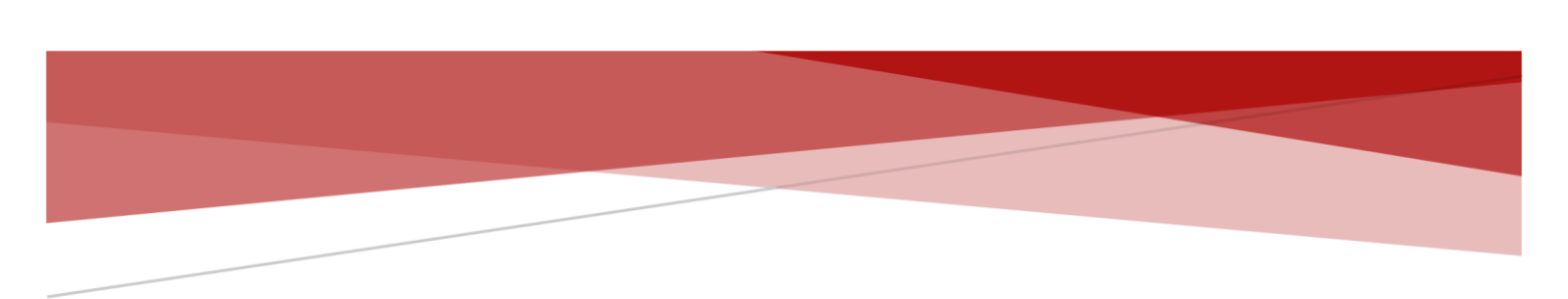


Submission
No 38

**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: United Workers Union

Date Received: 1 March 2024



NSW Legislative Council
Standing Committee on Social Issues

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

Submission of the United Workers Union

1 March 2024

Acknowledgement of Country

We acknowledge and respect the continuing spirit, culture, and contribution of Traditional Custodians on the lands where we work, and pay respects to Elders, past and present. We extend our respects to Traditional Custodians of all the places that United Workers Union members live and work around the country.

About United Workers Union

United Workers Union (UWU) is a powerful union with 150,000 workers across the country from more than 45 industries and all walks of life, standing together to make a difference. Our work reaches millions of people every single day of their lives. We feed you, educate you, provide care for you, keep your communities safe and get you the goods you need. Without us, everything stops. We are proud of the work we do – our paramedic members work around the clock to save lives; early childhood educators are shaping the future of the nation one child at a time; supermarket logistics members pack food for your local supermarket and farms workers put food on Australian dinner tables; hospitality members serve you a drink on your night off; aged care members provide quality care for our elderly and cleaning and security members ensure the spaces you work, travel and learn in are safe and clean.

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1. Introduction

The United Workers Union (UWU) applauds the committee for undertaking this inquiry. The NSW Government spends hundreds of millions of dollars each year on service contracts alone which cumulatively employ thousands of workers. How the Government approaches procuring these services can make a profound impact, not only on the workers employed under government contracts, and the families they support, but also on the broader employment standards in their industries.

UWU, in this submission, urges the adoption of a ‘Local, Fair and Secure Jobs Code’ that focuses on the creation of quality jobs NSW workers can count on. Key to this approach is a recognition that government is not a passive by-stander in the jobs created by its contracting and spending. Government, as the client paying for services with public money, can design a procurement framework that both supports better outcomes for workers and delivers value for money, and will be acting in the public interest when it does so.

This submission focuses on the contracting of cleaning and security services. Not only are these sectors where our union represents substantial numbers of members, they are also jobs that are structurally vulnerable to poor employment conditions and where the NSW Government is well positioned to make a positive impact. These are also jobs that by their nature, must occur in NSW. Cleaning can’t be done over zoom and a security officer can’t protect their site from interstate or overseas. Government cleaning and security jobs are found in every corner of the state – UWU has members employed under the whole-of-government cleaning contracts that live in each of NSW’s 93 legislative assembly electorates. Investing in these jobs means investing in local workers and our regions.

While the focus here is on cleaning and security, the United Workers Union has members that work across a number of other industries that are impacted by government procurement and supply chain purchasing, including plastics, cables and other manufacturing (including renewable energy components), laundries, and food and beverage production. The union supports initiatives to leverage

the State's procurement dollars to improve labour standards in these industries and notes our interest in participating in any related future policy discussions or working groups.

This submission makes the case for a procurement policy that is focused on creating good jobs. It outlines the barriers to improving wages and conditions for workers under the current approach and discusses several best practice examples of procurement policy currently in place across Australia. Importantly, this submission also emphasises that in some instances, such as whole of government cleaning in NSW, direct employment should be the preferred model of service delivery. Lastly this submission makes a number of specific recommendations that should be adopted in NSW to improve the social and economic outcomes of State Government procurement.

