

Submission  
No 41

**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:** Australian Owned Contractors

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AUSTRALIAN OWNED  
CONTRACTORS

01 February 2024

The Hon. Dr Sarah KAINE, BEc, PhD MLC  
Chair  
Legislative Council Standing Committee on Social Issues  
Parliament of New South Wales  
6 Macquarie Street  
SYDNEY NSW 2000

By email: [socialissues@parliament.nsw.gov.au](mailto:socialissues@parliament.nsw.gov.au)

Dear Chair

From the outset, Australia Owned Contractors Ltd (AOC) welcomes the NSW Legislative Council's 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. We look forward to contributing to the work of the Committee and providing evidence and policy analysis as the Committee sees fit.

AOC is heartened by the referral and acceptance of these terms of reference by the Committee alongside the relatively recent appointment of the Hon Courtney Houssos MLC as New South Wales Government's first even Minister for Government Procurement (and Domestic Manufacturing). As such, AOC is both confident and optimistic that this inquiry will inform and guide necessary policy reform within NSW Government procurement to better support local industry development, local content, local manufacturing and local jobs. Whilst this is the aim of the inquiry, AOC submits that a legislative definition needs to be arrived at as to what "local" means to truly drive these outcomes in both a social and domestic economic policy sense, and in capturing the wider benefits of (NSW Government) procurement.

AOC maintains that a primary focus of this inquiry should be to evaluate and recommend policy reform to meet the pre-election commitments of the Minns NSW Government; particularly (then Opposition Leader) Minns' Budget-in-Reply address of 23 June 2022 where he commits NSW Labor in government to, amongst other things, "redefine 'value for money' to capture wider economic benefits, jobs created, and industry development"<sup>1</sup>. In this address, (now Premier) Minns referenced the McKell Institute's June 2021 report [\*Build it Here - the economic cost of offshoring major transport projects in New South Wales\*](#) which AOC recommends the Committee examine in the context of this inquiry.

## **ABOUT AOC**

Australian Owned Contractors Ltd was established in 2018 to represent and advocate for Australian owned Mid-Tier civil contractors to have more opportunity to deliver major public infrastructure projects in each State and Territory of Australia.

Not at all suprisingly, New South Wales remains the primary focus of advocacy for AOC. Committee members would be aware of the significant role transport/ infrastructure plays as a percentage of NSW

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<sup>1</sup> <https://api.parliament.nsw.gov.au/api/hansard/search/daily/pdf/HANSARD-1323879322-126431>

Government procurement – in fact the 2023 Federal Budget commits \$85.6 billion to NSW infrastructure, equating to a significant 16.6 per cent share of general NSW government expenditure<sup>2</sup>.

AOC's membership comprises 16 local construction companies based in and around each State and Territory, with a strong presence throughout regional Australia – including operations in a range of NSW regional communities spanning the Hunter Valley, Forbes and Narromine to name a few.

Our members are drawn from companies which reflect our membership criteria:

1. Majority Australian owned and controlled
2. Delivering transport-related civil infrastructure
3. Operations in more than one State or regional area
4. Capacity to comfortably deliver projects between \$250 - \$500m, either individually or with a joint venture partner/s.

AOC is a not-for-profit advocacy body and was constituted to highlight to Australian governments, including the Government of NSW, the market and policy failures that currently exist in procuring major (\$500m+) public infrastructure projects. These include:

- the growing trend of State transport and infrastructure agencies to 'bundle' big infrastructure projects into large multi-billion-dollar tender packages that reduces the number competitive tenderers who can bid for these projects: reducing contestability, removing downward pressures on cost and appropriate risk considerations and sending profits to parent companies offshore
- further consolidation of market power to dominant, Tier 1 civil contractors who are now all foreign owned and have little interest or incentive in joint venturing with Australian owned firms
- a lack of vision in creating the market settings where a domestic industry can take advantage of competitive procurement opportunities from Federal and State Governments, where consequently today Australia no longer enjoys a locally owned Tier 1 civil constructor
- State Governments effectively relegating Mid-Tier contractors to "second fiddle" subcontractor status on our nations' largest infrastructure projects and in doing so, denying locally owned companies project leadership, skills development and business growth opportunities.

