

**Submission
No 7**

**INQUIRY INTO PROCUREMENT PRACTICES OF
GOVERNMENT AGENCIES IN NEW SOUTH WALES AND
ITS IMPACT ON THE SOCIAL DEVELOPMENT OF THE
PEOPLE OF NEW SOUTH WALES**

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Submission to inquiry into the Procurement practices of government agencies in New South Wales

Dear Committee Chair

I welcome the opportunity to make a submission to this New South Wales (NSW) Legislative Council 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.

This submission addresses:

- current approaches to transparency and accountability of procurement by New South Wales government agencies; and
- procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally

SUMMARY

The NSW Government should adopt best practice procurement policies as well-targeted strategies can deliver economic development and improved social outcomes for communities across NSW.

Greater accountability and transparency regarding government spending is needed. The threshold to be recorded in the register of government contracts and published on the NSW Government's eTendering website should be reduced to \$10,000 (including GST) or more. Spending analyses should also be published to improve decision making around procurement. An understanding of what is spent where will lead to more supplier competition and better value for money.

To promote genuinely inclusive economic development in a holistic manner, community wealth building should be embraced. As part of a NSW community wealth building agenda, the NSW Government should:

- Develop its own community wealth building framework, starting with a focus on procurement,
- Prioritise social procurement policies that ensure suppliers provide secure jobs, meet employment targets, and pay their fair share of tax, and
- Establish an Office of Community Wealth Building to oversee the implementation of the community wealth building framework, coordinate across government and support community wealth building at the local level, beginning with pilot projects in Western Sydney and in rural or regional NSW.

PROCUREMENT THRESHOLD FOR CONTRACT DISCLOSURE

Governments play a significant economic role as a major purchaser of goods and services, the NSW Government alone spending \$37 billion on goods and services each year.¹ To ensure accountability and transparency in expenditure, governments maintain public registers of current government contracts, however, the threshold for basic contract disclosures on registers of government contracts vary significantly between Australian jurisdictions.

In NSW, the threshold for disclosure on the register is much higher than in other jurisdictions. Under the *Government Information (Public Access) Act 2009* (GIPA Act), only contracts over \$150,000

¹ Skatsooson, Judy. "Inquiry to Investigate NSW Procurement Practices." Government News, 19 Oct. 2023, <https://www.governmentnews.com.au/inquiry-to-investigate-nsw-procurement-practices/>

(including GST) are required to be recorded in the register of NSW Government contracts and published on the eTendering website.² This threshold also applies to local governments in New South Wales.

In contrast, most agencies at the Commonwealth level must publish details about contracts awarded by an agency at or above \$10,000 (including GST) on Austender.³ Disclosure was originally a product of Senate Motion Number 489, also known as the Murray Motion, which passed in June 2001.⁴ The original motion required all Australian Government departments and agencies to produce annual lists of all contracts (procurement and grants) which met a \$100,000 threshold.⁵ The subsequent introduction of Austender in 2007 resulted in the continuous online reporting of contracts over a threshold of \$10,000 (including GST) in addition to the Senate order.⁶ Since July 2012, there have also been explicit obligations on agencies to report contracts and contract amendments valued above \$10,000 on Austender within 42 days under the Commonwealth Procurement Rules.⁷

While some jurisdictions have different levels of disclosure depending on the contract value or class, NSW currently has the highest threshold for any recording in a register of government contracts of any jurisdiction. Table 1 shows thresholds for registers of government contracts by Australian jurisdiction.

Table 1. Threshold for a contract in the register of government contracts by jurisdiction

Jurisdiction	Lowest threshold for contract disclosure
Commonwealth	\$10,000
New South Wales	\$150,000
Victoria⁸	\$100,000
Queensland⁹	\$10,000
Western Australia¹⁰	\$50,000
South Australia¹¹	<\$25,000 ¹²
Tasmania¹³	\$50,000
Australian Capital Territory¹⁴	\$25,000
Northern Territory¹⁵	\$15,000

² Government Information (Public Access) Act 2009 No 52, New South Wales, <https://legislation.nsw.gov.au/view/html/inforce/current/act-2009-052#pt.3-div.5>

³ Contract Notices: AusTender. <https://www.tenders.gov.au/cn/search>. Accessed 11 Jan. 2024.