2. The need to put good jobs at the heart of procurement policy

Quality jobs are essential in allowing working families and our communities to thrive. Unfortunately, trends like the "gigification" of work in the on-demand economy, casualisation, the use of labour hire and sham contracting have all undermined job quality and denied workers, including low-income and vulnerable workers, access to basic entitlements and job security.¹

These trends have contributed to a reduction in workers' bargaining power and have occurred in parallel with long-term stagnant wage growth.² And the effects go well beyond pay - workers in insecure jobs are found to face greater risk of heart disease and increased risk of depression.³

The impact of low wages and insecure jobs on workers' quality of life has been exacerbated during the current cost-of-living and housing affordability crisis in NSW. A cleaner, for example, paid the modern award wage of \$24.07, needs to work for almost 93 hours a week to afford a rental apartment in Sydney, at the median weekly asking price and *not* be in housing stress. If sharing the rent with another person on the same wage, both people would need to work more than 46 hours a week to avoid paying more than 30% of their income in rent.⁴

Perversely, governments have often contributed to the erosion of good jobs by pursuing procurement policies that focus on a limited and short-term view of value for money.⁵ This has ultimately cost governments and the tax payer over the long-term by driving a culture of non-compliance, which has resulted in higher enforcement and management costs, lower tax receipts (as a result of sham contracting that often involves cash payments), underfunded workers compensation insurance, non-payment of superannuation contributions and a range of other social, economic and fiscal costs.

Low-road procurement practices can also diminish the quality of services that are being purchased and can put the safety and security of critical public infrastructure at risk. Low wages and poor working conditions contribute to higher employee turnover, which in turn undermines training and the development of an experienced, knowledgeable, and effective workforce.⁶ Studies on the impact of labour standards and employee turnover in US airports have found a causal relationship between low wages and workforce turnover, and security violations and ramping accidents. Conversely, at airports where policies have been enacted to raise standards for contracted workers, studies show a reduction

in turnover and improved performance in areas including customer service, absenteeism, grievances and morale.⁷

Governments across Australia, at both the Commonwealth and State and Territory level, have recognised the need to support and create good jobs. The recently passed Closing Loopholes bills, introduced by the Federal Labor Government, aim to end the practice of labour-hire employees being paid less for doing the same job, enhance the ability of casual workers to convert to secure ongoing positions, criminalise wage theft and enable the Fair Work Commission to set minimum standards for digital platform workers.⁸ With respect to procurement, the Secure Australian Jobs Code was committed to by the Federal Labor Party in 2022 and adopted into the ALP's national platform in 2023.⁹ This commitment follows the passage of the Secure Local Jobs Code in the Australian Capital Territory in 2020¹⁰ and the introduction of the Fair Jobs Code in Victoria in 2022.¹¹

The NSW Government, since its election in March 2023, has already demonstrated its willingness to improve worker pay and conditions in spheres where it has direct influence, most significantly by repealing the public sector wages cap put in place by the previous Government and amending the Industrial Relations Act to include an objective to “encourage strategies to attract and retain skilled staff”.¹² Placing good jobs at the heart of its approach to procurement is a critical next step for the NSW Government and will ensure that tax payers dollars are maximising the social good.

3. Structural barriers to bargaining and effective workplace relations

Australia's industrial relations system under the Fair Work Act is geared around enterprise level bargaining being the driver of wage increases and improved conditions, and the forum to negotiate consultation and dispute resolution mechanisms. Sector-wide modern awards, in tandem with the National Employment Standards, are intended to play a safety net role and ensure legal minimum rates increase over time while providing universal access to certain conditions and entitlements.

Service contracting presents a number of structural challenges to this model. When labour is a dominant cost in a contract's composition and companies bid in competitive, lowest price tender processes, there a clear incentive for them to base their bids on the lowest wages possible. And once awarded the work, companies are bound by contractual terms on prices and service delivery that limit the extent of any labour cost increases. This scenario is inherently inconducive to bargaining. Any company committed to above award pay and conditions is placed at a competitive disadvantage in the bidding process, and once under contract is restricted in their capacity to bargain by the economic terms of the contract. In addition, at the expiry of each contract, workers face the prospect of losing their accrued entitlements and having to reapply for their jobs with a new employer with no guarantee that any wages and conditions established in an enterprise agreement will be recognised by the incoming contractor. The net effect is that for many workers employed by contractors, modern award rates (assuming they are even adhered to) effectively function as both a safety net *and a ceiling*.

The recent changes to the Fair Work Act to better enable multi-employer bargaining should help to address this issue. If entered into, new multi-employer agreements in sectors like cleaning and security, which establish uniform wages and conditions for covered employers, could help to create a

level playing field with respect to the underpinning labour costs of contract bids. However, without a commitment from government to sufficiently fund contracts and a requirement that specifies above award wages be paid by any contractor awarded the work, there will continue to be a bias towards low-ball bids and low wages.

Additionally, without any requirement within contracts to respect workers freedom of association and to deal constructively with unions, contracted companies will continue to adopt an antagonistic position in relation to union organising and fail to invest in building cooperative relationships. Further, the fissured employment arrangements that are created when work is contracted and sub-contracted means that employees and their unions are often kept at arms-length from the ultimate decision maker regarding the nature and scope of work. The net result is workplaces in which workers are disempowered and without any means to deal with grievances and workplace change in an effective collective manner.

