

REPORT ON PROCEEDINGS BEFORE

STANDING COMMITTEE ON SOCIAL ISSUES

**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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At Macquarie Room, Parliament House, Sydney, on Tuesday 2 April 2024

The Committee met at 9:15.

PRESENT

The Hon. Dr Sarah Kaine (Chair)

Ms Abigail Boyd (Deputy Chair)

The Hon. Anthony D'Adam

The Hon. Rachel Merton

The Hon. Emily Suvaal

The Hon. Damien Tudehope

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

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The CHAIR: Welcome to the first hearing of the Standing Committee on Social Issues 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. I acknowledge the Gadigal people of the Eora nation, the traditional custodians of the lands on which we are meeting today. I pay my respects to Elders, past and present, and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of New South Wales. I also acknowledge and pay my respect to any Aboriginal and Torres Strait Islander people joining us today.

My name is Sarah Kaine and I am the Chair of the Committee. I ask everyone in the room to please turn their mobile phones to silent. Parliamentary privilege applies to witnesses in relation to the evidence they give today. However, it does not apply to what witnesses say outside of the hearing. I urge witnesses to be careful about making comments to the media or to others after completing their evidence. In addition, the Legislative Council has adopted rules to provide procedural fairness for inquiry participants. I encourage Committee members and witnesses to be mindful of these procedures.

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Ms SONYA CAMPBELL, Deputy Secretary, Commercial, NSW Treasury, sworn and examined

Mr SONG HONG, Executive Director, NSW Procurement—Policy, Analytics and Advisory, NSW Treasury, sworn and examined

Mr NIGEL BAILEY, Executive Director, NSW Procurement—Operations and Governance, NSW Treasury, sworn and examined

Mr RUDI PIRCHER, Chief Procurement Officer, NSW Treasury, affirmed and examined

The CHAIR: Thank you for coming. I know a lot of you are frequent participants so the procedure will be second nature to you, but I appreciate you making the time to give evidence.

SONG HONG: I am professionally known as Song Hong, but my legal name is Sung-Soo Hong.

The CHAIR: Thank you. Would any of you like to start by making a short statement?

SONYA CAMPBELL: Thank you for the opportunity to participate as witnesses in this hearing today. My name is Sonya Campbell, Deputy Secretary Commercial, NSW Treasury. I am joined by my colleagues Mr Song Hong, Executive Director for policy, analytics and advisory, Mr Nigel Bailey, Executive Director for operations and governance and Mr Rudi Pircher, Chief Procurement Officer at NSW Treasury. We've provided the Standing Committee on Social Issues with a New South Wales Government submission prepared in response to the inquiry's terms of reference. We thank the Committee for the opportunity to make this submission. The whole-of-government submission was a coordinated effort led by NSW Procurement comprising of submissions from New South Wales government accredited agencies who have a central procurement function and accredited agencies who procure only for their agencies. The submission does not cover procurement practices or policies administered by unaccredited agencies.

The submission describes the New South Wales Government's procurement operating framework including the roles and responsibilities of the Minister for Domestic Manufacturing and Government Procurement and the Procurement Board and the authorising environment in the current devolved model and how this impacts procurement legislation, regulations and policy. Being one of the largest procurers in the Southern Hemisphere, it is imperative that we have robust procurement practices for the financial and social wellbeing of the people of New South Wales. The Procurement Board has implemented several economic, social and environmental procurement policies and initiatives that aim to promote economic participation and help deliver social outcomes, and I'll touch briefly on the main ones. Firstly, the New South Wales Procurement Policy Framework is the agency buyers comprehensive guide to what is expected of them throughout the procurement process. It defines the Government's procurement objectives of value for money, fair and open competition, easy to do business, innovation and economic development, and social outcomes and sustainability, and provides guidance on how to achieve these objectives.

The Aboriginal Procurement Policy focuses on increasing the participation of Aboriginal businesses in government procurement and supporting employment opportunities for Aboriginal and Torres Strait Islander peoples. It supports the Government's commitment to First Nations economic development. The current version of this policy was introduced in January 2021 after a review recommended it be consolidated with two previous Aboriginal procurement policies, and procurement spend by agencies with verified Aboriginal businesses under the APP has been meaningful to date—\$479 million in FY 2021-22 and \$354 million in FY 2022-23. The Small and Medium Enterprise and Regional Procurement Policy aims to increase SME participation in New South Wales government procurement opportunities, particularly in regional areas, by ensuring they have access to government procurement opportunities. It includes a requirement that suppliers provide an SME and local participation plan with all tenders for contracts valued \$3 million or more that references SME and New South Wales specific content.

In November last year the Minister for Domestic Manufacturing and Government Procurement issued a ministerial direction to the Procurement Board to allow agencies to purchase goods and services not including construction valued up to \$250,000 directly from an SME, which was an increase of the previous threshold of \$150,000. The ministerial direction also required the board to ensure agencies only request SMEs provide confirmation of relevant insurance coverage at the time of contract award rather than during the tender submission process. Based on a number of assumptions, the Government procurement spend totalled \$37 billion in FY 2021-22, with \$8.7 billion spent with SMEs, and \$41.6 billion in FY 2022-23, with \$9.1 billion spent with SMEs. There are many other policies and programs in place managed by different agencies, including for ICT and construction procurement, and also other initiatives currently in development. Some of these include working with the Anti-slavery Commissioner on the impacts of the Modern Slavery Act across government procurement,

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the Infrastructure Skills Legacy Program, the Small Business Shorter Payment Terms Policy, policies that encourage the use of social enterprises and disability employment organisations, and women's economic reform.

On top of this, environmentally sustainable procurement and how to address the transition to net zero are addressed in a range of policies and strategies including the Government Resource Efficiency Policy, the Waste and Sustainable Material Strategy, the Net Zero Plan Stage 1: 2020-2030 and the Decarbonising Infrastructure Delivery Roadmap. I must also mention international procurement obligations and the enforceable procurement provisions which form part of the New South Wales policy framework. Australia is a party to the Australian and New Zealand Government Procurement Agreement, the World Trade Organization Agreement on Government Procurement and nine free trade agreements that contain government procurement provisions. Collectively known as international procurement agreements, they require New South Wales government agencies to comply with procurement procedures and conventions that guarantee equal treatment to suppliers from trade partner countries.

While the Procurement Board develops, implements and reviews government-wide procurement policy, heads of departments and agencies are ultimately responsible for managing their agency's procurement in compliance with procurement law and policy and entering into contracts on behalf of their agency. We understand the people of New South Wales are searching for assurance that procurement undertaken by government agencies is underpinned by strong policies, procedures and processes. We are dedicated to continuous improvement, and the current New South Wales Government has made a commitment to reform the procurement policy framework and procurement practices with a particular focus on supporting domestic manufacturing, small business, local industry and jobs. Recommendations from this inquiry will help inform that procurement reform agenda. Thank you for the opportunity to provide the Committee with information about the procurement practices of government agencies and their impact on the social development of the people of New South Wales. We look forward to supporting the Committee in relation to the inquiry and to answering your questions.

The Hon. DAMIEN TUDEHOPE: Ms Campbell—or whoever wants to answer these questions, I'm very relaxed about it—on page 13 of your submission, you make reference to the key Government commitments which were made prior to the election. In fact, the first of those is the establishment of "a NSW Jobs Commission to rebuild domestic manufacturing and support the growth of local industries and jobs". Has Treasury done any modelling in relation to the establishment of the Jobs Commission?

SONYA CAMPBELL: Thank you for the question, Mr Tudehope. I think we talked about this at estimates recently. Yes, Treasury is doing some work around the Jobs First Commission and looking at the model to establish that, and there is a proposal that will be considered through the upcoming budget process.

