop a framework for implementing these obligations. In December 2023 I published 200 pages of Guidance on Reasonable Steps, which provides detailed guidance for New South Wales government procurement actors and helps align their practice with Australia's international commitments—specifically, commitments made by the governments of Australia, Canada, New Zealand, the UK and the US several years ago to use public procurement to tackle modern slavery, and our commitments under the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

I and my office have worked closely with NSW Procurement to develop this framework and to provide a suite of tools: an inherent risk identification tool, model tender clauses and model contracting clauses, and e-learning and in-person training opportunities. Our approach to the work has been shaped in part by a study I commissioned from researchers early last year. I asked them to look at when social procurement reforms have worked. They looked at experiences in the UK, the US, the Netherlands, Europe and beyond. That research forms the heart of my written submission to this inquiry, in which my colleague Lucy Forbes played a critical drafting role.

I'm not going to repeat my submission today, but please do allow me, Chair, just to highlight very quickly the six key insights that emerge from that study about when these reforms work. The first is normative frameworks. Buyers need clarity and consistency across procurement contexts about the conduct expected of them, or what we in New South Wales call "reasonable steps", and suppliers need that clarity too. Secondly, it is financial resources and capability. If there's to be a shift from a narrow focus on risks to the organisation, or risk to business, to broader social risks, procurement officials need training and ongoing support that has to be adequately resourced across all implementing entities.

The third is impact measurement. It is critical to have clear metrics to understand the link between buying and contract management practices, and social outcomes. These should be system-level metrics; otherwise the process risks becoming narrowly performative, focused on reporting and compliance. The fourth, clear policy objectives, is closely related to the previous point. Social procurement policy needs to be underpinned by a clear theory of change shaping preferred procurement practices. In the modern slavery space, this means that buyers need to be equipped to reward suppliers that produce goods and services in ways that do not depend on forced labour and modern slavery. That may mean, for example, adopting policies that preference suppliers that are certified to operate in ways that minimise modern slavery risks. It certainly means—and our Guidance requires here in New South Wales—consideration of modern slavery risks in tendering processes.

The fifth is engagement with the broader market. It is not enough to simply impose obligations on buyers. There also needs to be provision for and resourcing for engagement with suppliers to uplift suppliers' capabilities.

CORRECTED

That includes small and medium enterprises, otherwise social procurement risks becoming a de facto barrier to entry for SMEs. More broadly, social procurement initiatives appear to be most effective where they involve co-regulation with industry. In the anti-slavery space, this is likely to play out as supply chain based risk identification and risk management solutions. Section 27 of the Modern Slavery Act here in New South Wales gives me the power to issue codes of practice on identifying and managing modern slavery risks in supply chains. I'm currently working with industry to develop two such codes of practice. One is dealing with modern slavery risks in renewable energy value chains, with particular focus on solar panels, and one is focused on investment lending and asset management.

Sixthly and finally—but critically—it is technical implementation support. The last key lesson from the research was that there needs to be a central implementation body supporting implementation by all the different actors across the system of modern slavery. That's essentially the role that the Act already gives to my office. Thank you very much, Chair. I look forward to the discussion.

The CHAIR: Thank you very much, Commissioner, for that overview. You just mentioned and covered that in the New South Wales Act and, indeed, in your role, a key focus is mitigating modern slavery risks in government supply chains, essentially. It would seem that our consideration of what changes to make to the procurement process is central to how you might perform your role in the future. Would you agree?

JAMES COCKAYNE: Yes.

The CHAIR: In thinking about that but also in listening to the key points that you just drew out, there are a couple of things I want to ask about—in fact, largely thinking about them in the context of discussions we have had in these hearings. It's hard to know where to start because there's so much and so little time. The third point you made was about impact measurement and looking at system-level metrics to make sure that, if we are striving for outcomes, we can be confident that they are being achieved. I think a question was asked by Mr Tudehope to one of our other witnesses about what that might entail. I think Mr Tudehope posed it in terms of social return on investment but, if we're thinking of impact measurement, what are the types of things that we might be considering? Could you point to schemes that are in place that we might consider?

JAMES COCKAYNE: Certainly. Some of them are fairly low-hanging fruit. For example, we now, as of several days go, have arrangements in place on the Buy.NSW platform that allow us to identify when reported contracts are over a certain threshold—what we have identified as involving products that attract high modern slavery risk. We can identify across government where modern slavery risk is pooling around certain products or in certain agencies or certain supply chains.

That is useful in two ways. First, it allows us to use scarce available resources to go after the risk and to support the actors in the system that are most exposed to that risk to effectively mitigate and manage that risk. Second, what we think this will allow over time—that information and the reporting that we'll receive from the covered reporting entities—is the development of a dataset, essentially, that allows us to track return on investment, for lack of a better word. "These efforts were made by these agencies to address modern slavery risks and over time their performance improved in these ways, and modern slavery risks came down in these ways."

That is very important, I think, also from a capital markets perspective. In a period where capital markets are very interested to understand the environmental, social and governance performance of not only firms but also governments when they issue bonds, for example, the existence of that data and of this framework is going to give us a head start over some other actors in capital markets and may in time lead to capital pricing benefits here in New South Wales.

The CHAIR: I go back to the first point you made about normative frameworks. That goes to some of the questions and concerns that I have. Normative frameworks, reasonable steps, the framework that we currently have—indeed, even your shared implementation framework—all of those, as you said, operate in that normative space which ideally nudges behaviour in the right direction. But in terms of what we've currently had or what we've had to date, the kinds of frameworks that we've had set up seem not to have been working in terms of implementation. There seems to be a gap either in implementation or enforcement. What do we need to do to bridge that gap so that it's not just a normative question; it is actually what happens practically?

JAMES COCKAYNE: If we look internationally over the last couple of decades, Chair, I think we see a movement away from reliance solely on voluntary standards and initiatives towards what is often now called a smart regulatory mix: Thinking across the system about the incentive structures that are set up by a combination of mandatory and voluntary arrangements, and how they can reward good practice in various ways and make it less rewarding to engage in bad practice—not necessarily penalising it, but just removing access to, for example, certain contracts or market benefits.

CORRECTED

Here in New South Wales with modern slavery, I think we're lucky in what the Parliament has done over the last half a decade in that it sets up such a smart mix. We have, for example, under the Modern Slavery Act the possibility that the Procurement Board, which now has as one of its objectives to address modern slavery risks, can actually adopt directions that will require those subject to the Procurement Board's jurisdiction, for lack of a better term, to follow this guidance. There's the possibility both to pull the levers in government around public procurement and to incentivise private sector behaviour to align. In fact, I would argue that there's not only the possibility, but increasingly it is a market expectation.

As we see jurisdictions such as the European Union moving now to mandatory human rights and environmental due diligence, we're actually hearing from business that they want to see this kind of clarity here in Australia and in New South Wales or they risk being left behind. They are going to be receiving—they are, I know for a fact, already receiving—questions from European partners, European investors and European buyers of their products about the way they manage these risks, and they're going to need to be able to collect data and report that effectively. Having consistency across jurisdictions would make this much easier and more efficient and effective, and we have the underlying international normative frameworks—Australia has subscribed to those—that give us the common baseline to work across.

The CHAIR: I will pick out one piece of that. You talk about the Procurement Board. I am not sure if you are aware that we tabled an interim report a couple of weeks ago, and one of the findings of that report was that there were some concerns regarding the level of oversight of the Procurement Board. What we've heard is that the Procurement Board oversight has been lacking, so that anything that is reliant, so far, on the Procurement Board being where those kinds of sanctions or anything else emanate from hasn't worked. Do you have any thoughts or comments about future ways of operating to avoid the lack of enforcement or lack of compliance?

JAMES COCKAYNE: My experience with the Procurement Board is limited. I should start by saying that. I haven't read your interim report. I apologise. I've been on leave for a few weeks.

The CHAIR: Absolutely fine.

JAMES COCKAYNE: What I would say is that the current structure of course gives the Minister a level of oversight over the board. I guess the question is what other levers could be brought to bear in a regulatory structure that ensures diverse voices are heard to understand whether the board's choices are leading to the outcomes that the Parliament or the Government are seeking to achieve.

The CHAIR: That is a very good segue into the next question I wanted to ask you. You mentioned in your points again that engagement with the broader market and, in fact, looking at co-regulatory options. Indeed, that's emerged as a bit of a theme today. I wondered if you could explore that a bit further. You did speak about a couple of codes of practice and whatnot, but I wondered if you could expand on who are potential co-regulators. Who are the parties that might be involved?

