

Submission
No 52

**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



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 to the Inquiry into the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales.

The Public Service Association of New South Wales is the union representing the New South Wales public sector, with almost 40,000 members. We have a significant interest in the matters before this Inquiry into Social Procurement. In making this submission we draw upon international examples of social procurement – in addition to illustrations from elsewhere in Australia, as well as the peer reviewed academic literature.

Social procurement is a conscious decision by government as to how it uses the considerable expenditure at its disposal. The Organisation of Economic Co-operation and Development argues that government expenditure represents some 12% of GDP in member countries (Mupanemunda, 2020; OECD, 2023). Essentially governments have a choice: to spend using an economic rational model pursuing economy and efficiency objectives or do they (governments) seek to use its expenditure plans as a sophisticated social policy tool which can have widespread benefits throughout society creating social value (Ek Österberg and Zapata, 2023; Uyarra et al, 2019). The potential benefits of the latter approach within the health sector in New Zealand were demonstrated by Asquith et al (2016). We strongly believe that the social policy approach will have far wider ranging positive impacts than those associated with a rational, neo-liberal approach which dogmatically pursues economy and efficiency at the expense of broader implications (Gyori, 2022; Hood, 1991; Isaksson et al; 2017; Pollitt, 1993).

Given the unique position of government within a civilized society, we would argue that the legitimacy enjoyed by the NSW Government affords it an exclusive position to shape public and social policy around procurement to actively use policy instruments for the common good. In addition, we would argue that the NSW Government should use this position to actively influence and encourage others to follow its example and facilitate community benefits. These should include ideas such as requirements for public sector buyers to contract with social enterprises or for supplier provided apprenticeships (Wontner et al, 2020). In another example of how the public sector

could, and in our view should, help to shape wider societal procurement behaviour – Miguel and Tonelli (2023) highlight the importance of providing legitimacy to qualified suppliers thus reducing transaction costs and facilitating knowledge transfer, whilst Ek Österberg and Zapata (2023) argue that social inclusion should be central to public procurement.

We would even go as far as to argue that the NSW Government has a moral obligation to use public expenditure where possible to pursue and obtain both public value and community benefit. Two excellent examples of this are presented in Boxes 1 and 2 below from the United Kingdom:

Box 1

“The Welsh Government has legal power in Wales and drives Community Benefits policy. The Welsh Government utilises its power to set policy to require that public sector organisations seek Community Benefits when procuring goods, works and services. The power of the Welsh Government to enforce this policy was a clear driver emerging from the study. As one Registered Social Landlord participant explained: “we are enforced to do it, with the Welsh Government driving us”. The Welsh Government can also influence suppliers that wish to contract with it, and suppliers selling a larger proportion of goods to government and public sector organisations may be more willing to comply with government requests.” (Wontner et al, 2020, p.1922)

A second, sub-national regional example of successful social procurement in action is provided by Uyarra et al:

Box 2

“...Implementation by Greater Manchester authorities (considered one of the leading examples of social value procurement) linked procurement to economic, social and environmental priorities that reflect the Greater Manchester Strategy ‘Stronger Together’, including employment and economic sustainability, raising living standards, promoting equity and fairness and environmental sustainability. These objectives are

articulated to bidders in tender documents so that they can provide tender responses that deliver social value as defined by actors in the city-region. Responses to tenders are evaluated not just on the basis of quality but also significantly on the extent to which they make a demonstrable contribution to social value outcomes. Here we see public procurement being conceptualized as a tool of regional planning and strategy implementation.