4. Direct employment where appropriate, remains the best option

Direct employment should be the ‘gold standard’ for governments when it comes to ensuring quality jobs in sectors structurally vulnerable to poor labour standards. Prior to making a decision to contract for services, or upon the expiration and rebid of contracts, the NSW Government should consider whether such services can be provided by direct employees and take into account the risk of poor job quality and labour non-compliance if outsourced.

The NSW Government has already shown its willingness to bring privatised services back under public management, including the Junee Correctional Facility and the maintenance of public housing.¹³ Governments elsewhere have demonstrated the effectiveness of this approach when it comes to services like cleaning.

In 2020, the ACT Government ended years of contracting arrangements in school cleaning and brought cleaners back in-house. A 2022 case study published by the ACT Government described its actions as aligning with its commitment to address insecure work by promoting job security for employees, minimising the use of subcontractors and increasing the use of direct employment of workers across the ACT Public Service. The effect of the decision in the ACT has been the development of a “fair and productive workplace environment”, which in turn “supported improved cleaning outcomes”.¹⁴ The insourcing of cleaning aligns with the ACT’s implementation in 2024 of an insourcing policy that provides an assessment framework for decisions on outsourcing and insourcing. The framework, part of the ACT’s broader Secure Employment Framework, includes a social impact assessment within its criteria for assessing decisions.¹⁵

Meanwhile, in Queensland, directly employed school cleaners are covered by a collectively negotiated agreement that provides fair, above award wages, and enshrines a consultative approach on a range of issues, including workloads, which has led to the establishment of maximum productivity rates and safe workloads.¹⁶ An assessment of school and government cleaners pay across Australian jurisdictions shows that the modern award rates, commonly received by contracted cleaners in NSW lag behind every State and Territory where cleaners are directly employed.¹⁷

With the expiry of the current whole of government cleaning contracts at the end of 2024, the NSW Government, through the currently convened School Cleaning Services Review Group, has the opportunity to bring the work back inhouse and transition approximately 7,000 cleaners across the state employed under the contracts to secure, directly employed jobs.¹⁸ The cleaning work performed under the whole of government contracts, of which 75-80% is cleaning schools,¹⁹ is consistent year-to-year and provides services to sites where a stable workforce is paramount. Cleaners in the majority female workforce are commonly paid award wages that are fractionally more than the minimum wage and lack many of the care related leave entitlements provided to direct NSW Government employees.²⁰ While many of the procurement reforms supported here could substantially improve the standard of these cleaning contracts, the nature of the work and the workforce makes it an ideal candidate to be transitioned to direct employment. The union refers the committee towards its report “End this Failed Privatisation”, published in February of this year, which outlines the employment conditions faced by cleaners, including the excessive safety risks, and the case for direct employment in greater detail.²¹

5. The NSW Government has the scale to make an impact

The NSW Government, thanks to the scale of its contracting, property ownership and tenancy, can be a market shaper when it comes to employment standards in the property services sector.

At the start of 2024, the NSW Government’s tender website showed ongoing cleaning and security contracts worth \$680 million annually.²² \$518 million of this amount includes the nine regional whole-of-government cleaning contracts (which include school cleaning). Approximately 7,000 cleaners are employed under the whole-of-government contracts – a workforce that represent an estimated 15.3% of all commercial cleaners in NSW and almost 1 in every 20 commercial cleaners (4.5%) in Australia.²³

In addition, the NSW Government is a significant owner of property. Its portfolio, valued in 2019 at \$160 billion,²⁴ far exceeds the combined market capitalisation value of Australia’s 10 largest real estate investment trusts.²⁵ It is also the single largest tenant of office space in the country²⁶ – this means millions of square meters of property that is being cleaned and secured by workers whose wages are funded by public money via the rent paid by government.

By placing good jobs at the heart of its approach to being an employer, procurer and recipient of property services, the NSW Government can not only improve the pay and conditions for those workers who service the buildings it occupies, but can help to establish improved norms in the cleaning and security industries and support positive initiatives occurring in the marketplace.

6. Security and cleaning up-close

The security and contract cleaning industries in Australia are systematically plagued with compliance issues related to workplace rights and entitlements and the mistreatment and exploitation of workers. These issues exist on a continuum that ranges from wage and superannuation underpayments, and

other award breaches, through to incidents of modern slavery that involve threats, coercion and restrictions of workers' freedoms.²⁷

The cleaning and security industries are characterised by a number of structural features that academics identify as increasing the risk of labour non-compliance, including:²⁸

- The separation of oversight and diffuse accountability between building owners, contract managers and employer/s
- Commercial pressure to compete on price
- Vulnerable workforces
- The use of casual labour and sub-contracting
- Labour cost minimisation as a dominant strategy

A series of Fair Work Ombudsman (FWO) audits of the cleaning industry found workplace breaches, including the underpayment of wages, occurring in a significant number of contract cleaning businesses - 37% of business in 2010-11, 38% in 2012-13 and 33% in 2016.²⁹ These findings are consistent with results from a survey of 300 schools cleaners in NSW conducted by the union in 2023 which found 52% of cleaners experienced problems receiving the correct pay in the last 5 years.

