

Submission
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**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

Parliament of New South Wales Social Issues Committee Inquiry

Procurement practices of government agencies in NSW and its impact on the social development of the people of NSW

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We appreciate the opportunity to engage with the Standing Committee on Social Issues 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.

Government expenditure represents a significant portion of the economy. This financial power presents an opportunity for governments to promote decent work and economic growth through their procurement decisions. The United Nations Guiding Principles on Business and Human Rights, along with the Sustainable Development Goals, provide clear directives for governments to integrate social considerations into procurement activities. The New South Wales Government has notably demonstrated a firm commitment to ensuring transparency, accountability, and integrity within public expenditures by enacting the New South Wales Modern Slavery Act. It is timely to consider how public expenditure can also serve as a lever to advance the creation of local jobs and regional economic growth.

Recommendations

1. Establish Centralised Procurement Oversight

Create a centralised authority within the NSW government dedicated to overseeing procurement across all departments and agencies. This body would be responsible for ensuring compliance with procurement guidelines, auditing procurement practices, and addressing any deviations from established standards.

2. Lower Threshold for Contract Disclosure

At the Commonwealth level, agencies are required to make public the details of contracts awarded that are valued at \$10,000 (including GST) or more, via Austender.¹ In comparison, NSW has a threshold of \$150,000 for recording government contracts in a register.² Lowering the disclosure threshold could enhance transparency and accountability, and greater public trust in government procurement.

¹ 'Contract Notices: AusTender' <https://www.tenders.gov.au/cn/search> (accessed 26 February 2024).

² 'Register of government contracts' *Information and Privacy Commission New South Wales*, <https://www.ipc.nsw.gov.au/about-us/accessing-ipc-information/register-government-contracts> (accessed 26 February 2024).

3. Prioritise Local Suppliers

NSW already has several procurement connected policies that emphasise a social return on investment, such as the Small and Medium Enterprise and Regional Procurement Policy³ and the Aboriginal Procurement Policy.⁴ It could implement a similar procurement connected policy focused on local procurement, modelled on the Tasmanian Buy Local Policy.⁵

4. Social Procurement Clauses

In Victoria⁶ and the ACT⁷, there are requirements for businesses to provide workers with secure and well-compensated jobs are eligible to bid on specific government contracts. Social procurement clauses are used in many European countries as a lever for maintaining “effective employment rights in the workplace [to] encourage or require private sector employers from who [public sector purchasers] buy to adopt a proactive approach to ensuring fairness at work”.⁸ Research has shown that the capacity of workers to negotiate decent conditions is often contingent not only on their relationships with their employer, but also on the commercial clients of their employers. In this context, social procurement clauses are an important mechanism for regulating employment standards among contractors supplying goods and services to public sector organisations.⁹

NSW should consider creating its own social procurement criteria, focused on, but not limited to: job security, promotion of indigenous employment, record of compliance with workplace health and safety laws, extending the terms of collective agreements to labour hire operators and contractors, and mechanisms to support worker voice.. The following discussion will focus on the last two of these provisions, which have been found to be particularly important mechanisms for maintaining effective employment standards.

³ Buy NSW, ‘SME and Regional Procurement Policy’ *info.buy.nsw* (14 February 2024), <https://info.buy.nsw.gov.au/policy-library/policies/sme-and-regional-procurement-policy> (accessed 26 February 2024).

⁴ Buy NSW, ‘APP’ *info.buy.nsw* (18 January 2024), <https://info.buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy> (accessed 26 February 2024).

⁵ ‘Tasmanian business wins again with extended Buy Local Policy’ *Premier of Tasmania*, https://www.premier.tas.gov.au/site_resources_2015/additional_releases/tasmanian_business_wins_a_gain_with_extended_buy_local_policy (accessed 26 February 2024).

⁶ ‘Fair Jobs Code for suppliers and businesses’ (5 July 2023), <https://www.buyingfor.vic.gov.au/fair-jobs-code-suppliers-and-businesses> (accessed 26 February 2024).

⁷ ACT Government, ‘Secure local jobs’ (4 July 2022), <https://www.procurement.act.gov.au/supplying-to-act-government/getting-ready-to-work-with-the-act-government/secure-local-jobs> (accessed 26 February 2024).

⁸ Christopher McCrudden, 2012. Procurement and fairness in the workplace. In *Making Employment Rights Effective: Issues of Enforcement and Compliance*, edited by Linda Dickens. Oxford: Hart Publishing, p.87.

⁹ Sasha Holley, 2014. The monitoring and enforcement of labour standards when services are contracted out. *Journal of Industrial Relations*, Volume 56, Issue 5, pp.672-690.