Innovation is embedded in the processes used to implement the policy: potential suppliers are encouraged to engage in conversations with users and voluntary sectors early-on in the bidding process so they can respond to tenders with more innovative and competitive proposals. They are encouraged to involve members of the community which might be 'harder to reach', such as minority groups, to identify unmet needs and develop ideas about how they can enhance their opportunities and contribute to improving their standard of living. Subsequently, innovation is framed by local needs and ideally shaped by regional institutions and actors. Although organizational changes and changes to the social value in procurement policy are ongoing in the UK, frameworks motivated by the Social Value Act represent efforts towards aligning innovation and societal challenges. While this goal already resonates with those of the responsible research and innovation agenda, these frameworks have also an intrinsic connection to the local context and make explicit the need for creating public value from government's investments in both mundane technologies, and different forms of innovation, including social innovation." (Uyarra et al, 2019, pp.2368-69)

Hence, as Allen (2021) observes, social procurement embraces a range of activities such as: using public sector purchasing power to variously promote prosperity and jobs, using supply chains to support community benefits, support regions and economic development, pursue environmental sustainability, increase public sector efficiency. Such an approach was utilised by the local government sector during the Covid-19 pandemic (c.f. McNeill and Asquith, 2022; Stoney et al, 2023). A more formal definition is proffered by Irving and Stapes thus:

“Social procurement is a social justice mechanism whereby a government or organisation uses its purchasing power to generate social value above and beyond the value of its purchases. Social procurement initiatives are typically aimed at creating jobs for those disadvantaged in the labour market, stimulating local industry, encouraging environmental sustainability, and/or ensuring ethical supply chain management, including upholding best practice labour standards.”
(Irving and Stapes, 2021)

Using public procurement to pursue outcomes in the social sphere is not new, linking social justice and related concepts to the public interest through the power of the public purse. However, how this is done is gaining increasing attention as governments grapple with the challenges of supporting domestic objectives while remaining active and principled trade partners. One of these routes is through social procurement – an all-encompassing term defined as “the acquiring of a range of goods and services by governments from private and non-profit firms, with the aim of creating social value”.

Social procurement may be undertaken through social enterprise, an umbrella term for a variety of organisations that use commercial methods, and business models, to achieve social and/or environmental outcomes. While conceptions and practices vary, the unifying principle of ‘social enterprise’ is the primacy of intent to create social impact, with commercial practices being used as the means to serve and achieve this purpose. Barraket (2020) notes that research is demonstrating the potential for social enterprises to use public funds effectively through procurement, uncovering innovative practices not seen through traditional contracting. For example, ‘Community Benefits’ – ‘socioeconomic criteria that are inserted in supply contracts’ are one such practice that link procurement objectives with social outcomes – as with the examples outlined in Wales and Greater Manchester in Boxes 1 and 2 (above).

Using social procurement to create job opportunities.

Social procurement policies rely on different levers to enable the creation of social value (c.f. (Mupanemunda, 2020). Such policies include macro-level strategies such as legislation, policy, and supplier or market-development strategies. In addition, they

also include operational-level strategies in the form of various contractual obligations, including (but not limited to):

- **social benefit subcontracting:** involves mandating large commercial suppliers to subcontract a percentage of their work to social benefit suppliers.
- **social clauses:** involve the insertion of requirements in contracts that oblige commercial suppliers to engage in specific activities, such as employment for disadvantaged jobseekers.
- **social tendering:** comprises identifying purchasing opportunities that are ideal for social benefit suppliers and offering those opportunities specifically to these suppliers.
- **purchasing agreements and partnerships:** entail forming partnerships, usually below tender thresholds (or above with appropriate approval), with social benefit suppliers who can deliver goods and services in addition to creating social benefit.

Indeed, a wider examination of the academic literature indicates a wide range of issues around social equity and justice which have been referenced in relation to public procurement:

- the creation of *permanent* employment opportunities: promotion of gender balance, youth employment, employment opportunities for long-term unemployed, disabled and disadvantaged person – moving away from nefarious and unjust labour hire practices.,
- the promotion of decent work: decent pay, social dialogue, gender equality, non-discrimination, access to basic social protection,
- the promotion of social and labour rights: equal treatment and pay, fighting discrimination against other grounds (age, disability, race, religion and belief, sexual orientation),
- the support of social inclusion: equal access to procurement opportunities for firms owned by or employing persons from ethnic/minority groups,
- the promotion of accessibility and design for all,
- the promotion of ethical trade,

- the protection of human rights,

As such, we have seen the emergence of more explicit 'social procurement policy' – essentially social policy aimed at a specific group or groups using purchasing power. These are often called 'set-asides' - contracts reserved solely for certain groups and implemented through award criteria (giving credit to tenderers for the environmental or social benefits of their tenders) or as a policy direction in the form of percentages of contracts 'set-aside' or held and handled separately in different processes.