JAMES COCKAYNE: Let me stick to the domain that I'm mandated in and know best: the modern slavery domain. I might come back to something I mentioned: the code of practice on managing modern slavery risks in renewable energy value chains and explain why we decided to go in the direction of having a discussion with industry. We worked with the Clean Energy Council to explore whether this is feasible. It's still a work in progress, I should hasten to add. The short answer is that all different market actors need clarity on what to do about the fact that they recognise there are serious modern slavery risks in the solar panels in particular that we're buying in this country, but it's not easy to find alternative value-for-money sources of supply that are clearly slavery free.

So what actually is the expectation of government and of investors in that space? There are norms emerging through all of the work being done that I mentioned overseas, but it needs to be translated to the Australian context. We engaged in extensive informal consultations first before deciding to formally move in this direction, and it became clear that we are potentially able to bring greater clarity to the market, both government buyers and private sector actors, through a conversation about what reasonable steps look like, in some granular level of detail, while aligning with Australia's international commitments and, indeed, the Federal Modern Slavery Act. That has to be designed together with those who are going to be impacted.

There's no point imposing an expectation of, for example, terminating contracts that are made with solar panels that are found historically to have been made with forced labour if that's going to lead to a disruption of energy supply, for example. There's a lot of detailed work that needs to be done there. Industry workers and other affected stakeholders have the expertise that's needed to ensure that any regulatory design in that specific supply chain is effective. I would argue that you can see the same kind of pattern emerging in other supply chains as well. Co-regulatory approaches are more likely to produce effective, sustainable outcomes over the long term.

CORRECTED

The CHAIR: I wondered if I could ask you more explicitly about the Shared Implementation Framework, which I understand includes guidance on incorporating anti-slavery considerations and, indeed, model clauses into the tender process and into contracts. At the moment that's not mandated, is it? These are suggested things to go into contracts which would help an agency—government department—make sure that it abided by what it needed to do, but they're not mandated, are they, in contracts?

JAMES COCKAYNE: A range of entities, including all New South Wales government agencies, have a mandated legal obligation to take reasonable steps. We have provided guidance and resources that we indicate, in our expert view, are reasonable steps. They have been, to some extent, developed in collaboration and consultation with those affected entities. I believe the previous Auditor-General, in one of her last appearances before the Parliament, indicated that the Auditor-General's office is likely to treat that guidance as, in effect—and these are my words here, not hers—the auditable standard against which the modern slavery audit would be conducted, if or when that power under the relevant Act is exercised.

What is missing at this stage—it's true, Chair—is a formal direction from the Procurement Board, which will formally require those under its jurisdiction to implement. I would say two things about that. The first is that we have a very positive, productive ongoing discussion with the Procurement Board. I'm confident that, in time, essentially through a process of co-regulatory design, we will have the Procurement Board direction in place. It's going to take some time because we want to give as much clarity to government agencies as possible about exactly what we're going to be looking for them to do to implement—

The CHAIR: Clarity could come through saying, "You have to put this clause in a contract."

JAMES COCKAYNE: It could on that, for example. But the guidance, as you mentioned, covers many different things. The guidance itself says that in areas of high modern slavery risk, there's an expectation that covered agencies will use the clauses. The last thing I'd say is that government agencies are using the guidance. They're already implementing it. They're not waiting to be told they have to. We know for a fact that many of the largest government agencies, and many of the smaller government agencies, are already implementing this framework into their practice.

Ms ABIGAIL BOYD: Thank you for your submission and for your attendance this afternoon. I note some of your comments in relation to SMEs and not wanting to put that unreasonable burden on the smaller players but that the preference is to work with them to try to eliminate modern slavery from their supply chains. Can you talk us through the work that has already been done on that? What more do you need to make that work better?

JAMES COCKAYNE: The place to start is the term "reasonable steps". In its wisdom, the Parliament chose that language to explain what's required. A lot of our early consultation with different buyers that have to report under this framework was around what's going to be reasonable. That depends, of course, both on the risk to people but also the capability of the buyer organisation. The reality is that most buyers will take reasonable steps by imposing expectations on their suppliers. We very quickly come to the point that it's actually supplier capability that's quite critical here in order to achieve the social outcome we're looking for. If the expectations that are imposed through procurement practices are too onerous, the danger is that that becomes a de facto barrier to entry for SMEs.

Both in designing those expectations in how they calibrate to the capability of the supplier, and in thinking through, for example, training, we need to engage directly with a range of suppliers and SMEs. That is where I would quite openly say that my office and others in government have more work to do in the years ahead. The Small Business Commissioner has been active on this issue and published a very helpful fact sheet in this space. There is plenty of work for us to do to engage SMEs to make sure that, even allowing for that sliding scale calibration of what's reasonable in their context, the expectations that we're articulating that the buyers are going to impose on them through contracting practices, for example, are going to be reasonable.

The other thing that I would point to there is the way our model contract clauses work. Our model contract clauses—following best practice developed overseas—instead of asking buyers to displace all the risk down onto the supplier by saying, "You, the supplier, warrant and represent you have nothing to do with modern slavery," they instead set up what's called a shared responsibility framework. What that means is that if the supplier identifies there's modern slavery in their supply chain, they notify the buyer, and then they work together to remedy that situation. That means it's not all on the supplier. It may be partly on the buyer to upskill the supplier, to train them and to help them develop the capabilities, or it may be on the buyer to look at their purchasing practices and think about whether there's something about the way they're imposing purchasing requirements on the supplier that actually makes it more likely that there is going to be modern slavery—for example, unreasonable pricing or just-in-time production expectations.

CORRECTED

Ms ABIGAIL BOYD: You've got two full-time equivalent staff working for you. Is that the extent of your resources?

JAMES COCKAYNE: On this issue, yes. All up, I have around 15 people currently working for me, but we also do a number of other things, such as supporting survivors of modern slavery to find referrals to assistance, policy work, communications, awareness raising, training and various other things.

Ms ABIGAIL BOYD: It's quite a task for two people to be doing not just the bare minimum but actually doing that outreach work and really getting in there to work with people to solve the problems. What sort of resources would you require an ideal world, do you think, to actually do that properly?

JAMES COCKAYNE: I would say two things. I think the resources don't necessarily need to flow to me and my office. The rubber hits the road here with the implementing agencies—the buyers—so the reason we've been able to get as far as we have with such a small team is because we've had wonderful collaboration from government agencies, notably from NSW Procurement and Treasury. There are a number of agencies—for example, NSW Health, Transport and others—which are really putting their shoulders to the wheel in their effort to understand their obligations and implement them.

We say there are two people in my office; there are dozens and dozens of people across government now who are really working here and there, quite seriously, to implement this new framework. But, as you rightly point out, there will be a long period of capability development across government, and indeed with suppliers, so we're working to develop e-training resources. We've just published our first one through Comperio. I think in the first month that training course was already completed by a hundred people across government. We're developing additional resources and we have a newsletter and so on.

But, yes, there's a resourcing question and I've had productive early conversations with government about how we are going to resource that into the medium to longer term. Where I think the rubber is going to hit the road is, once we see reporting flowing at scale from reporting entities—if we really want to see progress, they're going to want, frankly, entity-level, bespoke feedback on "What are we doing? What could we be doing better?" We've got over 400 reporting agencies. We've explored creative options around machine learning-based primary analysis of the reporting we receive, and then improving that through manual analysis. That's an ongoing conversation with government, but we ultimately will likely need more staff either on payroll or by finding creative ways to collaborate with other agencies, or indeed with universities, to have a stronger analytic bench strength.

Ms ABIGAIL BOYD: Are there players in civil society who are helping with this? We have certification schemes. Are there ways for other players in the industry to help?

JAMES COCKAYNE: There's huge scope for other stakeholders to get involved in this, and they are and they're not waiting for us. For example, there's very important work going on in the property industry and construction industry. The Property Council of Australia has developed a collaborative system for receiving information from suppliers and then sharing that amongst buyers. One of the big problems here is lots of different buyers asking the same suppliers for social and environmental and other information, then that information is not shared, it's not comparable, it's not clear what use it's put to, it's highly inefficient and it leads you down the path, potentially, of greenwashing if you're not careful about the underlying validity and reliability of the information.

