

Submission
No 46

**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 Coalition of Aboriginal Peak Organisations (CAPO)
Date Received: 1 March 2024



NSW CAPO

Coalition of Aboriginal
Peak Organisations

**SUBMISSION TO THE NSW PARLIAMENTARY 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.**

STANDING COMMITTEE ON SOCIAL ISSUES

JANUARY 2024

NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) is supportive of the NSW Parliamentary 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.

The NSW Coalition of Aboriginal Peak Organisations (NSW CAPO) is a collective of NSW Aboriginal Community-Controlled Peak Organisations.

We provide a strong, independent, and coordinated voice to address issues affecting Aboriginal people in NSW. NSW CAPO has signed the National Agreement on Closing the Gap and works in partnership with the NSW Government to implement this Agreement in NSW.

NSW CAPO member organisations are self-determining non-government Aboriginal peak bodies with boards that are elected by Aboriginal communities and/or organisations which are accountable to their membership.

Our member organisations are advocates for Aboriginal Peoples throughout NSW.

NSW CAPO and its member Peaks have made previous representations to NSW Government in relation to the NSW Aboriginal Procurement Policy (APP). This is in line with the NSW specific Closing the Gap Priority Reform 5 on Employment, Business Growth and Economic Prosperity. Procurement Policies can provide an opportunity to develop and grow Aboriginal owned and operated businesses by leveraging the Government Procurement spending. Aboriginal businesses are more likely to employ other aboriginal people, the increasing employment opportunities for Community.

The APP as part of the NSW Government broader approach to procurement can play a significant role in the NSW Government's ability (in partnership with CAPO in the National Agreement on Closing the Gap) to deliver on its targets under the Priority Reform 5 – Employment, Business Growth and Economic Prosperity. However, the implementation of a revised APP also provides the opportunity to help NSW meet its obligations outlined in the National Agreement on Closing the Gap. In particular, Priority Reform 2 – Building the Community Controlled Sector and Priority Reform 3: Transforming Government Organisations.

The Aboriginal Procurement Policy (APP) commenced in January 2021 with two main focus areas:

- Support employment opportunities for Aboriginal and Torres Strait Islander peoples.
- Support sustainable growth of Aboriginal businesses by driving demand via Government procurement of goods, services and construction.

Targets

- **1% of total addressable spend.** The APP aims for NSW Government clusters to direct 1% of the cluster's addressable spend to Aboriginal businesses.
- **3% of total goods and services contracts.** The APP aims for NSW Government clusters to award 3% of the total number of goods and services contracts to Aboriginal businesses.
- **3,000 full-time equivalent employment (FTE) employment opportunities supported.** The APP aims to support an estimated 3,000 FTE opportunities for Aboriginal and Torres Strait Islander peoples through NSW Government procurement activities.

The APP has increased the scale of Government procurement from Aboriginal businesses, with over 1000 businesses registered to supply to the NSW Government on the NSW Government Supplier Hub.

A review of the APP occurred in 2019 and the review made 38 recommendations across nine themes. As of December 2022, 35 of the recommendations have been implemented and three are ongoing actions.

The current APP came into effect on 1 January 2021 and encouraged NSW Government agencies and suppliers to create opportunities for Aboriginal businesses and communities via government procurement.

The most current review indicates that all targets set have been met and, in some instances, exceeded goals – the review also found positive commitments to the policy’s objectives with the policy only needing to be refined as opposed to substantial changes being required.

NSW Treasury have consulted with both Community and CAPO in developing the recommendations in the current review. NSW Procurement have presented the draft findings and recommendation to CAPO prior to taking the recommendations to the Procurement Board and the Expenditure Review Committee.

NSW CAPO notes that the revised Aboriginal Procurement Policy is currently planned to be released July 2024.