The Australian Commonwealth designed an Indigenous social procurement policy involving set-asides, the Commonwealth Indigenous Procurement Policy (CIPP) in 2015. This took the form of mandatory set-asides, or a proportion of contracts designated for indigenous businesses. This approach was initially praised as presenting new possibilities for domestic contracts being awarded to indigenous businesses, increasing commercial opportunities and employment possibilities for indigenous people (Denny-Smith and Loosemore, 2017). The bluntness of this instrument and its cultural insensitivity has since come under criticism (Denny-Smith et al., 2020).

The significance of a well formulated social procurement policy on the Indigenous community cannot be understated. Such a policy can be a major contributor towards levelling up the socio-economic well-being of the Indigenous population. Denny-Smith et al (2020) do however draw attention to the dangers of so-called 'black cladding' whereby 'token' numbers of Indigenous people are employed strategically to give the impression of much wider Indigenous engagement in order to comply with social procurement requirements (Denny-Smith et al, 2023). Rather than such tokenism, the policy should aim to encourage and engage Indigenous owned enterprises to engage with government entities, and to facilitate this, appropriate education, training, and development should be proactively offered ensure such enterprises are equipped with the capabilities and competencies required to fully engage with the tendering process to enhance their potential to succeed.

It is possible however to design social procurement policies which avoid such pitfalls (Denny-Smith et al, 2023). Specifically, we would suggest that the social and cultural

benefits identified by Supply Nation in 2018 to be integral to the development of *any* Indigenous Procurement Policy. Supply Nation is an organisation which works to connect 4,500 verified Indigenous businesses with corporate, government and not-for-profit entities (2018) These benefits are:

- Reconnecting with family and community for Indigenous business owners and workers
- Increase self-pride and autonomy among Indigenous communities
- Increases in Indigenous peoples' sense of identity, belonging, safety, and pride in culture
- Changing the perceptions that non-Indigenous people may have about Indigenous people and Indigenous businesses.

There is much merit here in comparing the approach taken by the Western Australian government to that advocated by the previous Coalition Government here in NSW vis a vis steps to enhance levels of engagement with Indigenous business. Whereas here in NSW government agencies must include a minimum requirement of 1.5% Indigenous participation in all contracts of \$7.5m, in WA these are an engagement level of 4% for contracts in excess of \$5m. As such there is a considerably higher requirement for engagement in WA with smaller contracts. Given that the majority of the workforce are engaged within small and medium size enterprises, the smaller contract size thereby enhances the possibility of small and medium enterprises (SME's) to engage with government agencies. When we factor in that 98% of businesses within NSW are classified as SME's – then the potential is considerable.

The leadership role we referred to above which the public sector ought to play in terms of proactively pursuing social procurement policies can have significant flow on benefits for private sector organisations too – over and above those already identified. In this arena, the literature around corporate social responsibility is particularly pertinent (Carroll, 1999; Eweje, 2011; Wu and Jin, 2022). As Rutkowski et al (2022) observe private firms can benefit from a better understanding of the dynamics of the non-profit community and as such generate both better understanding and new opportunities as well as using the process to educate their existing stakeholders.