So collaborative solutions in that kind of space are already emerging in different supply chains and different industry sectors. I would argue there's more government could be doing there, not through interagency collaboration but actually through collaboration between, say, the big construction buyers in New South Wales Government and the industry. We're all going to need this information for different purposes. I would say that there might perhaps be benefit in clarification from the ACCC that such collaboration is not anti-competitive. There is a tradition of pre-competitive collaboration around these kinds of issues in other countries; it's less well developed here. The ACCC does have the powers to clarify something like that but probably needs, to use a colloquial phrase, a bit of a poke in order to understand that there's an appetite from government and industry for clarification of the rules of engagement around that kind of collaboration.

Ms ABIGAIL BOYD: So to clarify, then, it's data analysis and that piece of work that is going to require significantly more resources as we get to that point. Is that going to be the pinch point?

JAMES COCKAYNE: In the first instance. So if we break the reasonable steps down in really big blocks, they're designed to help buyers identify risk, manage risk and remediate harm. Where most entities are up to at the moment is still the risk identification phase. That's where their focus on collaboration is. Soon enough, they will be managing contracts where they know there's risk—they'll be buying solar panels and know there's risk and they'll have to manage that—and they'll be thinking about how we engage with those supply chains. We can't all do it separately, so, soon enough, their minds will turn to collective contract management approaches.

CORRECTED

Then, soon enough, when modern slavery risk does crystallise in one place or another, they will begin thinking about how we collectively engage around remedy and how we remediate the harm that's occurred, or change the practice of the particular suppliers in this supply chain. So I think there's actually scope for collective engagement around these issues, but that's a bit different from the tradition of devolved procurement practice that's dominant under the current framework in New South Wales. It might be that there's a need to clarify the terms in which that decentralised, devolved model is deviated from, in order to develop shared, collective capabilities around risk identification, risk management and remediation, for efficiency and effectiveness sake.

Ms ABIGAIL BOYD: Excuse my ignorance but, in terms of industries where we know there are components where it's not possible to get part of that supply chain to be ticked off as being ethical—where we know there is slavery but there is no actual alternative for something essential—is there a role for the commissioner in advocating or working with industry to set up our own production of that part? I'm thinking about solar panels in particular. I know that there are elements that come from overseas that we're not entirely comfortable with. Where is the advocacy role for creating new industries to try and help break that reliance?

JAMES COCKAYNE: I think industrial policy is properly for the Executive. You'd understand I'm independent of the Executive; I report to all of you, the Parliament. I think industrial policy—and certainly on something like solar panels, that's going to have implications for tariff policy, trade policy, bilateral relations and so on. It's probably a matter for government, whether it's here or in Canberra, rather than for an independent statutory officer, but what we can do and what we do do is we name the risk where we identify it. Our inherent risk identification tool that's available to all of the buyers gives them a common standard based on information that we make clear to them to identify where that risk is. Again, it's about bringing the certainty and clarity to all of the players in the market so that they can then make the case. The market can make the case to government: "We need industrial policy if we're going to have access to alternative, slavery-free supply," for example.

The Hon. DAMIEN TUDEHOPE: Agencies do have access to your inherent risk identification tool?

JAMES COCKAYNE: They do.

The Hon. DAMIEN TUDEHOPE: I note one of the things that you have done is issued your commissioners with guidance on reasonable steps.

JAMES COCKAYNE: Yes.

The Hon. DAMIEN TUDEHOPE: Are you satisfied that that guidance is being adopted by New South Wales agencies?

JAMES COCKAYNE: The process has certainly begun, yes. We have active, ongoing conversations with them, and we have a little email helpline. We get quite a few questions coming in from the agencies. We'll see how far they've gone when they issue their first annual reports—many of these agencies that speak to this issue—but we're optimistic.

The Hon. DAMIEN TUDEHOPE: Let me ask you about, potentially, a real-life example. You've identified, for example, that solar panels is one where you have identified inherent risk factors. Say we were purchasing, or NSW Health was purchasing, protective equipment from China. What steps constitute reasonable steps by that agency to establish that the equipment or whatever was being purchased was not being done by forced labour in Uighur camps?

JAMES COCKAYNE: There are seven reasonable steps set out in the Guidance. The first is called "Commit". It's about the kinds of policy frameworks and risk management frameworks that they need to have in place at an institutional level. The second, third and fourth follow the existing structure of the existing New South Wales procurement framework; that's around plan, source and manage. The guidance sets out in great detail what is required in terms of looking for modern slavery risk in that particular procurement that you've described; then how you engage with the supplier; how you manage the contract; and then there are several others—I think I was up to four, so there are three others—that go to the steps that you have to take if it indeed turns out that you've procured something made with forced labour. In that case, what you would likely be doing is engaging with suppliers down the supply chain to look at whether there was some way for them to alter their production practices, which really means their workforce management practices, in a way that would allow them to continue to provide, at the agreed price, the good that you're purchasing while not relying on forced labour.

The Hon. DAMIEN TUDEHOPE: We heard today about circumstances where the cleaning industry is able to establish what a reasonable price for cleaning would be. In circumstances where a tender was well under or significantly under that price, it may be a certain indicator that the tenderer was potentially availing themselves of some sort of modern day slavery provisions. Is that the sort of tool which you would expect agencies to adopt?

CORRECTED

JAMES COCKAYNE: We would be very encouraged if they moved in that direction. We see something like that, for example, in the security sector in Victoria, where, again, a regulator has helped develop that pricing information. Often market actors are unwilling to share that information as it's deemed commercial in confidence. There is a role for government in helping to develop that kind of pricing guide. As you describe, Mr Tudehope, it provides a very clear signal when corners are being cut. A lot of detailed work has to be done. That has to be dynamic as well, because prices change as inputs change. But we would be very keen to see that kind of tool develop.

As you say, it may be for the agencies to develop those tools, rather than for us, because they have the expertise about how much it costs to produce and source rolling stock, for example. We don't have that expertise. What we can do is help them understand what kinds of things they might be able to find in the information shared with them that might be indicators of forced labour. The inability to square the price with the workers being paid a living wage is a very good example of such an indicator. Another one might be to do with recruitment practices. Where suppliers are clearly relying on the recruitment, particularly, of migrant workers who are having to pay to get a job, that's a very good proxy indicator for vulnerability to debt bondage and modern slavery. Breaking it down to that kind of practical level is a very smart approach to take.

The Hon. DAMIEN TUDEHOPE: In terms of the reporting, why shouldn't that constitute some of the reporting that is required of agencies and contractors alike? Why isn't the granular level that you've identified potentially part of your requirements relating to reporting?

JAMES COCKAYNE: It is. Right now we have a reporting framework that is now being rolled out. We have various questions to which the answers are mandatory. For example, information about use of migrant workers is not yet mandatory; it's optional. The reason is that the feedback from the agencies is that they cannot access that information yet. But by making it voluntary, what we're doing is sending a signal to them that this is the direction of travel. We're encouraging them to move into conversation with their suppliers about the fact that they're going to want to start having access—

The Hon. DAMIEN TUDEHOPE: But you could include that as part of your tender documentation, could you not?

JAMES COCKAYNE: Absolutely.

The Hon. DAMIEN TUDEHOPE: "Will you be using migrant labour? If so, how are you using it?" That could be part of the documentation that agencies adopt.

JAMES COCKAYNE: Exactly.

The Hon. DAMIEN TUDEHOPE: Is it appropriate, therefore, that agencies really should be looking at the level of detail they should be including in their tender documentation to deliver the data that you're wanting to receive?

JAMES COCKAYNE: Absolutely.

The Hon. DAMIEN TUDEHOPE: That should be, potentially, a recommendation for what you would say is a proper procurement process.

JAMES COCKAYNE: I think if the aim is to ensure that procurement processes contribute to effective social outcomes in line with government and parliamentary priorities, then tendering practices are critical to achieving that outcome.

The Hon. DAMIEN TUDEHOPE: The current procurement guidelines require agencies that they must comply with public works and procurements, including requirements to take reasonable steps to ensure that goods and services procured by and for an agency are not the product of modern slavery.

JAMES COCKAYNE: Yes.

The Hon. DAMIEN TUDEHOPE: The reasonable steps, that you've already delivered a guidance report for, why shouldn't it include tender provisions?

JAMES COCKAYNE: It does. We provide model tender clauses at different levels of modern slavery risk, explaining the kinds of issues that should be addressed and even providing draft language on the types of ways to include this in their tender documents.

The Hon. DAMIEN TUDEHOPE: That's already in place in terms of the procurement policy which is being adopted by the New South Wales Government.

CORRECTED

JAMES COCKAYNE: It's included in our guidance summary on what reasonable steps are and the Procurement Board is considering how to reflect that in, potentially, a direction.

