



LEGISLATIVE COUNCIL

STANDING COMMITTEE ON SOCIAL ISSUES

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

## First report



Report 63

June 2024

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Standing Committee on Social Issues

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Procurement practice of government agencies in New South Wales and its impact on the social development of the people of New South Wales – First report

"June 2024"

Chair: Hon Dr Sarah Kaine MLC



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## Terms of reference

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

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

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

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

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



## Committee details

### Committee members

<b>Hon Dr Sarah Kaine MLC</b>	Australian Labor Party	<i>Chair</i>
<b>Ms Abigail Boyd MLC</b>	The Greens	
<b>Hon Jeremy Buckingham MLC</b>	Legalise Cannabis Party	
<b>Hon Anthony D'Adam MLC</b>	Australian Labor Party	
<b>Hon Rachel Merton MLC</b>	Liberal Party	
<b>Hon Bob Nanva MLC</b>	Australian Labor Party	
<b>Hon Emily Suvaal MLC</b>	Australian Labor Party	
<b>Hon Damien Tudehope MLC</b>	Liberal Party	

- \* Ms Abigail Boyd MLC substituted for Dr Amanda Cohn MLC from 11 October 2023 for the duration of the inquiry.
- \* The Hon Damien Tudehope MLC substituted for the Hon Sarah Mitchell MLC from 19 December 2023 for the duration of the inquiry.

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## Chair's foreword

Government procurement plays a vital role in the NSW economy with almost \$2 billion spent on the various resources that contribute to the provision of all public services to the people of NSW per year. Given its economic and social importance, the processes associated with procurement need to be fit for purpose. The procurement system should be constructed in such a way as to maximise the involvement of all types of businesses. Processes need to enable appropriate levels of transparency and oversight to ensure public funds are being used for the best outcomes for the people of NSW and ensure fairness for stakeholders.

To date, this inquiry has examined a broad array of themes associated with NSW Government procurement and, in particular, the processes engaged by government agencies in procuring goods and services. To inform its understanding, the committee has heard from government agencies, industry professionals and other key stakeholders in consideration of whether the current approach to planning, sourcing and managing government procurement is effective.

Through the evidence put before the committee it has become clear that there is no consistent and comprehensive definition and understanding of the 'value for money' procurement objective under the NSW Procurement Policy Framework. While the committee is aware that no two procurement engagements are the same, the lack of clear criteria has made it challenging not only for government agencies to interpret and apply the objective but for suppliers, vendors and service providers to understand and engage in the process in a fair and transparent way. To this end, the committee has recommended that an expanded definition of 'value for money' be reviewed and implemented as an immediate priority.

A further issue at the core of procurement governance in New South Wales is the role and effectiveness of the NSW Procurement Board in its oversight functions. An absence of key data and independent assurance reviews has potentially placed an overreliance on agencies to make self-attestations of compliance, rather than the Board independently verifying whether minimum procurement compliance standards have been met. The evidence has led the committee to conclude that the Board is not functioning effectively as an oversight body to ensure compliance and meet statutory monitoring requirements. The committee has therefore recommended that the NSW Procurement Board develop an independent and robust compliance and enforcement mechanism to meet its oversight obligations.

Barriers to government procurement opportunities for small-medium enterprises (SMEs) have also been resoundingly clear to the committee, particularly through evidence citing inequitable tender and contractual requirements. We also understand the benefits of agencies working more effectively to provide feedback to SMEs, including through the allocation of tender weightings and criteria, along with outcomes from competitive processes for engagement in government procurement opportunities. Building upon commitments to strengthen SMEs, the committee has therefore recommended that the current barriers to government procurement opportunities for SMEs be investigated.

Various other issues have been identified for the committee's consideration, including minimum contract disclosure requirements, contract management standards, the use of standardised contracts within government agencies, improvements to agency accreditation programs, and ensuring there is the correct mix of procurement expertise in government agencies. The committee has made a range of recommendations in response to these issues with the hope of facilitating more transparent, fair and effective procurement practices.

Indeed, taking these factors taken into consideration, it is apparent that the current approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met. It is time for a new approach – one that the committee is eager to explore as it moves into the second phase of this inquiry.

Whilst this committee continues to inquire into the matter, I would like to thank the NSW Government agencies and other stakeholders who have contributed to date, through their submissions and appearance at the inquiry hearings. I also thank members of this committee for continuing to work together on this important area to ensure government procurement moving forward reflects best practice and promotes ethical conduct and social development. I also extend my appreciation to the secretariat for their support and diligence in assisting with this inquiry.

Hon Dr Sarah Kaine MLC

**Committee Chair**

## Findings

- Finding 1** 40  
There is no consistent or comprehensive definition and understanding of 'value for money' as part of the NSW Procurement Policy Framework to assist government agencies to interpret and apply effectively to government procurement activities.
- Finding 2** 43  
There are barriers to government procurement opportunities for small-medium enterprises, including inequitable tender and contractual requirements.
- Finding 3** 44  
The NSW Procurement Board is not functioning effectively as an oversight body to ensure agency compliance with obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.
- Finding 4** 46  
The current approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met and a new approach is warranted.

# Recommendations

- Recommendation 1** **41**  
 That the NSW Government review and implement an expanded definition of 'value for money' as part of the NSW Procurement Policy Framework, as an immediate priority, to assist government agencies to interpret and apply effectively to government procurement activities.
- Recommendation 2** **41**  
 That the NSW Government:
- review what standard procurement contracts are currently available across all government agencies
  - consider developing standard procurement contracts across all government agencies where none exist
  - through stakeholder consultation, investigate the value of mandating standard procurement contracts where appropriate.
- Recommendation 3** **42**  
 That the NSW Government reduce the threshold to \$100,000 at most for disclosing government procurement contracts to ensure greater transparency of government procurement activities.
- Recommendation 4** **42**  
 That the NSW Government set contract management standards, including expectations around contract monitoring and storage requirements for contracts of any value.
- Recommendation 5** **43**  
 That the NSW Government develop measures to ensure feedback is provided to all parties involved in a competitive tender bid, as a standard outcome of the procurement process.
- Recommendation 6** **43**  
 That the NSW Government assess its agency accreditation programs, in particular for construction procurement, with a view to implementing robust accreditation levels to better qualify agencies to meet their procurement needs.
- Recommendation 7** **44**  
 That the NSW Government investigate the barriers to government procurement opportunities for small-medium enterprises, with a view to amending or removing inequitable tender or contractual requirements.
- Recommendation 8** **45**  
 That the NSW Procurement Board develop an independent and robust compliance and enforcement mechanism, with increased data monitoring capabilities, to meet its obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.
- Recommendation 9** **45**  
 That the New South Wales Government expand the remit for procurement officers to undertake sufficient due diligence functions and monitoring of agency compliance with the NSW Procurement Policy Framework.

## Conduct of inquiry

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

The committee received 63 submissions.

The committee has held two public hearings to date at Parliament House in Sydney.

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

# Chapter 1      **Background**

This chapter provides an overview of procurement governance and processes relevant to New South Wales government agencies. It begins by outlining the legislative and policy framework for government procurement, and provides background on the NSW Procurement Board. The chapter also discusses the devolved approach to government procurement and draws attention to certain aspects of this approach, including agency accreditation, central procurement agencies and responsibilities, and the use of technology platforms in procurement activities. Finally, the chapter considers recent developments in Australian Government procurement.

## **Structure of the inquiry**

- 1.1 This inquiry was established following a referral of the terms of reference to the committee by the Hon. Courtney Houssos MLC, Minister for Finance, Minister for Natural Resources and Minister for Domestic Manufacturing and Government Procurement.<sup>3</sup>
- 1.2 The terms of reference, included on pages vi-vii, require for the committee to inquire 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.
- 1.3 On 14 March 2024, the committee agreed to table two reports for the inquiry. This first report focuses on current procurement processes in New South Wales government agencies, through agency-specific or whole of government procurement arrangements. The second report is envisaged to examine key themes derived from the terms of reference, including social procurement, labour considerations, environmental impacts and local procurement.
- 1.4 It is noted that further hearings have been scheduled for after the tabling of this report. While the purpose of those hearings is primarily to inform the final report, the committee maintains the opportunity to examine and comment on any evidence relevant to the issues raised in this report. Similarly, any evidence received during the course of the hearings for this report may be referred to by the committee in its final report.

## **Legislative and policy framework for NSW Government procurement**

- 1.5 Procurement by New South Wales government agencies is administered by legislation, the NSW Procurement Policy Framework, and various other policies, guides and directives that govern the way agencies procure goods and services. This section considers these in turn, as they reflect the scale, scope and complexity of NSW Government procurement requirements.

### **Legislation**

- 1.6 Part 11 of the *Public Works and Procurement Act 1912* sets out the statutory approach to procurement by the NSW Government and institutes the framework for government-wide procurement practices and activities.

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

- 1.7** The Act defines procurement as the process of acquiring goods and services by:
- identifying the need to purchase
  - selecting suppliers
  - contracting and placing orders
  - disposing goods that are no longer required or that are unserviceable.<sup>4</sup>
- 1.8** The Act provides for the procurement of goods and services by and for a government agency to exercise its statutory functions and is pursuant to the agency's specific statutory powers of procurement.<sup>5</sup> In this regard, the Act defines government agencies as:
- a government sector agency, as defined by the *Government Sector Employment Act 2013*, namely 'a public service agency' or 'group of staff comprising the service' in the government sector<sup>6</sup>
  - a New South Wales Government agency
  - any other public authority prescribed under an applicable Act or that exercises a public function
  - a State-owned corporation, prescribed under relevant regulations.<sup>7</sup>
- 1.9** It is noted that no State-owned corporation has been included in regulation since 2013, when government procurement responsibilities were transferred to the statutory framework of the Act.<sup>8</sup>
- 1.10** The Act also establishes the NSW Procurement Board, the key governance structure for policy development and implementation as well as oversight of procurement by New South Wales government agencies. The objectives and functions of the Board will be discussed in greater detail later in the chapter.
- 1.11** The legislative framework, as contained in the Act, specifies the mandatory procurement obligations of government agencies, value for money considerations and requirements to provide information to the NSW Procurement Board.<sup>9</sup>
- 1.12** Separately, under the *Modern Slavery Act 2018*, New South Wales government agencies are also required to 'take reasonable steps to ensure that goods and services... are not the product of modern slavery'. Also applying to local councils and State-owned corporations, the *Modern Slavery Act* seeks to address modern slavery risks in operations and supply chains.<sup>10</sup>

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<sup>4</sup> *Public Works and Procurement Act 1912*, s 162.

<sup>5</sup> *Public Works and Procurement Act 1912*, s 163.

<sup>6</sup> *Government Sector Employment Act 2013*, s 3.

<sup>7</sup> *Public Works and Procurement Act 1912*, s 162.

<sup>8</sup> Submission 40, New South Wales Government, p 4.

<sup>9</sup> *Public Works and Procurement Act 1912*, s 176.

<sup>10</sup> NSW Government, Anti-slavery Commissioner, <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner.html>.



## NSW Procurement Policy Framework

- 1.13** To guide requirements under the *Public Works and Procurement Act*, the NSW Procurement Policy Framework provides a consolidated view of government procurement objectives and requirements as they apply to each step of the procurement process.<sup>11</sup>
- 1.14** The Framework applies to the procurement of all goods and services, as well as construction procurement,<sup>12</sup> and is relevant to all government buyers who are delegated to buy goods or services, including construction, on behalf of the NSW Government.<sup>13</sup> The Framework emphasises that agencies 'should ensure that their internal policies and controls are consistent with obligations under [the] Framework'.<sup>14</sup>
- 1.15** The Framework sets out five government procurement objectives:
- **Value for money** – noting that value for money is not necessarily the lowest price, nor the highest quality goods or services, but requires a balanced assessment of financial and non-financial outcomes<sup>15</sup>
  - **Fair and open competition** – highlighting transparent and open competition practices, probity and fairness, supplier conduct and due diligence practices<sup>16</sup>
  - **Easy to do business** – demonstrating the need to make government procurement simpler and more efficient through notification of business opportunities, mandated contracts, prequalification schemes, supplier payment terms and purchasing exemptions<sup>17</sup>
  - **Innovation** – testing new ideas, engaging in industry, offering interactive tendering for goods, services and construction, including major infrastructure projects<sup>18</sup>
  - **Economic development, social outcomes and sustainability** – including initiatives such as the support of small to medium enterprises and regional businesses, employment of Aboriginal people and people with a disability, procuring from social enterprises, skills and training development opportunities and through diversity.<sup>19</sup>
- 1.16** To assist with the management of the procurement lifecycle, the Framework requires for all individuals buying on behalf of the NSW Government to follow the 'Plan, Source, Manage' approach.<sup>20</sup> This approach sets out procurement in three stages, and broadly covers the aspects

<sup>11</sup> NSW Government, *Procurement Policy Framework* (April 2022), p 3, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf).

<sup>12</sup> NSW Government, *Procurement Policy Framework* (April 2022), p 3, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0008/1294541/Procurement-Policy-Framework-March-2024.pdf).

<sup>13</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 3.

<sup>14</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 3,

<sup>15</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 10.

<sup>16</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), pp 11-16.

<sup>17</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), pp 17-21.

<sup>18</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), pp 22-29.

<sup>19</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), pp 30-37.

<sup>20</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 40.

of procurement analysis and strategy, market and vendor selection, and finally implementing, managing and renewing procurement arrangements.<sup>21</sup>

**Figure 1.1** 'Plan, Source, Manage' approach to NSW Government procurement.



Source: NSW Procurement Policy Framework

### Other procurement-related policies, agreements and considerations

**1.17** In addition to the Framework, numerous other government-wide policies, agreements, directives and broader initiatives, aligned to social, economic and environmental considerations, apply to NSW Government procurement. These include, but are not limited to:

- **Aboriginal Procurement Policy** – aiming to increase skills and participation from within Aboriginal and Torres Strait Islander communities<sup>22</sup>

<sup>21</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 40.

<sup>22</sup> NSW Government, *Aboriginal Procurement Policy* (January 2021), p 1, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0007/949174/app\\_policy\\_jan\\_2021.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0007/949174/app_policy_jan_2021.pdf)

- **Disability employment** – including procurement of goods and services of any value with Australian Disabilities Enterprises (ADEs), which employ people with disabilities for agency and government contracts, across a range of industries<sup>23</sup>
- **International procurement obligations** - being legal requirements under Australia's Free Trade Agreements, international procurement agreements and Enforceable Procurement Provisions (EPPs). These obligations are applicable to 41 NSW Government agencies, where agreements with countries exist for goods, services and construction contracts.<sup>24</sup>
- Small and medium business policies, including:
  - **Small and Medium Enterprise (SME) and Regional Procurement Policy** – requiring for opportunities to be provided to small and medium businesses, to support local jobs, skills and access to government contracts<sup>25</sup>
  - **Procurement opportunities for small (and medium) businesses** – a NSW Procurement Board directive allowing agencies to directly negotiate and engage small and medium sized businesses 'when procuring goods or services excluding construction, valued up to and including \$250,000'<sup>26</sup>
  - **Small and Medium Enterprises in Construction** – a New South Wales Procurement Board directive which prescribes:
    - direct engagement for construction contracts up to \$50,000
    - reasonable efforts to obtain quotes for contracts up to \$1 million
    - the main contractor to include SMEs in subcontracting opportunities over \$1 million.<sup>27</sup>
  - **Small Business Shorter Payment Terms Policy** – mandates that for goods and services contracts with large businesses where the contract is valued at \$7.5 million or above, small business subcontractors must be paid within 20 business days of lodging a correct invoice.<sup>28</sup>

<sup>23</sup> NSW Government, *Buyer Guidance: Australian disability enterprises*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/australian-disability-enterprises>.

<sup>24</sup> NSW Government, *Enforceable Procurement Provisions (EPP) Guidance*, <https://www.info.buy.nsw.gov.au/buyer-guidance/plan/before-you-approach-the-market/enforceable-procurement-provisions>.

<sup>25</sup> NSW Government, *Small and Medium Enterprise and Regional Procurement Policy* (1 July 2021), p 6, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0010/990478/0621-01\\_Procurement-Policy-Reports\\_SME-and-Regional-Procurement-Policy\\_v5a.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0010/990478/0621-01_Procurement-Policy-Reports_SME-and-Regional-Procurement-Policy_v5a.pdf).