The Hon. DAMIEN TUDEHOPE: So there are some figures and personnel which clearly would be attached to that jobs commission and the establishment of that jobs commission?

SONYA CAMPBELL: That's correct, yes.

The Hon. DAMIEN TUDEHOPE: How much does Treasury estimate the establishment of a jobs commission will cost the New South Wales Government?

SONYA CAMPBELL: The cost of it will obviously be a decision for Government. We've proposed a range of models, depending on what the Government seeks to achieve over time. I don't know that there is a specific number, because no decision has been made around that.

The Hon. DAMIEN TUDEHOPE: Does the modelling include the number of employees that you would in fact engage for the purposes—

SONYA CAMPBELL: Yes, there are assumptions around employee numbers.

The Hon. DAMIEN TUDEHOPE: What are those assumptions?

SONYA CAMPBELL: I think off the top of my head—Mr Hong might be able to help me with that—there's a range.

SONG HONG: There is a range. Again, the Government ultimately needs to make a decision in terms of executive as well as non-executive staff that will be part of that Jobs First Commission. But, again, it will come down to the Government to make its decision in terms of how it resources that commission.

The Hon. DAMIEN TUDEHOPE: The functions of the New South Wales jobs commission—how do you envisage those being articulated? Will it require legislation to establish?

SONG HONG: I would say at this stage all options will be put to the Government in terms of that decision, whether it's legislation and—

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The Hon. DAMIEN TUDEHOPE: So the actual functions in terms of the proposal which has been established—what do you say the functions ought to be? The actual description is:

... support the growth of local industries and jobs. The Commission will monitor major procurements by NSW Government agencies ...

So what do you say the functions of the New South Wales jobs commission will be?

SONYA CAMPBELL: I can step in there. At the moment what the proposal includes, Mr Tudehope, is for the commission to advise, advocate for and promote New South Wales-based industries, particularly manufacturing; increase use of local content in New South Wales Government procurement; identify skill gaps and leverage procurement to grow skilled workforce for strategic New South Wales industries; track outcomes and quantify impact of the commission and procurement activities to grow New South Wales industry and employment; and monitor and enforce agency and supplier compliance with procurement policies and resulting contract commitments.

The Hon. DAMIEN TUDEHOPE: Do you anticipate that there will be any overlap between what the Procurement Board does and what the New South Wales jobs commission will do?

SONYA CAMPBELL: I think, Mr Tudehope, we'll be seeking not to have duplication. We have discussed this at the Procurement Board, with the members. The task at the moment is consultation to understand what is happening elsewhere across New South Wales Government so that we're not duplicating and that we are supplementing skills where they're needed to support these outcomes.

The Hon. DAMIEN TUDEHOPE: The next commitment was:

- increasing tender weightings to 30% capturing local content, job creation, small business, and ethical supply chains

There are a number of questions that arise. Why haven't you done that already?

SONYA CAMPBELL: We have been working with the Minister and the Government on a range and a suite of procurement reforms, and that is one of those—

The Hon. DAMIEN TUDEHOPE: But you could do that. You don't need any—if the Minister gave you a direction, you can just do it.

SONYA CAMPBELL: But it's the implementation of it, Mr Tudehope, that would need to flow through into forms of contracts being used across government and tender documentation within the agencies that will need—

The Hon. DAMIEN TUDEHOPE: Where is that up to? Is there a process that we're involved in at the moment to actually implement the 30 per cent local content?

SONYA CAMPBELL: Mr Hong, I think maybe I might defer to you.

SONG HONG: The direction we have been given by the Minister's office is that that particular election commitment will be fulfilled by the Jobs First Commission once it has been set up.

The Hon. DAMIEN TUDEHOPE: Let me understand that. There's currently in place a 20 per cent requirement in relation to local content, job creation, small business and ethical supply chains. That's currently in place. It wouldn't take much to increase that figure from 20 per cent to 30 per cent. Even the redocumentation wouldn't require much.

SONG HONG: It's not specifically in those words, but that particular election commitment will be allocated to the Jobs First Commission to implement.

The Hon. DAMIEN TUDEHOPE: That was the Government's commitment, and it might be able to be done by the New South Wales jobs commission. But, on coming to office, the Government could have easily put in place, could it not, a requirement or a direction to the Procurement Board that the content be increased from 20 per cent to 30 per cent?

SONYA CAMPBELL: I think, Mr Tudehope, we would agree with your point that it is not a difficult commitment to implement, and we're taking direction from the Minister around the suite of procurement reforms.

The Hon. DAMIEN TUDEHOPE: So that one could have been done already—would you agree with me on that?

SONYA CAMPBELL: Well, we've taken the step, obviously, to fulfil the election commitment around the insurance requirements and increasing the threshold for small business, which was done at the end of last year. We are working with the Minister, as I said, on a suite of reforms, which include both the one that you are asking

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about as well as the Jobs First Commission and looking at opportunities for strategic projects in the pipeline that will support the local jobs, local manufacturing commitments as well.

The Hon. DAMIEN TUDEHOPE: I'm sure all that's right, but, just to harp on, the point is that this wouldn't have been too difficult a decision. If it was the policy of the Government when they came to office to increase that figure, it would not have been too difficult to in fact give a direction to the board, the week after you came into office, that that figure be increased from 20 per cent to 30 per cent. It could have been done.

SONYA CAMPBELL: Noted, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: Thank you. Of the balance, what comprises the 70 per cent of the procurement requirements?

SONYA CAMPBELL: Mr Tudehope, is your question in terms of the tender evaluation criteria?

The Hon. DAMIEN TUDEHOPE: Yes.

SONYA CAMPBELL: They would be aligned to the procurement objectives in the procurement policy framework around value for money, social enterprises et cetera.

SONG HONG: I might step in, Ms Campbell. Again, there will be non-price and price criteria, Mr Tudehope. There are thresholds that agencies will abide by, but, again, there will be price and non-price criteria as part of that tender weighting.

The Hon. DAMIEN TUDEHOPE: They don't have any specific allocation of a percentage figure to them for those other factors, do they?

SONG HONG: When you say "other factors", could you clarify which other factors?

SONYA CAMPBELL: I think, Mr Tudehope, your question is, "Are there weightings on tender evaluation criteria?"

The Hon. DAMIEN TUDEHOPE: Correct.

SONYA CAMPBELL: I think the practice will differ across different parts of government. I don't think there is a mandated central position. There's a standard form contract for construction. We do have standard form contracts for goods and services, with a suite of tender documentation that supports that. I know that it is the practice of some agencies to use tender weightings and the practice of others, particularly on major projects, not to apply tender weightings, which allows a balance in terms of assessing the overall value for money, particularly in response to the fact that lowest price does not equal best value for money.

The Hon. DAMIEN TUDEHOPE: You and I can agree on that. In terms of what local content means for the purposes of evaluation, does that mean local content in New South Wales?

SONYA CAMPBELL: We are working on updating the policy. The working definition that we use is local means all of Australia and New Zealand, in accordance with our free trade obligations.

The Hon. DAMIEN TUDEHOPE: So it doesn't necessarily benefit the State of New South Wales, as long as local content is in Australia or New Zealand?

SONYA CAMPBELL: There are exemptions, as you know, to some of those international trade obligations.

The Hon. DAMIEN TUDEHOPE: Yes.

SONYA CAMPBELL: That's what we're working through in terms of policy development at the moment, where we may be able to consider preferences for procurement and manufacturing in New South Wales.

The Hon. DAMIEN TUDEHOPE: So let's be clear; local content doesn't mean New South Wales?

SONYA CAMPBELL: Mr Hong, do you have a view?

SONG HONG: For a broader industry policy, it can. As it relates to government procurement in terms of all the agreements that Ms Campbell has mentioned, it is the broader definition at this stage.