The Hon. DAMIEN TUDEHOPE: The annual reporting by agencies commenced on 1 July 2023.

JAMES COCKAYNE: It covers conduct starting from 1 July 2022.

The Hon. DAMIEN TUDEHOPE: Have agencies started to report already?

JAMES COCKAYNE: They have. They've had limited guidance on what to report on, so the reality is that they've only had my guidance on reasonable steps since December—Christmas, essentially, of last year. But for most of them—they're all on slightly different cycles—it's the reports coming in the next few months that will be the first real test of how they report against the guidance now available.

The Hon. DAMIEN TUDEHOPE: In any of their reports you've seen to date, have any identified reasonable suspicion of breaches of modern slavery requirements?

JAMES COCKAYNE: There's only a very small number that have reported to date because of the way the cycles work. There's a small number that report in April and then most will report between July and October. The ones reporting in April are universities that happen to be captured, and some of them do indeed address modern slavery risks in quite a lot of detail.

The Hon. DAMIEN TUDEHOPE: In circumstances where they've identified a risk?

JAMES COCKAYNE: I'd have to take that on notice.

The Hon. DAMIEN TUDEHOPE: One of your recommendations—and this goes to Ms Boyd's point—was relating to a need to fully finance the commissioner's monitoring function under section 9 (1) (e) of the Modern Slavery Act. Did you receive any additional funding in the recent budget?

JAMES COCKAYNE: No.

The Hon. DAMIEN TUDEHOPE: Did you put in a budget bid for additional funding for that?

JAMES COCKAYNE: That may be Cabinet in confidence. I'd have to take that on notice.

The Hon. DAMIEN TUDEHOPE: That's perceptive. How much additional funding would you say you need?

JAMES COCKAYNE: To do what, Mr Tudehope?

The Hon. DAMIEN TUDEHOPE: You want to have a fully funded monitoring function as part of your office.

JAMES COCKAYNE: I'll take that on notice, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Have you been successful in obtaining any funding from the Digital Restart Fund to deliver a shared portal for all New South Wales government agencies and local councils to manage modern slavery risks?

JAMES COCKAYNE: The process whereby we applied remains on foot to my knowledge.

The Hon. DAMIEN TUDEHOPE: Have you been given any reasons why that hasn't been provided to date?

JAMES COCKAYNE: Yes.

The Hon. DAMIEN TUDEHOPE: What are they?

JAMES COCKAYNE: I believe that's Cabinet in confidence.

The Hon. DAMIEN TUDEHOPE: I'm not entirely sure why that would be. One of the questions that Ms Boyd asked you in relation to where you have identified a modern slavery risk—you appear to say that in certain circumstances because of the potential to impact on the New South Wales economy there's a level of tolerance we should have for that modern slavery risk.

JAMES COCKAYNE: My response to that, Mr Tudehope, is that is how the legislation has been written. The requirement under the legislation is that organisations take reasonable steps to ensure that they do not procure goods and services made with modern slavery. The legislation has not been written as a strict liability standard that they may not procure goods and services made with modern slavery. It's a subtle but, I think, really critical difference. The tools that I've been given require me to reflect the statute.

CORRECTED

The CHAIR: You can only work with what you've got. Thank you, Commissioner, for appearing today and for your submission. There were a couple of questions taken on notice. If there are further supplementary questions, the secretariat will get in touch with you about those as well. You have 21 days to respond. Thank you once again for your time. We appreciate it.

(The witness withdrew.)

CORRECTED

Mr PAUL MUSSO, Policy Advisor, National Disability Services, affirmed and examined

Mr JIM SIMPSON, Senior Advocate, Council for Intellectual Disability, affirmed and examined

Mr BEN ALEXANDER, Inclusion Projects Officer, Council for Intellectual Disability, sworn and examined

The CHAIR: Welcome to the hearing. Thank you for making the time to give evidence. Would each organisation like to start by making a short statement?

JIM SIMPSON: We shall keep it short but we'll start with a short conversation between me and Ben if that's okay. Then I'll have a few comments to make as well. Ben, I know that you've worked in open employment, you've worked in a bookshop, and now you work for us at the Council for Intellectual Disability. I want to go to one example of that. Right now you're involved in providing some training for Woolworths. Could you tell the Committee about the training that you're providing for Woolworths?

BEN ALEXANDER: Yes. I actually finished giving training to staff across different Woolworths across Australia on Monday. We're helping support them to help them—the people with intellectual disability are going from supported wage to full wage, and we're helping give support to store managers and assistant store managers on how best to go about going to the full wage.

JIM SIMPSON: Ben, doing that kind of work, how do you feel about doing that kind of work?

BEN ALEXANDER: I think it's a good thing because I've heard that some staff members at Woolworths with intellectual disability are a bit apprehensive about going on the full wage because a lot of them are on a DSP and they're a bit cautious about potentially losing money from working a certain amount of hours.

JIM SIMPSON: I know there have been times where you've been out of work and have been sitting at home. How have you felt in yourself at times when you've been out of work?

BEN ALEXANDER: I have not enjoyed it. Those times when I was sitting at home I was like, "I want to be working three or four days a week, earning money from working rather than getting money from the DSP."

JIM SIMPSON: Good on you. Members, there are basically two kinds of employment that people with intellectual disability experience: There's open employment in ordinary workplaces, such as Ben has been talking about, and then there are Australian disability enterprises, which Mr Musso will talk more about later, where there are a lot of people with intellectual disability gathered in the one workplace. The disability royal commission, in line with contemporary thinking about the place of people with intellectual disability and other disabilities in society, has fully included people in society as opposed to people being segregated from society. The royal commission has recommended that governments do a lot more work to increase the opportunities for people with disability to be in open employment, and specifically including through procurement processes.

That really ties in with the key thing that we are seeking: that there be requirements or preferences in State government procurement practices to give preference to organisations and contractors who are going to provide employment to people with disability and, in particular, people with intellectual disability. The reason I really add and emphasise those words "including people with intellectual disability" is that the employment rates of people with intellectual disability are particularly low. I know that within government and government services, having talked to so many senior government people over the last two years about this issue, no-one disputes our assertion that there are very few people with intellectual disability employed in government jobs. It has been a hidden and extremely unfortunate problem.

The second thing to note is that we acknowledge the continuing role that Australian disability enterprises have. There is nothing said, that we're aware of, in government procurement policies about employment of people with disability in open employment. On the other hand, there is an existing preference for Australian disability enterprises to receive government work. We're not seeking a full stop on that, but we are seeking—again, in accordance with royal commission recommendations—that there be a requirement that if those Australian disability enterprises are to continue to receive government work, then they are transitioning towards a social firm model. When I say a "social firm model", I mean going towards a model where there are people with disability and people without disability working together in the same workplace, and with an emphasis on support for people to think about and move into open employment. That's our opening statement. I'd love to go on for half an hour but I know that wouldn't be appropriate.

The CHAIR: I think Mr Musso might like to have a say as well, so I might pass over to you, Mr Musso, for your opening statement.

JIM SIMPSON: Absolutely.

CORRECTED

PAUL MUSSO: I'd like to thank you for the opportunity to appear before the Committee. National Disability Services is the national peak body representing disability service providers in Australia. We have over 1,100 members nationally, with 300 in New South Wales. Our member organisations include supported employment service providers, previously known as Australian disability enterprises. Our recommendations to the Committee and our original submission were informed by our longstanding work with those members across Australia. We appreciate the efforts of New South Wales government agencies to procure goods and services from those organisations. We've received very positive feedback from members that have commercial arrangements with New South Wales government agencies.

We made several recommendations in our submission to the Committee. Again, I think there's a lot of very positive work going on at the moment in New South Wales government agencies, including Treasury, who I've been working with. I've worked closely with Transport for NSW and the Department of Customer Service as well. The Department of Customer Service recently held a very positive initiative—the disability and Indigenous supply showcase—which I had the pleasure to attend and present at. Otherwise, I'm very happy to talk about the work of supported employment services and the sterling work they do employing people, the vast majority of whom are people with intellectual disability.

The CHAIR: I might start where you finished off, Mr Musso. I, too, attended that excellent expo. Have there been others by other departments that you know of, or is that the first?

PAUL MUSSO: It has been the first expo of that type I've attended for several years. I believe the last expo of that type was held back around 2019. Again, that was held by the New South Wales Government. There are employment expos that highlight the work of our service provider members as well. They tend to focus more on people seeking jobs or a career in supported employment, as opposed to commercial arrangements between government departments or agencies and those disability enterprises. It would be nice to see more of them, certainly.