⁴ Department of Finance, Meeting the Senate Order for Entity Contracts (RMG 403), 22 Jul. 2022, <https://www.finance.gov.au/publications/resource-management-guides/meeting-senate-order-entity-contracts-rmg-403>

⁵ The Auditor-General, ANAO Report No.49, 2017–18 Performance Audit Senate Order for Departmental and Entity Contracts (Financial Year 2016–17 Compliance, 2018, <https://www.anao.gov.au/work/performance-audit/senate-order-departmental-and-entity-contracts-financial-year-2016-17-compliance>

⁶ *ibid*

⁷ Department of Finance, Submission to the Finance and Public Administration References Committee Inquiry into the Senate order for departmental and agency contracts, Jan. 2014. <https://www.aph.gov.au/DocumentStore.ashx?id=33586525-5c88-4c57-b883-8814dcd09aa7&subId=32271>

⁸ Department of Treasury and Finance, Contract management and contract disclosure - goods and services policy, Victorian Government Dec. 2021, <https://www.buyingfor.vic.gov.au/contract-management-and-contract-disclosure-goods-and-services-policy-0>

⁹ Department of Energy and Public Works, Procurement guidelines: Contract disclosure Queensland Government Procurement, Queensland Government, Jul. 2022, https://www.forgov.qld.gov.au/__data/assets/pdf_file/0021/183630/procurementguidecontractdisclosure.pdf

¹⁰ Department of Finance, Western Australian Procurement Rules Procurement Direction 2021/02, Government of Western Australia, 2021, https://www.wa.gov.au/system/files/2021-04/WA%20Procurement%20Rules%2020201218_1.pdf

¹¹ Government of South Australia, Premier and Cabinet Circular, PC 027 – Disclosure of Government Contracts, 2005, <https://www.dpc.sa.gov.au/resources-and-publications/premier-and-cabinet-circulars/PC-027-Disclosure-of-Government-Contracts.pdf>

¹² This threshold is for solely for some South Australian Government contracts involving consultants. For general private sector contracts, it is \$500,000 or \$200,000 if it involves industry assistance.

¹³ Department of Treasury and Finance, Purchasing, Whole-of-Government Common Use Contracts and eTendering, Government of Tasmania, 2023, <https://www.treasury.tas.gov.au/purchasing-and-property/purchasing-whole-of-government-common-use-contracts-and-etendering>

¹⁴ Procurement ACT, About the Contracts Register, ACT Government, <https://www.procurement.act.gov.au/register/contracts-register#:~:text=About%20the%20Contracts%20Register,contract%20by%2010%25%20or%20%2425%2C000>.

¹⁵ Northern Territory Government, Procurement Rules, 26 Oct. 2023, https://nt.gov.au/__data/assets/pdf_file/0010/899146/procurement-rules-v1.7.pdf

Lower disclosure thresholds are not unheard of in NSW Government. Under the *Annual Reports (Departments) Regulation 2015* and the *Annual Reports (Statutory Bodies) Regulation 2015*, most NSW Government agencies must disclose the cost of consultant engagements above \$50,000 by individual projects in their annual reports.¹⁶ This suggests that a much lower threshold for the register of government contracts would not be that difficult to do.

The additional transparency and accountability associated with a lower threshold will result in more supplier competition, deliver better value for money and more community confidence in public procurement. Evidence from the European Union found the number of bids received per request for tender increased by approximately 12% and prices decreased by approximately 8% for contracts valued above disclosure thresholds relative to contracts below these thresholds.¹⁷

Given all other Australian jurisdictions have lower contract disclosure thresholds, NSW should amend the GIPA Act to reduce the threshold for recording a contract in the register of government contracts and publication on the eTendering website to \$10,000 (including GST) or more.

Recommendation 1: The GIPA Act is amended to reduce the disclosure threshold for the register of government contracts to \$10,000 (including GST) or more.

