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

Organisation:Social EnterpriseDate Received:19 January 2024

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The Social Enterprise Council of NSW & ACT (SECNA) is a member-led peak body for social entrepreneurs and social enterprises, representing the interests of the 4,000+ social enterprises in New South Wales (NSW).

Social enterprises are businesses for good. They trade like any other business but exist specifically to make the world a better place, socially and/or environmentally.

Specifically, "social enterprises are organisations that:

- Are led by an economic, social, cultural, or environmental mission consistent with a public or community benefit;
- Trade to fulfil their mission;
- Derive a substantial portion of their income from trade; and
- Reinvest the majority of their profit/surplus in the fulfilment of their mission."1

A 2022 report from Social Enterprise Australia found that there are more than 12,000 social enterprises in Australia, which contribute more than \$21 billion (1% of GDP) to the national economy and employ more than 200,000 people (1.6% of the Australian workforce) each year - a similar contribution to the mining sector or the arts and recreation sector².

Globally, social enterprises make up more than 3% of businesses³ and there is strong and growing support for them, including from the United Nations General Assembly whose historic resolution 'Promoting the Social and Solidarity Economy for Sustainable Development'⁴, adopted in 2023, recognises the value of social enterprises and strongly encourages all member states of the United Nations to provide support for them at every level of government.

¹ Griffith University (2021), Australian Social Enterprise National Strategy Part 1, <u>https://www.griffith.edu.au/___data/assets/pdf_file/0031/1360399/SENS-Directions-Report_Part-One.p</u> <u>df</u>

 ² Social Enterprise Australia (2024), <u>https://socialenterpriseaustralia.org.au/business-for-good/</u>
³ Forbes (2024),

https://www.forbes.com/sites/worldeconomicforum/2024/01/15/social-enterprises-impacted-more-than -891-million-lives-over-the-past-25-years/

⁴ United Nations Inter-Agency Taskforce on Social and Solidarity Economy (2023), https://unsse.org/2023/04/19/historic-moment-for-the-sse-at-its-66th-plenary-meeting-the-un-generalassembly-adopts-the-resolution-promoting-the-social-and-solidarity-economy-for-sustainable-develop ment/

We congratulate the Parliament of NSW for conducting this inquiry into the procurement practices of government agencies in NSW and its impact on the social development of the people of NSW and thank you for considering our submission.

This submissions offers:

- An overview of social procurement as a growing opportunity to create social value and impact social development
- Feedback into the current state and effectiveness of procurement by NSW government agencies drawn from the experiences and challenges faced by social enterprises, and
- Practical recommendations for procurement processes to strengthen the positive impact on the social development of the people of NSW

Social procurement

The University of Technology Sydney (UTS) describes social procurement as "the deliberate use of purchasing to create 'social value'."⁵ The Organisation for Economic Co-operation and Development (OECD) notes that "social procurement is an opportunity to get social dividends through procurement activities."⁶

As this parliamentary inquiry is looking precisely at the impact of government procurement processes on the social development of the people of NSW, we strongly recommend that the committee read the OECD Global Action *'Promoting Social and Solidarity Economy Ecosystems'* report⁷ (OECD report) in full as it makes best practice recommendations for governments of all levels around the world on why and how to adopt social procurement and "promote social and solidarity economy (SSE) ecosystems".

Key points from the OECD report include:

 "The inclusion of social objectives in public procurement could generate long-term savings for the public sector by tackling social challenges while procuring goods and services. This requires making decisions for awarding contracts beyond focusing on short-term savings and solely financial considerations that lead to selecting the bidding offer with the lowest price. Indeed, a sound economic approach to public procurement will strive to provide a comprehensive picture where i) strategic objectives are clearly stated alongside with constraints; ii) incentives are made explicit; iii) different sources of risk are described and assessed. More and more public spending is being done in a socially responsible manner (Eva Varga, 2021[51]).