<sup>26</sup> NSW Government, *PBD 2023-03 Procurement opportunities for small (and medium) businesses* (7 December 2023), <https://arp.nsw.gov.au/pbd-2023-03-procurement-opportunities-for-small-and-medium-businesses>.

<sup>27</sup> NSW Government, *Buyer guidance: SMEs and regional business*, <https://www.info.buy.nsw.gov.au/supplier-guidance/supply-to-government/smes>.

<sup>28</sup> NSW Government, *Small Business Shorter Terms Policy* (1 July 2021), p 5, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0009/990477/0621-01\\_Procurement-Policy-Reports\\_Small-Business-Shorter-Payment-Terms-Policy\\_v4a.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0009/990477/0621-01_Procurement-Policy-Reports_Small-Business-Shorter-Payment-Terms-Policy_v4a.pdf).

- **Infrastructure Skills Legacy Program** – a further NSW Government Procurement Board directive to agencies and contractors to commit to skills development within the construction sector<sup>29</sup>
- **Social enterprise engagement** – NSW Government agencies are encouraged to buy from 'social enterprises' that provide economic and social opportunities by addressing social issues, providing access to training, and seeking initiatives to protect the environment<sup>30</sup>
- **Women's economic reform** – launched through the Women's Economic Opportunities Review, which commenced in February 2022, and was established to improve economic opportunities for women over the next five to 10 years<sup>31</sup>
- Environmental strategies and targets which include government agency procurement activities, including:
  - **Net Zero Plan Stage 1: 2020-2030** – prescribes the lowest cost approach to net zero emissions over the next decade through programs such as purchasing electricity from low emission sources, doubling the solar megawatt hours by 2024 and increasing the target for electric and hybrid vehicles<sup>32</sup>
  - **Waste and Sustainable Materials Strategy 2041, Stage 1: 2021-2027** – commits government agencies to procure recycled content where there is no significant additional cost or negative impact, and increases investment in research and innovation for recycling<sup>33</sup>
  - **Government Resource Efficiency Policy** – sets minimum energy, water use and air emissions standards when procuring good, services and construction, including introducing efficiency ratings in hotels used by the NSW Government, amending allowable emissions within the NSW Government Motor Vehicles Prequalification Scheme, and procuring water-efficient products.<sup>34</sup>

<sup>29</sup> NSW Government, *NSW Procurement Board Direction: Skills, training and diversity in construction* (2 August 2023), <https://arp.nsw.gov.au/pbd-2023-01-skills-training-and-diversity-in-construction?stage=Live>.

<sup>30</sup> NSW Government, *Buyer guidance: Social enterprises*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/select-suppliers/social-enterprises>.

<sup>31</sup> NSW Government, *NSW Budget 2022-23: Women's Opportunity Statement* (2022), p 6, [https://www.budget.nsw.gov.au/sites/default/files/2022-07/20220701\\_01\\_2022-23-Budget-Paper-Womens-Opportunity-Statement-Glossy.pdf](https://www.budget.nsw.gov.au/sites/default/files/2022-07/20220701_01_2022-23-Budget-Paper-Womens-Opportunity-Statement-Glossy.pdf).

<sup>32</sup> NSW Government, *Net Zero Plan Stage 1: 2020-2030* (March 2020), p 31, <https://www.energy.nsw.gov.au/sites/default/files/2022-08/net-zero-plan-2020-2030-200057.pdf>.

<sup>33</sup> NSW Government, *NSW Waste and Sustainable Materials Strategy 2041*, Part 1: 2021-2027 (July 2021), pp 4-28, <https://www.epa.nsw.gov.au/-/media/epa/corporate-site/resources/recycling/nsw-waste-and-sustainable-materials-strategy-2041.pdf>.

<sup>34</sup> NSW Government, *Government Resource Efficiency Policy* (2019), pp 11-19, [https://www.energy.nsw.gov.au/sites/default/files/2022-08/2019\\_02\\_NSW\\_GovernmentResourceEfficiencyPolicy.pdf](https://www.energy.nsw.gov.au/sites/default/files/2022-08/2019_02_NSW_GovernmentResourceEfficiencyPolicy.pdf).

## NSW Procurement Board

**1.18** As previously mentioned, the NSW Procurement Board is established under the *Public Works and Procurement Act* to oversee government-wide procurement activities. This section outlines the objectives and functions of the Board.

### Objectives

**1.19** The objectives of the NSW Procurement Board, as defined in the Act, are to:

- develop a strategic approach to procurement for the whole of government
- ensure the best value for money when procuring goods and services
- ensure goods and services procured by government agencies are not the result of modern slavery practices
- improve competition and access to government procurement activities by SMEs, regional enterprises, and the private sector more broadly
- reduce administrative costs associated with government agency procurement, and
- simplify procurement processes while ensuring probity and fairness objectives are accounted for.<sup>35</sup>

### Functions

**1.20** In order to fulfil its objectives, the NSW Procurement Board is required to carry out its functions as prescribed by the Act, namely to:

- oversee government agency procurement of goods and services
- develop and implement procurement policies, and issue directions
- monitor agency compliance with NSW Procurement Board directions and policies
- investigate and resolve complaints relating to procurement activities in government agencies
- develop procurement and business intelligence systems for use in government agencies
- collect, analyse and publish procurement statistics from government agencies
- other functions conferred or imposed by the Act.<sup>36</sup>

### Membership and structure

**1.21** In exercising its functions, the NSW Procurement Board is subject to the direction of the responsible Minister, currently the Minister for Domestic Manufacturing and Government

<sup>35</sup> *Public Works and Procurement Act 1912*, s 171.

<sup>36</sup> *Public Works and Procurement Act 1912*, s 172.

Procurement.<sup>37</sup> The Minister has the capacity to direct the New South Wales Procurement Board to comply with the Framework.<sup>38</sup>

**1.22** The Act requires the Secretary of NSW Treasury to be Chair of the NSW Procurement Board, with membership to comprise the heads of at least six other NSW Government departments, or their appointed deputies.<sup>39</sup> At present, the Secretary has delegated the role of Chair to the Deputy Secretary, Commercial, and board meetings are attended by approved deputies from nine other departments.<sup>40</sup>

**1.23** Further, the NSW Procurement Board maintains the capacity to delegate a function to an authorised person.<sup>41</sup> Delegated individuals can include a member of a sub-committee, a public service employee, a statutory employee or statutory officer, or another person or body prescribed under regulations.<sup>42</sup>

**1.24** In this context, a sub-committee can be created to assist the NSW Procurement Board to exercise any of its functions, and include individuals who are not members of the Board.<sup>43</sup>

**1.25** The following sub-committees currently operate to assist the NSW Procurement Board achieve its objectives and functions:

- **Procurement Leadership Group (PLG)** – an advisory group which gives direction on: policies, procedures and guides, the whole of government procurement strategy, monitoring of financial performance, and through resourcing, capacity and innovation planning<sup>44</sup>
- **Construction Leadership Group (CLG)** – a further advisory group which 'provide[s] leadership across government in the development, procurement and delivery of infrastructure and building projects'<sup>45</sup>
- **Risk and Compliance Sub-Committee** – this committee assists the New South Wales Procurement Board with agency accreditation, attestation outcomes and assurance,

<sup>37</sup> *Public Works and Procurement Act 1912*, s 166.

<sup>38</sup> *Public Works and Procurement Act 1912*, s 166.

<sup>39</sup> *Public Works and Procurement Act 1912*, s 165.

<sup>40</sup> NSW Government, *Buyer guidance: Government procurement governance*, <https://www.info.buy.nsw.gov.au/buyer-guidance/get-started/governance#:~:text=The%20NSW%20Procurement%20Board%20sets,wide%20strategic%20approach%20to%20procurement.&text=NSW%27s%20devolved%20governance%20structure%20makes,power%20to%20issue%20board%20directions> and Submission 40, NSW Government, p 5.

<sup>41</sup> *Public Works and Procurement Act 1912*, s 169.

<sup>42</sup> *Public Works and Procurement Act 1912*, s 169.

<sup>43</sup> *Public Works and Procurement Act 1912*, s 167.

<sup>44</sup> NSW Government, *Buyer guidance: Government procurement governance*, <https://www.info.buy.nsw.gov.au/buyer-guidance/get-started/governance#:~:text=The%20NSW%20Procurement%20Board%20sets,wide%20strategic%20approach%20to%20procurement.&text=NSW%27s%20devolved%20governance%20structure%20makes,power%20to%20issue%20board%20directions>.

<sup>45</sup> Infrastructure NSW, *Construction Leadership Group*, <https://www.infrastructure.nsw.gov.au/industry/construction-leadership-group/>.

emergency procurement activities, supplier complaints and the remediation of poor supplier performance and behaviour.<sup>46</sup>

- 1.26** The Board may also establish advisory groups consisting of people from both the public and private sectors to advise on matters relating to the procurement of goods and services as referred by the Board.<sup>47</sup>
- 1.27** The ICT and Digital Leadership Group (IDLG) is a further group outside of the NSW Procurement Board sub-committee structure which manages the NSW Digital Strategy, including Information and Communication Technology (ICT) procurement as a component of goods and services.<sup>48</sup> In addition, the IDLG is responsible for leadership, implementation and updates to NSW Cyber Security Policy, as well as reviewing agency compliance with the policy.<sup>49</sup>

## Approach to NSW Government procurement

- 1.28** Facilitated by the broader legislative and policy framework, NSW Government procurement operates within a devolved governance structure. In this structure, the NSW Procurement Board sets the government-wide strategic approach to procurement while each agency is ultimately responsible for managing its own procurement, with agency heads entering into contracts and ensuring compliance with legislation and policy.<sup>50</sup>
- 1.29** Under this devolved approach, agencies are required to be accredited in order to undertake procurement activities for themselves and other agencies. Those agencies that are not accredited must rely on the central procurement responsibilities of those who are.<sup>51</sup>
- 1.30** This section examines the devolved approach to procurement, with particular focus on accreditation programs, central procurement responsibilities and the use of technology in procurement activities.

### Agency accreditation

- 1.31** Under the devolved governance structure, the NSW Procurement Board oversees agency accreditation which allows a specific agency to procure goods and services or to do so on behalf of other government agencies.<sup>52</sup>
- 1.32** The Board is responsible for granting accreditation, monitoring agency compliance against accreditation obligations and performance, reviewing agency outcome targets, and varying or

<sup>46</sup> Submission 40, NSW Government, p 9.

<sup>47</sup> *Public Works and Procurement Act*, s 168.

<sup>48</sup> Submission 40, NSW Government, p 10.

<sup>49</sup> NSW Government, *NSW Cyber Security Policy*, <https://www.digital.nsw.gov.au/sites/default/files/2022-11/nsw-cyber-security-policy-2021-2022.pdf>; Digital.NSW, *Roles and responsibilities*, <https://www.digital.nsw.gov.au/delivery/cyber-security/policies/roles-and-responsibilities>.

<sup>50</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 4.

<sup>51</sup> Submission 40, NSW Government, p 7.

<sup>52</sup> *Public Works and Procurement Act 1912*, s 174(1).

withdrawing accreditation from accredited agencies that no longer meet minimum standards for accreditation.<sup>53</sup>

**1.33** Under its authority to establish accreditation schemes,<sup>54</sup> the Board has established two accreditation programs – one for the procurement of goods and services, and another for construction engagements.<sup>55</sup>

**1.34** Accreditation for the procurement of goods and services by government agencies is prescribed over two threshold levels, based on a maximum contract value:

- Level 1 accreditation – determined on three risk levels (high, medium and low), accredited agencies may enter into procurement arrangements up to \$50 million<sup>56</sup>
- Level 2 accreditation – accredited agencies have no maximum contract value.<sup>57</sup>

**1.35** Meanwhile, accreditation for construction procurement allows for accredited agencies to procure construction services autonomously.<sup>58</sup> While both accredited and non-accredited agencies can undertake procurement activities valued less than or equal to \$1.3 million (excluding GST), only accredited agencies are able to conduct construction procurement over this value.<sup>59</sup> Unaccredited agencies may also do so only if an accredited agency provides assurance over the procurement activity.<sup>60</sup>

**1.36** In order for a New South Wales government agency to be accredited to procure goods or services or for construction procurement, it must show that it can procure based on a set number of criteria.<sup>61</sup> Further, an external review is conducted, providing feedback on the expectations of accreditation to the agency seeking accreditation.<sup>62</sup> Endorsement from an agency secretary is also required, prior to approval being granted by the NSW Procurement

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<sup>53</sup> Answers to questions on notice, NSW Treasury, p 16.

<sup>54</sup> *Public Works and Procurement Act 1912*, s 174(1).

<sup>55</sup> NSW Government, *Buyer guidance: Accreditation*, <https://www.info.buy.nsw.gov.au/buyer-guidance/get-started/accreditation#:~:text=Procurement%20accreditation%20gives%20NSW%20Government,to%20manage%20their%20own%20procurements.&text=Procurement%20accreditation%20determines%20the%20type,agency%20is%20authorised%20to%20pursue>.

<sup>56</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 6, [https://www.info.buy.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/549762/1.-Accreditation-Program-Requirements-v.2021.7.pdf](https://www.info.buy.nsw.gov.au/__data/assets/pdf_file/0006/549762/1.-Accreditation-Program-Requirements-v.2021.7.pdf).

<sup>57</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 7.

<sup>58</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 7.

<sup>59</sup> NSW Government, *Accreditation Program Requirements for Construction Procurement* (1 October 2020), <https://www.info.buy.nsw.gov.au/policy-library/policies/accreditation-program-requirements-for-construction-procurement>.

<sup>60</sup> NSW Government, *Accreditation Program Requirements for Construction Procurement* (1 October 2020).

<sup>61</sup> Evidence, Mr Song Hong, Executive Director – Policy, Analytics and Advisory, NSW Treasury, 2 April 2024, p 9.

<sup>62</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 9.



Board.<sup>63</sup> Third party reviews are conducted to then test the performance of agency procurement.<sup>64</sup>

**1.37** Accredited agencies are required to comply with:

- policies and directions of the NSW Procurement Board
- terms of the accreditation, and
- probity and fairness principles.<sup>65</sup>

**1.38** Agencies accredited across both goods and services, and construction programs must ensure that they meet ongoing obligations through an annual self-reporting process.<sup>66</sup> The NSW Procurement Board must also receive from each accredited agency its Agency Procurement Plan, Annual Outcomes Report, and Self-Assessment Attestation to New South Wales Procurement.<sup>67</sup> Trigger events must also be managed and reported, prompted by situations that 'potentially affect an agency's ability to meet their accreditation requirements'.<sup>68</sup>

**1.39** Accredited agencies maintain their accreditation status in perpetuity, therefore assurance programs have recently been implemented to review past and current procurement activities.<sup>69</sup>

### Central procurement agencies and responsibilities

**1.40** Procurement responsibilities for specific whole of government contract arrangements across several agencies are carried out by 'central' procurement agencies. A central agency may be determined by the NSW Procurement Board if such an agency is the applicable agency, predominant procurer or specialist of the goods and services involved in the whole of government arrangement.<sup>70</sup>

**1.41** The following central procurement agencies coordinate and manage procurement responsibilities as they relate to goods and services. Their functions include, but are not limited to:

- **NSW Procurement (NSW Treasury)** – coordinating and managing government-wide procurement functions, providing advice or assistance to government agencies and leading whole of government saving initiatives<sup>71</sup>

<sup>63</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 9.

<sup>64</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 9.

<sup>65</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 142.

<sup>66</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 15 and NSW Government, *Accreditation Program Requirements for Construction Procurement* (1 October 2020).

<sup>67</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 15 and NSW Government, *Accreditation Program Requirements for Construction Procurement* (1 October 2020).

<sup>68</sup> NSW Government, *Accreditation Program for Good & Services Procurement* (2021), p 20.

<sup>69</sup> Evidence, Ms Sonya Campbell, Deputy Secretary – Commercial, NSW Treasury, 2 April 2024, p 9.

<sup>70</sup> Submission 40, NSW Government, p 18.