SPENDING ANALYSES

Beyond increasing transparency, greater effort will need to be placed on contract disaggregation and developing supplier capacity to improve procurement outcomes. The first step must be to map current procurement trends to identify who currently benefits from government procurement and where they are located. Without that data, it is difficult to identify where interventions need to be made to deliver better outcomes.

The NSW Government should conduct and publish regular spend analyses using its procurement data. Data on its annual spending on goods and services broken down by agency, size, and type of business, (SME, large business, social enterprise) and the geographic location of suppliers should also be made public. Data can then be used by government to identify target procurement categories and localities for action.

This may require improvements in the quality, accuracy, and completeness of NSW Government data about suppliers and contracts to enable this level of analysis and monitoring.

Recommendation 2: The NSW Government conducts and publishes regular spending analyses.

COMMUNITY WEALTH BUILDING

Community wealth building is an approach to economic development that seeks to build a long-term sustainable economy where people own, have a stake in, access and benefit from the wealth our economy generates. Community wealth building centres on key thematic pillars, namely procurement, workforce, land and property, inclusive ownership, and finance.¹⁸

Pioneered in the Midwest of the United States, it is an approach that has been adopted around the world in a diverse range of settings from Chicago to Scotland to Amsterdam and in many other cities

¹⁶ NSW Government Agencies' Use of Consultants, Audit Office of New South Wales. 2 Mar. 2023, <https://www.audit.nsw.gov.au/our-work/reports/nsw-government-agencies-use-of-consultants>.

¹⁷ "Evidence." Open Contracting Partnership, <https://www.open-contracting.org/impact/evidence/>. Accessed 16 Jan. 2024.

¹⁸ Scottish Government, Community Wealth Building, <https://www.gov.scot/policies/cities-regions/community-wealth-building/>

and regions. In NSW, both the City of Sydney and Inner West Council are exploring how to incorporate community wealth building principles into their economic strategies.¹⁹

Procurement is often the first pillar that community wealth building begins with. Procurement is key as it seeks to use ‘anchor institutions’, that is organisations that are geographically anchored, to strengthen local economies by driving economic development while reducing systemic and structural inequalities. Strategic procurement and commissioning can help grow more small and medium enterprises (SMEs) and social enterprises that offer good quality jobs, strengthen local supply chains, and support action to reduce carbon emissions.

Community wealth building provides a framework to ensure that procurement policies are not implemented in a silo, avoiding the pitfalls of a piecemeal approach that fails to maximise the potential of government procurement by working in concert with other thematic pillars like land and property, and workforce.

The Scottish Government has adopted community wealth building as a framework for economic development and is currently developing associated legislation. The NSW Government should emulate its actions as similar sub-national jurisdiction. Drawing on lessons from Scotland, NSW Government should develop its own community wealth building framework, beginning with the procurement pillar.

Beyond procurement, there is also substantial scope for future action in the workforce pillar as the NSW public sector accounts for more than 10% of employment in the state and is also the largest single employer in the Southern Hemisphere.²⁰

Recommendation 3: The NSW Government develops its own community wealth building framework.

BEST PRACTICE PROCUREMENT POLICIES

Procurement policies under a community wealth building framework embrace the concept of social procurement. Social procurement takes a broader view of what government spending can produce, focusing on getting the greatest social value per dollar spent. While social procurement has traditionally been focused on local content in the construction industry, there is significant potential to encourage collaboration, reduce disadvantage and embed social good as an expectation across multiple sectors.²¹

At the state government level across Australia, we already see a range of social procurement policies that could form the basis for a procurement pillar of a community wealth building strategy in NSW. These procurement policies usually focus on local content, First Nations procurement and small businesses.

NSW has several existing procurement-connected policies that focus on social value. The SME and Regional Procurement Policy, for example, provides exemptions to negotiate and engage with a SME or regional supplier directly up to \$150,000 and a preference for SMEs for goods and services up to \$3 million.²² It also includes minimum non-price evaluation criteria of 10% for SME participation and 10% to support for the NSW Government’s economic, ethical, environmental, and social priorities for contracts over \$3 million. NSW also has an Aboriginal Procurement Policy with spending and employment targets.²³

¹⁹ “Community Wealth Building Goes down Under!” The Democracy Collaborative, <https://democracycollaborative.org/blog/community-wealth-building-goes-down-under>. Accessed 15 Jan. 2024.