Collective bargaining extension mechanisms

The NSW government should consider ensuring that business who win public tenders comply with the terms of existing enterprise agreements and ensure that any labour hire companies or contractors they engage similarly comply. Such a provision would be consistent with the 'collective bargaining extension mechanisms' used in many other countries¹⁰ and also the 'labour hire loophole' provisions of the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 (Cth)* ensuring that the employees of labour hire operators are paid in line with a host company's enterprise agreement. Research by Professor Damian Grimshaw at King's College London has found that social procurement extension mechanisms are used wisely across Europe, are identified with improved service and production quality and with increased pay especially among women and ethnic minority workers.¹¹ We recommend the NSW government incorporate mechanisms to extend the terms of public sector enterprise agreements and other relevant labour standards to contractors and labour hire firms engaged to deliver public services into social procurement policies.

Mechanisms to support worker voice

Social procurement clauses to support worker representation or 'collective voice', including representation by trade unions, have been used in procurement regulations in other countries.¹² The NSW government should consider following the example of the Commonwealth government, which recently passed laws strengthening protections for union workplace delegates on the grounds that this would help workers access their workplace rights, by incorporating similar provisions into procurement criteria.

International research evidence indicates that provisions to promote collective voice can enhance productivity, alleviate staff shortages and reduce inequality. According to the OECD, collective voice can contribute to "lower turnover and longer tenure [which] can reduce hiring and training costs and increase productivity".¹³ This is because workers with access to collective voice such as union representation are more likely to feel fairly treated and are therefore more likely to be satisfied and less likely to leave their employer. Staff retention can be good for productivity given the time and resources it takes to recruit and train new employees, which can be a drain on productivity. In many European countries, such as Denmark, institutional

¹⁰ International Labour Organization, 2022. *Social Dialogue Report 2022: Collective bargaining for an inclusive, sustainable and resilient recovery*. Geneva: International Labour Organization.

¹¹ Damian Grimshaw, Jill Rubery and Sebastian Ugarte, 2015. Does better quality contracting improve pay and HR practices? Evidence from for-profit and voluntary sector providers of adult care services in England. *Journal of Industrial Relations*, Volume 57, Issue 4, pp.502-525.

¹² Christopher McCrudden, 2007. *Buying Social Justice: Equality, Government Procurement, and Legal Change*. Oxford: Oxford University Press, pp. 38-39

¹³ OECD (2019) *Negotiating Our Way Up: Collective Bargaining in a Changing World of Work*. Paris: OECD, p. 70.

support for collective voice, such as strong rights and protections for union workplace representatives, are recognised as essential ingredients for cooperative and productive workplaces.¹⁴ Research conducted by Professor Alex Bryson of the University College London has found that collective voice mechanisms can improve worker engagement, which can help companies to innovate and adopt more productive practices, and provide workers with power to negotiate fairer wages and conditions.¹⁵ There is therefore both a social case and an economic case for including criteria relating to the promotion of collective worker voice into social procurement policies.

5. Supplier Debarment

The NSW Procurement Board states that “agencies and service providers will conduct their business relationships in accordance with law and accepted standards of behaviour at all times” and it add that “[f]indings of dishonest, unfair, unconscionable, corrupt or illegal conduct can have a range of consequences for individual suppliers, including as serious as exclusion from contracting opportunities with the Government.”¹⁶ The Independent Commission Against Corruption (ICAC), in its guidance to help the NSW public sector conduct due diligence checks on prospective suppliers, states that “[f]or a number of reasons, including any serious red flags identified during the due diligence process, an agency may choose to create a supplier watchlist or do-not-engage list.”¹⁷ The former identifies suppliers whom the government is prepared to engage but requires closer monitoring, whereas a do-not-engage list pinpoints suppliers with whom the government does not want to engage. In Western Australia, the Debarment Regime establishes grounds and processes through which a supplier can be excluded from doing business with the Government.¹⁸

¹⁴ For example, Dansk Industri and CO-industri, Industrial Agreement 2023-2025, <https://www.danskindustri.dk/vi-radgiver-dig/di-dokumenter-for-personale/personalejuras-dokumenter/overenskomster/industrial-agreement/>.

¹⁵ Alex Bryson, 2023. Collective Bargaining in the UK: The Key to ‘Levelling Up’, 21 August, <https://unions21.org/ideas/collective-bargaining-in-the-uk-the-key-to-levelling-up>

¹⁶ ‘PBD 2017-07 Conduct by suppliers’ <https://arp.nsw.gov.au/pbd-2017-07-draft-conduct-suppliers> (accessed 26 February 2024).

¹⁷ ‘Supplier due diligence: a guide for NSW public sector agencies - Independent Commission Against Corruption’ <https://www.icac.nsw.gov.au/prevention/corruption-prevention-publications/latest-corruption-prevention-publications/supplier-due-diligence-a-guide-for-nsw-public-sector-agencies> (accessed 26 February 2024).

¹⁸ ‘Debarment Regime: Guide for suppliers’ (22 August 2022), <https://www.wa.gov.au/government/publications/debarment-regime-guide-suppliers> (accessed 26 February 2024).