<sup>71</sup> Submission 40, NSW Government, p 10.

- **Information and Communication Technology (ICT) Digital Sourcing (NSW Department of Customer Service)** – coordinating whole of government commercial outcomes for NSW Government ICT procurement<sup>72</sup>

1.42 In addition, the following central agencies and branches collectively administer procurement responsibilities as they relate to construction.<sup>73</sup> Their functions include, but are not limited to:

- **NSW Public Works (Department of Regional NSW)** – maintaining the construction procurement accreditation program, providing assurance over construction projects under \$10 million and managing four construction prequalification schemes.<sup>74</sup>
- **Infrastructure NSW** – preparing the 20 year State Infrastructure Strategy, carrying out the delivery of identified major infrastructure projects and other responsibilities in accordance with the *Infrastructure NSW Act 2011*.<sup>75</sup>
- **Infrastructure and Structured Finance Unit (NSW Treasury)** – providing financial advice on construction projects and monitoring construction procurement policies, in conjunction with Infrastructure NSW.<sup>76</sup>

***Whole of government arrangements – contracts and pre-qualification schemes***

1.43 Procurement arrangements with the NSW Government may be specific to one agency or can be for whole of government, either through contracts or schemes. For whole of government contracts or schemes, all NSW Government agencies can buy using the arrangement.<sup>77</sup>

1.44 On the one hand, whole of government contracts include standing offers which are closed procurement arrangements where suppliers are approved to provide eligible government buyers with goods or services for a defined period, under agreed conditions including price.<sup>78</sup> These engagements are mandatory, requiring government agencies to purchase goods and services covered under the contract.<sup>79</sup>

1.45 In this context, there are seven government agencies managing a total of 42 whole of government contracts.<sup>80</sup> These can include panel arrangements, with more than one supplier providing similar goods and services, over a specified period.<sup>81</sup>

<sup>72</sup> Submission 40, NSW Government, Appendix A2 – ICT & Digital Sourcing, p 27.

<sup>73</sup> Submission 40, NSW Government, p 11.

<sup>74</sup> Submission 40, NSW Government, p 11.

<sup>75</sup> *Infrastructure NSW Act 2011*, s 11(1).

<sup>76</sup> Submission 40, NSW Government, p 11.

<sup>77</sup> Submission 40, NSW Government, p 18.

<sup>78</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 145 and Submission 40; NSW Government, p 18.

<sup>79</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 145.

<sup>80</sup> Submission 40, NSW Government, p 19.

<sup>81</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 145.

- 1.46 By contrast, prequalification schemes provide flexibility between providers of goods and services, and authorised NSW Government buyers. Such schemes have their own set of rules outlining the terms and conditions of the scheme for both buyers and suppliers. With the aim of reducing barriers and streamlining processes, prequalification schemes connect authorised buyers to suppliers with appropriate experience and qualifications, and eliminates the need for contract negotiations under a traditional tender process.<sup>82</sup>
- 1.47 Further, prequalification schemes are open to the market, allowing for new suppliers to register either on a periodic or ongoing basis, depending on the particular prequalification scheme open across a New South Wales Government agency.<sup>83</sup>
- 1.48 Currently, there are nine government agencies managing a total of 22 whole of government prequalification schemes.<sup>84</sup>

### Contract disclosure thresholds

- 1.49 In New South Wales, the *Government Information (Public Access) Act 2009* mandates the disclosure of contracts valued over \$150,000 on the NSW Government's eTendering website (discussed in the next section). Agencies can also publish contract details on their own website or another platform. Notably, all contracts with Aboriginal businesses must be disclosed, regardless of value.<sup>85</sup>
- 1.50 Comparatively, other Australian jurisdictions apply different thresholds for procurement information disclosure. These thresholds are dependent on the type of contract being entered into and can require the disclosure of basic or full contract details. Threshold amounts subject to minimum disclosure requirements in each jurisdiction include \$10,000 for the Commonwealth Government<sup>86</sup>, \$25,000 in the Australian Capital Territory<sup>87</sup>, \$15,000 in the Northern Territory<sup>88</sup>, \$10,000 in Queensland<sup>89</sup>, \$25,000 in South Australia<sup>90</sup>, \$50,000 in Tasmania<sup>91</sup>, \$100,000 in Victoria<sup>92</sup> and \$50,000 in Western Australia<sup>93</sup>.
- 1.51 The details that need to be disclosed can be subject to the value of the contract or the nature of the goods or service procured. While some jurisdictions require only basic information for contracts to be disclosed, others mandate full disclosure for higher-value procurement activities.

<sup>82</sup> NSW Government, *Procurement Policy Framework* (April 2022), p 145; Submission 40, NSW Government, p 18.

<sup>83</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 145.

<sup>84</sup> Submission 40, NSW Government, p 19.

<sup>85</sup> NSW Government, *Buyer guidance: Contract disclosure*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/after-awardg-a-contract/disclosure-obligations>.

<sup>86</sup> Australian Government, *Commonwealth Procurement Rules* (13 June 2023), p 7, <https://www.finance.gov.au/sites/default/files/2023-06/Commonwealth%20Procurement%20Rules%20-%202013%20June%202023.pdf>.

<sup>87</sup> ACT Government, *Contracts Register*, <https://www.procurement.act.gov.au/registers/contracts-register>.

<sup>88</sup> Northern Territory Government, *Procurement Rules* (8 May 2024), p 19, [https://nt.gov.au/\\_\\_data/assets/pdf\\_file/0004/1378894/procurement-rules-version-1-8.pdf](https://nt.gov.au/__data/assets/pdf_file/0004/1378894/procurement-rules-version-1-8.pdf).

Notably, New South Wales uses a three-tiered system with increasing disclosure requirements for larger contracts.<sup>94</sup>

### Use of technology in procurement activities

**1.52** The NSW Government uses a variety of platforms within its procure-to-pay architecture to assist with procurement processes, as a part of a coordinated whole of government approach, or when procuring goods or services for agency-specific arrangements. In this context, these platforms work together, with the aim of improving transparency and accountability government procurement practices.<sup>95</sup> These platforms include:

- **Buy.nsw** – provides guidance to authorised government buyers and external suppliers, including resources and provides online registration 'to become a buyer or seller of digital products and services'<sup>96</sup>
  - **The buy.nsw Supplier Hub** - facilitates a connection between authorised buyers within the NSW Government to external suppliers, allowing government authorised buyers to search for suppliers, which may meet desired procurement arrangements<sup>97</sup>
  - **catalogues.buy.nsw** – offers government buyers the chance to buy products at a negotiated price<sup>98</sup>
- **eTendering** – provides a central point for authorised government buyers to advertise tenders and external buyers to respond to tenders.<sup>99</sup> The platform is also used to register

<sup>89</sup> Queensland Government, *Procurement guidelines: Contract disclosure* (1 July 2022), p 4, [https://www.forgov.qld.gov.au/\\_\\_data/assets/pdf\\_file/0021/183630/procurementguidecontractdisclosure.pdf](https://www.forgov.qld.gov.au/__data/assets/pdf_file/0021/183630/procurementguidecontractdisclosure.pdf).

<sup>90</sup> Government of South Australia, *Premier and Cabinet Circular: PC 027 – Disclosure of Government Contracts* (December 2005), p 3, <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/PC-027-Disclosure-of-Government-Contracts.pdf>.

<sup>91</sup> Tasmanian Government, *Procurement Treasurer's Instructions* (1 September 2023), p 19, <https://www.purchasing.tas.gov.au/Documents/Combined-Procurement-Treasurers-Instructions.PDF>.

<sup>92</sup> Victorian Government, *Contract Management and Contract Disclosure – Guidance* (December 2022), p 4, <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fcontent.vic.gov.au%2Fsites%2Fdefault%2Ffiles%2F2024-05%2FContract-management-and-contract-disclosure-goods-and-services-policy.docx&wdOrigin=BROWSELINK>.

<sup>93</sup> Government of Western Australia, *Western Australian Procurement Rules* (1 June 2021), p 24, [https://www.wa.gov.au/system/files/2021-04/WA%20Procurement%20Rules%2020201218\\_1.pdf](https://www.wa.gov.au/system/files/2021-04/WA%20Procurement%20Rules%2020201218_1.pdf).

<sup>94</sup> NSW Government, *Buyer guidance: Contract disclosure*, <https://www.info.buy.nsw.gov.au/buyer-guidance/source/after-awarding-a-contract/disclosure-obligations>.

<sup>95</sup> Submission 40, NSW Government, Appendix A2 – ICT & Digital Sourcing, pp 40-41.

<sup>96</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

<sup>97</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

<sup>98</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

<sup>99</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

for prequalification schemes, and contains an awarded contracts register for purchases greater than \$150,000.<sup>100</sup>

- **NSW eQuote** – presents agencies with the opportunity to seek quotes from external suppliers who have registered under a prequalification scheme.<sup>101</sup>

## Recent developments in Australian Government procurement

- 1.53** There have been a number of recent developments relevant to procurement practices at the federal level, including a recent parliamentary committee report on procurement by the Australian Public Service, consultation regarding the Australian Government's Indigenous Procurement Policy, the introduction of the 'A Future Made in Australia' plan as part of the 2024-25 Commonwealth Government budget, and an Australian Small Business and Family Enterprise Ombudsman's report on the impact of changes to procurement rules.
- 1.54** In August 2023, the Parliament of Australia's Joint Committee of Public Accounts and Audit handed down its report into Commonwealth procurement. The inquiry examined procurement at the federal level with a view to improving the culture of how procurement rules and guidelines are implemented across the Australian Public Service (APS).<sup>102</sup> The resulting report made 19 recommendations directed at the audited entities and the Australian Department of Finance to enhance procurement standards in the public service and strengthen the department's oversight role. Key areas of focus included procurement panels, value for money, internal scrutiny, procurement expertise and capability within the APS, and the role of the Department of Finance as the system steward and regulator.
- 1.55** In March 2024, the Australian Government concluded consultations considering options to strengthen its Indigenous Procurement Policy (IPP). The Indigenous Procurement Policy Reform Discussion Paper notes that reforms to the IPP are key to providing more opportunities for First Nations businesses and increasing sustainable employment under the Buy Australian Plan.<sup>103</sup>
- 1.56** In May 2024, the Commonwealth Government announced its plan to build 'A Future Made in Australia'. The plan is focused on encouraging and facilitating private sector investment, and includes the establishment of a National Interest Framework 'to guide the identification of priority industries and prudent investments in the national interest'.<sup>104</sup>
- 1.57** Further, in a report released in May 2024, the Australian Small Business and Family Enterprise Ombudsman examined the impact of the changes to the Commonwealth Procurement Rules

<sup>100</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

<sup>101</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 146.

<sup>102</sup> Joint Committee of Public Accounts and Audit, Parliament of Australia, '*Commitment issues*' - *An inquiry into Commonwealth procurement* (Report 498, August 2023), [https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000011/toc\\_pdf/Report498'Commitmentissues'-AninquiryintoCommonwealthprocurement.pdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000011/toc_pdf/Report498'Commitmentissues'-AninquiryintoCommonwealthprocurement.pdf)

<sup>103</sup> National Indigenous Australians Agency, *Indigenous Procurement Policy (IPP) Reform Discussion Paper*, (December 2023), <https://www.niaa.gov.au/sites/default/files/documents/2024-01/ipp-policy-reform-discussion-paper.pdf>.

<sup>104</sup> Commonwealth Government, *Budget 2024-25: A Future Made in Australia*, <https://budget.gov.au/content/factsheets/download/factsheet-fmia.pdf>.

implemented on 1 July 2022 on small and family businesses.<sup>105</sup> The report made a number of recommendations intended to address persistent challenges to small business and facilitate greater engagement by the supplier community and procurement processes.

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<sup>105</sup> Australian Small Business and Family Enterprise Ombudsman, *Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules*, (15 December 2023), ASBFEO Procurement Inquiry Report\_FINAL.pdf.

## Chapter 2 Key issues

A number of aspects of the legislative and policy framework for NSW Government procurement have been highlighted by inquiry participants to date. This chapter examines these key issues in detail, beginning with the concept of 'value for money' as one of the five objectives of the NSW Procurement Policy Framework. The chapter then considers the tender and vendor engagement processes engaged by government agencies and across whole-of-government arrangements. Finally, the chapter explores the monitoring of vendors, highlighting the responsibilities of both the NSW Procurement Board and respective government agencies.

### Value for money

- 2.1** As noted in chapter 1, the NSW Procurement Policy Framework identifies 'value for money' as a government procurement objective that 'is not necessarily the lowest price, nor the lowest quality good or service'.<sup>106</sup> As such, New South Wales government agencies are required to perform a broad assessment of financial and non-financial factors to determine value for money, including 'quality, cost, fitness for purpose, capability, risk, total cost of ownership or other relevant factors'.<sup>107</sup>
- 2.2** Some guidance on how to assess value for money in procurement is set out on buy.nsw<sup>108</sup> with an associated training module.
- 2.3** The committee received a breadth of evidence in relation to value for money in this context. For example, inquiry participants discussed whether value for money is defined adequately and applied consistently across government agencies, and shared various perspectives on the factors to consider when conducting procurement activities. This section considers these views in detail.

### Interpretation and consideration of 'value for money'

- 2.4** Stakeholders told the committee that the interpretation and application of the value for money principle varies amongst government agencies. For example, Mr Drew Varnum, Executive Director, NSW Public Works, explained that there are differences in value for money requirements across government agencies.<sup>109</sup>
- 2.5** Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW, shared a similar view, explaining that the basis of these differences is in the application of 'a single set of rules' to all types of government procurement.<sup>110</sup> Mr Hirsh drew attention to the challenges associated with this, stating 'it is very difficult to have just one size that just applies to all ... equally...'.<sup>111</sup>

<sup>106</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 9.

<sup>107</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 9.

<sup>108</sup> NSW Government, *Buyer guidance: Value for Money*, <https://www.info.buy.nsw.gov.au/buyer-guidance/get-started/procurement-objectives/value-for-money>.

<sup>109</sup> Evidence, Mr Drew Varnum, Executive Director, NSW Public Works, 2 April 2024, p 28.

<sup>110</sup> Evidence, Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW, 2 April 2024, p 29.

<sup>111</sup> Evidence, Mr Hirsh, Infrastructure NSW, 2 April 2024, p 29.

However, he argued that, while the current model 'is not perfect', 'it is trying to achieve value for money for quite different asset classes, different delivery risks...', all at the same time, thereby resulting in a common understanding but ultimately different requirements.<sup>112</sup>

- 2.6** Indeed, Mr Michael Gendy, Chief Procurement Officer, NSW Health, stressed that value for money 'can mean different things to different people', and that for NSW Health, it means a patient-centred approach that is primarily not price-driven.<sup>113</sup> Mr Gendy confirmed that there is a perception that value for money can mean best price, but asserted that 'the reality is very different from that', with non-price weighted criteria, such as being fit for purpose, accounting for two-thirds of the considered criteria.<sup>114</sup>
- 2.7** Mr Paul Hannan, Group Director and Chief Procurement Officer, Department of Education, explained the approach taken by his agency, based on the type of procurement arrangement. He advised that for construction procurement, professional services such as those of an architect, call for greater weighting on non-financial factors like quality of expertise.<sup>115</sup> However, when it comes to the actual construction itself, Mr Hannan informed that more weighting is placed on the financial costs associated with the engagement.<sup>116</sup>
- 2.8** In the context of goods and services procurement, Mr Hannan asserted that not all value for money considerations should be the same depending on the particular product or service.<sup>117</sup> As an example, Mr Hannan pointed to price factors potentially being more of a consideration when purchasing stationary, as opposed to professional services where non-monetary factors, such as the quality of the outcome, could be regarded as a more pertinent value for money consideration.<sup>118</sup>
- 2.9** Parties on the receiving end of the procurement process also reflected on their experiences of the value for money objective upheld by government agencies. For example, the CFMEU (Manufacturing division) asserted that the way value for money is assessed by contract and agency procurers is 'extremely inconsistent', despite the NSW Procurement Board's Statement on Value for Money.<sup>119</sup>
- 2.10** Further, according to Ms Kylie Yates, Chief Executive Officer, Civil Construction Federation (NSW Branch), the common experience of its members is that the lowest tender price wins.<sup>120</sup> The Industry Capability Network shared a similar view, stating that it was 'commonly known that value for money is more often than not interpreted to be based on price and not much else'.<sup>121</sup>

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<sup>112</sup> Evidence, Mr Hirsh, Infrastructure NSW, 2 April 2024, p 29.

