

Submission
No 36

**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: NSW Aboriginal Land Council

Date Received: 29 February 2024



Re: NSWALC Submission on Procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales

The NSW Aboriginal Land Council (**NSWALC**) takes the opportunity to provide comment 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*, focusing in particular on the following terms of reference of the inquiry:

- the effectiveness of whole of government and agency procurement arrangements/including the approach taken by procurement officials
- the evaluation criteria used in tenders and how they are weighted in making a decision to award a contract
- New South Wales Government's procurement practices, in particular its ability to:
 - prioritise local content, local manufacturing, and local jobs
 - improve opportunities for quality training and workforce participation
 - provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities
 - support local suppliers, and small and medium enterprises

Introduction

NSWALC is the largest member based Aboriginal organisation in NSW and is the State's peak representative body for Aboriginal affairs. Our goal is to protect the interests and further the aspirations of our 29,000 members and the broader Aboriginal community. One of the ways we achieve this is through strengthening the economic development of our land rights network, and the establishment of our social enterprises. NSWALC operates YARPA Indigenous Business and Employment Hub, which builds relationships and connects Aboriginal people to business and employment opportunities across NSW, strengthening the economic and social development of our people.

As per our Strategic Goals, NSWALC is dedicated to pursuing economic independence and prosperity for our people and Local Aboriginal Land Councils (**LALCs**). This involves and is not limited to:

- Supporting Aboriginal business owners, entrepreneurs, and job seekers to connect with business and employment opportunities across the state
- Assisting LALCs with strategic identification of business growth opportunities
- Advocating for greater Aboriginal community control and capacity building of Aboriginal organisations and business
- Increasing access to education, training and employment for Aboriginal peoples

NSWALC notes that the implementation of the Federal and NSW Government's Indigenous and Aboriginal procurement policies has led to significant improvements in the number of Aboriginal businesses procured by government agencies and the employment of Aboriginal people.

Since the introduction of the Federal Government's Indigenous Procurement Policy (IPP) in 2015 the Aboriginal business sector grew from approximately 6,320 Aboriginal business owners in 2016 to 17,900 Aboriginal business owners in the 2017 ABS Census 6.¹

Similarly, the introduction of the Aboriginal Procurement Policy (APP) in NSW in January 2021 has increased the number of Aboriginal businesses procured by the NSW Government.² There are now over 1000 Aboriginal businesses registered to supply and provide services to the NSW Government.³

NSWALC's subsidiary, YARPA, has noticed the positive impact these procurement policies have had on the number of Aboriginal businesses in NSW. Of the 460 Aboriginal businesses in their database almost 80% were established in last 5 years. However, there is still room for improvement and continued growth, particularly in relation to general procurement practices of government agencies.

Effectiveness of Whole of Government and Agency Procurement

The government has a crucial role to play in the employment and procurement of Aboriginal peoples and businesses. In addition to meeting targets under the APP, government agencies in NSW should be seeking to implement the commitments that the NSW Government has made under the NSW Closing the Gap Implementation Plan developed in partnership with NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)⁴, the Priority Reforms and key action areas under Socio-Economic Outcome 8:

- Priority Reform 1 – Genuine partnerships with Aboriginal community-controlled organisations and businesses
- Priority Reform 2 – Strengthening the Aboriginal Community Controlled sector, by providing more support to Aboriginal organisations and businesses to support business growth
- Priority Reform 3 – Transforming government to make practices more culturally safe and relevant to Aboriginal peoples.
- Priority Reform 4 – Sharing access to data and supporting Indigenous data sovereignty and governance.
- Priority Reform 5 – supporting Aboriginal businesses by improving procurement policy and strengthening the Aboriginal business sector.

A whole of government approach and a commitment to all the five Priority Reform areas is required to bring about meaningful change. Too often government tends to focus on only one Priority Reform or Socio-Economic Outcome rather than taking a holistic approach. Whilst the APP mentions working with Aboriginal businesses to progress Priority Reform 5, it does not make any reference to working in genuine partnership with NSW CAPO or Aboriginal Community Controlled Organisations.⁵

Working with Aboriginal Community Controlled Organisations to assist in the capacity building in communities will help meet the supply versus demand needs of the NSW Government.⁶ Aboriginal Community Controlled Organisations are already delivering a range of services in communities, including health, employment,

¹ PM&C 2019a. Third Year Evaluation of the Indigenous Procurement Policy and NIAA analysis of Australian Bureau of Statistics (2022) 2021 Census of Population and Housing, [Census Table Builder], accessed 19 April 2023

² Aboriginal procurement policy, NSW Government (2021). Available at:

https://info.buy.nsw.gov.au/_data/assets/pdf_file/0007/949174/app_policy_jan_2021.pdf

³ https://info.buy.nsw.gov.au/_data/assets/pdf_file/0010/1204678/Aboriginal-Procurement-Policy-Review-2023.pdf

⁴ <https://alc.org.au/about-nsw->

[capo/#:~:text=The%20NSW%20Coalition%20of%20Aboriginal,affecting%20Aboriginal%20people%20in%20NSW.](https://alc.org.au/about-nsw-capo/#:~:text=The%20NSW%20Coalition%20of%20Aboriginal,affecting%20Aboriginal%20people%20in%20NSW.)