The CHAIR: Your submission refers to the "BuyAbility" procurement initiative. I wonder if you could tell us more about this. We're trying to think about what things have worked, and what useful changes we can make. I wonder if you could talk a little bit about it. What were the outcomes? Do you have any suggestions around it? Has it been beneficial? If not, are there changes or other options?

PAUL MUSSO: It certainly has been beneficial. The Government has a very positive approach to highlighting the directory in the BuyAbility website. That's mentioned in the relevant procurement policy. Certainly, I know for a fact that there are quite a few New South Wales government agency representatives who are investigating these organisations and commercial arrangements or purchases with them. I'd like to be able to quantify what the value of the New South Wales government's purchases from these organisations is. We survey our members annually, and one of the questions in that survey is "What amount of goods and services have been purchased by government agencies at the Commonwealth, State and local government levels from your organisation?" They are purchases of the organisation's commercial goods or services, as opposed to funding they might receive for provision of NDIS supports.

We had 10 members report that they had commercial arrangements with New South Wales government agencies. I think that worked out at an average of about 160,000 per organisation, whereas we had 10 Victorian members report that they had a total of around 23 million, which was around 2.3 million per organisation. So that is a significant difference but, of course, because it was a survey, it may not necessarily be reflective of the actual amount purchased by New South Wales government agencies. Again, one of our recommendations has been it would be wonderful to see those figures quantified, whether on an agency basis or on a total basis in the New South Wales Government's annual report.

The CHAIR: Mr Simpson, we've been talking a lot about procurement and procurement officials and the vast array of things they need to understand. Do you think that there's relevant knowledge and experience currently to make decisions around ensuring the inclusion of people with disabilities or facilitating necessary adjustments when procurement decisions are made?

JIM SIMPSON: No, we certainly don't. The very low rate of employment of people with intellectual disability generally reflects a number of things. It reflects the fact that there are not great skills in employers in relation to the particular skills required to employ people with intellectual disability, and that in turn would flow through to people in government who are making decisions about procurement. The kind of skills that are really needed are skills around assessing individual capacity and individual strengths, and then thinking about job carving or job customisation—which I can elaborate on, if the Committee would like—so as to use the strengths that a person with an intellectual disability has, to provide a productive and included job in the workplace. Our experience, as one organisation, is most certainly that those things work. We have been funded by the

CORRECTED

Commonwealth Government for a number of projects aimed at upskilling workplaces to pursue those avenues—for example, we've had some recent success with the projects specifically focused on local councils.

The CHAIR: Thank you very much for that. Mr Musso, one of the things that we are grappling with is trying to quantify the impact, both social and economic, of initiatives that we might want to implement. I note that there is an economic impact tool that you refer to in your submission. I wondered if you could tell me more about that. Also, I understand that some of your members have actually reported to government agencies using this tool. Are we able to get on notice, maybe, some of those reports so we can understand a bit better how that impact has been measured?

PAUL MUSSO: I would probably need to get—sorry, you would probably need to get permission of the organisations to provide. I know one of our members definitely does develop those reports. That economic and social impact tool, we developed that several years ago. It's a measure of the economic and social impact or benefit of the provision of supported employment services. It can produce a dollar figure—it's a cost-benefit analysis, for want of a better term.

It also provides a figure that reflects a social return on investments. For example, for Federal Government outlays on NDIS employment supports, for every dollar of those employment supports that these organisations are funded for, they can produce a particular dollar amount of economic benefit from that \$1. Usually it's a significantly higher figure than \$1—for example, it might be \$2, \$3 per \$1 expended by the Commonwealth.

We've recently had that cost-benefit methodology overhauled by Taylor Fry consultants, and we will be updating the impact tool and strongly encouraging our members to use it and also to develop those reports that demonstrate that economic and social impact. While it's all very well to talk about an economic impact, obviously the provision of these services is a human story rather than just an economic one. Obviously we would like the—or we had a focus within the tool that could demonstrate that as well.

Ms ABIGAIL BOYD: Thank you very much for coming and providing your submissions and the evidence this afternoon. Good to see you both again, Jim and Ben. I want to pick up on the supported employment services. Are these services that effectively are paying a lower rate to people with disability, or is it only that there is—I say "only"; it's quite important. Is it just that it's a segregated space?

JIM SIMPSON: Both those things are of major concern to us.

Ms ABIGAIL BOYD: Right, so they do pay lower—

JIM SIMPSON: Yes. Paul may be able to give more detail, but we were talking to one of our staff members just yesterday who has worked in open and then segregated employment and then came to us. He related that he was receiving \$2 an hour for the work that he was doing in an Australian disability enterprise. Anecdotally, that's a very common figure, down towards that level, but Paul may be able to provide better overall data than I can.

PAUL MUSSO: Yes, I just wanted to say that I think Jim and I have very different perspectives on the two issues that you've raised, both the wages issue and the employment setting issue as well. For my sins, I've worked in this area of wage setting in supported employment for well over a decade. Yes, I was heavily involved in the review of the Supported Employment Services Award, which is the award that covers the working conditions and pay rates for employees with disability who work in what were formerly known as disability enterprises. For convenience's sake, I'll probably just refer to them as disability enterprises, if that's okay.

The Fair Work Commission, after a mammoth review of the award which took over a decade, finally made a decision back in December 2019—sorry, December 2022, pardon me; it just went on for so long, I lost my timeframe there—to completely overhaul the wage-setting arrangements for employees with disability. They introduced two new grades into a classification structure. They abolished all the old, rather arbitrary and inconsistent wage assessment tools that were used previously. They introduced the supported wage system as the sole determinant of an employee's rate of productivity. Again, this is a very complex concept that I would rather just touch on at the moment, but the upshot of these changes was that it was to ensure consistency and it was to ensure increased wages for these employees. There was a three-year transition period around the introduction of those increased wage rates.

I know that the disability royal commission made a recommendation stating that they would like to see all supported employees earning at least 50 per cent of the minimum wage within a five-year period and the full award wage or the equivalent of the full minimum wage at the end of a decade. With the way the new wage-setting structure works in the award, I think we will end up seeing probably around 70 per cent of employees working in supported employment services earning around two-thirds of the minimum wage by the end of that three-year period. That is a significant increase, and it does come with some risks to the viability of these organisations, in

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particular, with attendant job losses for employees with disability—mainly, probably, those employees who have more severe disability, who require more on-the-job support. I think they're most at risk of being displaced from the labour market as a result of these changes.

Ms ABIGAIL BOYD: But the disability royal commission looked into this deeply and came up with a recommendation that these supported workplaces need to be phased out and that we're moving to an inclusive model. On that basis, when we look at our procurement policies, we could move quicker than that, couldn't we, and say, "Actually, we're going to preference those organisations that are moving quicker on that scale to raise the minimum wage and actually treat people with disability with the respect they deserve".

PAUL MUSSO: You certainly could do that. Again, I would be very curious to see what the criteria were that the Government used to select those organisations. But NDS, again, has been working very closely with our members to encourage a transformation of the provision of that supported employment model, particularly moving away from what were called segregated settings by the royal commission. NDS and its members prefer to refer to them as congregate settings.

Ms ABIGAIL BOYD: That doesn't sound as bad, but they are segregated. They are a workplace that only has people with disability in it.

PAUL MUSSO: With respect, my interpretation is that "segregation" implies a lack of choice whereas a congregation is a group where people are willingly congregating or gathering. No-one is forced to work in—

Ms ABIGAIL BOYD: Sorry, "choice" implies that there is something to choose between. If it's a choice between no work or work not at the right wage, that's not really a real choice, is it?

PAUL MUSSO: Regrettably, that's correct. Obviously, we would all like to see a far greater number of employment opportunities for people with disability and, obviously, for people with disability to have far more choice with regards to their career options and the work options they choose. But, again, I'd like to think that our members are well on the way to evolving into providing a far wider range of employment options for people with disability, including those that more closely reflect their skills and their career aspirations and that will enable them to work in more mainstream settings. We are monitoring that through our annual survey of our members as well.

Ms ABIGAIL BOYD: Perhaps I could go back to CID. I'm looking at your recommendations and you make a distinction there between the major contracts and those that are not, and you talk there about specifically including a substantial number of people with intellectual disability. What would that substantial amount look like? Would it vary depending on the type of work and the workplace? Are there any other jurisdictions in Australia that do this better than us?