<sup>113</sup> Evidence, Mr Michael Gendy, Chief Procurement Officer, NSW Health 3 April 2024, p 15.

<sup>114</sup> Evidence, Mr Gendy, NSW Health 3 April 2024, p 15.

<sup>115</sup> Evidence, Mr Paul Hannan, Executive Director and Chief Procurement Officer, Department of Education, 3 April 2024, p 9.

<sup>116</sup> Evidence, Mr Hannan, Department of Education, 3 April 2024, p 9.

<sup>117</sup> Evidence, Mr Hannan, Department of Education, 3 April 2024, p 9.

<sup>118</sup> Evidence, Mr Hannan, Department of Education, 3 April 2024, p 10.

<sup>119</sup> Submission 11, CFMEU (Manufacturing division), p 10.

<sup>120</sup> Evidence, Ms Kylie Yates, Chief Executive Officer, Civil Construction Federation, 3 April 2024, p 35.

<sup>121</sup> Submission 13, Industry Capability Network, p 6.



- 2.11** To address such concerns, Ms Yates suggested there would be benefit in having a broader definition of value for money.<sup>122</sup> Further improvements to the value for money criteria are discussed in the next section.
- 2.12** An additional issue raised in the context of interpreting the value for money principle is the role of tender evaluation panels, and specifically the chair of such panels, to determine how the principle is considered and applied.
- 2.13** The committee heard evidence from the Department of Customer Service as to the parameters placed on tender evaluation panels when assessing contracts of varying worth. When asked about the capacity for non-executive staff members to determine procurement selection criteria, such as value for money, Mr Kwabena Bediako, Chief Procurement Officer, Department of Customer Service, confirmed that in the case of low-risk contracts or contracts below \$1 million, an officer at the Clerk Grade 9/10 could chair that respective tender evaluation panel.<sup>123</sup> Mr Bediako further advised that for contracts above \$1 million, the chair of that tender evaluation panel is typically required to be a Clerk Grade 11/12 Director or above.<sup>124</sup>

#### **Improvements to value for money criteria**

- 2.14** Given the varied approach to interpreting and applying the value for money principle in government procurement practices, inquiry participants discussed how to enhance value for money considerations as part of broader procurement policy reform.
- 2.15** For example, NSW Public Works asserted that a clear policy on value for money would assist industry to respond to government requirements and deliver construction procurement outcomes.<sup>125</sup> Mr Varnum reflected this in evidence, adding that this would be beneficial as part of a higher level reform of procurement policy.<sup>126</sup>
- 2.16** According to Mr Hirsh, contractors share a similar view with one of their criticisms being that 'they don't have visibility ... [about] how the agencies are actually assessing and what criteria they use'. Improvements in clarifying these criteria are therefore being sought 'so that the market that is bidding for work understands what it is being measured against'.<sup>127</sup>
- 2.17** CFMEU (Manufacturing division) also maintained that a 'comprehensive approach to value for money will ensure compliance by contractors and agencies',<sup>128</sup> arguing that at present 'the assessment of value for money by procurers is inconsistent'.<sup>129</sup>

<sup>122</sup> Evidence, Ms Yates, Civil Construction Federation, 3 April 2024, p 35.

<sup>123</sup> Evidence, Mr Kwabena Bediako, Chief Procurement Officer, Department of Customer Service, 3 April 2024, p 17.

<sup>124</sup> Evidence, Mr Bediako, Department of Customer Service, 3 April 2024, p 17.

<sup>125</sup> Submission 40, NSW Government, Appendix A4 – NSW Public Works, p 58.

<sup>126</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 28.

<sup>127</sup> Evidence, Mr Hirsh, Infrastructure NSW, 2 April 2024, p 29.

<sup>128</sup> Submission 11, CFMEU (Manufacturing division), p 6.

<sup>129</sup> Submission 11, CFMEU (Manufacturing division), p 6.

- 2.18** For the Civil Contractors Federation (NSW Branch), there is a misplaced emphasis on the lowest-priced contract being 'the best value for taxpayer dollars' which equates to what they described as a 'false economy'. The Federation argued that the 'fixation' on lowest price could be overcome if construction procurement goals were redefined, 'prioritising best public value, over traditional value for money'.<sup>130</sup>
- 2.19** Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, likewise expressed that 'value for money is not the cheapest option'.<sup>131</sup> However, he pointed out that the auditor's role is 'not to make the judgement for management' about what value for money looks like – indeed, Mr Goodwin stated 'there is no single definition' of value for money. Rather, the auditor's role is 'to look at whether management has actually complied with the framework.' In this regard, Mr Goodwin explained that when auditing value for money, consideration is given to whether the tender process was open and the extent to which relevant guidelines, such as those from the NSW Independent Commission Against Corruption (NSW ICAC), are complied with.<sup>132</sup>
- 2.20** Dr Christopher Day, Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney, offered an alternative perspective based on his research into public procurement. Dr Day argued that government procurement would benefit from a framework which 'measures the value of benefits being generated for the domestic economy and compares this against the additional cost incurred', rather than traditional value for money considerations.<sup>133</sup> Dr Day explained that such a model would allow a more meaningful comparison between domestic and overseas manufacturers:
- Quantifying broader financial benefits into an adjusted price brings broader financial factors to the forefront of decision making and allows procurement decision to make a like for like comparison between domestic and overseas manufactured options.
- 2.21** Indeed, Dr Day advised that when the calculated worth of the benefits from domestic production exceeds the financial costs being charged, it is clear then that 'we'll go with them' and in turn support domestic industry.<sup>134</sup> Dr Day added that a failure to factor in the value of broader financial benefits in this way, including exports, employment and research and development, 'leaves the government susceptible to sub-optimal choices'.<sup>135</sup>

## Tender processes and vendor engagement

- 2.22** Another key aspect of government procurement raised in evidence is the tender process and the way in which vendors are engaged. This section explores the current tender or direct purchasing approaches taken by government agencies, including the use of selection panels, weightings applied in competitive procurement processes, the use of standardised contracts, and

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<sup>130</sup> Submission 30, Civil Contractors Federation (NSW Branch), p 8.

<sup>131</sup> Evidence, Mr Ian Goodwin, Deputy Auditor-General, Audit Office of New South Wales, 3 April 2023, p 39.

<sup>132</sup> Evidence, Mr Goodwin, Audit Office of New South Wales, p 39.

<sup>133</sup> Submission 2, Dr Christopher Day, p 1.

<sup>134</sup> Evidence, Dr Christopher Day, Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney, 2 April 2024, p 60.

<sup>135</sup> Submission 2, Dr Christopher Day, pp 3-4.

the transparency of available government procurement opportunities, such as those provided to small to medium enterprises (SMEs).

### **Membership of tender evaluation panels**

- 2.23** Further to the 'Plan, Source, Manage' approach to procurement outlined in chapter 1, vendor selection panels are featured at the 'source' stage to identify and engage suppliers that will 'deliver best value for money in a framework of probity and fair dealing'.<sup>136</sup>
- 2.24** A number of inquiry participants discussed the membership of these evaluation panels, in particular the placement of contractors on them. In this regard, NSW ICAC advised that 'a contractor will have a conflict of interest if they or their company, stands to benefit from government procurement activities that they can influence'.<sup>137</sup> This includes a contractor who is selected to be on a procurement panel, who had knowledge of an agency's procurement plans, and access to agency records.<sup>138</sup>
- 2.25** In response to concerns about such conflicts, Ms Mandy Young, Deputy Secretary and Chief Operating Officer, Department of Customer Service, informed the committee that the Department of Customer Service has undertaken extensive effort to train individuals on procurement activities, including how procurement panels are to be established.<sup>139</sup>
- 2.26** Ms Young did acknowledge that there are ways which contractors can potentially be engaged on procurement panels, such as an advisor,<sup>140</sup> however, she stressed that contractors involved in such panels would not sign off on the engagement or chair the panel.<sup>141</sup>
- 2.27** Mr Rob Halsall, Executive Director Procurement, Goods and Services, Transport for NSW, also highlighted the improvements made to internal controls at his agency to have better oversight over conflicts of interest.<sup>142</sup> This includes having a tender evaluation committee chair review and manage any disclosed conflicts of interest.<sup>143</sup> Transport for NSW further advised that tender evaluation committee members have previously been removed, due to declared conflicts of interest.<sup>144</sup>
- 2.28** On conflicts of interest on panels, Mr Lewis Rangott, Executive Director – Corruption Prevention, NSW Independent Commission Against Corruption, advised that where a member of a procurement panel had previously declared a conflict of interest, they ideally should not be

<sup>136</sup> NSW Government, *NSW Procurement Policy Framework* (28 March 2024), p 72.

<sup>137</sup> Submission 18, NSW Independent Commission Against Corruption, p 7.

<sup>138</sup> Submission 18, NSW Independent Commission Against Corruption, p 7.

<sup>139</sup> Evidence Ms Mandy Young, Deputy Secretary and Chief Operating Officer, Department of Customer Service, 3 April 2024, p 16.

<sup>140</sup> Evidence Ms Young, Department of Customer Service, 3 April 2024, p 16.

<sup>141</sup> Evidence Ms Young, Department of Customer Service, 3 April 2024, p 16.

<sup>142</sup> Evidence, Mr Rob Halsall, Executive Director Procurement, Goods and Services, Transport for NSW, 2 April 2024, p 34.

<sup>143</sup> Evidence, Mr Halsall, Transport for NSW, 2 April 2024, p 34.

<sup>144</sup> Answers to questions on notice, Transport for NSW, 1 May 2024, p 4.

admitted or remain on the procurement panel.<sup>145</sup> However, Mr Rangott acknowledged circumstances where the expertise of a particular individual with a declared conflict may be required, in which case the individual should not have voting rights as part of the panel and sit only in an advisory role.<sup>146</sup>

### **Evaluation criteria and tender weightings**

- 2.29** The committee was informed that evaluation criteria and associated tender weightings can be used to make an assessment of individuals and organisations who are involved in the supply of goods and services to the NSW Government. The committee heard of different approaches to the use of weightings and criteria across government agencies to assist with the selection of vendors in competitive procurement processes.
- 2.30** For example, Ms Sonya Campbell, Deputy Secretary – Commercial, NSW Treasury, advised that while it is practice for some agencies to use tender weightings, others do not, especially for major projects.<sup>147</sup>
- 2.31** When questioned about a mandated weighting formula across agencies, Mr Varnum, Executive Director, NSW Public Works, explained that weightings are more generally determined by 'the local requirements, the local needs, the desires of the agency in terms of whether it is price, non-price [and] what non-price [criteria] may be'.<sup>148</sup> He noted that while there were recommendations about weighting in New South Wales documentation, they were 'just recommendations and no common formula'.<sup>149</sup>
- 2.32** In this context, Mr Gendy confirmed that NSW Health does comply with the competitive evaluation requirements, including weighting criteria of 10 per cent for SMEs and additionally 10 per cent for sustainability criteria when considering environmental factors in competitive tender processes.<sup>150</sup> Mr Gendy also noted that depending on the nature of what was being procured, a non-weighted price element of 70 per cent was also used for most medical consumables.<sup>151</sup>
- 2.33** Meanwhile, Mr Bediako advised the committee that the Department of Customer Service has set a guideline for engagement weights to include a minimum of a 30 per cent price criteria.<sup>152</sup> However, Bediako highlighted that there are variances in weightings across each procurement activity, stating:

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<sup>145</sup> Evidence, Mr Lewis Rangott, Executive Director – Corruption Prevention, NSW Independent Commission Against Corruption, 2 April 2024, p 71.

<sup>146</sup> Evidence, Mr Rangott, NSW Independent Commission Against Corruption, 2 April 2024, p 71.

<sup>147</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 5.

<sup>148</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 29.

<sup>149</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 29.

<sup>150</sup> Evidence, Mr Gendy, NSW Health, 3 April 2024, p 17.

<sup>151</sup> Evidence, Mr Gendy, NSW Health, 3 April 2024, p 17.

<sup>152</sup> Evidence, Mr Bediako, Department of Customer Service, 2 April 2024, p 17.

There is not a prescriptive rule to say that for each particular procurement engagement that would go to tender 50 per cent should be priced and 50 per cent should not be priced.<sup>153</sup>

- 2.34** Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, told the committee that it was ultimately the role of the NSW Procurement Board to not only look at data to determine weighting trends but to oversee tender weightings across agencies 'as opposed to the auditor trying to comment on that'.<sup>154</sup>

### **Standardised contracts**

- 2.35** The committee received diverse evidence from stakeholders on the use and adoption of standardised contracts for both goods and services procurement and construction procurement, to ensure consistency over contractual obligations.
- 2.36** For example, Mr Varnum, NSW Public Works, advised that there are a series of standard form contracts which have been developed by the NSW Government.<sup>155</sup> NSW Treasury confirmed, however, that while the use of such contracts form part of the overarching guidelines for government procurement, they are not mandated. NSW Treasury also noted that individual agencies may have their own policies that could include a suite of standard contracts.<sup>156</sup>
- 2.37** Mr Mark Lenzner, Executive Director – ICT and Digital Sourcing, Department of Customer Service, told the committee that a standard contract template existed for the procurement of Information and Communications Technology (ICT).<sup>157</sup> According to Mr Lenzner, these standard contracts allow the Department of Customer Service to meet the requirements of its ICT Purchasing Framework.<sup>158</sup>
- 2.38** However, Mr Michael Boyle, Board Member, Civil Contractors Federation (NSW Branch), argued that in fact 'there isn't a standard across all the agencies at the moment', and raised concerns about the cost and demands involved with learning an agency's requirements each time a tender is prepared. He explained:

There isn't a standard contract. That adds a lot of cost. Every time you do a tender, you have to learn what this agency—or within this agency, what this group—is trying to achieve and try to assess the risks of that... It takes a while to prepare a tender to understand that.<sup>159</sup>

<sup>153</sup> Evidence, Mr Bediako, Department of Customer Service, 2 April 2024, p 17.

<sup>154</sup> Evidence, Ms Margaret Crawford, Auditor-General, Audit Office of New South Wales, 3 April 2024, p 40.

<sup>155</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 22.

<sup>156</sup> Answers to questions on notice, NSW Treasury, p 9.

<sup>157</sup> Evidence, Mr Mark Lenzner, Executive Director – ICT and Digital Sourcing, NSW Department of Customer Service, 2 April 2024, p 12.

<sup>158</sup> Evidence, Mr Lenzner, NSW Department of Customer Service, 2 April 2024, p 12 and NSW Government, *ICT Purchasing Framework* (1 September 2021), <https://www.info.buy.nsw.gov.au/resources/ICT-Purchasing-Framework>.

<sup>159</sup> Evidence, Mr Michael Boyle, Board Member, Civil Contractors Federation (NSW Branch), 3 April 2024, p 35.

- 2.39** Mr Boyle asserted that a consistent approach to contracts with government agencies would be helpful and having a standard to work towards would be 'much more efficient and save a lot of money'.<sup>160</sup>
- 2.40** Ms Yates, Chief Executive Officer, Civil Construction Federation (NSW Branch), added that, while standard form construction contracts may exist, 'they are just not used'. She called for the use of such contracts to be mandated not only to remove the 'complexity and cost for everybody and build capability within the public sector and within industry', but address the pressures on capacity to administer bespoke contracts.<sup>161</sup>
- 2.41** Mr David Harding, Executive Director – Policy and Advisory, Business NSW, shared a similar view, agreeing that a suite of standard government contracts would be very useful, particularly to the small business community. He explained:

I think it would be very useful to have a suite of government contracts and say, "If you're likely to win this one, this is the kind of contract you're likely to get. This is what it means for you and these are the things that you'll need to have to perform the contract," but in a way that every person in New South Wales in the small business community can understand.<sup>162</sup>

- 2.42** Noting that standard contracts are not currently mandated and can be amended by agencies, Mr Varnum acknowledged there is a tendency for standard contracts to be varied, such as those for most types of infrastructure. He recognised that it is these variations that have created the inconsistency industry stakeholders have raised concerns about.<sup>163</sup>
- 2.43** Mr Varnum advised that NSW Public Works are not in control of how agencies or other parties use the contracts – they only draft and write them. However, he accepted that there is difficulty for those wanting to participate in the market without consistency in government contracts, and informed the committee that is 'a problem we recognise'.<sup>164</sup>
- 2.44** NSW Treasury also acknowledged that, while there is no data available on known cost savings relating to the use of standard contracts, such contracts would 'logically reduce effort for both agencies and suppliers', and lead to 'more efficient procurement and cost savings':

Use of standard contracts minimises the need for repeated external legal review, removes the need to negotiate bespoke contracts and reduces the risk of inconsistencies, ultimately leading to more efficient procurement and cost savings.

