



Your ref: DW24/299-4

Dr Sarah Kaine
Chair
Standing Committee on Social Issues
Parliament of NSW

By email: committee.socialissues@parliament.nsw.gov.au

Dear Dr Kaine

I refer to the Standing Committee on Social Issues on 4 July 2024 for the Procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales.

Please find enclosed the EPA's responses to the question on notice and supplementary questions.

Thank you also for the opportunity to review the uncorrected transcript. I do have requested clarification to the transcript, attached for your consideration.

Yours sincerely

TONY CHAPPEL
Chief Executive Officer

30 July 2024

Encl: Transcript clarification, and answers to questions on notice and supplementary questions

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

NSW EPA response to the question on notice (page 11)

Ms ABIGAIL BOYD: The other issue that I love to talk about is coal ash. I will talk about it until the cows come home. At the moment, almost 20 per cent of all waste in Australia is coal ash, and we had, I think, a one-line referral to it in the Waste and Sustainable Materials Strategy. There has been a bunch of recommendations made in relation to how we can recycle and reuse that coal ash, particularly within construction, roads and loads of other things, and yet there has been no movement on that for years. What is the EPA's role in that? Is there a way for the EPA to step in and suggest, "Hey, you might want to pay more attention to growing this industry over there"? Where are the levers for that to happen?

TONY CHAPPEL: Absolutely, there are. There are some levers deployed currently. The carbon abatement fund under the Waste and Sustainable Materials Strategy has three priority streams, one of which is coal ash reuse. Perhaps I'll take it on notice and give you some further detail, but there are two partnerships looking at, essentially, commercialising much greater reuse of coal ash. As you say, it's a very large waste but it's also a very large resource that can help us decarbonise some of these hard-to-abate sectors, like cement manufacturing, road building and so on, and do so in a way that also keeps materials and jobs and economic activity in those regions. So it's very interesting to consider in detail, which is what we're seeking to do through this Carbon Recycling and Abatement Fund partnership. I'll get some further detail and go through that, and any other examples.

Answer:

The Carbon Recycling and Abatement Fund supports initiatives to trial new approaches to recycling and recycled materials, such as low-carbon coal ash cement. \$3.25 million has been committed through the Carbon Recycling and Abatement Fund to support the reuse of coal ash in cement production. Specific initiatives include a Coal Ash Pathways Research Partnership, a coal ash harvesting infrastructure fund, new and updated specifications for geopolymers and Portland cement, and the publishing of coal ash supply chain information.

On 17 October 2023, the EPA entered a memorandum of understanding with the Ash Development Association of Australia (ADAA), in line with recommendation 13 of the Parliamentary inquiry into costs for remediation of sites containing coal ash repositories (March 2021). This memorandum of understanding supports a cooperative effort between the EPA and ADAA to map and characterise ash repositories across NSW to gain a better understanding of resource supply and applications to inform industry investment.

Ms ABIGAIL BOYD: This is a bit cheeky to ask, because it's not quite procurement, but it is around it. We heard from the Anti-slavery Commissioner, and one of the things that is on my mind is around the supply chain for solar panels in particular. I know that we are struggling to find an easy source of silica in Australia in order to produce our own solar panels. Coal ash has a huge amount of silica in it. Is that something that has come across your path? Has any work been done within the EPA in relation to that?

TONY CHAPPEL: I'm not familiar with any work on that particular issue. I know the Commonwealth Government—and we are participating in the process—is leading a circular solar policy development for product stewardship, essentially, for solar systems, which will include design for recyclability. I'll take that perhaps on notice and give you a considered answer.

Answer:

The EPA's Coal Ash Research Partnership will include the identification of coal ash end uses to gain a better understanding of coal combustion product repository supply, applications and

technologies to explore the potential for future use as coal-fired power stations are decommissioned.

Ms ABIGAIL BOYD: I'm just cheekily putting that on your radar, because I think it's a missing piece. One thing I wanted to touch on was, again, we've had a lot of evidence in previous inquiries around the limited number of environmental consultants available on projects. It's a form of procurement that—when departments are going and getting their EIS done, there has been a lot of talk about conflicts of interest and a limited pool of suppliers available to do that work. Is that something that the EPA has been looking at? Are there any concerns, from your perspective?

TONY CHAPPEL: We're very focused on following the recent legislative reforms, how to best establish a regime for what you might consider upstream environmental auditors or waste accreditation experts, in terms of where a project is doing demolition or there's a site that is producing material that might contain asbestos or other chemicals—having some sort of audit and assurance regime at the top of the pipe there. Specifically in terms of the planning system and environmental impact assessment, let me take that on notice because I'm not familiar with work we've done on constraints of the availability of consultants.