⁵ Aboriginal procurement policy, NSW Government (2021). Available at:

https://info.buy.nsw.gov.au/_data/assets/pdf_file/0007/949174/app_policy_jan_2021.pdf

⁶ [2019 - NSW Ombudsman OCHRE Review Report](#)

education and training, housing, and legal services. NSW procurement practices should encourage procurement officials to prioritise the procurement of Aboriginal suppliers, particularly in regions where there is a large Aboriginal population as this will also lead to increased employment opportunities for local Aboriginal people. Aboriginal businesses and organisations are much more likely to hire Aboriginal employees than other businesses. Of all the people employed in Supply Nation listed businesses, over 35% are Indigenous, compared with a 2.2% rate among 42 of Australia’s largest corporations surveyed in 2022.⁷

In addition to procurement officials, all government employees should be encouraged to prioritise the procurement of Aboriginal businesses for in-house purchases, for example, stationary orders, cleaning and catering, as part of their commitment to the NSW Closing the Gap Implementation Plan and the APP.

Government staff should be educated on the NSW Government’s commitments under Closing the Gap and the APP. The 2023 review of the APP found that government departments appeared to interpret and apply the APP differently and there was further work needed to upskill and inform agencies about the APP procurement processes.⁸ The review also identified that there is a perception among Aboriginal businesses that some NSW Government staff are either trying to evade APP requirements, or when applied, are fulfilling the minimum obligations without ensuring meaningful Aboriginal participation.⁹ Staff should be trained to prioritise the APP policy where there is inconsistency between the APP and standard procurement processes, for example, agencies may negotiate directly with an Aboriginal business for all procurements up to \$250,000 even if there is a mandated prequalification scheme or panel in place.¹⁰

Currently state-owned corporations, the Parliament of NSW and local councils are not covered by the APP policy. There should be incentives for state-owned corporations and local councils to adopt the APP rather than vague statements such as: “State-owned corporations are encouraged to adopt aspects of the APP that are consistent with their corporate intent.”¹¹

Evaluation of Tenders/Social Procurement

The evaluation criteria for tenders should include greater weighting for businesses that are providing social benefits. The current NSW Procurement Policy Framework encourages procurement officials to “...procure from social enterprises to support economic and social change for disadvantaged people”.¹² However, there is no specific mechanism to operationalise this. As the APP has shown, having specific targets can help to bring about behavioral change.

At the same time, if a specific target or additional weighting is applied to businesses that provide a social good then there needs to be a clear definition of what is a social good or benefit. Currently the NSW Procurement Policy Framework defines social enterprises as: “businesses that trade to intentionally tackle social problems, improve communities, provide people access to employment and training, or help the environment.”¹³ Although procuring through social enterprises could contribute to social change, contributing to economic

⁷ <https://bcec.edu.au/publications/woort-koorliny-australian-indigenous-employment-index-2022/>

⁸ https://info.buy.nsw.gov.au/__data/assets/pdf_file/0010/1204678/Aboriginal-Procurement-Policy-Review-2023.pdf

⁹ Ibid

¹⁰ State-owned corporations, the Parliament of NSW and local councils are not covered by this policy. State-owned corporations are encouraged to adopt aspects of the APP that are consistent with their corporate intent.

¹¹ <https://info.buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>

¹² https://info.buy.nsw.gov.au/__data/assets/pdf_file/0020/1065503/Procurement-Policy-Framework-1.9-April-2022-Full-V1.pdf

¹³ Ibid

empowerment, promoting job creation and supporting marginalized and disadvantaged communities, there needs to be appropriate checks and balances to ensure it is not exploited.

Without a framework for social impact measurement, procurement officials, and social enterprise entities may have different understandings of what social impact is. According to the Social Enterprise Council of NSW & ACT: "... public authorities do not always appreciate the additional social value SSE entities may bring in procurement above and beyond price."¹⁴ Moreover, without a clear framework, some businesses may present themselves as providing a social or environmental impact when they do not. This is akin to the 'black cladding' that has occurred under the IPP and APP, whereby a non-Indigenous business entity or individual partners with an Aboriginal business entity or individual for the purpose of gaining access to otherwise inaccessible Aboriginal procurement policies or contracts.