The Hon. DAMIEN TUDEHOPE: I'm not quibbling with that. I'm comfortable with that definition that it's Australia and New Zealand—it is the definition that you would apply for the purposes of local content.

SONYA CAMPBELL: For procurement policy but, as Song said, there is industry policy that goes along with that.

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The Hon. DAMIEN TUDEHOPE: There may be. In terms of the New South Wales jobs-only policy, is that the creation of jobs only in New South Wales? Or does it apply, again, to Australia-wide creation of jobs?

SONYA CAMPBELL: I must admit, I'm not aware of a jobs-only policy, Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: In terms of job creation as part of the Government commitment, is it looking specifically at job creation in New South Wales or is it looking at job creation in Australia and New Zealand?

SONYA CAMPBELL: I understand the question. It's a good question, but we're obviously in policy consultation and development so I don't think we can answer that question at this time.

The Hon. DAMIEN TUDEHOPE: Have we developed any notion around what job creation will look like?

SONYA CAMPBELL: Measuring job creation is something that the Government has sought to do through policy levers for some time now.

The Hon. DAMIEN TUDEHOPE: I'm aware.

SONYA CAMPBELL: It's often difficult to measure. It's not necessarily within our remit in Treasury to be doing that but working alongside other parts of government with that responsibility. But we would be looking, I would expect, as part of the policy development to how we would assess the number of jobs that a particular procurement would deliver in New South Wales.

Ms ABIGAIL BOYD: Good morning to all of you. It's good to see you all again. I wanted to talk about this tension between trying to encourage certain types of procurement with higher thresholds and other cutting of red tape while also managing the potential for there to be gaming of the system or corruption or something else coming out of those categories where exemptions have been allowed. Presumably you've read the ICAC submission to the inquiry. Of particular note is this reference to there being a higher potential for corrupt practices when it comes to smaller entities and local businesses, which is incredibly interesting. What do you make of that? In particular, when the ministerial direction was issued in November 2023 raising that threshold for direct procurement of small businesses to \$250,000, were any other mitigating steps put in place to manage the additional risk?

SONYA CAMPBELL: Thank you, Ms Boyd, for your question. Just to quickly add, the ICAC commissioner came and presented to the Procurement Board last week—not specifically in relation to the submission to the inquiry, although that was touched on, but more broadly around what they are seeing and the cases that they've investigated in terms of procurement. We and the board take that very seriously. In relation to your question around what mitigating measures, the consultants that can be procured within that threshold or the SMEs are part of prequalification schemes in the most part, where there are questions to verify their standing, their capability to tender for government procurement or participate in government procurement. Mr Pircher or Mr Bailey might be able to add to the other mitigating measures.

Ms ABIGAIL BOYD: Can you clarify two aspects of that then?

SONYA CAMPBELL: Yes, of course.

Ms ABIGAIL BOYD: You say on the whole they're part of that prequalification scheme. Is it a requirement under this exemption that they be on that prequalification?

SONYA CAMPBELL: No, it isn't.

Ms ABIGAIL BOYD: Is that any different to what we had before with small businesses being on those prequalification schemes. Is there any difference?

SONYA CAMPBELL: With the increase in the threshold?

Ms ABIGAIL BOYD: Yes. Was that changed at all?

SONYA CAMPBELL: I think it's a little early to tell. We did track some expenditure data in preparation for estimates and did see an increase across the agencies that responded, although that was variable and it was a small dataset to be able to understand the impact of the policy change at this point in time. But I would expect that agencies are using standard form agreements and procedures and checks before they are engaging any SME pursuant to that policy.

Ms ABIGAIL BOYD: It sounds like there are no mitigating factors.

SONYA CAMPBELL: Mr Pircher might have something to add.

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RUDI PIRCHER: It does open the door for agencies to find suppliers that are not on a prequal scheme. There are a whole bunch of categories where we don't have schemes. To be able to find a supplier up to 250 in another category—this policy enables that.

Ms ABIGAIL BOYD: When that threshold was increased, were any measures put in place to manage the additional risks from that?

RUDI PIRCHER: From my point, as the CPO for Treasury, we put some guidelines in place for our buyers to make sure that they don't use this as, "I'm just going to direct engage"; they still get three quotes and follow due process by each agency.

SONG HONG: May I add maybe one comment? Again, the Procurement Policy Framework sets out in lots of detail the rules by which all agencies must procure. Just because the threshold has increased from 150 to 250 does not preclude them from ignoring the Procurement Policy Framework. They must still comply with the Procurement Policy Framework and all the protections underneath it—or within it.¹

SONYA CAMPBELL: Which includes the conflicts of interests Supplier Code of Conduct requirements.

Ms ABIGAIL BOYD: One of the major themes from our consultants inquiry that came out of our examination of the Procurement Board and its processes is that although it's all good and well to have a set of guidelines and policies and other things people need to comply with, when it came to actually enforcing or monitoring that compliance, it appeared to be pretty much absent. That was also picked up by ICAC in their submission to this inquiry. They suggest that—well, they don't make this direct suggestion. What they say is, given NSW Procurement's lack of monitoring and enforcement or not having sufficient resources to monitor and enforce compliance with procurement guidelines, they then go on to suggest a bunch of other things. But do you think it's time that we just gave NSW Procurement the resources and the power to properly monitor and enforce compliance with the guidelines?

SONYA CAMPBELL: I think that's asking for a personal opinion, but what I will tell you is what we are doing in response to that. Because you're correct, Ms Boyd; we have discussed that in the context of the consultants inquiry. As I mentioned, we did discuss this with the ICAC commissioner present at the Procurement Board meeting last week. We are looking at this in the context of the accreditation program and the self attestation. We have established a risk and compliance subcommittee of the board to be specifically looking at these risks. That was established at the end of last year. We've had, I think, three or four meetings since then and it is a very rich conversation about what we can do to better monitor and call out compliance issues across the sector. In addition, we have implemented an assurance program across the accreditation program, where we have now conducted assurance across four agencies, including—

SONG HONG: Three.

SONYA CAMPBELL: Three—including the Treasury department, where we've looked at both a current and a historical procurement example in terms of compliance with the framework, identified instances of noncompliance and prepared remedial plans, which will then be monitored through the governance under the Procurement Board. I would say, Ms Boyd, we are aware of the challenges, taking steps towards what we can do at the moment within the framework to ensure compliance and messaging that through the Procurement Board as a shared responsibility across government to be driven down through each of the agencies.

Ms ABIGAIL BOYD: I think it's fair to say we've all had a bit of an awakening over the last year on the flaws in the New South Wales Government's procurement processes in practice. I accept that there is a significant amount of work being done now to try and improve things. There's a lot of mention in your submission about improvements, and I know the Minister has been working hard on this. But, given that we haven't yet had those improvements—so we still have this same system with self-attestations and reliance on people to just do the right thing—do you think it was sensible to then increase the thresholds for procurement of some of what ICAC has identified as the most risky subsets of contract?

SONYA CAMPBELL: It's our job as public servants to be monitoring and mitigating any risks around that. The decision to increase the threshold is obviously a government decision, and we're here to support the Government in minimising those risks.

¹ In [correspondence](#) to the committee received on 17 May 2024, Mr Song Hong, Executive Director - Policy, Analytics and Advisory, Treasury NSW, clarified his evidence.

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Ms ABIGAIL BOYD: How did you mitigate those risks? I've not heard any example yet of how the risk was mitigated.

SONYA CAMPBELL: It's through a variety of mechanisms, including increased reporting from the agencies that was a requirement of that increase in the thresholds. We're working with the agencies at the moment around how to get better data to understand the practices, the implications of the change and insights from that data. Mr Hong, did you want to add anything?