The most recent cleaning industry compliance activities conducted by the FWO found:

- Wage theft, layers of subcontracting, and systemic non-compliance with workplace laws by cleaning contractors operating at stadiums.³⁰
- 100% of school cleaning contractors at Victorian public schools were non-compliant, with wage theft found in 9 out of 11 contractors.³¹
- Cleaners were being underpaid at 90% of audited supermarkets in Tasmania.³²

The cleaning industry was also specifically cited in a 2016 federal parliamentary report as being one of the industries in which the exploitation of temporary work visa holders was rife. A submission to the inquiry informing the report cited the example of Swan Services Cleaning Group. The company went into administration in May 2013, owing \$9.5 million in unpaid wages and leave entitlements to around 2500 workers. A large proportion of the workforce was international students many of whom were left with weeks of unpaid wages.³³

A 2018 FWO inquiry into the procurement of security services by local governments found similarly alarming compliance issues. The inquiry found that 14 of 23 investigated councils (61%) had incidents of non-compliance within their supply chain, including at least one incident in each state. The most common issues related to breaches of minimum award and penalty rates – something the inquiry directly linked to the companies bidding to win work at rates insufficient to fully meet employee costs and the lack of due diligence on behalf of the contracting councils. The inquiry found a significant correlation between workplace breaches and the presence of multiple tiers of subcontracting, with 63% of sub-contractors found to have breaches of Commonwealth workplaces laws compared to 42% of primary contractors.³⁴

Recent FWO investigations have further demonstrated how endemic labour breaches are in the security industry. In March 2023 FWO reported the recovery of \$368,666 for 102 underpaid guards and supervisors following an audit of 13 companies operating in and around Perth.³⁵ While in 2021 FWO recovered \$303,299 for 1,010 workers employed to provide security at COVID-19 quarantine hotels in Melbourne and Sydney. Of the 37 security business audited, 41% were found to be non-compliant with workplace laws.³⁶

In its approach to compliance in the cleaning and security industries, the FWO has turned its attention up the supply chain to procurers of cleaning and security services, and found serious deficiencies in governance arrangements with regard to the procurement and oversight of contracts, resulting in serious exploitation of workers occurring at multiple levels of the supply chain. The FWO has urged major Australian companies to “take the lead in promoting a culture of compliance with workplace laws, beginning with their own contracting networks” and said that businesses need to “step up and be active in their responsibility to ensure that workers in their supply chains are being paid appropriately and treated fairly”.³⁷

This model of ‘strategic enforcement’ focuses on the role of procurers in driving compliance by setting labour standards at the point at which services are tendered and procured, rather than relying purely on auditing compliance with labour standards during the life of a contract. The FWO has recommended that procurers amend tender documents to reflect best practice contracting and labour standards and ensure that the amounts paid in their contracts are sufficient for contractors and subcontractors to cover employee entitlements.³⁸

7. Best practice approaches

a. ACT – Secure Local Jobs Code

Passed by the ACT Legislative Assembly in 2020, the Territory’s Secure Local Jobs Code is considered by the union to be the most effective procurement policy operating in Australia with respect to promoting quality jobs and addressing systemic compliance issues in vulnerable industries. The code includes in its objectives the goal of awarding “territory-funded work to businesses that meet the highest ethical and labour standards across their business” as well as “improved industrial relations planning and management at both the enterprise level and on specific projects”.³⁹

The operation of the code features a number of key aspects:

- A requirement for contractors to prequalify for government work by being independently audited and certified as code compliant.
- A ‘two-envelope’ tendering process, whereby businesses are assessed by an independent compliance unit on their treatment of workers and ethical conduct separate to the commercial assessment phase of the tender process.
- The role of the secure local jobs registrar who is responsible for monitoring and enforcing ongoing compliance with labour standards in government contracts.
- Support for workers rights to freedom of association and collective bargaining.
- The role of the Secure Local Jobs Advisory Council, which includes union and industry representatives, in advising the minister on the operation of the code.

- The capacity for non-compliant businesses to have their code certification suspended or cancelled

The experience of the union is that the code has been enormously effective in building a government procurement culture within the ACT in which agencies and participating business are attuned to their labour obligations and take seriously the need to support and cultivate cooperative workplace relations.

b. Safeguard

UWU members have long fought for enterprise bargaining agreements that address the systemic issues in the security industry and achieve the union's 'Safeguard' standard, which provides;

- Job security
- Living wages
- Respect
- Career and skill development
- Safe workplaces

However, the Safeguard EBA standards won by security guards are consistently undermined by procurers seeking to lower contract prices and engage irresponsible contractors promising to deliver more for less. The union has actively engaged both public and private procurers about the important role they can play and has recommended three key Safeguard steps to be incorporated into their procurement practices:

1. Funding Safeguard wages and conditions, and ensuring contracts are priced appropriately to meet these standards.
2. Prohibiting or restricting the use of subcontractors.
3. Implementing responsible procurement and contract management practices (e.g. prequalification of contractors and use of model contract terms) that support the Safeguard standards, following consultation with security guards and UWU.