²⁰ Cormack, Lucy. “More than \$113 Million on Redundancies from NSW Government Agencies in 2021.” The Sydney Morning Herald, 28 Apr. 2022, <https://www.smh.com.au/politics/nsw/more-than-113-million-on-redundancies-from-nsw-government-agencies-in-2021-20220428-p5agw3.html>.

²¹ Jackson, Shirley, Ibrahim Sam. A Blueprint for Better, Cleaner Jobs. Industrial strategies for the post-carbon economy. Per Capita, Apr. 2022, <https://percapita.org.au/wp-content/uploads/2022/04/A-Blueprint-for-Better-Cleaner-Jobs-SCREEN-VERSION.pdf>

²² NSW Government, Small and Medium Enterprise and Regional Procurement Policy, 1 Jul. 2021, <https://info.buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy>

²³ NSW Government, Aboriginal Procurement Policy, 23 Sept. 2023, <https://info.buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>

Some other jurisdictions have a stronger focus on local procurement, for example, the Tasmanian Government has a Buy Local Policy.²⁴ The policy has an economic and social benefits criterion that provides a minimum of 25% of the qualitative and quantitative criteria combined.²⁵ There are requirements to approach Tasmanian businesses for competitive procurements above \$100,000 and for those procurements under the threshold, the guidance is Tasmanian businesses should be approached first.

A more expansive approach to social procurement by the NSW Government could encourage other social outcomes such as improved pay and conditions for work, better employment outcomes and ensuring suppliers pay their fair share of tax.

Procurement is already being used by state governments to drive better workplace conditions. Examples include Victoria's Fair Jobs Code,²⁶ and the Australian Capital Territory's Secure Local Jobs Code.²⁷ These codes ensure tenderers must undergo an assessment to show they comply with all their industrial relations and workplace health and safety obligations and encourages secure employment.

Improved employment outcomes can be delivered by procurement policies. Victoria's Local Jobs First Policy, for example, is focused on enabling SMEs to tender for government contracts through local content requirements and creating a pipeline of training opportunities by guaranteeing hours for apprentices, trainees, and cadets.²⁸ The new Western Sydney Airport is another example as it has targets for diversity, training, and local employment during both its construction phase and for after it commences operations in its workforce plan.²⁹

Procurement policies can also be used to dissuade tax avoidance which undermines the funding of essential public services. At a federal level, there are moves to bring in a Fair Go Procurement Framework that would require those that gain government contracts to pay their fair share of tax.³⁰ Similar obligations and requiring tax transparency from major suppliers should be considered at the state level.

It will be important that there are clear qualitative and quantitative measures to assess the success of social procurement policies. Victoria, for example, has a social procurement framework that outlines departmental and agency requirements including for measurement and reporting.³¹ NSW should consider emulating this as part of its community wealth building framework.

Drawing on best practice from other Australian jurisdictions, procurement policies should be adopted that capture social value and reward suppliers that meet outcomes like job security, employment targets and paying their fair share of tax.

Recommendation 4: The NSW Government adopts social procurement policies that reward suppliers for job security, meeting employment targets and tax compliance as part of its community wealth building framework.

²⁴ Department of Treasury and Finance, Buy Local Policy, Government of Tasmania, Dec. 2021, <https://www.purchasing.tas.gov.au/Documents/Buy-Local-Policy.pdf>

²⁵ Department of Treasury and Finance, Procurement Better Practice Guidelines (Principles and Policies), Government of Tasmania, Jul. 2022. [https://www.purchasing.tas.gov.au/Documents/Procurement-Better-Practice-Guidelines-\(Principles-and-Policies\).pdf](https://www.purchasing.tas.gov.au/Documents/Procurement-Better-Practice-Guidelines-(Principles-and-Policies).pdf)

²⁶ Buying for Victoria, Procurement and Fair Jobs Code - What Is Required by Agencies, Victorian Government, <http://www.buyingfor.vic.gov.au/procurement-and-fair-jobs-code-agencies>. Accessed 11 Jan. 2024.