SONG HONG: Yes. Again, if you think about how the procurement system works within New South Wales, all the procurement teams within the agencies are a flow-on from what New South Wales is trying to do at the centre. So they will be monitoring the agencies' procurements. Like Mr Pircher for Treasury, they will have rules and guidelines. Again, from a reporting point of view, they will collect information for that agency in terms of how the agency is procuring, in terms of this particular example, the threshold to 250.

Ms ABIGAIL BOYD: During the consulting inquiry it became very clear that a lot of that information flow from agencies about their own practices was not necessarily robust and accurate. I'm not sure, again, how that is a mitigation of this additional risk from increasing the thresholds. Was anything different done? Sounds like no.

SONYA CAMPBELL: Ms Boyd, I think it's hard for us to speak for individual agencies. I think that's a good question to ask them. What we are seeing is different approaches across different agencies. I think where we are seeing more centralisation of that reporting and data, we in the centre are able to get better insights from that as well, but those practices will look a little bit different from department to department.

Ms ABIGAIL BOYD: This devolved procurement model that the New South Wales Government has seems to be rife with issues. What's the history of it? Is there any appetite or has there been any work done on re-centralising or bringing some of the risk management more directly in control?

SONYA CAMPBELL: I might make a few comments and then I might hand over to Mr Hong. We provided advice to the Minister shortly after the election on the history of the model in New South Wales. The Government shifted from a very centralised model under a State contracts board, where all procurement was run through the centre, which had its own challenges around the time frames and capacity to be able to procure, and obviously as population has grown, procurement spend has grown. It would be very challenging, I think, to bring everything back to the centre, so I think it's a question of where the pendulum swings and has it been too decentralised under the current operating framework? The conversations and advice that we are thinking about is around what is appropriate to be in the centre from a data analytics, insights, reporting and monitoring perspective versus what is appropriate for agencies to have responsibility for as the budget owners. Mr Hong, did you want to add anything?

SONG HONG: I will quickly add maybe one clarification. Agencies have always procured. Four or five years ago there was more centralisation of the whole-of-government arrangements. They were partly decentralised as part of reform back then. So the current model today is part central, part devolved within the agencies. Again, I speak to my counterparts across Australia and New Zealand, as well as across the other Westminster systems. Many of them also utilise a devolved procurement system just because of the sheer size and scale of how procurement is done across governments.

The CHAIR: Thank you, Ms Boyd, for asking some of the questions that I was going to get to. It is very helpful. I will ask a few questions about the Procurement Board itself, particularly the objectives of the Procurement Board, as outlined in the Act. Obviously you're aware that there are those five objectives. In the interests of time, I won't read them out to you. I wonder what specific actions or action plan the Procurement Board has or takes in each of those areas. How does it monitor progress? It is tasked with these objectives, the Procurement Board. How does it go about implementing those?

SONYA CAMPBELL: I would probably start by saying we had a significant number of new members to the Procurement Board at our last meeting—I think five new delegated members. We're working with them to provide an induction at the moment. But, in answer to your question, we hold a board strategy offsite annually. We are in the process of planning for one now that we have our new membership in place. That's the forum where we talk about these issues, such as the oversight, consequence management and shape of the assurance program that we currently have in place. That was discussed at length at our offsite last year, together with the challenges around the data capture and what we can do about that.

The board is a great forum because of the diversity of practices, but that itself presents some challenges in getting consensus around particularly reporting and data where the ask is over and above potentially the resources and capability that an agency might have. But I would say there's an acceptance that that's where we need to get to in terms of better data and insights around procurement expenditure and a commitment from the

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board to work on ways that we can do that within the means that we have. In answer to your question, we have those strategic offsites where we look at those priorities. The board itself has regular updating on the various programs across government and obviously considers policy direction and Procurement Board directions as we go forward.

The CHAIR: Following on from some of Ms Boyd's questions, as I understand it, the Procurement Board, with representatives from all of the agencies, gives the opportunity for oversight of those agencies' procurement activities. How often has an agency self-reported issues or felt they've had to bring something to the board to report about themselves?

SONYA CAMPBELL: There have been various trigger events that have been actioned since the current accreditation system came in place. Often they're a result of MOG changes. With the self-attestations, the responsible central agency—which would be NSW Procurement for goods and services, Public Works for construction, and DCS provides advice on ICT—will review those self-attestations and report back to the board where there are noncompliances and any recommended actions. I think that there is opportunity to continue to improve that process with the insights for the board, and we'll be working with the relevant agencies on that.

The CHAIR: Self-attestations—which, again, Ms Boyd referred to—are slightly problematic, but you say there's a review process.

SONYA CAMPBELL: There is.

The CHAIR: How often has that review process resulted in the finding of noncompliance and some kind of sanction applied to either the agency or the contractor involved?

SONYA CAMPBELL: I'm not aware of sanctions being applied to the agency, but it is a question that I am currently asking in response to the most recent round of self-attestations and having a conversation through the risk and compliance committee and the board around what those consequences should be. I think the most extreme is a suspension of an accreditation for noncompliance, but a prompt remedial plan and action as a minimum should be required for identified instances of noncompliance.

The CHAIR: So just to confirm, the Procurement Board, which has ultimate oversight via the secretaries of the accredited departments, has never to date—

SONYA CAMPBELL: I wouldn't say never.

The CHAIR: Not that you're aware of? I don't want to put words in your mouth.

SONYA CAMPBELL: But I'm happy to take it on notice and check for you, Chair.

The CHAIR: Thank you. I appreciate that.

SONYA CAMPBELL: Unless any of my colleagues are aware?

SONG HONG: No.

The CHAIR: If I could then go to the issue of accreditation—and this might be Mr Hong, I'm not sure—has accreditation ever been refused an agency? What does it mean when you're accredited? What have you got to do to show that you're going to be an accredited agency, that you've got the goods to be accredited?

SONG HONG: I can talk about current process. As Ms Campbell has alluded to, we need to look at it in terms of continuous improvement. The current process is that the agency needs to be able to show that it can procure based on a set number of criteria. We require an external review of that particular agency and then we'll give them feedback in terms of what we believe they may be short, in terms of the thresholds by which we would expect them to get accreditation. There is a process that needs to be followed that involves the agency that's seeking accreditation and a third party that reviews how they are doing their procurements.

It still requires endorsement from the secretary of that agency group and then it will come to the Procurement Board for final approval. You may ask if there is a review. At the moment, it is in perpetuity. It's the reason why one of the things we have implemented more recently is that assurance program of going and looking at agencies and how they are procured in the past and also current procurement, noting that before my time—I think it was maybe five or six years ago—there was a three yearly cycle where an external party came in and reviewed agencies from an accreditation perspective.

SONYA CAMPBELL: Chair, if I can just add to that, please, I can give you two examples. One is in relation to an agency that applied last year for construction procurement accreditation. The review supported it but the board did not endorse it in the first instance because the agency's procurement capability was aligned to smaller procurements and, since the review had been done, they had a very large procurement in their pipeline

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where we discussed the capability of that agency to actually be able to procure a project of that size and scale. The board went back to the agency, requested further information and, at the next board meeting, endorsed accreditation with a condition that that agency could not procure projects over \$20 million and would need to seek concurrence from an accredited agency with that capability.

The construction procurement accreditation does not have thresholds in the way that the goods and services accreditation does. That's something that we can look at in due course. There is another example of an agency that has been seeking goods and services accreditation for quite some time now. We have been working with them on a suite of agreed capability requirements that need to be demonstrated before we would be able to support their accreditation application going to the Procurement Board. So, yes, there are active recent examples of that being administered.