AOC also advocates consistently for policy resolutions to reform procurement to major infrastructure projects to overcome these policy and market failures. These are:

1. Governments of Australia should direct their transport and infrastructure agencies to break up major projects into individual packages under \$500m in value to immediately increase the pool of contractors able to bid for them and consequently, maximise market competition.

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<sup>2</sup> <https://infrastructure.org.au/policy-research/major-reports/australian-infrastructure-budget-monitor-2023-24/>

***AOC recommends the NSW Parliament replicate the model of the the Government of South Australia, through Treasurer’s Instruction 18 – Procurement, that binds agencies through section 7(2)<sup>3</sup> to do just this, except by way of tested exemption.***

2. Where a major project can not be disaggregated to packages under \$500m, governments should include industry sustainability criteria at the early stages of procurement to encourage Tier 1 contractors to joint venture with Mid-Tier contractors within the head contract of the project.

***AOC recommends the NSW Parliament follow the lead of successful public policy approaches the Victorian Government in their innovative approach to procurement of the [North-East Link Secondary Packages](#), the Government of Western Australia in their deliberative approach to head contractor diversity in the [Bunbury Outer Ring Road](#) and the Queensland Government’s procurement of the [Ipswich Motorway Upgrade Alliance: Dinmore to Goodna](#).***

3. Make Commonwealth joint funding conditional on these two conditions either through the Federation Funding Agreement on Land Transport Projects, the Commonwealth Procurement Rules, Australian Industry Plans (AIPs) or a combination of all of these tools.

Importantly, AOC is not opposed to the ‘concept’ of foreign ownership or the presence and abilities of foreign owned Tier 1 civil constructors to bid for tender in Australia. We note that foreign investment has played a vitally important role to the growth of the Tier 1 civil contractor market and that direct foreign investment is welcomed where industry development and competition outcomes can be better and measurably realised.

In conclusion, AOC shares the views of the Prime Minister, Anthony Albanese MP, Federal Minister for Finance, Senator Katy Gallagher and NSW Premier Chris Minns MP and other State Premiers on the importance of a government’s purchasing power in positively shaping our future domestic industries. Indeed, the purchasing power of a state government is an economic tool that can and should be used to drive beneficial social outcomes for a jurisdiction and a country, as it is applied haphazardly in Australia’s civil construction market but much more successfully in many countries and economic zones across the world. AOC submits to the Committee that harnessing procurement to deliver these outcomes is a legitimate and worthy approach of considered procurement design.

## **A SHORT HISTORY OF DOMESTIC INDUSTRY DEVELOPMENT – A PROUD PAST**

Australia can be proud of a history of support and development of world-leading civil construction companies throughout the twentieth century. Deliberative industry development and policy supported a growing Australian sovereign capability in our domestic Tier 1 construction companies over many years. Australian companies partnered with foreign constructors to build our most vital iconic infrastructure such as the Snowy Mountains Scheme, Sydney Opera House, ANZAC Bridge and Canberra’s Australian Parliament House, to name a few.

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<sup>3</sup> <https://www.treasury.sa.gov.au/budget/treasurers-instructions/treasurers-instructions-files/TI18-Procurement.pdf>

The *Australian Institute of Building's Construct* magazine (2015, edition 3)<sup>4</sup> is valuable in providing a succinct historical background to the financial and capability development of iconic Australian civil contractors, from humble beginnings in the 1900s. The article outlines how construction giants such as Baulderstone, Hornibrook, Abigroup, Leighton and Thiess became household names and succeeded in head contractor roles in their own right, with opportunities to deliver important and iconic Australian infrastructure projects.

The article also underscores the period of globalisation and concentration of Australia's Tier 1 contractors which, since the 1980s, has involved successive takeovers and acquisitions by foreign interests.

Unfortunately, our proud history of Australian Tier 1 civil construction companies came to an end 2020 with the sale of Lendlease Engineering to Spanish company Acciona. The last locally owned Australian Tier 1 civil contractor has now been acquired by foreign hands, **leading to the situation today where the Australian Government no longer maintains the domestic ability of a locally owned Tier 1 civil constructor.**

Without procurement policy reform from governments across Australia to help reform procurement of their major infrastructure projects, this situation is unlikely to change.

Support from governments across Australia is needed to help reform procurement of their major infrastructure projects, Australian owned companies will continue to be denied the opportunities to develop and grow into larger organisations, as in the past. This submission outlines the reasons supporting reform.