### **Prequalification schemes**

- 2.45** As outlined in chapter 1, prequalification schemes provide a mechanism for new vendors to register for future contract opportunities with the NSW Government. The committee received

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<sup>160</sup> Evidence, Mr Michael Boyle, Board Member, Civil Contractors Federation (NSW Branch), 3 April 2024, p 35.

<sup>161</sup> Evidence, Ms Yates, Civil Contractors Federation (NSW Branch), 3 April 2024, p 36.

<sup>162</sup> Evidence, Mr David Harding, Executive Director – Policy and Advisory, Business NSW, 2 April 2024, p 43.

<sup>163</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 22.

<sup>164</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 22.

evidence highlighting the different approaches to prequalification schemes amongst government agencies, including the extent to which they are made available to vendors.

- 2.46** For example, Mr Gendy advised that NSW Health had mandated the use of prequalification schemes in its procurement practices, even though this was only recommended and not required by the NSW Procurement Board.<sup>165</sup>
- 2.47** For the Department of Customer Service, Mr Lenzner informed the committee that prequalification scheme for ICT services were always open to new applications, noting that around 100 suppliers a month were admitted to the scheme.<sup>166</sup>
- 2.48** In contrast, Mr Varnum indicated that whole-of-government prequalification schemes under the responsibility of NSW Public Works are usually opened only for a defined period of time.<sup>167</sup>
- 2.49** In terms of the management of construction prequalification schemes, Mr Varnum explained that the role of NSW Public Works is 'assessing, updating and administering schemes, but that is basically high-level administration'.<sup>168</sup>

### **Transparency of contracts and outcomes**

- 2.50** Noting that transparent processes are an important part of fair and open competition, the committee considered existing procurement practices and whether there is a greater need for transparency in relation to procurement activities and contracts awarded.
- 2.51** In this regard, the committee noted that government agencies are required to advertise tender opportunities on the eTendering platform, and that all contracts over \$150,000 are to be disclosed.<sup>169</sup>
- 2.52** Although many agencies are complying with these requirements,<sup>170</sup> some stakeholders called for greater transparency of government procurement activities, including a lowering of the threshold for disclosure.
- 2.53** For example, Nook Studios, a social enterprise supplier of Information Communications Technology (ICT) Services, advocated for the public disclosure of government contracts and purchase orders above \$10,000 instead of \$150,000. With the current threshold, it noted that small businesses are often working under \$150,000 which means they are not being captured by the system. In its view, this means that there is not a 'clear and comprehensive picture of spending and who has been awarded contracts and work'.<sup>171</sup>

<sup>165</sup> Evidence, Mr Gendy, NSW Public Works, 3 April 2024, p 13.

<sup>166</sup> Evidence, Mr Lenzner, NSW Department of Customer Service, 2 April 2024, p 18.

<sup>167</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 28.

<sup>168</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 24.

<sup>169</sup> Evidence, Mr Lenzner, NSW Department of Customer Service, 2 April 2024, p 18.

<sup>170</sup> See, for example, Evidence, Mr Gendy, NSW Health, 3 April 2024, p 17; Answers to supplementary questions, Transport for NSW, 1 May 2024, p 16.

<sup>171</sup> Submission 31, Nook Studios, p 29.

- 2.54** Nook Studios noted that, as outlined in chapter 1, the Australian Federal Government's threshold for publishing public spending is \$10,000, and that this level is consistent with the approach taken in some international jurisdictions, including the United Kingdom and Canada.<sup>172</sup>
- 2.55** Likewise, Mr Osmond Chiu, Research Fellow, Per Capita, highlighted that the NSW Government currently holds the highest threshold for contract disclosure at \$150,000 compared to other Australian jurisdictions.<sup>173</sup>
- 2.56** The United Workers Union also argued for better transparency, accountability and enforcement, contending that 'access to government contracts in NSW is often limited and opaque at best'. Noting that contract specifications can determine service delivery standards, including an employers' capacity to meet labour obligations, the Union recommended that all contracts be made available in a searchable online database.<sup>174</sup>
- 2.57** Further to this, inquiry participants discussed the storage of agency procurement contracts more generally. For example, Mr Varnum confirmed there is currently no centralised repository for all construction contracts.<sup>175</sup> He reported that while there is a requirement to post information regarding contracts to NSW Procurement platforms, such as the eTendering platform, he stated that it didn't 'necessarily mean the agencies post all their contracts, particularly lower level [contracts]'.<sup>176</sup>
- 2.58** Indeed, agencies such as Transport for NSW, Infrastructure NSW and NSW Treasury shared their individual approaches to contract management, each reporting the use of different vendor management and contract management systems.<sup>177</sup> In particular, NSW Treasury advised the implementation of a vendor management system with the capability to capture contracts more broadly but notes that at present, its intended function is to capture the use of consultants.
- 2.59** Another area of concern for stakeholders was the lack of transparent information and feedback provided to those competing for tendering opportunities. This included a lack of transparency in relation to the selection criteria used by panels to make decisions, as well as insufficient feedback to tenderers on procurement outcomes.
- 2.60** Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW, acknowledged that one of the key criticisms provided to his agency by contractors bidding for government contracts was that there was a lack of clear visibility as to how agencies were assessing tenders, or even what criteria was adopted.<sup>178</sup> Mr Hirsh explained that they are hoping to improve this to ensure that the market 'understands what it is being measured against'.<sup>179</sup>

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<sup>172</sup> Submission 31, Nook Studios, p 29.

<sup>173</sup> Submission 7, Mr Osmond Chiu, p 2.

<sup>174</sup> Submission 38, United Workers Union, pp 12 and 13.

<sup>175</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 23.

<sup>176</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 23.

<sup>177</sup> See for example, Evidence, Mr Halsall, Transport for NSW, 2 April 2024, p 35; Answers to supplementary questions, Infrastructure NSW, 1 May 2024, p 3; Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>178</sup> Evidence, Mr Hirsh, Infrastructure NSW, 2 April 2024, p 29.

<sup>179</sup> Submission 3, Small Business Commissioner, p 5.



- 2.61** In a similar vein, the Australasian Railway Association noted that tenderers are often not aware of the weighting of evaluation criteria. It suggested that there be increased clarity where price factors may dominate the purchase decision.<sup>180</sup>
- 2.62** Likewise, the National Electrical and Communications Association argued that there should be clear evaluation criteria, along with objective decision making processes and robust oversight mechanisms. It emphasised that 'transparency promotes trust and encourages small businesses to participate actively'.<sup>181</sup>
- 2.63** On the issue of providing transparent feedback to unsuccessful tenderers, Mr Mustafa Agha, Executive Manager – Policy, Business NSW, called for improved feedback processes, noting that some applicants can spend a significant amount of time preparing their tender, with feedback being important in building capacity:
- At the moment you go through the process and you might spend a month—you might spend hours and hours—in putting something together only to fail time and time again. You might be missing something basic and fundamental but you just don't know so transparency goes a few ways. Providing that feedback would be really important as well to build that capacity.<sup>182</sup>
- 2.64** Mr Harding, also from Business NSW, highlighted how the provision of feedback is particularly important for smaller businesses. He noted that after a small business conducts the necessary preparation to place themselves within the market for a government contract, including making necessary expenses, the lack of effective feedback can be 'disheartening for the impacted small businesses'.<sup>183</sup>
- 2.65** The Small Business Commissioner NSW echoed this view. It noted that small business are seeking greater transparency and enhanced feedback from agencies through pre and post tender briefings. It noted that there are some cases in which agencies do not provide feedback on why bids were unsuccessful, nor references for work completed, which is also required.<sup>184</sup>
- 2.66** Other suggestions were put forward in relation to how transparency could be improved. The Social Enterprise Council of NSW & ACT called for:
- a supplier rating and review system that allows whole of government visibility of a supplier based on performance across the duration of the contract and recognised accreditations
  - publication of contract values and social impact targets/pledges
  - publication of independent audits of projects
  - a 'robust' whistleblowing policy for the government's supply chain
  - publication of the value of social procurement as a percentage of total procurement.<sup>185</sup>

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<sup>180</sup> Submission 12, Australasian Railway Association, p 8.

<sup>181</sup> Submission 32, National Electrical and Communications Association, p 6.

<sup>182</sup> Evidence, Mr Mustafa Agha, Executive Manager – Policy, Business NSW, 2 April 2024, p 43.

<sup>183</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 40.

<sup>184</sup> Evidence, Mr Hirsh, Infrastructure NSW, 2 April 2024, p 29.

<sup>185</sup> Submission 16, Social Enterprise Council of NSW & ACT, p 10.

**2.67** There were also a range of other suggestions put forward, including:

- enhanced record keeping arrangements in relation to procurement activities from supported employment services, including purchase amounts to be identified in agency annual self-reports and outcomes reports<sup>186</sup>
- the naming of subcontractors in tenders, with a post-award verification process to examine subcontracting arrangements<sup>187</sup>
- audits on organisations that have secured tenders for extended periods<sup>188</sup>
- publication of written analyses that justify the selection of suppliers for all major contracts, along with periodic publication of lists of suppliers to governments, with this list disclosing the goods or services provided, the value of those products and the location of relevant operations<sup>189</sup>

### **Creating a level playing field**

**2.68** A number of inquiry participants consistently drew attention to the notion of creating a 'level playing field' for small to medium enterprises (SMEs) to compete with larger enterprises for government procurement contracts.

**2.69** For example, Mr Mustafa Agha, Executive Manager – Policy, Business NSW argued that SMEs should be supported to achieve the same outcomes as other businesses, noting 'we might need to make some exceptions for them to help them get there'<sup>190</sup>. He described it as a matter of 'equity versus equality':

We want to ensure that small businesses can get the same outcome in the end, but we might need to make some exceptions for them to help them get there. Small businesses provide the social outcomes that we need for the State. It's about creating that level playing field for them, in many ways.<sup>191</sup>

**2.70** Mr Harding supported this view, noting that there is currently not that level playing field with larger businesses in the marketplace having an abundance of resources at their disposal, a capacity to manage risk, and are able to deliver projects that other cannot.<sup>192</sup>

**2.71** Inquiry participants explored ways in which SMEs could be supported, including splitting and packaging contracts, and addressing challenges in meeting tender requirements. This evidence is discussed in turn.

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<sup>186</sup> Submission 6, National Disability Services, p 10.

<sup>187</sup> Submission 9, Entrepreneurial & Small Business Women Australia, pp 3-4.

<sup>188</sup> Submission 9, Entrepreneurial & Small Business Women Australia, p 4.

<sup>189</sup> Submission 57, Australian Workers Union, p 6.

<sup>190</sup> Evidence, Mr Mustafa Agha, Executive Manager – Policy, Business NSW, 2 April 2024, p 44.

<sup>191</sup> Evidence, Mr Agha, Business NSW, 2 April 2024, p 44.

<sup>192</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 44.

### *Splitting and packaging of contracts*

- 2.72** To facilitate more equitable opportunities, some stakeholders suggested splitting contracts or creating smaller packages within a scope of works to allow SMEs to partner with larger tier 1 organisations or complete a defined element of the determined scope of work.
- 2.73** For example, Mr Harding believed there is an opportunity for governments 'to split the size of packages appropriate to some of those medium-sized players'.<sup>193</sup> He asserted that contract splitting in this way would allow for SMEs to reinvest in their skillsets and communities.
- 2.74** Indeed, Ms Belinda Ritchie, Executive Director Commercial Services – Infrastructure and Place, Transport for NSW, advised the committee that there is ongoing work around packaging strategies to engage with tier 2 contractors.<sup>194</sup> She stated that, in developing a delivery strategy for a project, Transport for NSW actively looks at how it can be packaged to efficiently engage with industry.<sup>195</sup>
- 2.75** To demonstrate this in practice, Mr Josh Murray, Secretary, Transport for NSW, added that there would be approximately 16 contracts over the next 12 month period, with a value of approximately \$500 million, which will open to the market. He believed that this 'opens the front door for more contracting with tiers 2 and 3'.<sup>196</sup>
- 2.76** Further, Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors suggested the NSW Government consider a program delivery approach (PDA), akin to what has been adopted by Major Roads Projects Victoria.<sup>197</sup> He explained that under this approach, contractors are divided into a tiered panel arrangement, and could make a bid for work.<sup>198</sup>
- 2.77** While such opportunities were supported by inquiry participants, some pointed out ongoing challenges. For example, the NSW Small Business Commission argued that once small businesses are successful in prequalification schemes or panel contracts, there is no guarantee of work.<sup>199</sup> The Commission asserted that there is 'a perception among small business suppliers that work is offered to larger suppliers and those already known to Government departments'.<sup>200</sup>
- 2.78** Australian Owned Contractors added that tier 1 contractors operating in Australia are not Australian owned, asserting that tier 1 firms 'have little interest or incentive in joint venturing with Australian owned firms'.<sup>201</sup> Australian Owned Contractors therefore argued that there was

<sup>193</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 43.

<sup>194</sup> Evidence, Ms Belinda Ritchie, Executive Director Commercial Services – Infrastructure and Place Transport for NSW, 2 April 2024, p 38.

<sup>195</sup> Evidence, Ms Ritchie, Transport for NSW, 2 April 2024, p 38.

<sup>196</sup> Evidence, Mr Josh Murray, Secretary, Transport for NSW, 2 April 2024, p 38.

<sup>197</sup> Evidence, Mr Brent Crockford, Chief Executive Officer, Australian Owned Contractors, 3 April 2024, p 36.

<sup>198</sup> Evidence, Mr Crockford, Australian Owned Contractors, 3 April 2024, p 36.

<sup>199</sup> Submission 3, NSW Small Business Commission, p 2.

<sup>200</sup> Submission 3, NSW Small Business Commission, p 2.

<sup>201</sup> Submission 42, Australian Owned Contractors, p 2.

a trend for state transport and infrastructure agencies to 'bundle' projects, which 'reduces the number competitive tenderers who can bid for these projects'.<sup>202</sup>

- 2.79** ICAC NSW also identified risks in contract splitting and raised concerns about potential for corruption, explaining how large contracts could avoid going to public tender if the project was split into smaller jobs.<sup>203</sup>

### *Tender requirements*

- 2.80** Some inquiry participants commented on the difficulties faced by SMEs in meeting certain tender requirements, including insurance conditions.

- 2.81** For example, Mr Paul Dale, Policy Director, Medical Technology Association of Australia (MTAA), told the committee that MTAA members consistently report difficulty in meeting requirements, particularly for insurance.<sup>204</sup> He described how a larger company might consider insurance – 'they'll pay it and move on, even if they think they're excessive' – compared with a smaller company for whom 'that's a really big deal'.<sup>205</sup>

- 2.82** Mr Harding suggested that risk should be transferred in such a way that is appropriate to the size of the business undertaking a contract.<sup>206</sup> Indeed, Mr Agha reflected on the example of public liability insurance of \$10 million required for a marketing contract to illustrate the disproportion with the work being undertaken. He explained that this is the same level of liability for work requiring physical labour on a worksite.<sup>207</sup>

- 2.83** Mr Harding expressed a similar point, asserting that there is a gap in the market between who is able to manage the risk for large contracts and who is not.<sup>208</sup> He cited an example of small businesses on the railway network having to 'carry very large insurance burdens which effectively does drive the work towards those who hold regional or global covers'.<sup>209</sup>

- 2.84** Similarly, Consult Australia, an industry association, drew attention to a recent report by Business NSW that shows the average public indemnity insurance claim is \$250,000, but agencies typically seek insurance cover for \$20 million.<sup>210</sup> Consult Australia argued that this discrepancy was partly driven by 'the burdensome insurance requirements set by government clients'.<sup>211</sup>

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<sup>202</sup> Submission 42, Australian Owned Contractors, p 2.