The CHAIR: You mentioned data, and having centralised data is important. Can you describe what gaps currently exist in the collection of data across agencies? I think it might have been Mr Hong that we asked during the consultants inquiry—because the Auditor-General's report noted that there was a vendor management system which Treasury was going to put in. I just wondered if we could also get an update. What data don't we have and where are we in terms of this centralised vendor management system?

SONG HONG: It's a very good question, Dr Kaine. I'll try to summarise. Last time at the consultants inquiry I talked about financial data and operational data. I will focus on operational data, noting that the Auditor-General tried to reconcile the financial account data versus the operational data. I will tell you what we have and then, by default, what we don't have. What we do have within NSW Procurement is that we do a sweep of all the ERP systems across agencies that fall within the remit of the Public Works and Procurement Act and we collect all the invoiced data that is being paid by agencies. But, like any data system, the data is only as good as the source.

To your point about where is the first potential gap, it is the data collection at the agencies in terms of how they collect the data. At a macro level, we do a sweep and we get all the invoice data from agencies. It is all the invoice data. If things are paid outside of invoices—at this stage, again, a team that is within Ms Campbell's remit, the banking team, looks at the PCard data, which is effectively card data. That is not included at this stage. We are looking at figuring out how we combine these together to have a more holistic picture, but invoices are typically the biggest spend.

If you look at invoice data—now I'm going to switch to financial accounting. If you look at how people look at financial accounts, there is capex and opex. At this stage, within the system that we have within NSW Procurement, we don't do a split between capex and opex. It's all spend data. As a result—and the Auditor-General picked it out in her report—there will be a slight mismatch because, again, financial accounts budget-wise typically are opex, or operating expenditure, whereas capex is done separately. At a macro level, if you look outside of that, that's the missing data. In terms of the reconciliation, it will be a very difficult task to be able to reconcile financial data with operational data. We are trying to get more granular information on the procurement data so that we can do better reconciliation with the financial accounts, which are the official records of the State.

The CHAIR: You are doing that work and I appreciate that, but is there intent for there to be that centralised system to gather that or was it, as Ms Campbell suggested, an issue because Procurement Board members are a bit all over the place about what they're prepared to provide?

SONYA CAMPBELL: I'm not sure I would quite put it in those terms, Chair.

The CHAIR: You did not. I concede that, Ms Campbell.

The Hon. DAMIEN TUDEHOPE: We do have the Spend Cube, though, don't we?

SONG HONG: That invoice data is Spend Cube.

SONYA CAMPBELL: To Mr Hong's point and the Chair's question, it is all about how the agencies are inputting that data. Some agencies across government have implemented the VMS systems—I think, Mr Hong?—where that data is more complete and we are actively in discussions around how we code that data up-front from agencies to support the data and insights.

SONG HONG: On the VMS, that was always only intended for consultant use, hence the reason why it was raised in the consultants inquiry. The key focus at the centre is just datasets. We don't mind where the data comes from, as long as it is consistent and accurate from agencies. That is what we are seeking to get from agencies and that is the ask of agencies.

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The CHAIR: I find myself empathising with Mr Tudehope about the lack of time. We have lots of questions but we will provide those to you on notice. You will have 21 days to reply to questions on notice. Thank you for appearing again at one of these hearings.

(The witnesses withdrew.)

Mr KWABENA BEDIAKO, Cluster Chief Procurement Officer, Department of Customer Service, affirmed and examined

Ms LAURA CHRISTIE, Deputy Secretary, Digital.NSW, and Government Chief Information and Digital Officer, Department of Customer Service, affirmed and examined

Ms MANDY YOUNG, Deputy Secretary and Chief Operating Officer, Department of Customer Service, affirmed and examined

Mr MARK LENZNER, Executive Director, ICT/Digital Sourcing, Department of Customer Service, affirmed and examined

The CHAIR: Good morning. Thank you all for coming along today and making the time to give evidence.

The Hon. DAMIEN TUDEHOPE: Mr Lenzner, is there a difference between the Chief Procurement Officer and the ICT sourcing that you do?

MARK LENZNER: There is, Mr Tudehope. Mr Bediako looks after procurement in DCS. The portfolio we look after is a specialised all-of-government function for ICT and digital procurement.

The Hon. DAMIEN TUDEHOPE: That's your responsibility.

MARK LENZNER: Correct.

The Hon. DAMIEN TUDEHOPE: You very capably put together an ICT round table during the period of the last Government. That mandated, in fact, did it not, that 25 per cent of ICT procurement go to Australian small businesses?

MARK LENZNER: The small business SME targets were set by the ICT and Digital Sovereign Procurement Task Force. There were two targets: a direct spend target of 30 per cent and an indirect target of 25 per cent for contracts greater than three million. Those targets applied to SMEs, just to clarify, not to Australian businesses.

The Hon. DAMIEN TUDEHOPE: Correct. How is that policy working out?

MARK LENZNER: As published in the 2021-22 financial year, we achieved 28 per cent. We have not published the year after that, 2022-23, as we are now focused more on the broader priorities of the current Government, which is broader small-business targets, rather than specific category targets.

The Hon. DAMIEN TUDEHOPE: What I would put to you is, if in fact the Government said that 30 per cent is now the target, and 35 per cent, you could implement that, could you not?

MARK LENZNER: Correct, yes.

The Hon. DAMIEN TUDEHOPE: It wouldn't take a great deal of change in terms of the way the policy administration is. It's just a change of assessment, is it not?

MARK LENZNER: Correct.

The Hon. DAMIEN TUDEHOPE: Who is responsible for buy NSW?

MARK LENZNER: We are, Mr Tudehope. It's within the all-of-government procurement function.

The Hon. DAMIEN TUDEHOPE: Under *PBD-2023-04 Mandated registration of all NSW government suppliers on the buy.nsw Supplier Hub*, it says that if an international business wishing to do business with the New South Wales Government does not have an Australian ABN, "a simplified registration process must be completed. However, the business will not be included in the all-of-government supplier list". Is that correct?

MARK LENZNER: No. First of all, buy.nsw relies on ABN information to conduct due diligence on suppliers and to verify that they're a genuine business. International businesses are able to obtain an ABN through the ABR, the Australian Business Registry, but for those businesses that choose not to have an ABN we've

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introduced a simplified process for them to register to help them find and respond to New South Wales government supply opportunities. But we also encourage them to get an ABN, and for New South Wales agencies to also encourage them to obtain an ABN before responding to those opportunities. International businesses with an ABN have complete access to buy.nsw without any restrictions. If they choose not to get an ABN, they can still complete a supplier profile, have opportunities matched to their business and be invited to respond to those opportunities. They also receive nightly opportunity emails and can search for opportunities. However, when agencies do general searches of supplier lists, the lists do not have international businesses that don't have an ABN. They do list businesses with an ABN. That's the difference.

The Hon. DAMIEN TUDEHOPE: That agency wouldn't be able to see that there is an international business who may be able to be a supplier to the agency?

MARK LENZNER: If they don't have an ABN and the agency is not aware of them, correct. But the international business can see those opportunities and have those opportunities matched to them.

The Hon. DAMIEN TUDEHOPE: One of the criticisms which has arisen in relation to the implementation of policy is that there is no standardisation of contracts for the purposes of making sure, across government, that we have a standard contract that suppliers and agencies work within for the purposes of procurement. Does Customer Service have a standardised contract that it uses in relation to procurement of services?

MARK LENZNER: Mr Tudehope, I can only speak to the procurement of ICT. So we have a standard contract framework, the ICT Purchasing Framework, which is mandatory for all ICT procurement—both low risk, low value and high risk, high value. That contract template is designed specifically to work with the complexities of ICT procurement.

The Hon. DAMIEN TUDEHOPE: For the purposes of establishing the targets which have been set, who does that? Who actually oversees the meeting of targets which ICT has set?