⁵ University of Technology Sydney (2024),

https://www.uts.edu.au/about/faculty-design-architecture-and-building/built-environment/social-procure ment-community-practice-construction-industry/what-social-procurement

⁶ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.9

https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-en_

⁷ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.3

https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e n

The implementation of responsible business conduct (RBC) in public procurement has the potential to trigger indirect economic benefits, such as the inclusion of vulnerable groups in the economy, improved well-being, eased pressure on public health systems, and enhanced trust in the public sector and business environment through improvement of reputation (OECD, 2022[22]). Across jurisdictions, the fundamental principle of "value for money" is evolving to strategic social priorities (Box 1.1). In recent years, the advent of international and national "buy social" initiatives (e.g. in Canada, the European Union, and the United States) have further propelled this trend."⁸

- "Procurement from social and solidarity economy (SSE) entities is an opportunity to work with providers focused on achieving impact as part of their core mission. SSE entities focus on economic practices that address societal (i.e. social and/or environmental) needs and they are based on participatory forms of governance. Their local anchorage makes them particularly well-suited to meet the needs of vulnerable groups and communities in remote and rural areas. The contribution of the SSE to better social and territorial cohesion can be measured in terms of increased employment opportunities for vulnerable groups, but also monetary benefits to society, including cost savings for the public administration (OECD, 2023[1])."⁹
- "Value for money is a fundamental principle underpinning public procurement. It guides public procurement decisions and actions to focus on the "most advantageous combination of cost, guality and sustainability to meet defined requirements" (MAPS, 2018[13]). The economic argument (cost and quality) has been brought to the forefront of government considerations given budget pressures and citizens demanding accountability for public spending. However, for more than a decade now, value in public procurement increasingly focuses on the sustainability dimension, including more frequently objectives beyond cost and quality, such as environmental objectives. This is to ensure that goods and services do not unduly harm the environment. Value for money also increasingly includes social considerations such as respect for human rights, labour rights including non-discrimination, and gender mainstreaming, as well as promoting economic opportunities for long-term unemployed people, minorities and people with disabilities. These considerations have primarily focused on citizens, and within national boundaries (OECD, 2020[14]). This shift represents an important opportunity for SSE entities and for policy makers to leverage public procurement to drive positive social impacts while supporting the development of the SSE as a whole."¹⁰

n ¹⁰ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.14 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u> n

⁸ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.19 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u> n

⁹ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.16 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u>

- "Social procurement has been recognised as a driver towards a wide range of strategic policy objectives (Tepper et al., 2020[25]; UNEP, 2021[26]; LePage, 2014[17]; OECD, 2022[27]). Given that social and environmental concerns are at the heart of the operating models of SSE entities, they hold great potential as suppliers that are actively contributing to:
 - Improving environmental performance
 - Promoting employment opportunities and social inclusion of marginalised persons
 - Supporting compliance with social and labour rights and encouraging decent work
 - Promoting gender equality.
 - Delivering high-quality social, health, education and cultural services"¹¹

Feedback on current practices

We consulted our 330 members to gather their insights into the current state and effectiveness of procurement by NSW government agencies. Here is a summary of their feedback and the challenges experienced.

1. Competitive tendering leads to **secrecy, underpricing and unethical conduct** such as subpar delivery and/or overcharging for variations (a tactic that some of our members have reported is commonly employed by commercial firms).

Example 1.1: one social enterprise was advised by a highly experienced tender writer in a particular industry to submit pricing in their tender that only just covered their costs and would almost certainly result in them making a loss on the project once overheads and contingencies were taken into account, then once the contract was awarded, to charge triple the normal rates for any work that they were asked to do that wasn't quite covered in the tender.

Example 1.2: another social enterprise was made aware that in a project they were working on, another contractor had planted a cheaper species of tree than what was specified in the contract. The auditor who discovered this estimated that the savings to the contractor were approximately \$600,000.

¹¹ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.16 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u> <u>n</u>

Example 1.3: Senator David Pocock recently reported that 37.67% of contracts listed on AusTender were contract amendments¹², suggesting that more than 50% of contracts awarded are then amended, which may be similar for the NSW government. This raises questions including why so many are amended, what the administrative cost of so many amendments is, and whether they are still good value for money.

- 2. Where social enterprises are being included as subcontractors to achieve social impact on contracts, they are often:
 - a. Being squeezed on price and/or having inappropriate levels of risk passed down to them, leading to **financial losses** which jeopardises their mission and impact; and
 - b. Being **included tokenistically** (with some suggestion that larger contractors are overreporting the value of the contracts with social enterprises), or being asked to quote or include letters of support for tenders that are then awarded but the social enterprise is not given any work.