Answer:

The EPA is not responsible for approving the overarching Environment Impact Statement (EIS) document submitted as part of the NSW Planning System. The Department of Planning, Housing, and Infrastructure (DPHI) is the department that requires the EIS as part of the planning process. Whilst the EPA provides advice as part of the process, DPHI is the lead agency on reviewing EIS, so the EPA is unable to comment on the availability of consultants that prepare the overarching EIS reports.

NSW EPA response to the question on notice (page 13)

The Hon. DAMIEN TUDEHOPE: In relation to your submission about the sustainable materials strategy 2041, there's a \$3.6 million Choose Circular fund for New South Wales government agencies. Can you highlight those agencies that are actually using that fund and how they have done it?

TONY CHAPPEL: That's not actually a program the EPA manages, but I'm happy to take it on notice and get some detail from my colleagues in the department, because they actually run that particular program.

Answer:

The Choose Circular program aims to stimulate innovation and demand for recycled materials through NSW Government procurement. It is funded through the \$13 million Circular Innovation Fund under the NSW Waste and Sustainable Materials Strategy (WaSM). The program supports agencies to meet the requirement under WaSM to preference recycled materials in procurement. It was developed following an extensive consultation process with agencies to understand the support they needed to implement this requirement.

In late 2023, DCCEEW launched an Expression of Interest (EOI), allocating up to \$3.6 million to help NSW Government agencies improve their circularity and uptake of recycled materials.

13 agencies submitted EOIs. Following a rigorous assessment process, 11 agency EOIs were selected as the first tranche and funding agreements have been executed with nine agencies thus far. A list of the finalised projects will be published on the NSW Climate and Energy Action website within the next month.

Once the agreements for the first tranche are all finalised and in delivery, DCCEEW will commence the consideration for a second tranche of agency projects. The next phase of this program will also look to address barriers that industry is facing to supply recycled products to government.

The Hon. DAMIEN TUDEHOPE: What lessons do you say we should have learnt in relation to the manner in which that mulch has been procured or the contracts relating to that procurement?

TONY CHAPPEL: It's hard for me to speak specifically on the contract. That's really a matter for Transport and their partners in the joint venture.

The Hon. DAMIEN TUDEHOPE: And Education, I suppose.

TONY CHAPPEL: But it does seem that there were a number of breaches, looking from the outside in, perhaps, at what the contract said. I understand that at one school, instead of using soil, they actually used mulch metres deep, which is what required such extensive effort to do the remediation. That's a contractual issue that I know that the education department is looking at. I think there are lots of learnings from that experience. Some of them are still the subject of a live investigation, so I probably just need to be a bit careful not to comment on that. But some of the points I referenced earlier about the need for, perhaps, more assurance at the top of the chain for this recycled material have been demonstrated there. Obviously, the need for appropriate penalties that are a disincentive to doing the wrong thing is very evident in this case as well, and some of that has now been enacted by the Parliament. Perhaps I'll leave it there, and I'm happy to give you more on notice. I just need to make sure I don't comment on some live legal issues.

The Hon. DAMIEN TUDEHOPE: Perhaps you might take this on notice as well: Would the investigation include the manner in which the respective contracts were led?

TONY CHAPPEL: Yes, let me take that on notice.

Answer:

The EPA's investigation is ongoing, the investigation is looking into the contractual arrangements in place between all the parties involved in the sourcing of the materials that were used to generate the mulch products, the production of the mulch and the transport and application of the mulch at the destination sites.

NSW EPA response to the question on notice (page 14)

TONY CHAPPEL: The EPA's criminal investigation is ongoing, the investigation is looking into the contractual arrangements in place between all the parties involved in the sourcing of the materials that were used to generate the mulch products, the production of the mulch and the transport and application of the mulch at the destination sites.

The Hon. AILEEN MacDONALD: I will expand on that. How do you plan to address the lack of awareness and knowledge about sustainable procurement amongst government staff? That's probably pretty broad.

TONY CHAPPEL: I think public servants always take our obligation seriously. Anything that elevates the obligation to assess this stuff would get, I think, strong traction. I'm happy to take that one on notice as well because I think there is a significant amount of work underway in terms of education. It would be good to lay that out.

Answer:

An example of what the EPA is doing to raise awareness and educate local government on sustainable procurement is the recently launched Circular Economy Accelerator training pilot. The EPA is piloting a circular economy training program for local government through its Circular Economy Accelerator training pilot. The first training commenced in June 2024 with 58 local government participants. The Pilot includes education and training in sustainable and circular procurement in partnership with Local Government Procurement (a part of Local Government NSW).

NSW DCCEEW is developing draft environmentally sustainable procurement guidance that will show how to integrate environmental sustainability within the NSW Government procurement process. Part of the implementation of this guidance will include development of a learning program to support the upskilling of NSW Government procurement practitioners.