MARK LENZNER: Are you referring to the SME procurement targets?

The Hon. DAMIEN TUDEHOPE: Yes, correct.

MARK LENZNER: Our team oversees them and works with agencies to establish their performance against those targets.

The Hon. DAMIEN TUDEHOPE: In terms of how that actually operates, an agency engages in a contract for the purchase of new technology or new software or whatever that they are purchasing. How does that play out in terms of the oversight about making sure that we are meeting targets? Who does that?

MARK LENZNER: The agencies themselves, under a devolved model, are responsible for their own procurement under the policies that we set centrally. For that first financial year that those targets were in place, we reached out to each agency and worked with NSW Procurement and the Spend Cube team to analyse the spend data for that 2021-22 financial year.

The Hon. DAMIEN TUDEHOPE: To in fact verify that those figures were accurate.

MARK LENZNER: We verify those figures with the agencies, ensuring that the spend is on valid SMEs, and then work with those agencies. So that's how we got to the original number of 28 per cent for the first financial year.

The Hon. DAMIEN TUDEHOPE: What's it going to be for the 2022-23 year?

MARK LENZNER: As I said earlier, we haven't published that result as we are now working on the broader targets being set by the current Government.

The Hon. DAMIEN TUDEHOPE: But you have the data to establish where you are in terms of the current spend on SMEs?

MARK LENZNER: We could establish the data if requested, yes.

The Hon. DAMIEN TUDEHOPE: When you're looking at local procurement, is that New South Wales only?

MARK LENZNER: No, the targets were set specifically for SMEs—SMEs under the definition of any business with less than 200 people, regardless of their locality.

The Hon. DAMIEN TUDEHOPE: So not constrained to New South Wales. It's Australia or New Zealand. Is that how you see it?

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MARK LENZNER: Correct.

The Hon. DAMIEN TUDEHOPE: Is that what you would also see local content as being? Australia and New Zealand?

MARK LENZNER: That's a question more for the Government and the policies that they set through NSW Procurement, working with ourselves and other procurement teams. So that's to be determined, I believe.

The Hon. DAMIEN TUDEHOPE: Mr Bediako, there are similar sorts of questions in relation to procurement on behalf of DCS. Do you have a standardised contract that you use in relation to procurement on behalf of DCS?

KWABENA BEDIAKO: It really depends on the scheme that we buy from. As an example, for the ICT Services Scheme that Mr Lenzner spoke about, there's the Core& or MICTA/ICTA that is mandatory. If we're buying from that scheme, we are meant to be using those particular contractual arrangements versus the performance management scheme, which is managed by NSW Procurement. They've also got a standardised contractual framework that we use if buying from that scheme. So it really depends on the scheme that we're buying from and then, within that scheme, there are contractual frameworks that we use to engage with that particular supplier.

The Hon. DAMIEN TUDEHOPE: You're the chief procurement officer?

KWABENA BEDIAKO: Yes.

The Hon. DAMIEN TUDEHOPE: What training did you have in relation to obtaining that position?

KWABENA BEDIAKO: Great question. I started off my career in consulting. I worked in a procurement supply chain operations consulting firm for 10 years. Then I moved over to Endeavour Energy and headed up their strategic procurement team, and then I moved over to DCS.²

The Hon. DAMIEN TUDEHOPE: So you've worked within the procurement framework for a long period of time.

KWABENA BEDIAKO: Correct.

The Hon. DAMIEN TUDEHOPE: But in terms of working for the New South Wales Government, do you get specific induction and training in relation to the manner in which you have to implement the Procurement Policy Framework?

KWABENA BEDIAKO: I wouldn't say there's an induction as such. However, the whole procurement process around plan, source, manage is pretty standard across wherever you are in procurement, whether it's private or public. The nuances around particular policies—yes, I had to read up on that when I joined DCS. That being said, NSW Procurement also has a training system called Comperio. For example, for any new member who joins my team, we get them to complete the courses to familiarise themselves with key government policies and how we do procurement within government.

The Hon. DAMIEN TUDEHOPE: The ICAC have identified various issues relating to potential invoicing and the like for procurement, and some of the issues that they have raised, in fact, relate specifically to ICT procurement. In terms of your monitoring for potential corruption issues, how do you do that?

KWABENA BEDIAKO: Great question. There are a couple of ways. We conduct a bimonthly random audit within DCS where we pick up contracts to see whether they've been conducted in compliance with the DCS procurement manual. We then publish the results to the department so that people learn from it. If there are some noncompliances that we've picked up, we publish the results so that people learn from that. We've also, from 8 January in DCS, implemented an attestation process. This is where senior executives within the department attest that all procurements being conducted are compliant with the New South Wales Procurement Policy Framework as well as the DCS procurement manual. If they do attest and we do an audit and they haven't been compliant, then there are some consequences that those individuals might be subjected to, based on the DCS Code of Ethics and Conduct.

The Hon. DAMIEN TUDEHOPE: I suppose that's not foolproof at the end of the day.

KWABENA BEDIAKO: Yes.

² In [correspondence](#) to the committee received on 2 May 2024, Mr Kwabena Bediako, Chief Procurement Officer, Treasury Department of Customer Service, clarified his evidence.

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The Hon. DAMIEN TUDEHOPE: Mr Lenzner, perhaps I can come back to you also. The taskforce explored opportunities for preferencing New South Wales based or Australian suppliers, and we talked about that earlier. However, such preferences were inconsistent with the EPP Direction which enforces, for New South Wales Government agencies, compliance with international procurement and free trade agreements. Are you aware of any changes to the compliance requirements arising from these agreements that would now enable explicit direct preferencing of New South Wales suppliers?

MARK LENZNER: Specifically for ICT and digital, no, there haven't been any changes in regard to the policies and the EPP Direction.

The Hon. DAMIEN TUDEHOPE: So it would be difficult to have a policy that says you have to preference a New South Wales supplier?

MARK LENZNER: Specifically for ICT and digital, yes.

The Hon. DAMIEN TUDEHOPE: In relation to the ICAC references, Mr Bediako, are there any breaches during your period as a chief procurement officer that you've identified or been able to identify by your agency in relation to procurement requirements?

KWABENA BEDIKO: To our DCS manual, yes. There are breaches that we've found when we do the random audits that I spoke about earlier. We then go through the education process to ensure that the people involved are aware and it doesn't happen again. Like I said, since 8 January we've put in place the attestation process, which has some management consequences attached to it, should a senior executive attest to a procurement and then should we find out that there's a breach later on.

MANDY YOUNG: Perhaps I could add to that, if I may. The breaches that we've tended to have found through the compliance process have more been administrative, like not using the right recording system and those purposes. We use TRIM as our official recording system, and they haven't put them on TRIM. We haven't necessarily seen breaches of the nature that you would potentially term corruption.

The Hon. DAMIEN TUDEHOPE: A specific case of corruption.

MANDY YOUNG: If there is corruption, it's obviously reported through public interest disclosure and we go through that process and work with ICAC accordingly.

Ms ABIGAIL BOYD: Good morning to all of you. Are you responsible for the eTendering website?

MARK LENZNER: Yes, Ms Boyd, that's part of the buy.nsw ecosystem.

Ms ABIGAIL BOYD: Excellent. When was the last time that digital improvement was undertaken on that site?

MARK LENZNER: Right now, as part of the buy.nsw transformation, as we call it. We're now up to eTendering, and we're aiming to launch a new version of eTendering in the middle of this year.

Ms ABIGAIL BOYD: What improved functionalities will it have?

MARK LENZNER: It's primarily to modernise the platform. The platform is built on old technology which is unsupported and comes with cybersecurity risk, for example. We're modernising the technology and digitising the processes so that it's a greater user experience for both suppliers and buyers.