The Victorian Government has already acted to meet the Safeguard standards. Effective from 1 February 2023, all Victorian Government security contracts are to be funded on the basis of security wages at 6% above the modern award. In announcing its commitment, the Victorian Government recognised that security is a low paid industry with many workers reliant on the award to set their pay and conditions. It said that its decision to support above award remuneration for security officers is consistent with its continuing support for fair pay and conditions for low paid and insecure workers.⁴⁰

c. Code of Practice – Security Industry Sham Subcontracting

The United Workers Union has also developed a code of practice to prevent the exploitation of security workers through dodgy subcontracting. The code aims to deliver higher standards, better wages, more secure jobs and safer workplaces in the security industry, and therefore improved community safety. Under the code, signatory companies commit to upholding the following standards:

- Minimum subcontracting standards: employees of subcontractors are to be paid no less than the applicable enterprise agreement of the primary contractor, or in lieu of enterprise agreement being in place, the modern award.
- Agreement/award compliant commercial fees: paid to subcontractors to ensure they are financially able to comply with their labour obligations.
- Direct employment by subcontractors: subcontractors of the signatory are not to engage workers as individual contractors.
- Same job, same pay for subcontractors: the signatory agrees to include a clause in any enterprise agreement entered into, that requires subcontractor personnel to be paid the relevant Enterprise Agreement rates of pay.
- Audit and compliance: the signatory agrees to enter into an audit and compliance process to ensure subcontracting arrangements meet the requirements of the code.
- Transparency: the signatory agrees to provide the union with a list of all current subcontractors and relevant details such as operating sites.
- Subcontractor and worker engagement: the union is permitted to conduct subcontractor briefing to educate subcontractors on the compliance requirements. The signatory will also take all reasonable steps to facilitate the union conducting worker engagement to verify the payroll audit of subcontractors.

The code has proved an effective framework for ensuring quality jobs, responsible subcontracting and cooperative workplace relations in the operations of one of Australia's largest security companies, Wilson Security, following their signing on to the code in 2021.

d. The Cleaning Accountability Framework

The Cleaning Accountability Framework (CAF) is a multi-stakeholder initiative in the cleaning industry that has been recognised by the FWO as a best practice model of collaborative workplace relations, strategic enforcement and industrial compliance.⁴¹ CAF's objective is to promote responsible procurement, employment and compliance approaches in the cleaning industry that support decent work for cleaners and ethical and sustainable business practices in the property services industry. This is achieved through a building certification, contractor prequalification, and portfolio rating program that ensures:

- Property owners have responsible procurement practices and appropriate due diligence mechanisms in place and pay fair contract prices.
- Cleaning contractors are compliant with labour standards.
- Cleaners are educated and have the ability to speak up when they experience exploitation, and any issues raised are investigated and remediated.

For an individual building to be certified, CAF undertakes both a third-party audit and a worker engagement protocol. Additionally, a key tool for CAF participants is the 'contract quantum adequacy' pricing schedule which is intended to assist procuring agents, such as building owners and managers, make an informed decisions as to whether bids by cleaning contractors are sufficient to meet labour obligations and oncosts, as well as provide for safe workloads (in the form of maximum per square metre productivity benchmarks).⁴²

CAF is also piloting a property portfolio rating pathway in which owners can apply to have their portfolio of buildings rated against the CAF standards. The portfolio pathway is currently being undertaken by the Industry Superannuation Property Trust (ISPT) and is anticipated to launch in the market later this year.

An academic assessment of the CAF model found that through the audit, worker engagement, tender controls and rectification steps embedded within the certification process, CAF has been able to improve the labour standards for cleaners in participating retail and commercial properties.⁴³ Fair Work Ombudsman Anna Booth describes the success of CAF as being attributable to two key elements of its approach – buy-in at the top of the supply chain and empowering workers to speak up.

“[B]y encouraging lead firms such as property owners to recognise the influence they can have on a cleaner’s experience in the workplace, CAF has been instrumental in getting these firms to use their leverage in the supply chain to promote good practices and improve working conditions...Perhaps the key feature that distinguishes CAF from other certification schemes is the central element of worker voice. CAF genuinely focuses on hearing from actual cleaners as part of their auditing process and education approach, which reflects the integrity of the certifications CAF carries out, and the sustainability of the CAF model.”⁴⁴

The FWO has supported CAF for over a decade, was involved in the development of the scheme and remains an active partner today. The FWO has encouraged “all public and private businesses to review their cleaning contracts and apply for certification [...] through the Cleaning Accountability Framework”.⁴⁵

Data from CAF further demonstrates the importance of hearing directly from workers. 70% of labour violations identified in buildings by CAF come about through worker engagement compared to 30% from desk-based audits. The difference is particularly stark with respect to Workplace Health and Safety, bullying and harassment and discrimination for which 100% of violations were identified through direct worker engagement.

Introducing CAF building certification and/or CAF portfolio rating as a leasing requirement when the NSW Government enters into tenancy agreements would drive improved procurement and labour standards in the high-risk cleaning industry, and given the scale of the government’s leasing, would significantly boost exposure and engagement with CAF across the market.