<sup>203</sup> Submission 18, NSW Independent Commission Against Corruption, p 7.

<sup>204</sup> Evidence, Mr Paul Dale, Policy Director, Medical Technology Association of Australia, 3 April 2024, p 23.

<sup>205</sup> Evidence, Mr Paul Dale, Policy Director, Medical Technology Association of Australia, 3 April 2024, p 23.

<sup>206</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 42.

<sup>207</sup> Evidence, Mr Agha, Business NSW, 2 April 2024, p 42.

<sup>208</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 44.

<sup>209</sup> Evidence, Mr Harding, Business NSW, 2 April 2024, p 41.

<sup>210</sup> Submission 21, Consult Australia, p 5.

<sup>211</sup> Submission 21, Consult Australia, p 5.

- 2.85** Mr Lamont, NSW Small Business Commissioner, also raised concerns about other tender requirements. For example, he drew attention to International Organisation for Standardisation (ISO) requirements that are being mandated in some tender arrangements. In its submission, the NSW Small Business Commission explained that ISO certification is presenting as a 'significant barrier to small business participation in terms of cost and capacity', and is more generally considered as being 'unexpected or unreasonable' by respondents to a recent survey.<sup>212</sup>
- 2.86** Mr Agha expressed a similar view, asserting that tender eligibility requirements, including quality management systems (QMSs) and ISO certifications, are barriers to participation in agency procurement engagements.<sup>213</sup> Mr Agha argued that these requirements were 'more difficult than any other barrier because they require months of implementation and assessments'.<sup>214</sup>
- 2.87** In addition, to further encourage small business engagement, Mr Chris Lamont, Small Business Commissioner, NSW Small Business Commission, advocated for a reduction of procurement and contractual requirements for small business more generally. He asserted this approach would 'boost competition ... [and] help demonstrate value for money, all of which is good for New South Wales small businesses, the New South Wales Government and New South Wales'.<sup>215</sup>

## Monitoring and compliance by vendors and accredited agencies

- 2.88** As noted in chapter 1, an important feature of the legislative and policy framework guiding government procurement is the monitoring and compliance of procurement practices as they relate to agency obligations under the NSW Procurement Policy Framework. This was raised in evidence as a key theme when stakeholders discussed oversight by the NSW Procurement Board alongside agency responsibilities. This section examines the role of the Board and government agencies in ensuring procurement requirements are met.

### Role of the NSW Procurement Board

- 2.89** The NSW Procurement Board is required to take measures in accordance with the Act, as outlined in chapter 1, to ensure its objectives are met. These measures centre on the Board's functions to oversee government agency procurement, monitor agency compliance, develop procurement systems, and collect and publish data, amongst others. This section examines various aspects of these functions, including the Board's role in overseeing agency accreditation, monitoring self-attestations and trigger events, operating within a devolved structure, and data collection and monitoring.

<sup>212</sup> Submission 3, NSW Small Business Commission, p 18.

<sup>213</sup> Evidence, Mr Agha, Business NSW, 2 April 2024, p 45.

<sup>214</sup> Evidence, Mr Agha, Business NSW, 2 April 2024, p 45.

<sup>215</sup> Evidence, Mr Lamont, NSW Small Business Commission, 2 April 2024, p 67.

### ***Oversight of agency accreditation***

- 2.90** As noted in chapter 1, the NSW Procurement Board oversees agency accreditation which allows agencies to engage in procurement activities or do so on behalf of another agency, as a feature of the devolved governance approach to government procurement in New South Wales.
- 2.91** Some inquiry participants commented on the accreditation programs established by the Board, in particular, agency accreditation for construction procurement.
- 2.92** For example, Ms Campbell, Deputy Secretary – Commercial, NSW Treasury, confirmed that construction procurement accreditation does not have threshold levels in the way that accreditation for goods and services procurement has.<sup>216</sup> As outlined in chapter 1, agencies procuring goods and services have two accreditation levels they can apply for based on maximum contract value. In contrast, only accredited agencies can conduct construction procurement activities over a value of \$1.3 million dollars.<sup>217</sup>
- 2.93** According to NSW Public Works, there are opportunities for improvement in this regard, with the agency asserting that the current 'one size fits all' approach to construction procurement accreditation 'does not suit all agencies due to their variability in size, type, capability, maturity, risk profile and value of the planned procurement activities'.<sup>218</sup>
- 2.94** Mr Varnum demonstrated this point by way of example of a smaller agency being required to meet the same accreditation requirements as a bigger agency, such as the Sydney Metro.<sup>219</sup> He argued that the current system is set up in such a way that does not acknowledge that different agencies have different pipelines of procurement.<sup>220</sup>
- 2.95** NSW Public Works also drew attention to a number of other areas for improvement within the accreditation program for construction procurement, including addressing inconsistencies in accreditation assessment outcomes, and managing risks associated with construction procurement assurance (or lack thereof).<sup>221</sup>
- 2.96** In this regard, Ms Campbell acknowledged that the construction procurement accreditation program warranted further consideration.<sup>222</sup>

### ***Monitoring self-attestations and trigger events***

- 2.97** The committee also received evidence on self-attestation as a mechanism to ensure agencies continue to meet accreditation standards. In this context, accredited agencies are required to report to the NSW Procurement Board an annual self-attestation approved by the respective agency portfolio department Secretary.<sup>223</sup> The attestation confirms that an accredited agency's

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<sup>216</sup> Evidence, Ms Campbell, Deputy Secretary, NSW Treasury, 2 April 2024, p 10.

<sup>217</sup> NSW Government, *Procurement Policy Framework* (28 March 2024), p 143.

<sup>218</sup> Submission 40, NSW Government, Appendix A4 – NSW Public Works, p 55.

<sup>219</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 27.

<sup>220</sup> Evidence, Mr Varnum, NSW Public Works, 2 April 2024, p 27.

<sup>221</sup> Submission 40, NSW Government, p 55.

<sup>222</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 10.

<sup>223</sup> Submission 40, NSW Government, p 7.

procurement activities comply with the *Public Works and Procurement Act 1912* and the NSW Procurement Policy Framework, and includes standard measures of procurement activity, achievement of procurement outcomes and achievement of social procurement activities.<sup>224</sup>

- 2.98** Ms Campbell, advised that responsible central agencies, such as NSW Procurement for goods and services, NSW Public Works for construction, and the Department of Customer Service for ICT procurement, review self-attestations before reporting to the NSW Procurement Board when there are non-compliance issues and recommended actions.<sup>225</sup>
- 2.99** Further NSW Treasury confirmed that the trigger escalation process would include:
- an accredited agency to evaluate a trigger event and notifying the PLG of findings
  - the agency may then be required to develop trigger event action plan for PLG endorsement
  - where matters are not addressed in the trigger event action plan, the Board would consider a targeted review with root cause analysis and a trigger event action plan
  - if the matters are not addressed, the Board would consider a full review, which could result in an accreditation status change or withdrawal.<sup>226</sup>
- 2.100** Mr Kwabena Bediako, Chief Procurement Officer, Department of Customer Service, confirmed that his agency has indeed implemented attestation processes, drawing on random audits of contracts to validate their attestations, publishing non-compliances that have been detected, and applying internal consequences breaches.<sup>227</sup>
- 2.101** Similarly, Transport for NSW shared its experience of attesting to compliance, advising that no accreditation breaches were reported for goods and services procurement via the self-attestation process.<sup>228</sup> However, it confirmed that two trigger events were raised with NSW Procurement in the construction self-attestation, 'being two ICAC investigations – Operation Hector and Operation Paragon'.<sup>229</sup> Transport for NSW advised that it had subsequently updated its internal policy framework to replace two accreditations with a single streamlined accreditation.<sup>230</sup>
- 2.102** Further, the committee heard evidence regarding trigger events outside of the annual self-attestation process, demonstrating agency self-reporting in practice.
- 2.103** For example, NSW Treasury advised that there have been five trigger events for action regarding an agency's accreditation status since the accreditation process was implemented. Of these, only one was for non-compliance, and no sanctions were required as the agency self-reported the event to the Procurement Leadership Group (PLG).<sup>231</sup> The other four trigger events were

<sup>224</sup> Submission 40, NSW Government, p 7.

<sup>225</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 9.

<sup>226</sup> Answers to questions on notice, NSW Treasury, 10 May 2024, pp 1-2.

<sup>227</sup> Evidence, Mr Kwabena Bediako, Department of Customer Service, 2 April 2024, p 13.

<sup>228</sup> Answers to questions on notice, Transport for NSW, 1 May 2024, p 14.

<sup>229</sup> Answers to questions on notice, Transport for NSW, 1 May 2024, p 14.

<sup>230</sup> Answers to questions on notice, Transport for NSW, 1 May 2024, p 14.

<sup>231</sup> Answers to questions on notice, NSW Treasury, p 1.

similarly self-reported by the agencies and endorsed by the PLG, and no sanctions were required.<sup>232</sup>

- 2.104** While the committee heard that agencies actively engage in the attestation process, some stakeholders commented on its effectiveness as a means to monitor whether minimum accreditation standards are complied with. For example, according to NSW Public Works, the accreditation program for construction 'does not adequately provide visibility over an accredited agency's ongoing compliance with the minimum standards'.<sup>233</sup>
- 2.105** Another inquiry participant, a former agency employee, argued that there was no way to verify annual agency self-reports and outcomes reports, claiming that they are often late or not completed at all, with 'no consequences for lateness or inaction'.<sup>234</sup>
- 2.106** Ms Campbell accepted that 'there is opportunity to continue to improve [the self-attestation] process with the insights for the board' and undertook to work with the relevant agencies in this regard.<sup>235</sup>

### ***Data collection and monitoring***

- 2.107** In accordance with the *Public Works and Procurement Act*, the NSW Procurement Board also has responsibility over the collection, analysis and publication of procurement statistics, in conjunction with monitoring agency compliance with its own directions and policies.<sup>236</sup>
- 2.108** In this regard, the committee explored the use, collection and monitoring of data by government agencies to inform its procurement decisions and scrutinise procurement activities, and found an inherent diversity of data collection practices. Inquiry participants raised concerns about the inconsistencies in recording keeping and data usage, and the lack of a centralised data source to facilitate transparency of agency procurement. In particular, evidence was received in relation to expense data and supplier performance insights.
- 2.109** For example, while Mr Hong, Executive Director – Policy Analytics and Advisory, reported that enterprise resource planning (ERP) system data (including all invoice data in Spend Cube) was available across agencies was available.<sup>237</sup> However, Ms Campbell confirmed that despite more centralisation of reporting and data, the practices 'will look a little bit different from department to department'.<sup>238</sup>
- 2.110** In addition, Ms Crawford, Auditor-General, advised that a recent finding of the NSW Audit Office from its review of the *NSW government agencies' use of consultants*<sup>239</sup> was the lack of visibility

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<sup>232</sup> Answers to questions on notice, NSW Treasury, p 1.

<sup>233</sup> Submission 40, NSW Government, p 55.

<sup>234</sup> Submission 26, Name suppressed, p 7.

<sup>235</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 9.

<sup>236</sup> *Public Works and Procurement Act 1912*, s 172.

<sup>237</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>238</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p

<sup>239</sup> Audit Office of New South Wales, *NSW government agencies' use of consultants* (2 March 2023), [https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants\\_2\\_0.pdf](https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants_2_0.pdf).



over the government's total spending on consultants. Ms Crawford informed the committee that this is because 'there is no single data source that adequately captured this'.<sup>240</sup>

- 2.111** Indeed, Mr Hong recognised potential gaps with regard to operational data and stressed that like any data system, 'the data is only as good as the source'.<sup>241</sup> Mr Hong highlighted that where invoices are paid outside of invoicing, reliance is then required to be placed on purchase card data.<sup>242</sup> Noting the current approach, the committee learnt that NSW Treasury was looking to combine all data together, with the aim of forming a holistic picture of all agency procurement operational data.<sup>243</sup>
- 2.112** In this vein, NSW Treasury further confirmed it was exploring opportunities to obtain further insights by linking Prime system transactional data with Spend Cube management data.<sup>244</sup> NSW Treasury explained that the Spend Cube system is an analytics database with the ability to capture invoice expenditure and transactional supplier data from across government agencies.<sup>245</sup> Further, the Prime system is used for collecting budget, forecasting and actual cost accounting data across government agencies.<sup>246</sup>
- 2.113** Further, Mr Hong advised that the current system within NSW Procurement did not distinguish between capital expenditure (CapEx) and operating expenditure (OpEx), which was identified in a recent audit conducted by the NSW Audit Office.<sup>247</sup> In this regard, Mr Hong acknowledged the difficulty with reconciling financial data with operational data but suggested that gaps in expense allocations could be addressed by gaining further information from procurement operational data.<sup>248</sup>
- 2.114** With regard to managing supplier performance, the committee received evidence that some agencies are ineffectively managing their supplier performance requirements in accordance with relevant Framework requirements.
- 2.115** Of relevance to this issue, Ms Crawford drew attention to the NSW Audit Office's *NSW government agencies' use of consultants* report from 2023<sup>249</sup> which found that agencies do not procure and manage consultants effectively and do not have systems for managing and evaluating consultant performance.<sup>250</sup> Similarly, a further report from the Audit Office of New South Wales

<sup>240</sup> Evidence, Ms Crawford, Audit Office of New South Wales, p 37.

<sup>241</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>242</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>243</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>244</sup> Answers to supplementary questions, NSW Treasury, 13 May 2024, p 17.

<sup>245</sup> Answers to supplementary questions, NSW Treasury, 13 May 2024, p 18.

<sup>246</sup> Answers to supplementary questions, NSW Treasury, 13 May 2024, p 17.

<sup>247</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>248</sup> Evidence, Mr Hong, NSW Treasury, 2 April 2024, p 10.

<sup>249</sup> Audit Office of New South Wales, *NSW government agencies' use of consultants* (2 March 2023), [https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants\\_2\\_0.pdf](https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants_2_0.pdf).

<sup>250</sup> Evidence, Ms Crawford, Audit Office of New South Wales, p 37.

on *Ensuring contract management capability in government – HealthShare NSW*<sup>251</sup> identified issues relating to inadequate performance monitoring.

- 2.116** In response to the issues raised that report, Mr Gendy, NSW Health, informed the committee that improvements had been made to their systems to increase visibility, including 'making sure that the repository for all contracts [were] being completed... [and] in ensuring that the reporting back of the benefits and value of those contracts [was] also visible'.<sup>252</sup>
- 2.117** More generally, reflecting on the functions of the NSW Procurement Board, Ms Campbell believed it is a good forum for oversight because of 'the diversity of practice' but acknowledged 'that itself presents some challenges' in forming a consensus on reporting and data, particularly when what is asked of agencies may be beyond their resources and capability.<sup>253</sup>

### **Agency responsibilities**

- 2.118** Alongside the oversight functions carried out by the NSW Procurement Board, agencies operate with ultimate responsibility for managing its own procurement within the devolved governance structure. As such, agencies have obligations to ensure compliance with the legislative and policy framework, noting that each agency's approach to meeting these obligations will be different. This section highlights issues within the remit of an agency's responsibilities that relate to monitoring and compliance, including the implementation of assurance programs, procurement expertise, and category management.

### **Assurance programs**

- 2.119** Inquiry participants shared about agency assurance activities that have been set up to complement the attestation process discussed earlier in the chapter, including agency requirements to perform assurance through compliance checks and audit engagements of procurement processes.
- 2.120** For example, Mr Bediako advised that the Department of Customer Service conducts random assurance activities on a bi-monthly basis to determine whether contractual engagements are consistent with the agency's procurement manual.<sup>254</sup> Similarly, the committee received evidence from other agencies demonstrating they each perform various types of assurance activities.<sup>255</sup>
- 2.121** Further to this, Mr Campbell confirmed that an assurance program had been implemented across three agencies, including NSW Treasury, to review assurances under the governance of

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<sup>251</sup> Audit Office of New South Wales, *Ensuring contract management capability in government – HealthShare NSW* (31 October 2019), <https://www.audit.nsw.gov.au/sites/default/files/pdf-downloads/FINAL%20report%20-%20Contract%20management%20capability%20-%20HealthShare%20NSW.PDF>.