Example 2.1: one social enterprise was engaged on a government project and the rates offered were so low that they only covered labour costs. The social enterprise was then forced to pay for site inductions for every staff member as well as not being reimbursed for travel time, site meetings or administration, so overall they made a loss on doing the work.

Example 2.2: one social enterprise reported frequently being asked to provide quotes, capability statements, case studies and letters of support for bigger contractors to include in tenders but rarely being contracted even to do the work even when those contractors won the tender. The bigger contractors are unwilling to share what they promised to do in the tender with the social enterprise due to confidentiality, but the social enterprise reported hearing that their documents and promised social impact helped at least some of the contractors to win tenders.

- 3. Suppliers to the NSW government that are caught out underdelivering, cost cutting, misrepresenting social impact or engaging in other **unethical conduct** can continue to contract to the NSW government because there are no mechanisms in place to share how well they delivered on a contract with other government agencies.
- 4. Externalities (both positive and negative) are not taken into account at the qualification or contract stage and throughout the contract management, especially if they are outside the remit of the NSW government agency contracting the work. So while a social enterprise may be able to deliver a good or service for a similar price and generate positive social and/or environmental benefits for the people of NSW, the contract will be awarded to the lowest bidder without taking those benefits into account. Similarly, if a company or product is known to have negative social and/or environmental impacts, that is also ignored in procurement processes.

¹² Pocock, David via InnovationAus (2023), https://www.innovationaus.com/public-sector-procurement-reform-to-build-local-industry/

5. The current NSW Procurement Policy Framework states to procuring officers that "You are **encouraged** to procure from social enterprises to support economic and social change for disadvantaged people"¹³ however, it is not operationalised by any concrete mechanisms to preference social enterprises. As a result, social enterprises are finding that this encouragement doesn't translate into work being awarded and even when on a supplier panel, they are required to pitch multiple times to different agencies. This is both a time consuming exercise on often heavily resource constraint organisations and reflection of lack of overall understanding of social enterprise.

Example 5.1: one social enterprise has been appointed to a panel but has to market themselves to more than 200 government agencies individually and reported there being little to no understanding of social enterprise within the agencies they have approached. They are the most socially and environmentally sustainable option on the panel but aren't being preferenced by buyers for it.

6. The entire procurement journey, from evaluating tender opportunities to contract negotiations, demands **significant resources**. There seems to be an overall trend towards increasingly complex and directive tenders. This increases the administrative burden (and therefore costs for both suppliers, and both directly and indirectly to the government) and also stifles innovation and opportunities to co-design better solutions for better outcomes.

Example 6.1: one large not-for-profit employs a tender writer to help its four individual social enterprises to apply for government work. Without this resource, the organisation would not win nearly as many contracts, but it adds a cost to the business that most smaller social enterprises cannot afford. This overhead cost must be covered by income from trade, increasing the price the organisation has to charge to deliver its goods and services.

Example 6.2: one social enterprise reported delivering on a contract that was poorly designed and could have been done in a way that delivered better outcomes and cost the government less money, but the tender did not allow alternative suggestions, innovation or even continuous improvements to be made, so both the government and the social enterprise are locked into delivering a less efficient and less effective solution.

The OECD report highlighted additional challenges that resonate with social enterprises who contract (or who wish to contract) to the NSW government. (*Note: "SSE" means "Social and Solidarity Economy"; i.e. "SSE entity" means "social enterprise" in Australian terms*).

¹³ NSW Government (2021), 'Procurement Policy Framework', p.33, <u>https://info.buy.nsw.gov.au/policy-library/policies/procurement-policy-framework</u>