This is a proven pathway for improving standards – for some years now, governments in Australia have used green leasing requirements as a means to drive improvements in green building standards.⁴⁶ Since 2010, green leases have been required for all new Commonwealth, State and Territory leases where the office space is more than 2,000 square metres and the lease term is more than two years. Green Lease Schedules (GLS) were created under the Energy Efficiency in Government Operations (EEGO) policy and are added to government leasing agreements. They set out environmental and sustainability standards to be followed by both landlords and tenants, including energy efficiency requirements (NABERS energy ratings targets).⁴⁷

A 2017 Government analysis of the use and effectiveness of GLS found that they were successful in motivating proactive landlords to engage and improve the quality of their building stock, and drove significant improvements in energy efficiency in Government accommodation.⁴⁸

Similarly, introducing CAF as a leasing requirement would help drive responsible procurement practices, which would support sustainable business models in the cleaning industry, build a culture of compliance, reduce exploitation of vulnerable workers, and lift labour standards in the cleaning industry.

8. Transparency, accountability and enforcement is key

Public access to contract information is an essential component of a transparent, fair and well-functioning procurement system. Access to government contracts in NSW is often limited and opaque at best. Without the uniform open provision of contracts, interested parties are forced to issue GIPA requests which can be time-consuming, delayed, disputed, and often result in heavily redacted material.

Not only does the public have an interest in understanding how tax-payers money is being spent, who it is going to and for what services, contracts often contain critical details that shape the nature of contracted companies' employees' work and their pay and conditions. Contract specifications are often the basis for determining the service delivery standards that workers are held to, as well as shift structures, staffing levels, workloads and other requirements. Additionally, the economic terms of contracts, including annual payments and indexing, are highly determinative of an employers' capacity to meet their labour obligations. Without access to contracts, workers and their unions are operating with a complete asymmetry of information compared to the employer that is party to the contract. Not only does this impede the ability of workers and their unions to effectively bargain and participate in meaningful workplace consultation, but it also denies them the capacity to assess contracts and determine whether they are adequate to meet the required wage and superannuation rates and other labour costs. The union points the inquiry towards the ACT as an example of a jurisdiction supporting a transparent approach to contract publication. The 'Tenders ACT' website is easily searchable by multiple criteria, and importantly provides access to contract documents.⁴⁹

It is critical that the right accountability and enforcement mechanisms are also in place to ensure labour compliance. Too often the only tool available to government to ensure contract performance is threat of contract termination. Even if labour non-compliance is specified as a matter that can give rise to contract termination, the reliance of the contracting agency on the ongoing service delivery, and the cost and disruption of contractor change over, means that this is a rarely exercised action. Additionally, the union sees too often that repeat bad actors go unpunished during the course of the contract and then succeed in winning further government work.

It is important to note that labour standards included in State and Territory Government contracts, unless reflected in an enterprise agreement, are not matters enforceable through the Fair Work jurisdiction. Should the NSW Government adopt a "Local, Fair and Secure Jobs Code", it is essential that compliance with the code be specifically written into the contracts including the means for investigating non-compliance and resulting enforcement and penalties. The role of a third-party government agency, independent from the contracting agency, with the capacity and expertise to investigate labour compliance issues and the ability to enforce penalties, can be crucial in both providing this enforcement function and overcoming the risk of agency dependency. Penalties for breaches of required labour standards should include financial penalties and escalate to the

suspension and debarment of non-compliant companies. Additionally, the code should include terms that support freedom of association, respect for union organising and union delegate rights and facilitate enterprise bargaining. It is the combination of these two elements – contractually obligated standards enforced by an independent government agency *and* the support for freedom of association and collective bargaining that will best ensure that efforts by the government to create quality jobs through its procurement practices are realised.

9. Recommendations

1. In-house work where direct employment better enables the NSW Government to support quality jobs and deliver effective services, including the whole-of-government cleaning contracts.
2. Introduce a 'Local, Fair and Secure Jobs Code', which incorporates the best practices of the ACT's Secure Local Jobs Code. Include within the code the following requirements for all cleaning and security work funded by the NSW Government (including direct contracts, sub-contracts and subsidiary contracts under project contracts including public private partnerships):
 - a) Minimum rates of pay equal to the rate under the relevant NSW award that would apply if the employee was a direct NSW Government employee, or 6% above the relevant modern award, whichever is greater.
 - b) Annual indexation clauses that allow for wage increases over the term of the contract that maintain the above award differential or parity with the relevant NSW award, whichever is greater.
 - c) Union delegate rights, consultation clauses and support for enterprise bargaining.
 - d) Job security provisions that ensure that upon a change of contract, employees are offered a position by the incoming contractor that is the same employment category and working pattern to the position they held under the previous contractor (with redeployment and redundancy provisions applying when workers do not wish to stay on).
 - e) Escalating penalties for labour breaches written into the contract, including financial penalties, suspension, and disqualification from public contract eligibility, to be enforced by an independent government agency.
3. Ensure contracts are adequately funded to support code required rates of pay, including annual increases during the life of the contract.
4. Reform the NSW Security Providers Panel to establish improved thresholds for inclusion including compliance with the 'Safeguard' and 'Code of Practice – Security Industry Sham Subcontracting' standards and require the consideration of a company's labour compliance record when assessing their initial and ongoing inclusion on the panel.
5. Introduce CAF Building Certification and/or CAF Portfolio Rating as a leasing requirement (embedded in contractual terms) for government office space leased from private landlords.