JIM SIMPSON: We haven't sought to come with a specific proportion, but we'd be happy to work with government on nailing that. I don't know of other jurisdictions that have done it better, offhand. I do know—and this is the reason why we've made that distinction between major contracts and others—that there are existing procurement requirements in relation to major construction requirements and that there is a ratio of First Nations people and women employed. That's the model that we're coming from, saying, "Well, look, it would be totally sensible to equally include people with disability in that sort of context."

The other thing I want to emphasise is that, in relation to people with higher support needs that Paul referred to, there isn't nearly enough good practice out there. However, there is one stand-out disability employment service job support who have a stand-out record in terms of supporting people with moderate intellectual disability—in other words, people with higher support needs—into open employment and being able to maintain that employment. That's about 68 per cent, which is a pretty good success rate if you look at disability employment services generally.

The CHAIR: I thank you all very much for making the time to come and speak with us today. We appreciate you being here and your submissions. If there were any questions taken on notice or if there are any supplementary questions, the secretariat will be in touch and you have 21 days to respond.

(The witnesses withdrew.)

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Mr BRAD PIDGEON, Acting NSW/ACT State Secretary, Australian Manufacturing Workers' Union, affirmed and examined

The CHAIR: Welcome, Mr Pidgeon. Thank you for making the time to come and give evidence. Would you like to start by making an opening statement?

BRAD PIDGEON: For quite some time our union, the AMWU, which consists of around 15,000 members, has significantly been denied work over time through poor procurement choices. For too long now in manufacturing, construction and also public transport and energy infrastructure, we have just been denied opportunities to partake in jobs—good, secure jobs which should have been built or manufactured here in New South Wales. What we have experienced as a union is we have seen jobs being offshored, to which businesses have shut down over time, skills have diminished and opportunities for our children and their futures were denied by previous governments.

For the past 14 years the AMWU has been heavily active in a campaign called Build Them Here, which primarily talks about public transport infrastructure such as ferries, buses and rail rolling stock. What we do know, and what we hear from our members on the ground, is that there are consistent issues with items purchased overseas, not just from an economic standpoint but from a skills and development point, to the point where we see the likes of the intercity fleet—that train cost blowout is up around \$4 billion. We think about that number: \$4 billion. What could we spend that on?

What we do know is that we can build trains here in New South Wales. We should have built trains in New South Wales. But the track record of the previous Government clearly indicates that—and, in fact, we have had a previous Premier say publicly that we can't build trains in New South Wales yet. Where is she now? I won't go any further on that. But what we want to see is the opportunity for our members and the communities by and large across New South Wales to partake in new projects, both in rail manufacturing and obviously the transition, which has a lot of green jobs available as well. I'll just leave that as my opening remarks and I'm happy to take any further questions.

The CHAIR: You referenced your campaign about local manufacturing—I think it is called Build Them Here. What challenges have you faced in that campaign? Have you managed to secure contracts on that basis? What barriers have you seen in that campaign?

BRAD PIDGEON: The barriers throughout since 2013 have been quite clear. It was due to a previous Government's rhetoric to purchase things overseas. We've had a previous transport Minister that consistently says that we cannot do things here, yet if we look at the current class of Tangara train, that was built in the Hunter by AMWU members. That train is still in operation today. Yes, it's a bit tired around the edges and needs a bit of work to be done to keep it reliable in service, but that train demonstrates that we can build things here. What we do know is that we have been denied opportunities over the past 12 years to do that.

The CHAIR: I don't know if you've had a chance to see any of the evidence, but we have heard quite a lot today about the Secure Local Jobs code in the ACT. I note you reference that in your submission, and also the Victorian equivalent. I wondered if you could talk us through why that's important to your union, or your members, and why you're advocating for that?

BRAD PIDGEON: I think it fits into some of the Federal stuff that we're advocating as well around Future Made in Australia. But why it's important in New South Wales is because it allows our members to have opportunities to partake in the construction or manufacturing of publicly owned assets. As I've previously stated, we can build stuff here. It is quite evident. We have members on the ground right now in Newcastle that are building trains and locomotives for private enterprise. So we do currently have the skill base. What we need is contracts to be signed to ensure that we can partake in those programs, which has a greater economic benefit for New South Wales, as opposed to offshoring.

The CHAIR: That refers to what they call in the ACT code that second gate, that industry participation plan aspect in terms of the planning around industry. What about what's been referred to as the first gate, which is the idea that organisations that are going to engage in tendering for government contracts should be pre-certified based on their previous workplace behaviour, compliance with labour laws—those kinds of things?

BRAD PIDGEON: Yes, absolutely. It's important that we have those things vetted properly. When we talk about workplace safety, that should be front and foremost of any business that wants to partake in any program, whether it's construction or manufacturing or the like. What's important is that we have good industrial relations in place to ensure that these projects run smoothly and operate properly. Having best labour practices will ensure that it gives government a level of confidence that we can execute these projects on time and on budget as well.

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The CHAIR: What about the suggestion that we've had that anything that requires that kind of pre-certification, or checking, isn't really necessary because businesses have to comply with the law, so we can almost assume that they are already doing what they should in terms of labour law?

BRAD PIDGEON: I'd never assume in that space, to be honest, Chair. What we do know is that there are some people out there that on the face appear to be doing the right thing, as we understand, whether it's through payments of superannuation or whether it's consistent industrial issues, especially around payment of wages—what we've experienced is that it's a common problem, and we see it in the labour hire space and the subcontractor space as well.

The CHAIR: Could you explain a little bit more about that?

BRAD PIDGEON: Sure. When we see group training providers supply apprentices to industry, what we see a lot of the time is those apprentices are usually on award wages or plus 5 per cent. We do normally have enterprise agreements in those workplaces which contain an index to the trade rate in the agreement. An example would be C10, which is an entry level trade rate for a mechanical tradesperson. What we do see is that rate is predominantly far greater than the award rate or the award plus 5 per cent. What we do know is that award wages for apprentices are not liveable wages in this current day and age, so we have a campaign on foot to try to change the awards to increase the apprentice rates. But rather than try to change the awards, we'd like to see government, as part of the procurement process, have some tight provisions to say that anyone that partakes—for instance, say, the new future fleet of trains, so the new Tangara replacement—any subcontractor or supplier, would be paying as per the applicable site agreement rate and not the award rate. What we do see is we see apprentices that are exploited to the market, to which they're charged out normally from the subcontractor to the prime as a tradesperson as well.

The CHAIR: You've spoken a bit about not building stuff here anymore, and you've given trains as the example. What kind of impact does that have locally for workers and the manufacturer when government procures offshore rather than choosing local options?

BRAD PIDGEON: What happens there is a horrible experience that I've been through too many times in relation to redundancies—people with no certainty, people with no future. We see, especially with apprentices, potentially in the second year of their four-year apprenticeship, that when projects wind up they're left to the whims of the market with no certified skills, no opportunities and struggles to obtain work due to tight opportunities in the job market. We've seen that in the Hunter Valley too many times, whether it's shipbuilding—the last program I was involved in before becoming a union official—a downturn in the coal industry or whether it's trains built overseas, and ferries and the like. It's a horrible circumstance, and one that has a human element. As an official, it's quite difficult.

The CHAIR: What I'm hearing also is that one of the implications is particularly with regard to future workforce. Once we, as a government, take a decision to offshore, not only is there an impact on those individuals—which, of course, is difficult to deal with—but it also means that we're then denying ourselves trained tradespeople into the future because we've cut off that opportunity. Are you also concerned, then, about the training implications and the workforce of the future?

BRAD PIDGEON: Absolutely, I'm concerned. I'm on the public record welcoming the recent announcement of the Tangara upgrades and the viability of future fleet or further subsequent programs. What I am still concerned about is what are the skills and the training? How do we futureproof our workforce so that it's ready to partake in programs? When it comes to skills and training, what we do know is that TAFE has predominantly been the institution that we've utilised to train tradespersons. What we've seen through cuts in funding, the sale of assets in TAFE and the precarious work of TAFE teachers is it has delivered a difficult challenge in training the future of our workforces that are required.