- 7. "SSE entities are often overlooked as potential suppliers simply because public officers and the forprofit sector may not be familiar with them or their activities. Public and private buyers don't always understand their social relevance as well as their operating approach (e.g. hybrid sources of income, operating under many different legal forms). One of the most persistent myths around SSE entities is that they are more expensive than mainstream companies. However, SSE entities have demonstrated their competitiveness on both price and social value in several studies."¹⁴
- 8. "Public buyers have to **navigate and interpret multiple changing requirements** related to procurement, including environmental and social goals as well as technological innovations in procurement systems. Since public procurement is vulnerable to mismanagement, fraud and corruption, public officials might also fear repercussions for preferential treatment to the SSE, even though legally allowed or even encouraged."¹⁵
- 9. "Social impact measurement represents a common hurdle for both buyers and suppliers. Contracting authorities, lead corporate suppliers and SSE entities do not always share a similar understanding of what social impact is. Due to the lack of a common framework for social impact measurement, public authorities do not always appreciate the additional social value SSE entities may bring in procurement above and beyond price. The difficulty in defining, measuring and comparing social value also leads to the risk of "impact washing" by market competitors, who might present a false picture of their social and environmental impact, engage in exploitative practices when partnering with SSE entities, or misrepresent their adherence to the SSE values and characteristics."¹⁶

- n ¹⁵ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.10 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u>
- n ¹⁶ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.10 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u>

¹⁴ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.10 <u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e</u>

Recommendations

Our recommendations to strengthen social development through procurement processes are as follows:

- 1. Establish a **social enterprise strategy** for New South Wales that:
 - is co-designed and powered by a genuine partnership between the sector and the NSW Government;
 - is underpinned by data and certification;
 - incorporates social procurement, access to finance, outcome payments, capability building and sector development; and
 - leverages knowledge and experiences from other jurisdictions that have already established and started delivering on social enterprise strategies such as Victoria¹⁷ and Scotland¹⁸
- 2. Support **social procurement** through:
 - Establishing an **explicit obligation to consider social and environmental value** in the NSW procurement framework. Similar examples of this include the United Kingdom Public Services (Social Value) Act 2012 which has "made the British public administration more accountable for its social and environmental impacts when procuring."¹⁹
 - As per the OECD report's recommendations, "Setting aside a percentage of the contracted amount to SSE entities (e.g. registered social enterprises, certified public benefit or non-profit organisations). By design, the tendering process provides preferential treatment to a specific subset of potential providers, which must be justified under competition policy." Mandating a minimum social procurement spend (e.g. 1% of total procurement value on large contracts) has resulted in significant growth of social enterprises and social impact in Victoria following the introduction of their Social Procurement Framework²⁰;

https://www.gov.scot/publications/scotlands-social-enterprise-strategy-2016-2026/

 ¹⁷ Victorian Government via Department of Jobs, Skills, Industry and Regions (2021), <u>https://djsir.vic.gov.au/about-us/overview/strategies-and-initiatives/social-enterprise</u>
¹⁸ Scottish Government (2016),

¹⁹The role of Voluntary, Community, and Social Enterprise (VCSE) organisations in public procurement (www.gov.uk); Social Value Act: information and resources (www.gov.uk); Social Value Model (publishing.service.gov.uk); Public contract wins by social enterprises at lowest level for two years - UK Fundraising; Government at a Glance | OECD iLibrary (oecd-ilibrary.org); VCSE Procurement (publishing.service.gov.uk) as sourced in OECD Global Action, 'Promoting Social and Solidarity Economy Ecosystems', p.42

https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e

n ²⁰ Victorian Government via Buy for Victoria (2023), https://www.buyingfor.vic.gov.au/social-procurement-framework

- Alternatively, having mandatory weightings for social outcomes when evaluating tenders and guotes in all government procurement activities. This not only supports local communities and delivers a social return on investment but also ensures diverse perspectives in project execution. This is echoed by the experience of some of our members with the implementation of Victoria Government's Social Procurement Framework. Initially, it was suggested that this drove a tick box, compliance based response, however, it undoubtedly triggered immediate social enterprise expenditure and over-time led to genuine partnerships and outcomes;
- Defining "quantitative social and/or environmental impact targets that condition the awarding of the contract as well as, potentially, the ensuing payments by the buyer. Here, what is being procured are not mere activities or outputs; the focus is shifted directly to medium-term outcomes."²¹ Where these outcomes include employment targets, focusing on "priority job seekers" as a whole rather than defining one group of job seekers to be employed on a particular project enables flexibility but still achieves great outcomes for people who would otherwise be locked out of the labour market.
- Ensuring a robust **certification process** for social enterprises (such as Social Traders²²), and valuing certification in the procurement process.
- Establishing a social impact measurement framework with the social enterprise sector that:
 - is co-designed and powered by a genuine partnership between the social enterprise sector and Government;
 - aligns to the Australian Government's Measuring What Matters Framework²³; 0
 - is underpinned by evidence-based measurement tools; 0
 - is cost-effective and practical for stakeholders to use; 0
 - provides consistency and comparability of measurement; and 0
 - is continuously updated and improved. 0
 - Note: Examples of current measurement tools that could be tested and 0 improved upon include SEEDKit²⁴, Australian Social Value Bank²⁵ and/or Social Impact Toolbox²⁶,