#### **HOUSE OF REPRESENTATIVES STANDING COMMITTEE ON INFRASTRUCTURE, TRANSPORT AND CITIES INQUIRY INTO PROCUREMENT PRACTICES FOR GOVERNMENT-FUNDED INFRASTRUCTURE.**

AOC has previously referenced to members of the committee the relatively recent House of Representatives Standing Committee on Infrastructure, Transport and Cities inquiry into government procurement titled [Government Procurement: A Sovereign security imperative](#) tabled in Federal Parliament in March 2022.

The eight recommendations supported by the bipartisan committee (noting there were not any dissenting views in tabling the Committee's report) specifically deal with policy areas within the Terms of Reference for this inquiry and AOC feels strongly that the Committee should seek to explore these themes and replicate them in the context of your recommendations.

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<sup>4</sup>Sarah, Neil. "What's in a name? A Brief History of Some of Australia's Construction Giants." *Australian Institute of Building's Construct* 2015, Edition 3 (2015): p. 4-8.

Specifically, AOC highlights recommendation number six<sup>5</sup> and replicates this below as an example of considered bipartisan policy development worthy of attention by this committee:

*The committee sees increasing the access of tier two and three companies, and related Australian small and medium enterprises, to projects in the Australian infrastructure pipeline as key to enhancing Australia's sovereign industry capacity. Accordingly, the committee recommends that the Australian Government examine ways to maximise developing Australia's sovereign capacity in infrastructure delivery. As part of this work, consideration should be given to:*

- *providing opportunities in procurement and contracting to engage local industry and utilise local content*
- *ways to break up projects into packages of less than \$500 million to increase competitiveness by tier two and three companies*
- *making as a condition of Australian Government funding for major infrastructure projects over \$500 million industry sustainability criteria within the early stages of procurement design that encourage tier one contractors to partner/joint venture with a non-tier one company in the head contract*
- *education and training for government officials to support these objectives*
- *reviewing market conditions for infrastructure insurances and the impact on small and medium enterprises.*

AOC notes that the recommendations of the bipartisan committee report were well supported across industry at the time and did not attract any substantial criticism or opposition to its proposals. Together with AOC, organisations such as the [Australian Constructors Association](#), [Civil Contractors Federation](#) and [Consult Australia](#) were supportive of the recommendations as a positive starting place in reforming procurement policy for the better and have a large footprint across the New South Wales market and industry.

## **EXAMPLES OF PUBLIC POLICY APPROACHES TO PROCUREMENT/REFORM**

### **1. Major Road Project Victoria's (MRPV) Program Delivery Approach**

The success of the Victorian Government's 'panel' approach to the procurement of roads and highways, first announced in July 2020 to replace a proposed \$2.2b bundled Suburban Roads Upgrade PPP is another such example of a State government recognizing the need to disaggregate projects and promote contestability and competition amongst civil contractors.

Indeed, MRPV cite the Program Delivery Approach as genuinely collaborative, bringing together the valuable experience and knowledge of MRPV and industry – by working together, and sharing experience and knowledge, MRPV and contractors under the PDA model are able to find solutions and

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<sup>5</sup> [https://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Former\\_Committees/ITC/Gov-fundedInfrastructure/Report/section?id=committees%2freportrep%2f024903%2f79239](https://www.aph.gov.au/Parliamentary_Business/Committees/House/Former_Committees/ITC/Gov-fundedInfrastructure/Report/section?id=committees%2freportrep%2f024903%2f79239)

innovations to improve project delivery. With greater certainty and visibility of upcoming projects, businesses have more confidence to invest in people, resources and technology, helping to grow a competitive, sustainable infrastructure market, boosting the state's economy and creating thousands of local jobs. Importantly, the PDA approach also includes social inclusion and environmental protection requirements into contracts to ensure projects add social and community value.<sup>6</sup>

The benefits of the panel approach have also have been evaluated by academic and independent parties and have been largely praised for meeting their policy objectives. For example, the University of Melbourne's Law School's Kiri Parr and Phillip Greenham concluded in September 2023 that MRPV's panel model of procurement gave rise to the following six outcomes <sup>7</sup>:

- improved market capacity
- rapid and efficient procurement
- increased innovation
- increased collaboration and trust
- increased actual cost certainty
- improved social outcomes.