Ms ABIGAIL BOYD: Thank you for coming in and for your submission. Listening to you talk just now, I was reminded of the Spanish-built light rail and when it cracked in 2021. It cracked because it was apparently required to go around a bend and go a bit too fast. Although the Spanish supplier had been sent exactly what the route would be, they hadn't factored that in. It then turned out that the instructions on how to weld the cracks were written in Spanish. I remember sitting in an inquiry at the time and asking the transport Minister why it was so delayed getting this thing corrected. He was saying that because of COVID, they were trying to Zoom the Spanish engineers in to try to teach people on the ground how to repair the light rail. It all struck me as so absurd that we'd ever gone offshore. In response, the transport Minister said that there were no Australian bidders and that there were no workers here, which is what you started on with your opening statement—that there was no capacity. What could they have done better? We've heard about skills and training but, if there is a real circumstance where we don't have capacity—say that is true—should we be requiring those companies to train up our workers in the process? How should we be doing that?

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BRAD PIDGEON: Absolutely. It should be part of the process of any program that there's a skills and training component awarded to those programs. One, it sort of futureproofs industry, but it also stops the scenarios like that welding scenario you just mentioned. It still bewilders me as well, mind you. That is one of many examples where we've got major shortfalls that need to be addressed.

Ms ABIGAIL BOYD: So requiring that skills upgrade, as you say, boosting TAFE and ensuring levels of apprentices, trainees and cadets in major projects—have I captured all of that?

BRAD PIDGEON: Yes. What we've done in anticipation is we took a proactive approach. In Newcastle, we have a lot of OEM potential suppliers for future fleet. We know of those companies where we've got good industrial relations, good safety records and good payment of wages. We've had a lot of great, robust discussions with industry about training programs and different mechanisms which those businesses can access, such as National Reconstruction Fund money, and the ratios of one in 10 workers for training programs is part of that criteria. So there are other avenues for businesses to partake and get funding arrangements but, by and large, the ratios are what are important.

Because what we do know, as part of a transition—I've spoken about this in many settings—is an example of electric bus technicians. We need about 6,500 of them by 2030. Where are we going to get them from in a hurry? When I look at the ACT Government and their program that they've got—and I spoke to their transport Minister as of last week, and I've been invited to go down and understand how they've implemented that program and what were some of the constraints they had with getting it off the ground. But, by and large, replicating something like that here in New South Wales—because we are upon a structural change and, as each day goes by, it's becoming difficult to reach the targets that have been set.

Ms ABIGAIL BOYD: And you see that mistake continually being made. Even now people are talking about it with the—there's a whole other issue—nuclear submarines and who the hell would be able to actually work on them if we don't have that workforce, if we indeed do ever get them. I think one of the other things I picked up in your submission was in relation to this subcontracting, particularly when it comes to local jobs and use of local content as well as local labour, when we're contracting with one company, who then outsources and gets a bunch of different components, often from overseas. Does the ACT do that better than us here? What would you recommend?

BRAD PIDGEON: The ACT are in a bit of a weird predicament, to be honest. They have a problem about getting manufacturing in the ACT due to the price of land down there. It's predominantly a defence space down there, and with defence contracts it attracts big dollars as well. So the actual market to manufacture in the ACT is quite difficult but they've identified predominantly the skills issue they're going to have for their current fleet, of maintaining their buses and the like. So in terms of them, they are quite different to us. I think we're a little bit different. While we've got manufacturers, we actually haven't quite got the centres of excellence to perform those transitions of skills that are required.

Ms ABIGAIL BOYD: So it's a broader point about government identifying skills shortages and saying, "We're going to put everything in to make sure that we actually have workers in these areas as we go forward". It seems like such an obvious thing, but I guess if you've been reliant on the markets to do everything for so long, then we do end up with these kinds of shortages. I think that's all I have.

The Hon. DAMIEN TUDEHOPE: Were you a bit disappointed when the Government purchased ferries from Tasmania?

BRAD PIDGEON: No, because they were built in Australia.

The Hon. DAMIEN TUDEHOPE: So your definition of local content is anywhere in Australia?

BRAD PIDGEON: Wherever we can't build them, the preference is to build them in Australia. So an example—

The Hon. DAMIEN TUDEHOPE: So the fact that New South Wales workers didn't get that opportunity didn't worry you?

BRAD PIDGEON: We didn't have the opportunity or the skill base at the time to do it.

The Hon. DAMIEN TUDEHOPE: Are you sure of that?

BRAD PIDGEON: Yes, positive.

The Hon. DAMIEN TUDEHOPE: Well, what was all wrong with the trains which comprised the new intercity fleet?

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BRAD PIDGEON: The consistent issues that they have with the commissioning phase. Just for the record, I was previously the organiser for doing this role for UGL Kangy Angy for the intercity fleet. Our members consistently approached me about issues with those trains.

The Hon. DAMIEN TUDEHOPE: What were they?

BRAD PIDGEON: Anywhere from wheels flattening out on the lines due to brake jams—

The Hon. DAMIEN TUDEHOPE: That was because they were sitting there for a long period of time not operating. Isn't that the case?

BRAD PIDGEON: Not when they're operating up and down the Blue Mountains and they actually—

The Hon. DAMIEN TUDEHOPE: They weren't allowed to be operated, were they?

BRAD PIDGEON: They had to do it for test and activation.

The Hon. DAMIEN TUDEHOPE: Now that's the case, but all that time that they were sitting there—that caused the problem, didn't it?

BRAD PIDGEON: Well, not a flat spot because it's not moving.

The Hon. DAMIEN TUDEHOPE: Yes, it did, effectively because of the amount of time that those trains were sitting there and not operational.

BRAD PIDGEON: I'm trying to understand how something that doesn't move obtains a flat spot when it's hard metal.

The Hon. DAMIEN TUDEHOPE: These trains are used everywhere in Europe. What was the problem when they arrived in Australia?

BRAD PIDGEON: The problem is the design was immature, that they were actually—

The Hon. DAMIEN TUDEHOPE: These are the state-of-the-art trains used everywhere in Europe. You say that they are immature?

BRAD PIDGEON: Yes, absolutely. It's why they've got so many faults.

The Hon. DAMIEN TUDEHOPE: What was the—

The Hon. BOB NANVA: Point of order—

BRAD PIDGEON: I'm trying to understand the relevance of the question.

The CHAIR: Sorry, Mr Pidgeon. We'll get back to you shortly. I'm going to hear a point of order from Mr Nanva.

The Hon. BOB NANVA: Chair, if courtesy could be extended to the witness—there have been now a succession of questions asked by Mr Tudehope and barely a moment given to the witness to answer them.

BRAD PIDGEON: That's all right.

The CHAIR: Mr Tudehope, I ask you that you allow the witness to answer the question.

The Hon. DAMIEN TUDEHOPE: That's alright. He's a big boy.

The CHAIR: Mr Pidgeon, you can continue your answer if you so wish.

BRAD PIDGEON: The train of the inner city fleet, they've had multiple wiring issues. They've had configuration issues. They've had to change the configuration for guard provisions around safety.

The Hon. DAMIEN TUDEHOPE: That's the problem, isn't it?

BRAD PIDGEON: No, not by and large.

The Hon. DAMIEN TUDEHOPE: That was the problem, wasn't it? It was the guard compartments that were the problem.

BRAD PIDGEON: No, the actual problem was there was no due diligence done by the Government to see if these things would fit the tracks.

The Hon. DAMIEN TUDEHOPE: You identified \$4 billion—and I'm not sure that that's the final number, but anyway—and they're not running yet, are they?

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BRAD PIDGEON: No.

The Hon. DAMIEN TUDEHOPE: Not in service.

BRAD PIDGEON: No, have not returned one dollar for us, New South Wales.

The Hon. DAMIEN TUDEHOPE: Indeed. Why is that?

BRAD PIDGEON: Because they're taking an extra-long time to actually configure the trains properly. There are some issues with software that still need to be rectified. Our train system within itself is going to digitalisation as well, which is having an effect on that class of trains.

The Hon. DAMIEN TUDEHOPE: But they could have been operating in New South Wales at least 2½ years ago, could they not?

Ms ABIGAIL BOYD: Unsafely.

The Hon. DAMIEN TUDEHOPE: Yes, they could have.

BRAD PIDGEON: I disagree with that assertion.

The Hon. DAMIEN TUDEHOPE: They could have been operating 2½ years ago.

BRAD PIDGEON: That's your view, and it's certainly different from mine.

The Hon. DAMIEN TUDEHOPE: In fact, the only reason that they weren't operating was because the RTBU would not operate those trains without guard compartments. Isn't that the case?

BRAD PIDGEON: That's not solely the case at all.

The Hon. DAMIEN TUDEHOPE: But it was the predominant case why those trains would not operate. Isn't that the case?