²¹ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.11 https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0-e

n ²² Social Traders (2024),

https://www.gov.scot/publications/scotlands-social-enterprise-strategy-2016-2026/ ²³ Australian Government via The Treasury (2023), 'Measuring what matters',

https://treasurv.gov.au/policy-topics/measuring-what-matters

²⁴ Centre for Social Impact (2023), 'Seedkit: An online tool to track and communicate social enterprise impacts'.

https://www.csi.edu.au/tools-and-guides/seedkit-an-online-tool-to-track-and-communicate-social-enter prise-impacts/ ²⁵ Australian Social Value Bank (2024), https://asvb.com.au/

²⁶ Social Impact Toolbox (2024), <u>https://www.socialimpacttoolbox.com/</u>

- 3. Replace competitive tendering based on price with **collaborative tendering** based on quality. Set the price and compete on quality and outcomes, rather than setting the quality and outcomes and competing on price, to mitigate cost-cutting, unethical conduct and the consequential erosion of trust between stakeholders. Allow room for negotiation in the delivery of goods, services, or outcomes, fostering a cooperative spirit between the government and suppliers. This approach ensures that the most efficient and effective methods are employed, tailored to each project's unique requirements.
- 4. Implement enhanced, demonstrable **transparency and accountability measures** for NSW procurement including:
 - 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 to ensure that trustworthy and high-performing suppliers are acknowledged and preferred;
 - Publicly publish contract value and social impact targets/pledges;
 - Publicly publish independent audits of projects;
 - A robust whistleblowing policy for the government's supply chain that applies best practice, such as ASIC's report²⁷ on handling whistleblower disclosures; and
 - Publicly publish the value of social procurement as a percentage of total procurement by the NSW government on a regular basis.
- 5. Reducing administrative burden by **streamlining procurement administration** processes. This can be achieved a number of ways, including:
 - Sharing ratings and reviews of suppliers openly across the NSW government which provides an incentive to deliver on time, on budget and to quality standards better than overdetailed scoping and compliance requirements in contracts (which must then be audited, increasing the administration burden on both sides);
 - Endorsing **certification** (such as Social Traders social enterprise certification) to help government buyers to identify social enterprises (on the list of certified organisations) and to reduce the administrative burden of due diligence by each NSW government agency; and
 - Encouraging **collaboration** amongst social enterprises to pool their expertise and tendering/contracting capability.

²⁷ ASIC (2023), 'Good practices for handling whistleblower disclosures Report 758', <u>https://download.asic.gov.au/media/wsjegua5/rep758-published-2-march-2023.pdf</u>

- 6. Educating both government buyers and suppliers to the NSW government on best practice procurement and social impact, including:
 - Mobilising government agencies to come together to **share and learn** from each other and adopt best practices;
 - Mobilising intermediaries²⁸ to help **foster knowledge sharing, understanding and collaboration** amongst stakeholders in the social procurement ecosystem; and
 - Sharing **case studies and regular updates** on procurement practices with buyers and suppliers

Closing remarks

Value for money in procurement is about more than the dollar value of a contract.

Government bodies all around the world are seeing the value of social enterprises, which offer competitive goods and services while having a positive impact on people and the planet. The OECD in particular has laid out recommendations for governments that the NSW government can use to create frameworks and practices that deliver a greater return on investment for the people of NSW. These recommendations on social procurement plus our recommendations on a social enterprise strategy, collaborative tendering and greater transparency and accountability, will all lead to a better future for the people of NSW.

We look forward to following the progress of this inquiry and to working with the government to create that better future.

²⁸ OECD Global Action (2023), 'Promoting Social and Solidarity Economy Ecosystems', p.12 p.<u>https://www.oecd-ilibrary.org/industry-and-services/buying-social-with-the-social-economy_c24fccd0</u> <u>-en</u>