Ms ABIGAIL BOYD: Will the new system be able to cope with, for example, having all contracts put on there? At the moment we only have contracts over a certain dollar amount put on there for three months, and it's a little bit random. Some of them seem to stick around longer than that. Will it have the capacity to hold more data?

MARK LENZNER: Yes, it will. It will be designed specifically for the current policies of government. So it will have a more robust, more modern database that will be capable of holding more contracts, and if the Government chooses to disclose more, it will be capable of supporting that as well.

Ms ABIGAIL BOYD: Is that three months on the eTendering system under a policy document? I should know the answer but I don't.

MARK LENZNER: That I'm not sure of. Can I take that question on notice?

Ms ABIGAIL BOYD: Yes.

MARK LENZNER: We have disclosure obligations but I'm not aware of the three-month obligation. So I will take that question on notice.

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Ms ABIGAIL BOYD: I'm sure you're aware the Federal one doesn't have that time limit, and it's really handy to be able to look back and see a bunch of things. Will it be able to link to associated tenders? For example, where we've seen massive variations in contracts, will it have a way to be able to link back to the originals so that we can see other associated documents?

MARK LENZNER: I'll also take that question on notice, but the intent is to have a more transparent end-to-end picture of procurement from the time the opportunity is advertised to the time the opportunity is disclosed. So I think the answer to your question is that the intent is yes, but I'll furnish further detail if I may.

Ms ABIGAIL BOYD: Thank you. But if the Government was to make the decision, through whatever form it needs to do it, to remove that three-month time limit and also perhaps to lower the threshold so we ended up with a lot more data on the website, the new system could cope with that?

MARK LENZNER: Correct.

Ms ABIGAIL BOYD: That's great to know. In terms of IT consultants and contractors, we've heard a lot in the consulting inquiry and also through estimates that there is quite a lot of difficulty in being able to basically directly employ IT consultants within the public sector because of the high wages that they can get elsewhere et cetera. But it seems to be a bit of a cyclical feature. I know that back in 2021 former Minister Dominello was very keen on insourcing some of that functionality. What happened to that, and what have you been doing to try to insource?

LAURA CHRISTIE: I might take that question. In my capacity as Government Chief Information and Digital Officer, I chair an ICT and digital leadership group, with the CIOs across the New South Wales government sector. This is absolutely a challenge that Government faces—as you say, a struggle to hire permanent ICT staff within the New South Wales public sector, well-documented skills shortages in that space and, I think, probably the context of government not necessarily being the most attractive digital place to work, although we are working on that proposition.

In saying that, while we have struggled to attract permanent staff, we do have a very large engineering capability in the Department of Customer Service. In Digital NSW, we have the government technology platforms team, which has a large number of engineers that sit within the department that do back-end platforms for all of New South Wales Government. Service NSW also has a large engineering capability in house, and other New South Wales government agencies do have capability within house. So it's a constant juggle between in-house resourcing and external procurement of resources and contractors.

As part of the IDLG that I chair, we have been doing some work to really think about what is the optimal model for Government in terms of the resourcing mix, given that—particularly in ICT and digital transformation—we don't always need permanent resources as well. The buy.nsw is an example. We will finish that work in due course and so we won't need the level of engineering resources or particular specific software engineering resources on a permanent basis. There's a real juggle between the resourcing mix for ICT and digital capability in government.

Ms ABIGAIL BOYD: The former Minister talked a lot about having basically sufficient in-house resources for there to be an effective partnership formed with external resources.

LAURA CHRISTIE: Correct, yes.

Ms ABIGAIL BOYD: It's quite a specific project, but in terms of the ill-fated upgrade of the COPS system to IPOS, I am just wondering whether anyone in Digital NSW has been involved in that project, because, as we've gone from contractor to contractor, we appear to have lost a lot of the base work and keep having to start again. Is that something that you have been involved in?

LAURA CHRISTIE: I'll just clarify the role of Digital NSW. We have two jobs. We assure ICT and digital projects across the sector. We do that with an independent assurance function. We are delegated by NSW Treasury to do that. We have been involved in the COPS projects as an independent assurer to say this is working, this is not working, and giving assessments of the health of that project. To our engineering capability that I talked about—government technology platforms—no, we have not been contracted to do that work per se. The engineering capability in government technology platforms, we focus on what we call all-of-government platforms—so the Customer Payments Platform; the government data centre; licence New South Wales, the licensing system for the Government. These are core platforms that we engineer and run in Digital NSW. We do some kind of contract work on behalf of other agencies, but we don't, as a rule, have an engineering squad that would go off and do the COPS-IPOS upgrade, for example. But we do advise upon the best way to step into some of those projects.

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Ms ABIGAIL BOYD: So it's not a current capability, but I guess it could be if we ended up bolstering the group or the team to be able to provide that sort of work?

LAURA CHRISTIE: Yes. It happens in some shape or form with some of the platforms we provide, because we provide them to a number of government agencies. For example, the Customer Payments Platform will be one component of a broader digital transformation that another agency is doing, as an example.

Ms ABIGAIL BOYD: Given the relatively high numbers of consultants we see in the IT space and given the ICAC comments around the potential for conflicts of interest and behaviour that is potentially corrupt—and we did see some examples or concerns during the consulting inquiry with contractors as well—what steps have you taken to try to minimise the risk? For example, do you have contractors on recruitment panels and that sort of thing?

LAURA CHRISTIE: ICT/Digital Sourcing run the ICT consultancy scheme. It's the responsibility of individual agencies in how they administer both the consultancy scheme and how they recruit and hire and manage contractors. To that specific question, I might hand over to Ms Young or Mr Bediako to talk about DCS-specific contracting arrangements.

MANDY YOUNG: Thanks, Laura. When we think about the contracting arrangements that we have, we've obviously had a couple of audit reports of recent times, with SafeWork and with Park'nPay, which have definitely raised these issues that are similar to ICAC. We have done a considerable amount of work on what we do and how we train and how we support people to set up those panels. We do a range of mandatory training. If you are involved in any recruitment—any procurement—then you need to run through things. If you own a purchase card, then you have to complete the training for a purchase card. If you deal with purchase orders, there is mandatory training for purchase orders. If you are involved in a panel for procurement, then you must undertake the mandatory training in that space as well.

We've set that up and implemented all of those in the last couple of years. Additionally to that, we have worked really closely with what we have called a centre of excellence. We provide strategic advice to people as they do that, and any procurement over \$1 million is actually supported by our procurement team. So there's a range of things that we have put in place to ensure that contractors are engaged legitimately in those processes. They will not sign off or chair a panel—that's not okay—but they can potentially be involved in the process but as an adviser of sorts. I might just hand over to Mr Bediako to clarify.

KWABENA BEDIAKO: To add on to what Ms Young said, specifically when it comes to engaging consultants, in terms of DCS, our threshold—anything up to 50,000, we get the dep secs to approve that engagement. Anything above 50,000 used to be the secretary, but the secretary has delegated that to Ms Young for the foreseeable future. To further ensure that we're actually using consultants when required, we also introduced a new process last week Monday, where anything over 50K, a paper needs to now go to the DCS ELT to discuss the merits of that engagement. Then once the DCS ELT has approved that, the standard procurement process then follows to engage that particular—

Ms ABIGAIL BOYD: Sorry, what does "DCS ELT" stand for?

KWABENA BEDIAKO: The secretary and the dep secs, the deputy secretaries.

MANDY YOUNG: That's our executive leadership team. The reason we have done that is that, for a range of reasons, we need to keep an eye on the value for money and spend. We can also think about if there's another part of the agency that could support that, so potentially save. There's a range of factors as to why we would do that. For example, there might be a team in Laura's team that could help. It means that we don't actually need to go to consultants. So we can start to think more collectively as a department about how we do that. The reason we do that then also is to just make sure we're getting the value for money that we need and that we're making the right decisions, because we have to really think about that.