The Choose Circular program aims to stimulate innovation and demand for recycled materials through NSW Government procurement. The program is working directly with a number of key agencies to improve their circularity and uptake of recycled materials. This includes supporting agency representatives in the development and implementation of agency-specific guidance, strategies and action plans. Through this process, agency representatives will build up their awareness and knowledge, which will assist the successful implementation of any proposed measures. The Choose Circular program is also supporting agencies through development of a recycled materials directory and development of specifications to support the uptake of recycled materials.

NSW EPA responses to supplementary questions

1. What's your view on including in the tender process/government contracts an extended producer responsibility for end of life of products? What consideration has been given to end of life and how could we incorporate producer responsibility into that?

Government procurement decisions can be an effective way to encourage suppliers to adopt circular economy principles in their operations, including participation in extended producer responsibility (EPR) schemes. There are a range of ways that this could be incorporated in tenders and procurement, such as encouraging suppliers to:

- be active members of an accredited EPR scheme, where one exists
- provide take-back options for their products when they reach end of life
- when taking-back products, they refurbish and sell or donate those products, or that their products are recycled domestically, where possible
- support and enable repair and refurbishment of their products to maximise their lifespan.

I am aware that NSW DCCEEW is developing environmentally sustainable procurement guidance that will show how to integrate environmental sustainability within the NSW Government procurement process. The guidance will demonstrate how circular economy principles can be incorporated into government tenders and contracts, including producer responsibility. The EPA will work closely with DCCEEW on this work.

2. In terms of the tender process, are you aware of any examples where tenders have been framed in terms of outcomes rather than specific products? Do you think there could be benefits to framing tenders in this way?

Transport for NSW has identified that it will 'establish and implement performance-based carbon intensity thresholds for technical requirements, standards and specifications' in its [Sustainable Infrastructure Program](#). The Sustainable Infrastructure Program is a four-year program created to streamline and drive decarbonisation and circularity on transport infrastructure projects.

3. One of the barriers to procurement that drives sustainability outcomes that you identified is lack of accountability and compliance checks. Can you tell us more about this barrier? Have steps been taken to address this?

This barrier was identified during consultation that DCCEEW undertook with NSW Government agencies in 2022 to understand barriers to procurement of recycled materials and low-emission building materials.

As identified in the EPA's submission, this barrier is also associated with a lack of directive from senior leadership around sustainability objectives and sustainability requirements not being built into contracts and procurement processes.

This barrier demonstrates that NSW Government sustainability commitments need to be translated into agency procurement processes and contracts in order for it to take effect, with associated reporting and monitoring. As procurement professionals are faced with multiple, complex demands for a procurement activity, procurement professionals need to have easily accessible information about a sustainability requirement and understand how it is prioritised by their organisation.

The actions being undertaken by EPA and DCCEEW to address this barrier include:

- the development of recycled material reporting requirements for goods and services procurement
- the Sustainable Construction Protection of the Environment Policy and its reporting requirements for embodied carbon and recycled material
- the NSW Government's commitment to periodically report on recycled material procured by government
- environmentally sustainable procurement guidance, which will include model clauses for tendering and contracting, to support the integration of sustainable procurement into business-as-usual procurement practices.

4. The need to preference recycled content in the Waste and Sustainable Materials strategy is subject to there being no significant additional cost or negative impacts on performance and the environment. What guidance is there around what 'significant additional costs' entails? What is to stop agencies using this as a 'catch-all' for more expensive options, particularly given your submission's recognition that one of the barriers to sustainable procurement is the additional complexity and costs?

The Waste and Sustainable Materials Strategy 2041 outlines a commitment to require NSW Government departments to preference products that contain recycled content, including building materials and office fit outs and supplies, on an 'if not, why not' basis. The Strategy states that 'Agencies will need to preference recycled content where there is no significant additional cost or negative impacts on performance and the environment.' The intent of requiring agencies to preference recycled content on an 'if not, why not' basis is to ensure that agencies properly consider opportunities to procure recycled content. There is currently no guidance specifying the additional cost that is reasonable to pay for recycled content and this is likely to vary from one case to another.

There are significant barriers to increased government procurement of recycled content and the EPA and DCCEEW are working to address those barriers. For example, DCCEEW's \$3.6 million Choose Circular Fund supports agencies to increase their procurement of recycled materials through funding for activities such as recycled material action plans and feasibility studies. DCCEEW is also supporting agencies through development of a recycled materials directory, procurement guidance and training, and development of specifications to support the uptake of recycled materials. Reporting frameworks are being established to make transparent the extent to which agencies are procuring recycled content. The EPA is also working to increase the availability of construction materials containing recycled content through its \$37 million Carbon Recycling and Abatement Fund.