²⁷ Procurement ACT, Secure Local Jobs, ACT Government, 25 Jan. 2023, <https://www.procurement.act.gov.au/secure-local-jobs>.

²⁸ Local Jobs First, Victorian Government, 5 Aug. 2019, <https://localjobsfirst.vic.gov.au/about/local-jobs-first>

²⁹ Western Sydney Airport, 2023-24 Corporate Plan, 2023, <https://westernsydney.com.au/sites/default/files/2023-08/2023-24%20WSA%20Corporate%20Plan.pdf>

³⁰ Department of Finance, Buy Australia Plan, 10 May 2023, <https://www.finance.gov.au/business/buyaustralianplan>

³¹ Buying for Victoria, Victoria's Social Procurement Framework, Victorian Government, Apr. 2018, <https://www.buyingfor.vic.gov.au/victorias-social-procurement-framework>

OFFICE OF COMMUNITY WEALTH BUILDING

An Office of Community Wealth Building (OCWB) should be established by the NSW Government to oversee the development and implementation of the community wealth building framework. Internal capability and capacity building will be needed to effectively implement a community wealth building agenda as it is not a one size fits all strategy and requires coordination across government.

Coordination across the NSW public sector will be a key responsibility for the OCWB. There are a range of NSW public sector entities that can act as anchor institutions such as TAFEs, schools, transport agencies, and hospitals that need to be engaged. The OCWB will also need to work with other entities such as NSW Procurement and the NSW Public Service Commission as part of developing the community wealth building framework.

In addition to coordinating across government, the OCWB should also play a wider role as successful community wealth building strategies require public, private, and not-for-profit partners to collaborate. There are a range of other potential anchor institutions outside the NSW public sector that could be leveraged, for example, local councils, universities, sports and cultural facilities, utilities, ports, airports, and large local employers.

The OCWB can play a role in building local networks of anchor institutions (anchor networks) by helping with the coordination and facilitation of anchor networks, assessing an anchor institution's capacity to contribute to local community wealth building strategies, advising on the development of plans across anchor networks, and assisting anchor institutions conduct spending analyses.

By working together in a manner that is appropriate for local circumstances, anchor networks can enable inclusive economic development in a range of diverse localities from rural and regional NSW to the outer suburbs of cities. To build the OCWB's internal capability and capacity to facilitate this, two pilot community wealth building projects, one in Western Sydney, and one in rural or regional locality, should be initially funded.

Through establishing an OCWB as an NSW public sector entity, the NSW Government will be able to implement its community wealth building agenda across government while also providing institutional support for the development of community wealth building strategies and anchor networks at the local level.

Recommendation 5: The NSW Government establishes an Office of Community Wealth Building to oversee the implementation of its community wealth building framework and provide local support for community wealth building.

CONCLUSION

Reforming the NSW Government's approach to procurement has the potential to deliver better outcomes for communities across the state. A more targeted use of its spending power can leverage the power of government. Greater transparency when it comes to procurement data will also mean more supplier competition, lower costs for government, and better decision making.

Firstly, New South Wales should lower the disclosure threshold for its register of government contracts to \$10,000 (including GST) or more, in line with the Commonwealth and Queensland. The current threshold is unacceptably high and out of line with community expectations. It will ensure more contracts are included in the register of government contracts and published on the eTendering website.

The NSW Government should also conduct and publish regular spending analyses to identify how it can more effectively use its own spending power to deliver better outcomes.

To avoid a piecemeal approach, the NSW Government should commit to developing its own community wealth building framework, beginning with a focus on procurement that maximises social value at the

state level with a view to incorporating the other thematic pillars of community wealth building such as land and property, and workforce.

As part of its community wealth building framework, the NSW Government should adopt best practice procurement policies that capture social value by ensuring suppliers are rewarded for providing secure jobs, meeting employment targets, and paying their fair share of tax.

Finally, an Office of Community Wealth Building should be established to oversee the implementation of the community wealth building framework, coordinate across government and enable the development of more local community wealth building strategies. Providing support to local anchor institutions and anchor networks would encourage inclusive economic development in communities across NSW.

Kind regards

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