<sup>252</sup> Evidence, Mr Gendy, NSW Health, 3 April 2024, p 14.

<sup>253</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 8.

<sup>254</sup> Evidence, Mr Bediako, Department of Customer Service, 2 April 2024, p 13.

<sup>255</sup> See for example, Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 7; Evidence, Mr Gendy, NSW Health, 3 April 2024, p 14; Evidence, Mr Dizdar, Department of Education, 3 April 2024, pp 8-9; Evidence, Mr Gendy, NSW Health, 3 April 2024, p 14.

the NSW Procurement Board.<sup>256</sup> Ms Campbell advised that these reviews aimed to assess both historical and current procurement examples for compliance with the Framework to identify instances of non-compliance and prepare remedial plans for oversight by the Board.<sup>257</sup>

- 2.122** In response to questions about the Board's capacity to undertake such compliance functions, Ms Campbell stated that steps are being taken towards 'what we can do at the moment within the framework to ensure compliance' and are 'messaging that through the Procurement Board as a shared responsibility across government to be driven down through each of the agencies'.<sup>258</sup>
- 2.123** However, reflecting on the Board's role in this regard and the responsibilities of individual agencies, Mr Rangott highlighted the limitations of NSW Procurement to 'police all procurement activity' given its size and asserted that individual agencies should bear significant responsibility in maintaining compliance.<sup>259</sup>
- 2.124** Mr Rangott suggested that a combined approach to coordinated procurement assurance is ideal, highlighting that most agencies have well developed internal audit functions, however, noted that 'some degree of assurance applied from central government would assist'.<sup>260</sup>

### *Procurement expertise in agencies*

- 2.125** Procurement officers play a vital role in assisting with purchasing in New South Wales government agencies. The committee learnt of the necessary skills and authority required by procurement teams to ensure procurement functions operate effectively.
- 2.126** For example, Mr Goodwin, NSW Audit Office, advised that a Chief Procurement Officer (CPO) should be professionally qualified and hold 'sufficient seniority to be able to hold ground in making decisions around procurement' and ensure good governance.<sup>261</sup>
- 2.127** Some agencies went on to explain the involvement of procurement professionals in their procurement practices. For example, Mr Hannan stated that within the Department of Education, construction contracts over the value of \$10,000 and goods and services contracts over \$150,000 require the engagement of an agency procurement professional.<sup>262</sup> Similarly, Mr Bediako, advised that the Department of Customer Service uses specialised procurement professionals within various divisions to conduct procurement activities for the agency.<sup>263</sup>
- 2.128** Some inquiry participants questioned the depth of expertise currently held by procurement officers when performing such procurement functions. For instance, the committee heard that while procurement officials are generally aware of tendering requirements, one stakeholder

<sup>256</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 7.

<sup>257</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 7.

<sup>258</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 7.

<sup>259</sup> Evidence, Mr Rangott, NSW Independent Commission Against Corruption, 2 April 2024, p 73.

<sup>260</sup> Evidence, Mr Rangott, NSW Independent Commission Against Corruption, 2 April 2024, p 73.

<sup>261</sup> Evidence, Mr Goodwin, Audit Office of New South Wales, 3 April 2024, p 40.

<sup>262</sup> Evidence, Mr Hannan, Department of Education, 3 April 2024, p 10.

<sup>263</sup> See for example: Evidence, Mr Bediako, Department of Customer Service, 2 April 2024, p 17.

argued there was a 'great lack of knowledge and technical skill on what they are buying, the innate risks to both government and [the] supplier'.<sup>264</sup>

**2.129** A similar view was shared by the CFMEU (Manufacturing division), asserting that procurement officials 'often lack expertise in assessing noncompliance with labour laws and reputation risks'.<sup>265</sup>

**2.130** Indeed, NSW ICAC drew attention to the impact of 'dual devolution' whereby responsibility for procurement activities is devolved in the first instance from NSW Procurement to agency procurement units and subsequently to frontline staff.<sup>266</sup> The Commission explained:

Most public sector agencies or clusters have a procurement unit, which might be led by a Chief Procurement Officer (CPO) or person with a similar title. While the CPO or procurement unit will often be directly involved in large or complex tenders, most lower value procurement is led by operational managers with financial delegations and carried out by their staff.<sup>267</sup>

**2.131** By devolving responsibility in this way, NSW ICAC asserted that, as a consequence, those exercising financial delegations 'are unlikely to be across the important detail. Among other things, many of these managers will have little understanding of the supplier schemes and standing offer contracts established by NSW Procurement'.<sup>268</sup>

**2.132** Mr Rangott, NSW ICAC, offered a further perspective by highlighting the power relationship between the budget holder and the procurement officer, and cited the experiences of procurement officers who are often ignored. According to Mr Rangott, the decision-making power lies with budget holders in agencies while the procurement department has less power. He therefore believed that granting some decision-making power or veto powers to procurement officers would be 'a better balance' and a 'reform worth considering'.<sup>269</sup>

**2.133** NSW ICAC in turn recommended that consideration be given to an approach which might provide CPOs additional organisational powers in enforcing and monitoring the Framework.<sup>270</sup>

## Operating within a devolved structure

**2.134** With consideration of the various aspects of the procurement policy and framework, the committee received evidence highlighting the operation of these processes within a devolved governance structure.

**2.135** For example, in discussing the approach to agency accreditation and self-attestation, some inquiry participants reflected on this devolved structure and drew attention in particular to the value of centralised monitoring to ensure oversight and consistency.

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<sup>264</sup> Submission 26, Name suppressed, p 4.

<sup>265</sup> Submission 11, CFMEU Manufacturing, p 6.

<sup>266</sup> Submission 18, NSW Independent Commission Against Corruption, pp 5-6.

<sup>267</sup> Submission 18, NSW Independent Commission Against Corruption, pp 5-6.

<sup>268</sup> Submission 18, NSW Independent Commission Against Corruption, pp 5-6.

<sup>269</sup> Evidence, Mr Rangott, NSW Independent Commission Against Corruption, 2 April 2024, p 74.

<sup>270</sup> Submission 18, NSW Independent Commission Against Corruption, p 14.

- 2.136** The committee heard about the shift in approach away from a 'very centralised model under a State Contracts Board, where all procurement was run through the centre', to this devolved structure. Ms Campbell, NSW Treasury, explained that the centralised approach had challenges around timeframes and capacity to procure, all the while the population and procurement spend had grown.<sup>271</sup>
- 2.137** Ms Campbell posed the question of 'where the pendulum swings and has it been too decentralised under the current operating framework?'.<sup>272</sup> She highlighted the need for a balance between 'what is appropriate to be in the centre from a data analytics, insights, reporting and monitoring perspective versus what is appropriate for agencies to have responsibility for as the budget owners'.<sup>273</sup>
- 2.138** Ms Claudia Migotto, Assistant Auditor-General, Audit Office of New South Wales, reflected on this balance to some extent, drawing attention to the importance of centralised monitoring of agencies following the findings of a recent Audit Office report. She acknowledged that while accreditation processes provide a baseline for how agencies should perform, she asserted that central monitoring is necessary to ensure agencies are actually performing to those requirements: '... [T]here's no point in having accreditation if agencies are slipping from those parameters and there's no monitoring of that process'.<sup>274</sup>
- 2.139** In this regard, the Audit Office of New South Wales expanded on its findings in relation to procurement oversight and agency non-compliance.<sup>275</sup> It found:
- several examples of non-compliance with procurement rules, including contract variations that exceeded allowable limits
  - policy breaches had been approved by New South Wales government agencies and had not been identified or acted on by NSW Procurement
  - the approach to responding to agency non-compliance by NSW Procurement was not consistently applied across government agencies.<sup>276</sup>

## Committee comment

- 2.140** The intention of this first report of the committee has been to examine closely the procurement processes engaged by New South Wales government agencies to better understand more broadly the current state of procurement practices across the NSW Government. The committee notes that government procurement operates within a devolved governance

<sup>271</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 8.

<sup>272</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 8.

<sup>273</sup> Evidence, Ms Campbell, NSW Treasury, 2 April 2024, p 8.

<sup>274</sup> Evidence, Ms Claudia Migotto, Assistant Auditor-General, Audit Office of New South Wales, 3 April 2024, p 39.

<sup>275</sup> Audit Office of New South Wales, *NSW government agencies' use of consultants* (2 March 2023), [https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants\\_2\\_0.pdf](https://www.audit.nsw.gov.au/sites/default/files/documents/FINAL%20REPORT%20-%20NSW%20government%20agencies%20use%20of%20consultants_2_0.pdf) and Answers to questions on notice, 6 May 2024, pp 2-3.

<sup>276</sup> Answers to questions on notice, 6 May 2024, pp 2-3.

structure facilitated by complex legislative and policy framework reflecting the scale and scope of procurement requirements.

- 2.141** The committee heard from several government agencies to inform the extent to which procurement activities are being managed at present within this broader context, taking into consideration the roles and responsibilities of individual agencies, NSW Procurement and the NSW Procurement Board. The committee also heard from a range of industry stakeholders, union officials and professionals who presented various perspectives on government procurement processes.
- 2.142** The committee notes that a key theme arising from the evidence to date is the principle of 'value for money' as a fundamental consideration when procuring goods and services, including construction, on behalf of the NSW Government. The committee acknowledges the range of views presented by various stakeholders, including government agencies, on the interpretation and consideration of the term. While inquiry participants acknowledged that the lowest price did not always represent the best value for money, it is clear to the committee that there is no consistent or comprehensive definition and understanding of 'value for money' as part of the NSW Procurement Policy Framework to assist government agencies to interpret and apply effectively to government procurement activities.
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### **Finding 1**

There is no consistent or comprehensive definition and understanding of 'value for money' as part of the NSW Procurement Policy Framework to assist government agencies to interpret and apply effectively to government procurement activities.

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- 2.143** The committee is troubled by the lack of a consistent definition and understanding of value for money, particularly as stakeholders raised concerns about the distinct variation in the way the principle has been applied to procurement activities by New South Wales government agencies as a result. While the committee appreciates that no two procurement engagements are the same and that indeed there is wide array of government procurement activities, clearer guidance is needed to assist agencies to not only interpret and apply 'value for money' but clearly communicate this objective to suppliers, vendors and service providers.
- 2.144** The committee notes the range of perspectives on how best to improve the definition and understanding of 'value for money', including broadening the definition, clarifying the criteria, dispelling misperceptions about price factors, and considering the value of benefits as an alternative measure of 'value for money'. The committee urges the NSW Government to review and implement an expanded definition of 'value for money' as part of the NSW Procurement Policy Framework, as an immediate priority, to assist government agencies to interpret and apply effectively to government procurement activities.

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**Recommendation 1**

That the NSW Government review and implement an expanded definition of 'value for money' as part of the NSW Procurement Policy Framework, as an immediate priority, to assist government agencies to interpret and apply effectively to government procurement activities.

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- 2.145** In considering tender processes and vendor engagement, the committee heard various views on the use of standardised contracts by agencies as a means to ensure consistency over contractual obligations, whether through whole-of-government arrangements or agency-specific contracts. While the committee acknowledges the evidence that standard form contracts are available for use by government agencies, the committee finds it compelling that vendors, suppliers and service providers engaging in such contracts, particularly for construction procurement, consistently maintained that such contracts are not being used as intended, if they existed at all.
- 2.146** The committee notes in particular stakeholder calls to mandate the use of standard contracts for the various reasons presented in evidence, including efficiency and cost savings, as well as addressing inconsistencies and challenges in administering and monitoring amended contracts. The committee believes there is merit in investigating further the widespread use of standard contracts. We therefore recommend that the NSW Government review what standard contracts are currently available across all government agencies and consider developing standard procurement contracts where none exist. Moreover, the committee recommends that, through stakeholder consultation, the NSW Government investigate the value of mandating standard procurement contracts where appropriate.
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**Recommendation 2**

That the NSW Government:

- review what standard procurement contracts are currently available across all government agencies
  - consider developing standard procurement contracts across all government agencies where none exist
  - through stakeholder consultation, investigate the value of mandating standard procurement contracts where appropriate.
- 

- 2.147** Further, the committee notes government agency requirements to publish procurement contracts on its eTendering platform, used to record contractual engagements valued at \$150,000 or greater in accordance with the *Government Information (Public Access) Act 2009*. The committee acknowledges with interest the range of thresholds held by other jurisdictions, noting that New South Wales is the highest across the country. The committee recognises the concerns raised by various stakeholders who suggest the threshold is too high and agrees with calls that it should be lowered. The committee therefore recommends that the NSW Government reduce the threshold to \$100,000 at most for disclosing government procurement contracts to ensure greater transparency of government procurement activities.
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**Recommendation 3**

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

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- 2.148** Further to the disclosure of contracts, the committee recognises the varied approach to contract storage amongst agencies for those contracts under the value of \$150,000. While it is clear that individual agencies are managing their contracts as they see fit, the committee acknowledges how inconsistencies in approach make it difficult to maintain visibility and transparency of government contracts more generally.
- 2.149** The committee acknowledges the evidence that a vendor management system has been implemented by NSW Treasury with the capability to capture contracts more broadly but notes that at present, its intended function is to capture the use of consultants. The committee also acknowledges, as noted in chapter 1, that the eTendering platform, a subset of the NSW Government's buy.nsw procure-to-pay architecture, will soon have the enhanced capacity to store a larger quantum of contracts, providing further options for a centralised management system.
- 2.150** To this end, the committee believes there is a need at the very least to set contract management standards, including expectations around contract monitoring and storage requirements for contracts of any value, with a view to developing a centralised contract management system should the enhanced capability of the eTendering platform, or other vendor management systems, allow. The committee therefore recommends that the NSW Government set contract management standards, including expectations around contract monitoring and storage requirements for contracts of any value.
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**Recommendation 4**

That the NSW Government set contract management standards, including expectations around contract monitoring and storage requirements for contracts of any value.

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- 2.151** Likewise, the committee acknowledges further evidence raising concerns about transparency and, in particular, the visibility of tender outcomes. The committee notes the views of stakeholders who assert that small or medium enterprises (SMEs) most especially are impacted by a lack of constructive and transparent feedback following an unsuccessful bid. The committee shares the sentiments of stakeholders who argue that enhanced feedback would build capacity and encourage SMEs to continue to engage in government procurement processes. The committee therefore recommends that the NSW Government develop measures to ensure feedback is provided to all parties involved in a competitive tender bid, as a standard outcome of the procurement process.
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**Recommendation 5**

That the NSW Government develop measures to ensure feedback is provided to all parties involved in a competitive tender bid, as a standard outcome of the procurement process.

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- 2.152** With regard to agency accreditation programs, the committee notes the evidence suggesting that the construction procurement accreditation program in particular requires improvement. Indeed, the committee acknowledges that the construction program does not include accreditation tiers consistent with that of the goods and services accreditation program, where risk and contract value are considered.
- 2.153** The committee agrees with the view that the current 'one size fits all' approach to construction accreditation is not appropriate given agencies vary in size, maturity, capability and risk profile. The committee therefore encourages the NSW Government to assess its agency accreditation programs, in particular for construction procurement, with a view to implementing robust accreditation levels to better qualify agencies to meet their procurement needs.
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**Recommendation 6**

That the NSW Government assess its agency accreditation programs, in particular for construction procurement, with a view to implementing robust accreditation levels to better qualify agencies to meet their procurement needs.

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- 2.154** The committee also notes the call from stakeholders to create a 'level playing field' for SMEs to be considered amongst larger enterprises when seeking contracts for the supply of goods and services, and construction. The committee acknowledges the efforts of agencies to split and package contracts where possible to ensure that SMEs are able to participate in government procurement opportunities.
- 2.155** In addition, the committee recognises the challenges faced by SMEs to meet tender requirements that are disproportionate to the size of their business. The committee notes that insurance requirements in particular are a cause for concern amongst inquiry participants. In this regard, the committee believes there are barriers to government procurement opportunities for small-medium enterprises, including inequitable tender and contractual requirements.
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**Finding 2**

There are barriers to government procurement opportunities for small-medium enterprises, including inequitable tender and contractual requirements.