Of huge relevance to this study is that Transport for NSW (TfNSW) in September 2022 released a discussion paper calling for responses amongst construction sector and industry associations on a proposed NSW "Productivity Packaging" procurement model that mirrored in large parts MRPV's Program Delivery Approach<sup>8</sup>.

AOC remains disappointed that TfNSW did not proceed with genuinely implementing reform through their 'portfolio procurement' considerations since this time that AOC believes (and have experienced through our tendering and project delivery) would have reflected many of the successes of MRPV's panel approach.

***AOC therefore recommends that the Parliament of NSW adopt key elements of TfNSW's Productivity Packaging agenda in both portfolio procurement alongside three phase procurement approaches.***

## 2. Albanese Government's Buy Australia Plan

AOC was praiseworthy when (then Opposition Leader) Anthony Albanese announced Federal Labor's 10-point *Buy Australia Plan* election commitment in a speech<sup>9</sup> to the NSW Labor State Conference on 9 October 2021. Within the *Buy Australia Plan*, there is a specific commitment for the Albanese Government to "commit to work with states, territories and local governments to, where possible, break up larger contracts in a way that allows smaller, Australian-owned companies to bid for tender."

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<sup>6</sup> <https://bigbuild.vic.gov.au/news/roads/program-delivery-approach-powers-childs-road-upgrade-towards-completion>

<sup>7</sup> [https://law.unimelb.edu.au/\\_data/assets/pdf\\_file/0004/4759672/MRPV-and-its-Project-Delivery-Approach-September-2023.pdf](https://law.unimelb.edu.au/_data/assets/pdf_file/0004/4759672/MRPV-and-its-Project-Delivery-Approach-September-2023.pdf)

<sup>8</sup> <https://industry.transport.nsw.gov.au/tfnsw/tiip/productivity-packaging>

<sup>9</sup> <https://anthonyalbanese.com.au/media-centre/address-nsw-labor-state-conference-2021>

As a former Minister for Infrastructure and Shadow Minister for Infrastructure, AOC noted the Prime Minister's understanding of the process and outcomes of procurement policy and remains supportive of policy approaches that strengthen market diversity amongst head contractors and the ability grow locally-owned civil construction industry through using a government's purchasing power to disaggregate size of projects into smaller (<\$500m) packages and introducing industry sustainability clauses where this cannot be done.

The eleven specific initiatives of the Buy Australia Plan are attached as an appendix to this submission and acknowledge AOC's long-held views on the need for procurement reform to realise a sovereign and growing industrial base for civil contractors.

***AOC recommends the NSW Government consider aligning value for money considerations in a way that reflects the aims of the Buy Australia Plan in supporting Australian owned contractors to bid for tender.***

### 3. Bunbury Outer Ring Road

AOC references the Bunbury Outer Ring Road tender frequently as a gold standard approach when it comes to aligning strategic industry development policy alongside healthy and competitive models of procurement.

Main Roads WA in September 2019 provided Australian owned and Mid-Tier contractors with an excellent opportunity to participate in the head contract of the estimated \$852 million Bunbury Outer Ring Road project, which is now under construction.

In its expressions of interest document for the project in September 2019, Main Roads WA stated its preference for Tier Two and Tier Three contractors to be included in the head contract leadership for the project. Main Roads WA also included an *industry sustainability* criteria – with a weighting of ten per cent – which asked respondents to outline how they would include Tier Two and Tier Three contractors in the delivery consortium.

The industry sustainability criteria had the same weighting as several other key selection criteria, including project management capability, design capability and construction capability. The Main Roads agency specifically stated in the tender document that one of the key objectives of the Bunbury project was to increase the capability of Tier Two and Tier Three road and bridge construction contractors.

As it was intended (but at no time mandated), every respondent to the EOI process included a Tier Two or Tier Three contractor in its delivery consortium – providing a fantastic opportunity for local Mid-tier contractors to play a leadership role in the delivery of this major public infrastructure project – an opportunity that otherwise would not have occurred.