Key Issues that NSW CAPO has advocated on as raised by Aboriginal Businesses via the NSW Aboriginal Business Roundtables and through NSW CAPO led Closing the Gap Community engagements over several years, that need to be addressed to strengthen and improve the APP, include:

1. Aboriginal businesses and the Aboriginal community have high expectations for the APP, and NSW Government delivery has not consistently met their expectations.
2. Benefits of the APP have not been widely realised more broadly by Aboriginal Businesses. While the targets have been met to date, reporting shows the spend has been concentrated on a relatively small number of businesses. The NSW Government could do more to ensure the benefits of the APP are experienced more widely by Aboriginal businesses and community. This would include, ensuring the small and medium sized businesses as well as Aboriginal Community Controlled Organisations (ACCOs) throughout NSW are afforded the opportunity to access the NSW Government procurement program directly through changes such as breaking contracts down into smaller work packages. Current practices favour Tier 1 contractors with government in part achieving targets via sub-contracting arrangements.
3. Many Agencies have achieved or exceeded the APP targets to date, but there has been limited engagement with more aspirational targets.
4. While the APP mentions working with Aboriginal businesses to progress priority reform five, it does not make any reference to working in genuine partnership with NSWCAPO or ACCOs.
5. Working with ACCOs can assist in the capacity building in communities to meet the supply vs demand needs of the NSW Government. This would help the NSW Government meet its National Partnership obligations under Priority Reform 2 and Priority Reform 3.
6. Continued commitments to ensuring the benefits are experienced amongst the community broadly, provide opportunity for YARPA Business and Employment Hub to skill up businesses seeking to expand into bigger government projects.
7. Procurement NSW, in consultation with Aboriginal businesses, NSW CAPO and NSW Aboriginal Affairs develop a rigorous methodology to test and confirm the bonafides of businesses claiming to be majority Aboriginal owned but benefit not flowing to Aboriginal

owner or community to minimise what is otherwise referred to as black cladding which continues to be raised as a concern more thoroughly.

8. Stakeholder feedback report also identified evidence of inconsistency in NSW Government staff understanding of the APP and how to apply it properly. Further work will need to be undertaken by the Government to upskill and inform agencies about the procurement processes.
9. Feedback throughout the review focused on how the NSW Government is currently implementing, monitoring and measuring the APP. There was strong feedback from the Community, and was also identified by Treasury, that government agencies were inconsistently implementing, monitoring and reporting the APP outcomes on an agency-by-agency basis. CAPO strongly supported the draft review recommendation to develop stronger Agency procurement guidelines that are endorsed by the Procurement Board. These guidelines should ensure rigorous reporting and monitoring by agencies with oversight of the implementation by Treasury.
10. The review 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.
11. To ensure meaningful engagement, an appropriate review and audit of procurement processes is required to ensure Government agencies are being as aspirational as possible to not only meet but exceed targets.
12. Currently NSW government owned corporations and Local Government Authorities are not obligated to adopt the APP or pursue the targets of the policy. NSW CAPO strongly encourages exploration of the inclusion of these entities into the APP to maximise Governments impact for Aboriginal businesses and the Priority Reforms under Closing the Gap.
13. Procurement NSW should seek to have Agencies undertaking larger, long-term procurement spends, that have a long lead time during planning phases, engage earlier with Aboriginal businesses to provide opportunities to access business. Where possible, this could be facilitated by breaking up larger contracts into smaller contracts that can be delivered by small to medium sized Aboriginal businesses.

NSW CAPO raises that the input provided to the review of the APP is also relevant to governments broader approach to Procurement. Adjustments to contracting arrangements and approach to work packages to make it easier for smaller businesses to compete for contracts in Procurement practices could have a greater impact on the social development of NSW.

To not duplicate or be repetitive of submissions of members, NSW CAPO notes the attached submission of NSW Aboriginal Land Council to the Inquiry which goes into a high level of detail and draws on submissions also made to Commonwealth inquiries.

NSW CAPO looks forward to providing support and further input throughout the inquiry.

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