NSW Government Procurement Practices

The APP in NSW has illustrated how the implementation of a policy can result in changes to procurement practices that have enhanced the economic opportunities for Aboriginal businesses, through specific targets and mandatory set asides. However, reviews of the APP and the IPP have shown that although these policies have had a positive impact on the Aboriginal business sector that there is still room for improvement, particularly if the government wants to support local suppliers and small and medium businesses.

One of the initial criticisms of the Aboriginal procurement policies was that only counting the percentage of contracts awarded to Aboriginal businesses had led to perverse incentives, whereby government officials divided up contracts into smaller contracts to meet targets. However, only reporting on the value of contracts is also problematic as it has led to government officials only procuring one or two 'trusted' Aboriginal suppliers and not procuring from a range of Aboriginal suppliers.

If the government is serious about prioritising and supporting local suppliers and small and medium enterprises, then it needs to ensure the right incentives are applied to procurement processes and that appropriate support mechanisms are put in place. For instance, government agencies must be required to report on:

- x % increase in the value of government contracts with Aboriginal businesses or other minority group/local suppliers
- x % increase in the number of government contracts with Aboriginal businesses or other minority group/local suppliers
- x % increase in the number of Aboriginal businesses (or other minority group) that have government contracts (this is to ensure that the policy is not just supporting a few businesses by providing them with a lot of contracts but that a range of different businesses are benefiting from the policy)
x number of Aboriginal (or other minority group) employed under their contracts

Government must also display a commitment to capability building through their procurement practices. Many smaller Aboriginal and other minority group businesses struggle with the tender-writing process due to a lack of resources, with businesses often having to hire contractors to undertake this work.

To support smaller businesses, government should have a simpler tendering process for smaller contracts, with the number of requirements commensurate with the value of the contract. The government could also provide a bank of resources including templates and examples in environmental, quality assurance and WHS policies to help businesses meet their requirements and upskill tier 1 providers. Investment in internal procurement

¹⁴ [0016 Social Enterprise Council of NSW and ACT.pdf](#)

experts and business coaches could also help facilitate the procurement process for businesses and government agencies.

To ensure local businesses and employees benefit from government contracts in their region, there should be certain percentage requirements for local businesses and employees for government contracts over a certain amount, with appropriate checks and balances in place to ensure that these requirements are met.

In regional communities, Aboriginal procurement targets could be increased to better align with the percentage of Aboriginal people in the population. For example, in Nowra where Aboriginal people make up 10% of the population, the percentage of government contracts awarded to Aboriginal businesses or organisations could also be 10%.

Historically there has been a lack of accountability in this space, with few repercussions for government agencies who fail to meet targets or for businesses that misrepresent themselves. In addition to public reporting by individual agencies, which has helped to increase transparency and accountability, businesses that fail to meet local employee targets or are found to not be a genuine Aboriginal or other minority business should face financial consequences. These financial penalties could range from a fine to a ban on applying for government contracts for a period of time.

Recommendations

Please see below a table of our recommendations:

Recommendation 1: In addition to meeting targets under the Aboriginal Procurement Policy (APP), government agencies in NSW should be upholding the commitments that the NSW Government has made under the NSW Closing the Gap Implementation Plan. This includes a whole of government approach to supporting all the five Priority Reform areas.

Recommendation 2: Education of all government staff on the APP, in addition to procurement officials, so that all government employees understand the APP and the NSW Government's commitments under Closing the Gap and prioritise the procurement of Aboriginal businesses for in-house purchases.

Recommendation 3: Provide incentives for state-owned corporations and local councils to adopt the APP.

Recommendation 4: Provide additional weighting for businesses that deliver social benefits/impact. This process should include a clear definition of what is a social good or benefit and an assessment framework for social impact measurement so that businesses are not able to misrepresent themselves.

Recommendation 5: Government agencies should be required to report on the number of contracts with individual businesses as well as the value of contracts with social enterprises/Aboriginal businesses (or some other minority group) to ensure government contracts help to strengthen the whole sector not just a few businesses.

Recommendation 6: Government should also display a commitment to capability building through their procurement practices by providing a bank of resources including templates and examples in environmental, quality assurance and WHS policies to help businesses meet their requirements and upskill smaller providers.

Recommendation 7: To ensure local businesses and employees benefit from government contracts in their region, there should be certain percentage requirements for local businesses and employees for government contracts over a certain amount, with appropriate checks and balances in place to ensure that these requirements are met.

Recommendation 8: To provide greater accountability businesses that fail to meet local employee targets or are found to not be a genuine Aboriginal or other minority business should face financial consequences, such as a fine or a ban on applying for government contracts for a period of time.

We hope that the recommendations made in this submission will be carefully considered.

Should you require further information, please contact the NSWALC Strategy and Policy Unit on 02 - 9689 4444 or via e-mail:

Sincerely,

Yuseph Deen
Chief Executive Officer
29 February 2024