6. Establish a debarment list of contractors deemed ineligible to be awarded government contracts for serial and/or serious labour breaches, to be maintained and enforced by independent agency.
7. Make all contracts available in a searchable online database.

¹ Commonwealth Senate Select Committee on Job Security (2022). “The Job Insecurity Report”. Available at: <https://oia.pmc.gov.au/sites/default/files/posts/2023/09/3%20Job%20Insecurity%20Report.pdf> (p. 13-31)

² Ibid, p. 32

³ Ibid, p. xiv

⁴ 2023 median rental price - \$670, see <https://www.smh.com.au/property/news/too-much-for-me-sydney-unit-rents-soar-145-per-week-in-a-year-20230704-p5dlpn.html>. Housing stress is defined, for low-income households, as paying 30% or more of gross income in housing expenses, see: <https://www.aihw.gov.au/reports/australias-welfare/housing-affordability>

⁵ Commonwealth Senate Education and Employment References Committee (2018). “Wage Theft? What Wage Theft? The exploitation of general and specialist cleaners working in retail chains for contracting or subcontracting cleaning companies”. Available at: [Wage theft? What wage theft?! \(aph.gov.au\)](https://www.aph.gov.au/Wage_theft?What_wage_theft?!). (chapter 4)

⁶ Jacobs, K. (2023). “Labor standards and airport safety and security”. UC Berkeley Center for Labor Research and Education. Available at: <https://laborcenter.berkeley.edu/wp-content/uploads/2023/07/Labor-standards-and-airport-safety-and-security-final.pdf> (p. 2)

⁷ Ibid (p. 3)

⁸ Details on the legislation is available at: <https://www.fwc.gov.au/about-us/closing-loopholes-acts-whats-changing>

⁹ 2022 Election commitment: “Secure Australian Jobs Plan”. Available at: <https://anthonyalbanese.com.au/media-centre/secure-australian-jobs-plan> and 2023 Federal Labor platform available at <https://www.alp.org.au/media/3569/2023-alp-national-platform.pdf> (p. 12)

¹⁰ Information on the ACT’s Secure Local Jobs Code is available at:

<https://www.procurement.act.gov.au/secure-local-jobs>

¹¹ Information on the Victorian Governments Fair Jobs Code is available at:

<https://www.buyingfor.vic.gov.au/fair-jobs-code>

¹² Amended Industrial Relations Act is available at:

<https://legislation.nsw.gov.au/view/html/inforce/current/act-1996-017#sec.3>

¹³ NSW Minister for Corrections, Anoulack Chanthivong (3 November 2023). “Bringing Junee Correctional Centre into public hands”. Available at: <https://www.nsw.gov.au/media-releases/bringing-junee-correctional-centre-into-public-hands> and NSW Minister for Housing Rose Jackson (13 November 2023). “Back to basics: Social housing maintenance call centre back in public hands” available at: <https://www.nsw.gov.au/media-releases/social-housing-maintenance-call-centre>

¹⁴ ACT Education Directorate (2022). “Case Study: Insourcing cleaning in ACT public schools”. Available at: https://www.education.act.gov.au/_data/assets/pdf_file/0011/2001530/Insourcing-cleaning-case-study.pdf (p. 2)

¹⁵ ACT Government Insourcing Policy, available at:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0005/2355395/Insourcing-Policy-2023.pdf, ACT Government Insourcing Framework, available at:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0008/2355371/Insourcing-Framework-Overview-and-Guidance-2023.pdf, ACT Government Secure Employment Discussion Paper, available at:

https://www.cmtedd.act.gov.au/_data/assets/pdf_file/0011/1953326/Secure-Employment-Discussion-Paper-No.-1.pdf

¹⁶ Department of Education Cleaners’ Certified Agreement 2022. Available at:

https://www.qirc.qld.gov.au/sites/default/files/2023-06/2023_cb49.pdf

¹⁷ United Workers Union (2024). “End this Failed Privatisation”. Available at: https://unitedworkers.org.au/wp-content/uploads/2024/02/240201_SchoolCleaningReport.pdf (p. 13)

¹⁸ Per the form 17 submitted to the Fair Work Commission in 2016, there were 7346 employees covered by the NSW Contractors Multi Enterprise Agreement which covered the contractors engaged under the whole of government contracts

¹⁹ Calculation based on evidence provided in NSW Parliament Budget Estimates 2017-18, indicating 75-80% cost share to Education from the total costs of whole of government cleaning contracts. E.g. In 2015-16, Education paid \$255.640 million of a total \$334.3 million (76.47%) and in 2016-17 \$262.724 of a total \$340.9 million (77.07%). Cf. Answers to Supplementary Questions on Notice, Finance, Services and Property, pp. 12-13 (Answer 55) at <https://www.parliament.nsw.gov.au/lcdocs/other/11006/ASQs%20-%20Dominello.pdf> and

Answers to Supplementary Questions on Notice, Education, pp. 23-24 (Answer 51) at

<https://www.parliament.nsw.gov.au/lcdocs/other/11015/ASQs%20-%20Stokes.pdf>

²⁰ United Workers Union (2024). "End this Failed Privatisation". Available at: https://unitedworkers.org.au/wp-content/uploads/2024/02/240201_SchoolCleaningReport.pdf. For demographics of the contracted government cleaning workforce, see p. 5, analysis of wage rate compared to NSW public sector awards, see p. 11 and comparison of conditions with public sector awards, see p. 16. The modern award rate for cleaners as of 1 July 2023 is \$24.07 compared to the national minimum wage of \$23.27.