Ms ABIGAIL BOYD: There were all the mirrors, and the—

BRAD PIDGEON: In fact, we have manufacturing faults—

The Hon. DAMIEN TUDEHOPE: So your—

The CHAIR: Mr Tudehope, I'll draw your attention to the previous point of order and my recommendation that you allow the witness, as a courtesy, to answer the question. Mr Pidgeon, you can continue.

BRAD PIDGEON: The assertions made are somewhat incorrect, from my observation.

The Hon. DAMIEN TUDEHOPE: Not from mine.

BRAD PIDGEON: When we look at the trains themselves, when they are going down the lines as live exercising or commissioning, when they are breaking down consistently and getting towed to the depots to get fixed, whether it's the brakes jamming on, whether it's the actual couplings that hold the trains and passenger sets together malfunctioning, whether it's—

The Hon. DAMIEN TUDEHOPE: Is that all reported?

BRAD PIDGEON: It should be reported.

Ms ABIGAIL BOYD: It was at the time.

The Hon. DAMIEN TUDEHOPE: There's documentation which would substantiate the allegations you're now making?

BRAD PIDGEON: Yes.

The Hon. DAMIEN TUDEHOPE: Where would we find those?

BRAD PIDGEON: I'm sure if you approach UGL or the department of transport or whoever the regulator may be—

The Hon. DAMIEN TUDEHOPE: One of the things you've advocated—and you and I can agree to disagree on the new intercity fleet. In relation to your proposal for 90 per cent local content for major construction projects and 80 per cent local content for complex manufactures by local content, you now are telling us that your local content is Australia and New Zealand?

BRAD PIDGEON: That's the figure that we aim for, yes.

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The Hon. DAMIEN TUDEHOPE: And, if that does not comply with Australia's obligations under its international agreements, what do you say happens then?

BRAD PIDGEON: International trade agreements are not fit for purpose.

The Hon. DAMIEN TUDEHOPE: You would be advocating for the abolition of the international trade agreements?

BRAD PIDGEON: Potentially, yes.

The Hon. DAMIEN TUDEHOPE: And if that impacted on Australia's opportunity in primary produce in the European market, would that worry or concern you?

BRAD PIDGEON: Coming from a primary produce market as a cotton farmer from Moree growing up, certainly that has no relevance, because there'd be a carve-out on that.

The Hon. DAMIEN TUDEHOPE: We have some access to European markets because of the international trade agreements, don't we?

BRAD PIDGEON: We do.

The Hon. DAMIEN TUDEHOPE: So, if those international trade agreements protect our access to those markets, and they were interfered with, it follows that those markets and other suppliers to those markets would be impacted, wouldn't they?

BRAD PIDGEON: It depends on what the free trade agreement is. We have multiple free trade agreements around the world where there are certain provisions and carve-outs do occur from time to time.

The Hon. DAMIEN TUDEHOPE: Yes, but the nature of entering into those agreements is that we get access to other markets for other suppliers and manufacturers in Australia—principally, potentially, primary producers.

BRAD PIDGEON: I'm trying to understand.

The Hon. DAMIEN TUDEHOPE: Do you care about the impact on other industries if you tore up international trade agreements?

BRAD PIDGEON: I wouldn't be saying to tear up the free trade agreements in entirety.

The Hon. DAMIEN TUDEHOPE: You don't say tear them up?

BRAD PIDGEON: No.

The Hon. DAMIEN TUDEHOPE: Okay. To the extent that you're advocating—

BRAD PIDGEON: There would be certain exclusions which you can reach agreement on. It has been done before.

The Hon. DAMIEN TUDEHOPE: So would you not assume that those exclusions are already contained in those international agreements?

BRAD PIDGEON: A case of example, for your record, is to have a look at the Queensland rail manufacturing and what we've achieved there.

The Hon. DAMIEN TUDEHOPE: I understood the point that you're making, but to the extent that you are advocating a model of 90 per cent local content for major construction projects and 80 per cent local content for complex manufactures—"buy local"—if that involved us having to breach our obligations under international trade agreements, does the impact on other industries concern you?

BRAD PIDGEON: They'd be negotiated. That 90 per cent could end up down to 85 per cent; it could end up to 80.

The Hon. DAMIEN TUDEHOPE: Can I take it that you are prepared to amend your recommendation to say that the percentage that you require for local content depends upon impacts on other industries relating to our obligations under international trade organisations?

Ms ABIGAIL BOYD: Point of order: I let this go on long enough. Mr Tudehope is putting forward a hypothetical based on a potential interpretation of a law that other people have said is not actually correct. He is now asking this witness to somehow opine on that hypothetical scenario. It's just a bit silly.

The CHAIR: Mr Tudehope, your time has expired. Perhaps we will leave that.

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The Hon. DAMIEN TUDEHOPE: I'll ask it again later.

The CHAIR: I think there is a bit of time to be shared. Mr Nanva, do you have a question?

The Hon. BOB NANVA: Yes, thank you, Chair. Part of what has been missing in the evidence today is the end-user experience of rolling fleet stock and the procurement—the assessment of that. We've previously had evidence with some concern with that lack of end-user consultation, industry engagement and stakeholder engagement with the procurement, particularly, of rolling stock. What consultation was there with the AMWU prior to the contracts being signed for the intercity fleet and the regional rail fleet?

BRAD PIDGEON: No consultation.

The Hon. DAMIEN TUDEHOPE: Is that true?

BRAD PIDGEON: Just an announcement.

The Hon. BOB NANVA: Are you aware of industry engagement with respect to local capacity to build the regional rail fleet or the intercity rail fleet?

BRAD PIDGEON: We do know there was engagement with industry. What we do know is that some of those participants in maintenance were told, "If you want to win maintenance contracts, best remain silent on the builds."

The Hon. BOB NANVA: A little bit has been made of the capacity in New South Wales to build rolling stock. Given years of local manufacturers being frozen out of manufacturing fleet, is it not the case that there just needs to be sufficient, consistent order volumes in order to build up that manufacturing capacity before we can build them here again?

BRAD PIDGEON: Yes, absolutely. We've been having conversation with industry, by and large, right from fibreglass manufacturers, seat component manufacturers, and people that can actually make sub-steel structures for the chassis of the rolling stock right through to handrails and components for the trains. In the Hunter, particularly, consortium HunterNet have done a fantastic job, in collaboration with us, to identify local suppliers and really make sure that they have an opportunity to partake in a program moving forward. To answer your question, they just need to be given a certainty of awarding a contract. It doesn't have to be, say, 400 rolling bits of stock; it can be 20 to start with, or when one comes offline—say, from Tangara—one is replaced. But ideally, you need to build up that skill capacity and then also the confidence as well to do it.

Like any program that's come out of—shipbuilding is an example of that, around the AWD destroyers. It was slow going for the first six months: immature design/low skill base. But what we learnt over time was the methodology got better, the design became more matured and there were a lot of lessons learnt. They have become very productive and competitive to do that here in Australia.

The Hon. BOB NANVA: But after a decade of being unfairly locked out or priced out, you can't flick the switch again overnight, can you?

BRAD PIDGEON: No, not at all.

The Hon. DAMIEN TUDEHOPE: One of the observations you were making was about the skills workforce. In relation to construction projects and New South Wales Government tenders, there is a condition, is there not—and I'm reading from a document here, so you won't be surprised to hear this condition—that in respect of those contracts, and, therefore, the large contracts which you've identified, you must embed an apprenticeship target of 20 per cent of the trades workforce on the project; include this target in tender documentation in contract requirements, including quarterly reporting; and provide quarterly reports to Training Services NSW in the Department of Education. That's the sort of proposition that you're embracing, is it not?

BRAD PIDGEON: Yes. Then you've got to have an opportunity to do that.

The Hon. DAMIEN TUDEHOPE: Yes, I know that. But this is exactly the sort of procurement policy which you would be advocating for?

BRAD PIDGEON: Absolutely, skills are the future.

The Hon. DAMIEN TUDEHOPE: If there is a manufacturer in Western Australia who can already build rolling stock, you wouldn't have, under your model, any problem with that company providing the new Tangara trains, would you?

BRAD PIDGEON: We'd like to see them built here in New South Wales, first and foremost.

CORRECTED

The CHAIR: That concludes the session for today. Mr Pidgeon, thank you so much for appearing. We do appreciate your time and your giving of evidence. If you took any questions on notice or if there are supplementary questions, the secretariat will be in touch and you'll have 21 days to respond. Again, thank you for your time.

(The witness withdrew.)

The Committee adjourned at 17:00.