Secondly, commentators identify the simple economic argument of networking vis a vis the costs inherent in inter and intra organisational transactions – so-called transaction cost economics and the benefits to be gained particularly by small and medium sized enterprises (Di Mauro et al, 2020). Such transaction costs are described by Kumar and van Dissel thus:

“Transaction costs, then are the costs of managing the interaction while keeping the opportunistic behaviour under control so that ongoing co-operation between the units can be sustained.” (1996, p.291)

Further to this, Jarillo succinctly observed that for any organisation:

“Establishing an efficient network implies the ability to lower transaction costs, for it is precisely those costs that lead firms to integrate, shunning the flexibility offered by a market relationship, together with the advantages of specialisation, both their own and their suppliers... What the ‘hub’ firm is doing is establishing an external relationship for a set of transactions that other firms must internalize, given the high cost for them of having those transactions performed outside.” (1988, p.38)

Other benefits will also accrue for organisations seeking to develop a network stance vis a vis organisational positioning. The ‘rules of the game’ which govern the participation of any organisation within a network can act as a behaviour moderating tool. As such Jarillo notes:

“An emphasis on long term relationships is also essential to the development of trust, because it makes clear that the relationship itself is considered valuable. Therefore opportunistic behaviour, which could cause a severance of the relationship will be considered less likely.” (1988, p.37)

Trickle down that works: Lessons from Western Australia.

A key plank in the social procurement policy in WA is ‘Buy Local’. The policy is a commitment to:

- Supporting SMEs by ensuring opportunity to supply to agencies;
- Requiring procurement decisions to be based on the value for money principle;
- Linking agency procurement to relevant government economic and social policies;
- Buying close to home to support improved government services and enhanced service access particularly in regional areas;
- Providing increased opportunities for regional businesses to bid competitively for agency contracts;
- Fostering competition by giving full, fair and reasonable opportunity to locally based businesses; and
- Maintaining and increasing employment and workforce skills locally.

Sitting alongside this is the Western Australian Jobs Act 2017 and the Western Australian Industry Participation Strategy (WAIPS) (c.f. Western Australian Government, 2020; 2022). The objectives of WAIPS are:

- Promoting the diversification and growth of the Western Australian economy by targeting supply opportunities for local industry.
- Providing suppliers of goods or services with increased access to, and raised awareness of, local industry capability.
- Encouraging Government and local industry to adopt, where appropriate, world's best practice in promoting innovation through the development of new products and processes.
- Promoting increased apprenticeship, training and job opportunities in Western Australia.
- Promoting increased opportunities for local industry to develop import replacement capacity by giving local industry, in particular small and medium sized enterprises, a full, fair and reasonable opportunity to compete against foreign suppliers of goods or services.

In conclusion, we would argue that going forwards, the NSW Government has a moral obligation to use its public procurement activities to not only employment opportunities and social inclusion, but also to promote several other goals, such as the following:

providing opportunities for social economy enterprises; encouraging decent work; supporting compliance with social and labour rights; promoting accessibility and design for all; respecting human rights and addressing ethical trade issues; and delivering high-quality social, health, education, and cultural wellbeing. In addition, other horizontal policies could be advanced through procurement, such as gender equality, innovation, and environmental objectives.

An unintended consequence of adopting such an approach would be in the collection of company tax. Whereas the policy inherited by the current NSW Government favoured economy and efficiency, which by default favoured larger, often international corporations equipped with tax avoidance strategies, smaller, local organisations are more likely to fulfil their social and moral obligations in relation to taxation. As such, this would provide an added benefit to society over and above those benefits outlined elsewhere in this document.

Recommendations:

- Social procurement be central to all government spending decisions
- A programme be developed to educate and advise SMEs in how to engage with government agencies with a view to gaining government contracts
- Those entering into contracts with government agencies be required to commit to:
 - Supporting on-going training and development of their workforce – in partnership with NSW TAFE.
 - As a minimum requirement, all government contracts in excess of \$5m should have an Indigenous participation level of at least 4%.
- An enhanced role for TAFE in working with employers to develop a sustainable, diverse workforce for NSW
- A buy NSW policy be adopted. Again, where existing capability does not exist, this provides opportunities for industry to engage with TAFE.

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