In October 2020, Main Roads WA awarded the contract to the Southwest Connex Alliance. Two Australian owned contractors: NRW Holdings and MACA (since acquired by foreign interests) together comprise 50 per cent of the head contract for this project. This represents a defining stake in project leadership and an investment in supporting home grown ingenuity and Australian know-how, together with Tier One Spanish contractor Acciona, AECOM and Aurecon.



Excerpts from the tender documentation are displayed below to highlight both the intent and outcome:

<b>7.</b>	<b>Industry Sustainability (Application and Presentation)</b>	10%	<b>10</b>
7.1	Alliance structure and composition		
7.2	Building industry capability		
7.3	Sustainable procurement		

#### 8.8 Industry Sustainability (Application and Presentation)

Main Roads is seeking to grow the construction industry to sustain healthy competition in the delivery of a pipeline of infrastructure projects proposed for Western Australia. Preference will be given to Applicants that have a commitment to building capacity and capability of local industry (as defined in the WAIPS) in particular the construction industry.

##### (a) Alliance structure and composition

Applicants must provide details of:

- (i) the proposed structure and relationship between NOPs in the Alliance, including any proposed Tier 2 or Tier 3 prequalified road and bridge contractors;
- (ii) representation at Alliance Board AMT level;
- (iii) commercial arrangements between NOPs; and
- (iv) involvement in the delivery of the Works.

##### (b) Building industry capability

- (i) Applicants must outline their approach to utilising lower level prequalified contractors in delivery of the Works including proposed packages and sub-contracting arrangements.
- (ii) Applicants must outline their approach to enhancing local industry capability including:
  - (A) providing diverse opportunities for existing and emerging local industries;
  - (B) simplifying procurement processes and implementing fair risk allocation to encourage local industry involvement; and
  - (C) improving capability of local industry.

***AOC recommends that the Bunbury Outer Ring Road procurement design become the established norm for State and Territory procured major infrastructure projects (>\$500m) as agreed through the Federation Funding Agreement and relevant Commonwealth joint-funding expectations.***

#### 4. NSW Premier's Memorandum - Procurement for Large, Complex Infrastructure Projects (2021)

The former Government of Premier Berejiklian issued a memorandum across the whole of NSW Government<sup>10</sup> in June 2021 directing that relevant NSW Departments and agencies recognise that a stable and sustainable infrastructure sector is in the public interest.

The contents, genesis and efficacy of this Premier's memorandum is highly relevant to the terms of reference for this inquiry and particularly so as it relates to the procurement of major infrastructure projects. Two particular policy directives point to the importance industry sustainability is having in rightly shaped design within the memorandum, as replicated below:

- *Size contract packages across the NSW portfolio to facilitate competitive bids from a wide range of participants. To utilise the full capacity of the construction market, offer tender packages capable of being more readily priced and managed by either tier 2 contractors or joint ventures between Tier 1 and Tier 2 contractors. The dollar value of the package may vary depending on the nature of works and form of procurement and risk allocation in the contract.*
- *Recognise international experience of international contractors and key personnel, subject to those contractors (1) genuinely bringing people, systems and skills into the market to support projects (2) providing bonding or guarantees that can be relied upon and easily drawn if needed and (3) partnering with domestic tier 1 and tier 2 contractors as another way to grow the market.*

AOC reluctantly reflects that this memorandum had very little, if at all, effect on the diversity of head contractor composition and views the exercise in market signaling as a failure at this time.

***AOC recommends the Committee enquire to relevant TfNSW Officials on the contents, genesis and efficacy of this Premier's memorandum as it relates to head contractor diversity in major projects amongst Tier 1 and non-Tier 1 contractors.***

#### **CONCLUSION**

AOC believes the Legislative Council Standing Committee's inquiry is most timely and we are confident that this inquiry will support a very important area of public policy investigation to benefit the people of NSW. We note that whilst this inquiry will investigate procurement across a wider whole-of-government remit, a great deal of time should be set aside to explore the 16.6% share of the NSW Budget that relates to infrastructure.

AOC looks forward to responding to the committee by way providing evidence as a witness to the Committee's hearings. Please do not hesitate to contact me at any time to discuss the policy materials AOC has highlighted.

Yours Sincerely

**Brent Crockford**  
**Chief Executive Officer**  
Australian Owned Contractors

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<sup>10</sup> <https://arp.nsw.gov.au/m2021-10-procurement-for-large-complex-infrastructure-projects/>