²¹ Ibid

²² Per contract data downloaded from NSW tender, 5 December 2023. Available at:

<https://www.tenders.nsw.gov.au/?event=public.advancedsearch.home>

²³ Based on commercial cleaning industry provided by the Federal Government's Labor Markets Insight program, available at: <https://labourmarketinsights.gov.au/occupation-profile/Commercial-Cleaners?occupationCode=8112>

²⁴ Smith, A (3 January 2019). "Boom time for NSW: state's growing \$160b property portfolio". Sydney Morning Herald. Available at: <https://www.smh.com.au/national/nsw/boom-time-for-nsw-state-s-growing-160b-property-portfolio-20190102-p50p6d.html>

²⁵ Australia's 10 largest REITs have a combined market capitalization of \$126 Billion. See:

<https://www.listcorp.com/asx/sectors/real-estate/real-estate>

²⁶ See Property and Development NSW, Corporate Plan 2023-24. Available at:

https://www.dpie.nsw.gov.au/data/assets/pdf_file/0004/581269/pdnsw-corporate-plan-2023-2024.pdf (p. 9)

²⁷ Cleaning Accountability Framework. "Cleaning Contractors Modern Slavery Guidance (V1.0)". Available at:

https://www.cleaningaccountability.org.au/wp-content/uploads/2020/12/CAF_ModernSlaveryGuidance_Contractors_v1.0.pdf

²⁸ Rawling, R., Kaine, S., Josserand, E., and Boersma, M. "Multi-Stakeholder Frameworks for Rectification of Non-Compliance in Cleaning Supply Chains: The Case of the Cleaning Accountability Framework". Federal Law Review, 2021. Vol 49(3) 438-464. Available at: <https://www.martijnboersma.com/new-research-article-multi-stakeholder-frameworks-for-rectification-of-non-compliance-in-cleaning-supply-chains/>

²⁹ Fair Work Ombudsman (13 May 2016). "Cleaning industry compliance needs to improve". Available at: <https://www.fairwork.gov.au/newsroom/media-releases/2016-media-releases/may-2016/20160513-cleaning-compliance-campaign-presser>

³⁰ Fair Work Ombudsman (9 October 2020). "Wages recovered for stadium cleaners". Available at:

<https://www.fairwork.gov.au/newsroom/media-releases/2020-media-releases/october-2020/20201009-stadium-contract-cleaning-report-media-release>

³¹ Fair Work Ombudsman (2019), "Cleaning supply chains in Victorian Government schools: compliance activity report". Available at: <https://www.fairwork.gov.au/sites/default/files/migration/714/victorian-government-schools-cleaning-supply-chains--compliance-activity-report.pdf>

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Available at: <https://www.fairwork.gov.au/reports/inquiry-into-the-procurement-of-cleaners-in-tasmanian-supermarkets>

³³ Commonwealth Senate Education and Employment References Committee (2016). "A National Disgrace: The Exploitation of Temporary Work Visa Holders". Available at:

https://www.aph.gov.au/parliamentary_business/committees/senate/education_and_employment/temporary_work_visa/~media/Committees/eet_ctte/temporary_work_visa/report/report.pdf. (p. 143 and 148)

³⁴ Fair Work Ombudsman (2018). "An Inquiry into the procurement of security services

by local governments". Available at: <https://www.fairwork.gov.au/sites/default/files/migration/1376/inquiry-into-the-procurement-of-security-services-by-local-governments.pdf>

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⁴⁴ Fair Work Ombudsman, Anna Booth (16 November 2023). “Cleaning Accountability Framework 10 Year Anniversary Celebration” (Speech). Available at: <https://www.fairwork.gov.au/newsroom/speeches>

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⁴⁷ Australian Government, Department of Climate Change and Energy Efficiency (2010). “Energy Efficiency in Government Operations (EEGO): Green Lease Schedules Guidance Notes”. Available at: <https://www.dcceew.gov.au/sites/default/files/documents/green-lease-schedule-guidance-notes-2010.pdf>

Note: As of November 2023, the EEGO policy has been superseded by the [APS Net Zero in Government Operations](#) strategy. This strategy sets out a timeline for further improving building energy efficiency, by ratcheting up NABERS targets from 2025 onwards and reducing the office space threshold mandating green leases to more than 1,000 square metres. See https://www.finance.gov.au/sites/default/files/2023-11/Net_Zero_Government_Operations_Strategy.pdf

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⁴⁹ See Tenders ACT, available at: <https://www.tenders.act.gov.au/contract/search>