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- 2.156** Indeed, the committee acknowledges evidence of the operational and financial challenges faced by SMEs when looking to participate in government procurement opportunities, in particular disproportionate insurance requirements as noted above and International Organisation for
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Standardisation (ISO) and quality management system (QMS) certifications. In recognising that such requirements present barriers for SME engagement, the committee recommends that the NSW Government investigate the barriers to government procurement opportunities for small-medium enterprises, with a view to amending or removing inequitable tender and contractual requirements.

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### **Recommendation 7**

That the NSW Government investigate the barriers to government procurement opportunities for small-medium enterprises, with a view to amending or removing inequitable tender or contractual requirements.

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**2.157** Drawing attention to the oversight of procurement activities, in particular the monitoring and compliance of procurement practices in the context of agency obligations, the committee acknowledges the role of the NSW Procurement Board as presented in the evidence. Noting the very clear obligations of the Board to effectively monitor government procurement activities in accordance with the *Public Works and Procurement Act 1912*, the committee holds concern for the extent to which the Board's oversight functions are being effectively carried out.

**2.158** Evidence raised in relation to the operation of the accreditation programs, the monitoring of self-attestations and the oversight of data collection suggest there is a fundamental need for greater centralised oversight in a way that is not currently being carried out. In this regard, the committee believes that the NSW Procurement Board is not functioning effectively as an oversight body to ensure compliance with obligations under the NSW Procurement Policy Framework. and the *Public Works and Procurement Act 1912*.

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### **Finding 3**

The NSW Procurement Board is not functioning effectively as an oversight body to ensure agency compliance with obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.

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**2.159** Having said this, the committee is acutely aware of the inherent limitations of the NSW Procurement Board in undertaking sole responsibility for these functions, noting its size, capacity and resources. The committee sees a place for the Board to enforce its role as an oversight body by clearly coordinating and drawing on increased agency responsibilities for monitoring and compliance. Indeed, the committee agrees with stakeholder views that monitoring and compliance should be a shared responsibility across government.

**2.160** In this regard, the committee acknowledges the evidence that assurance activities are being undertaken by some agencies to ensure ongoing compliance but believes there are further opportunities to improve this mechanism and its application across all government agencies. For example, while internal audit functions serve to provide agency specific assurances, such reviews provide limited value to the NSW Procurement Board without a consistent approach and robust mechanism to facilitate such information.

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- 2.161** While the NSW Procurement Board can look to government agencies to bear more responsibility in maintaining compliance, the committee acknowledges the importance of the Board determining independent insights into government procurement activity based on an active vetting of agency assurances and the self-attestation process. The committee recognises the value of this in practice, as evidenced by NSW Procurement's recent assurance program implemented across three agencies to review assurances under the governance of the NSW Procurement Board. Therefore, the committee recommends that the NSW Procurement Board develop an independent and robust compliance and enforcement mechanism, with increased data monitoring capabilities, to meet its obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.

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### **Recommendation 8**

That the NSW Procurement Board develop an independent and robust compliance and enforcement mechanism, with increased data monitoring capabilities, to meet its obligations under the NSW Procurement Policy Framework and the *Public Works and Procurement Act 1912*.

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- 2.162** The committee also notes the evidence highlighting the importance of procurement expertise in government agencies to guide procurement decision making and activities. The committee acknowledges concerns raised by some witnesses in relation to the depth of knowledge and skill held by procurement officers, as well as the capacity and decision-making power of procurement officers. In particular, the committee recognises the evidence suggesting that there may be benefit in seeking a better balance between budget holders and procuring officers when making procurement decisions. The committee feels this presents an opportunity for government to potentially broaden the capacity and power of procurement officers while enhancing their specialised procurement knowledge, skills and functions. The committee also acknowledges the evidence suggesting that procurement officers be given additional organisational powers to monitor and enforce the requirements of the Framework. The committee therefore recommends that the NSW Government expand the remit of procurement officers to undertake sufficient due diligence functions and monitoring of agency compliance with the NSW Procurement Policy Framework.

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### **Recommendation 9**

That the New South Wales Government expand the remit for procurement officers to undertake sufficient due diligence functions and monitoring of agency compliance with the NSW Procurement Policy Framework.

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- 2.163** In considering the evidence to date, the committee recognises the scale, scope and complexity of NSW Government procurement requirements. Indeed, the committee's comments reflect the intricacies of the processes engaged by government agencies to procure the goods and services, including construction, it needs to exercise its functions.
- 2.164** However, in taking a step back from this, the committee must acknowledge an overarching theme in the evidence suggesting an ineffectiveness in the devolved approach underpinning the governance of procurement.

- 2.165** The committee notes that the devolved governance structure in place has government agencies bearing ultimate responsibility for managing its own procurement. While the committee accepts that agencies should play a role in not only planning, sourcing and managing its procurement activities as well as maintaining compliance, it is clear there is a gap in the centralised oversight of government procurement.
- 2.166** The committee's previous finding that the NSW Procurement Board is not functioning effectively as an oversight body only serves to highlight this gap.
- 2.167** The committee therefore concludes that the current approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met and a new approach is warranted.

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**Finding 4**

The current approach to government procurement in New South Wales is not effective in ensuring that government procurement objectives are met and a new approach is warranted.

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## Appendix 1 Submissions

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

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

## Appendix 2 Witnesses at hearings

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

<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Peter Perdikos	Executive Director Commercial, Procurement & Transformation, Transport for NSW
	Mr Rob Halsall	Executive Director Procurement, Transport for NSW
	Mr Alex Claassens	Branch Secretary, Rail, Tram and Bus Union NSW Branch
	Mr David Babineau	Divisional Secretary – Tram and Bus, Rail, Tram and Bus Union NSW Branch
	Dr Christopher Day	Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney
	Mr Lewis Rangott	Executive Director, Corruption Prevention, NSW Independent Commission Against Corruption
	Dr Benjamin Marx	Principal Officer, Corruption Prevention, NSW Independent Commission Against Corruption
	Mr Chris Lamont	NSW Small Business Commissioner, NSW Small Business Commission
	Mr Mark Frost	Director, Advisory, NSW Small Business Commission
<b>Wednesday, 3 April 2024</b>	Mr Murat Dizdar	Secretary, NSW Department of Education
<b>Macquarie Room</b>	Mr Paul Hannan	Group Director and Chief Procurement Officer, NSW Department of Education
<b>Parliament House, Sydney</b>	Adjunct Professor Alfa D'Amato	Deputy Secretary, Financial Services and Asset Management, and Chief Financial Officer, NSW Health
	Mr Michael Gendy	Chief Procurement Officer, NSW Health
	Ms Emma Skulander	Chief Operating Officer, Health Infrastructure



<b>Date</b>	<b>Name</b>	<b>Position and Organisation</b>
	Mr Alex Araujo	Executive Director, Procurement & Supply Chain, HealthShare NSW, NSW Health
	Mr Paul Dale	Policy Director, Medical Technology Association of Australia
	Mr Andrew Mirich	Senior Tenders and Contract Specialist, Stryker & Chair of the MTAA Procurement Forum, Medical Technology Association of Australia
	Ms Kylie Yates	Chief Executive Officer, Civil Contractors Federation (NSW Branch)
	Mr Michael Boyle	Board Member, Civil Contractors Federation (NSW Branch)
	Mr Brent Crockford	Chief Executive Officer, Australian Owned Contractors
	Mr Treaven Martinus	Director, Australian Owned Contractors
	Ms Margaret Crawford	Auditor-General, Audit Office of NSW
	Mr Ian Goodwin	Deputy Auditor-General, Audit Office of NSW
	Ms Claudia Migotto	Assistant Auditor-General, Audit Office of NSW
	Witness A	
	Witness B	
	Witness C	
	Witness D	
	Witness E	

## Appendix 3 Minutes

### Minutes no. 2

Wednesday 11 October 2023

Standing Committee on Social Issues

Room 1043, Parliament House, 12.51 pm

#### 1. Members present

Dr Kaine, *Chair*

Mrs Mitchell, *Deputy Chair*

Dr Cohn

Mr D'Adam

Mr Lawrence (substituting for Mr Nanva)

Ms Merton

Ms Suvaal

#### 2. Previous minutes

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

#### 3. Correspondence

The committee noted the following items of correspondence:

##### *Received*

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

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

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

1. That the Standing Committee on Social Issues inquire into and report on the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales, and in particular:

- (a) the current state of procurement by New South Wales government agencies, in particular:
  - (i) the value of procurement, through whole of government or agency procurement arrangements
  - (ii) the policies, schemes and contracts of all categories that New South Wales government agencies procure, including labour
  - (iii) the number of whole of government procurement arrangements available to New South Wales government agencies
  - (iv) the application of the New South Wales Procurement Policy Framework and the devolved nature of the responsibilities and obligations of New South Wales government agencies under the framework
  - (v) the value/volume of New South Wales government agencies procurement undertaken outside of whole of government procurement arrangements
  - (vi) the accreditation program for goods and services procurement and construction procurement
- (j) the effectiveness of whole of government and agency procurement arrangements, including standing offers, panels and prequalification schemes, in ensuring that suppliers and their

subcontractors deliver value for money and comply with relevant policies and regulations, including labour laws, at the qualification, contract negotiation stage and contract management stages of procurement

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

3. That the committee report by July 2024.

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

Question put.

The committee divided.

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

Noes: Ms Merton and Mrs Mitchell.

Question resolved in the affirmative.

## 5. Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

### 5.1 Closing date for submissions

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

### 5.2 Stakeholder list

Resolved, on the motion of Ms Suvaal: That:

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

### 5.3 Hearing dates

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

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

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

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

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

## 7. Adjournment

The committee adjourned at 1.05 pm.

*Sine die.*

Kate Mihaljek  
**Committee Clerk**

## Minutes no. 3

Wednesday 7 December 2023  
Standing Committee on Social Issues  
Room 1043, Parliament House, 11.33 am

### 1. Members present

Dr Kaine, *Chair*  
Mrs Mitchell, *Deputy Chair* (via videoconference)  
Mr D'Adam  
Ms Merton  
Mr Nanva (via videoconference)

### 2. Apologies

Dr Cohn  
Ms Suvaal

**3. Previous minutes**

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

**4. Correspondence**

The committee noted the following items of correspondence:

***Received***

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

***Sent***

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

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

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

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

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

**6. Adjournment**

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

Jessie Halligan  
Committee Clerk

**Minutes no. 4**

Thursday 14 March 2024

Standing Committee on Social Issues into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

Members' Lounge, Parliament House, Sydney at 4.20 pm

**1. Members present**

Dr Kaine, *Chair*

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

Mr Buckingham

Mr D'Adam

Ms Merton

Mr Nanva (via videoconference)

Ms Suvaal

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

**2. Apologies****3. Draft minutes**

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

**4. Correspondence**

The committee noted the following items of correspondence:

**Received:**

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

**5. Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales**

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

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

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

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

**6. Adjournment**

The Committee adjourned at 4.28 pm until Tuesday 2 April 2024 (committee hearing – inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales).

Daniel Whiteman  
**Committee Clerk**

**Minutes no. 5**

Tuesday 2 April 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.00 am

**1. Members present**

Dr Kaine, *Chair*

Ms Boyd

Mr D'Adam,

Ms Merton

Mr Nanva (via videoconference)

Ms Suvaal

Mr Tudehope

**2. Apologies**

Mr Buckingham

**3. Previous minutes**

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

**4. Election of Deputy Chair**

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

The Chair called for nominations for Deputy Chair.

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

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

**5. Correspondence**

The committee noted the following items of correspondence:

***Received:***

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

***Sent:***

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

**6. Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales****6.1 Public submissions**

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

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

**6.2 Partially confidential submission**

Resolved, on the motion of Ms Boyd: That:

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

### **6.3 Confidential submissions**

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

### **6.4 Attachments**

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

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

### **6.5 Submission no. 8**

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

## **7. Public Hearing**

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

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr D'Adam left the meeting.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr D'Adam re-joined the meeting.

The following witnesses were sworn and examined:

- Mr Angus Begg, Chief Financial Officer, NSW Public Works
- Mr Drew Varnum, Executive Director, NSW Public Works



- Mr Said Hirsh, Head of Strategy, Planning and Innovation, Infrastructure NSW
- Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr D'Adam left the meeting.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr D'Adam re-joined the meeting.

The following witness was sworn and examined:

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

The evidence concluded and the witness withdrew.

The following witnesses were sworn and examined:

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

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

## 8. Adjournment

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

Daniel Whiteman  
Committee Clerk

## Minutes no. 6

Wednesday 3 April 2024

Standing Committee on Social Issues

Macquarie Room, Parliament House, Sydney at 9.15 am

### 1. Members present

Dr Kaine, *Chair*

Ms Boyd, *Acting Deputy Chair*

Mr Buckingham (until 11.45 am)

Mr D'Adam

Ms Merton (until 3.06 pm)

Mr Nanva (via videoconference)

Ms Suvaal

Mr Tudehope (until 3.55 pm)

### 2. Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

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

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

#### 2.2 Public hearing

The public and the media were admitted at 9.15 am.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr Nanva left the meeting.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

Mr Nanva re-joined the meeting.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

The following witnesses were sworn and examined:

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

The evidence concluded and the witnesses withdrew.

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

Ms Boyd left the meeting.

### **2.3 In camera hearing**

The committee proceeded to take *in camera* evidence.

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

The witnesses were admitted.

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

The following witnesses were sworn and examined:

- Witness A
- Witness B.

The evidence concluded and the witnesses withdrew.

Ms Boyed re-joined the meeting.

The following witnesses were sworn and examined:

- Witness C
- Witness D
- Witness E.

The evidence concluded and the witnesses withdrew.

The *in camera* hearing concluded at 4.30 pm.

### **3. Adjournment**

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

Daniel Whiteman  
**Committee Clerk**

### **Draft minutes no. 7**

Wednesday 12 June 2024  
 Standing Committee on Social Issues  
 Room 1043, Parliament House, Sydney at 2.01 pm

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

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

Mr Nanva (via videoconference)  
Mr Tudehope  
Ms Suvaal

## 2. Previous minutes

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

## 3. Correspondence

The committee noted the following items of correspondence:

### ***Received:***

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

### ***Sent:***

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

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

#### 4. Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

##### 4.1 Public submissions

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

##### 4.2 Confidential submissions

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

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

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

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

##### 4.4 Transcript corrections

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

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

on the inquiry webpage

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

##### 4.5 Clerk's advice

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

##### 4.6 Consideration of the Chair's Report

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

#### Chapter 1

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

## Chapter 2

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

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

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

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

Amendment of Ms Suvaal put and passed.

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

Mr Tudehope moved: That:

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

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

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

Amendment of Ms Boyd put.

The committee divided.

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

Noes: Ms Merton, Mr Tudehope.

Amendment of Ms Boyd resolved in the affirmative.

Original question of Mr Tudehope, as amended, put.

The committee divided.

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

Noes: Ms Merton, Mr Tudehope.

Original question resolved in the affirmative.

Mr Tudehope moved: That:

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

Question put.

The committee divided.

Ayes: Ms Merton, Mr Tudehope.

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

Question resolved in the negative.

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

Ms Boyd moved: That Recommendation 3 be amended by:

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

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

Amendment of Mr D'Adam put and passed.

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

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

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

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

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

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

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

#### **Finding 4**

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

Question put.

The committee divided.

Ayes: Ms Merton, Mr Tudehope.

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

Question resolved in the negative.

Resolved, on the motion of Ms Suvaal: That:

- paragraph 2.166 be amended by omitting 'a devolved approach to government procurement' and inserting instead 'the current approach to government procurement'.
- Finding 4 be amended by omitting 'a devolved approach to government procurement' and inserting instead 'the current approach to government procurement'.

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

Question put.

The committee divided.

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

Noes: Ms Merton, Mr Tudehope.

Question resolved in the affirmative.

Resolved, on the motion of Ms Suvaal: That:

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

## 5. Adjournment

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

Daniel Whiteman  
**Committee Clerk**