The CHAIR: Thank you, Ms Young. I might just pick up on that issue of value for money. You've referenced it throughout the submission, to do with DCS. You mention about value for money. You talk about approximately \$28 million in procurement savings through whole-of-government arrangements being effective in ensuring value for money and compliance with policies. What exactly do you mean in DCS when you talk about value for money in procurement?

MANDY YOUNG: I will hand over to Mr Bediako after on this one, because he spends lot of his time doing this in our communities of practice, but we really look at making sure that we are spending the money in the right places to get the right outcomes for the people of New South Wales. We have to consider the value for money in terms of the price but also in terms of our social and economic outcomes that we're required to do. It's

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the combination of those things and how we evaluate a tender or a procurement process to make sure that we're getting the right outcome.

The CHAIR: Mr Bediako, before you answer I really am interested in how it's measured. How do you know that policies and regulations are being complied with, and who undertakes that work? How are you measuring, or what are the metrics, around this value for money?

KWABENA BEDIAKO: When we're running procurement activities in DCS, even though we've got a level two accreditation within DCS, for procurements that are deemed lower risk or up to \$1 million the business is responsible for doing the doing, and DCS corporate procurement, which I lead, we then provide advice. If it is deemed high risk or above \$1 million, then we actually do the doing and run the end-to-end procurement activity. When it comes to deciding what is value for money, that usually depends on that particular procurement engagement. As an example, if we're going to market to get a professional services firm to come in and help us implement a particular strategy, within the tender we will then decide what percentage of the weighting is dedicated to price and non-price. The non-price, we're then looking at things like experience of the firm, the people that they will be putting forward and how they're going to meet their requirements that we've set within the tender. Going through that pricing and non-pricing, and scoring of the tender responses, we come up with a ranking system and whoever placed first would be the person that we engage. That's how we know that we've actually assessed value for money from both a pricing and a non-pricing perspective.

The CHAIR: How do you measure that you've actually got what you thought you were going to get in value for money? It also appears that there might be a bit of interpretation about what value for money means. If it's a question of contract to contract, and whether you're doing the procurement or it's devolved, is there some level of interpretation of what that means?

KWABENA BEDIAKO: The weighting that has been assigned to the criteria, that would differ from contract to contract. There is not a prescriptive rule to say that for each particular procurement engagement that would go to tender 50 per cent should be priced and 50 per cent should not be priced. We have set some minimum guidelines—for example, pricing should at a minimum always be 30 per cent. Whilst in the past there used to be a lot of weighting placed on non-pricing—for example, 90 per cent non-pricing and 10 per cent pricing—we've tried to work with our customers to move the dial a bit on that.

When it comes to once the contract has been executed and doing the contract management to ensure that we're holding suppliers accountable to what they've promised we're going to deliver within the procurement process, that responsibility lies with the business or the budget holder. As part of our process, before you submit a briefing note to award a particular contract to a supplier, you also need to develop what we call a contract management plan which goes through "Over the next three years how do we manage this supplier, how do we ensure they're delivering what they said they're going to deliver and, if they don't, what are the remedies in place that we're going to take to ensure that we bring it back on board?" But that responsibility sits with the business, and they then engage my team from time to time if they need our advice on specific areas.

The CHAIR: If I could just go back then, value for money, different weightings depending on contracts—who decides that for those different contracts? Because that's not uniform, you can't really say value for money across DCS because it means different things depending on the contract. Who is the person that decides, contract to contract, what value for money is going to mean in that circumstance?

KWABENA BEDIAKO: Good question. For each procurement there is an evaluation committee that is set up. For contracts that are above \$1 million, usually the chair of that evaluation committee needs to be an SEB 1, so director and above, and if it's low risk or less than \$1 million then a grade 9, 10 and above can chair that evaluation committee. But essentially it is the responsibility of the evaluation committee to decide for that particular tender what—

The CHAIR: Essentially a non-executive can decide what value for money for the New South Wales taxpayer is in a contract?

KWABENA BEDIAKO: They chair the evaluation committee, but it's not just them. The evaluation committee is made up of three or more members for each particular tender that we run.

The CHAIR: You mentioned your team. There's a table in the submission that looks at your procurement staff, and there are two questions that I have about that. Firstly, obviously there's the ICT aspect, which is quite different, but within the rest of the team are there specialists or are they teams of generalists? I know you've got different groupings here, but even within those groupings? Secondly, I think there's a footnote on that page which says this includes contractors and temporary employees. Could you give us a breakdown of the arrangements of the staff in terms of contractors et cetera?

CORRECTED

KWABENA BEDIAKO: Your second question, I might take that on notice. Within my team we've only got one contractor. At the moment we're going through a recruitment process to change that to an ongoing position. For the other divisions within DCS, I might take that on notice and come back to you on the breakdown between permanent versus contracting staff. What's your first question again, sorry?

The CHAIR: It was about specialisations even within those teams.

KWABENA BEDIAKO: The numbers that you see on those tables are people that are dedicated to conducting procurement activities within DCS. They are specialised procurement professionals within those divisions.

MANDY YOUNG: Sorry, if I might just add onto that, there's a range of things that sit within that. Within our legal team we have people who specifically work on procurement in that space as well, so it might not just be the team of Mr Bediako that are working on that, but for specialist expertise we will go to the broader of DCS to get that advice.

The CHAIR: Thank you both for that; that's helpful. We had Treasury in here earlier this morning. I'm not sure who this question is to, but who do you deal with in Treasury or NSW Procurement? One of you mentioned dealing with NSW Procurement and I can't remember who that was. So who do you deal with? And I know we've got a devolved system, but is there any oversight or any working together with NSW Procurement in Treasury?

KWABENA BEDIAKO: In my role I deal with NSW Procurement a lot. We've got our monthly PLG, which I am a member of. PLG is the Procurement Leadership Group and it's made up of all the chief procurement officers of the various departments. We meet once a month to talk all things procurement. As part of the assurance work that Ms Campbell alluded to earlier this morning, we've also been working with NSW Procurement a lot on that. We had a team from NSW Procurement embedded within DCS, as an example, to run a procurement process for us for our printers. So, yes, we do work hand in hand on all things procurement.

MANDY YOUNG: At a more senior level, obviously we've got the Procurement Board and the set-up, and Treasury have given you that advice in the submission. But I sit on the Procurement Board as a representative for the department, along with the secretary. We are constantly working with Procurement. I think there's not a week that goes by that I wouldn't have a conversation with Sonya, and I suspect my colleagues around the table are also having similar conversations. We do work very closely, and I think when Mr Bediako was referring to the work that we did on printers, that was a specific piece to make sure that we worked closely with the Procurement Board so that they could understand our process and assure our process, which was a fantastic way for us to think about are we doing the right thing, are we completing all the rules and what is the policy. That's a new process that we've been kind of working through with them.

The CHAIR: My understanding about who is on the Procurement Board is that it's secretaries or their delegated representatives. Am I to believe that it's bigger than that?

MANDY YOUNG: It's secretaries or their delegated representatives, and recently Minister Houssos signed that a number of the delegated representatives could now sit, within the legislation, on the Procurement Board. I think that happened last week.

The CHAIR: I don't feel too far behind then.

MANDY YOUNG: No, you're not behind at all. It was just to clarify that and also to bring in those other agencies, given that we've had a number of machinery of government changes over the last while—to make sure that that setting is right.

The CHAIR: Thank you for that clarification; I appreciate it. This might be to Mr Lenzner, but correct me if I'm wrong. Whole-of-government schemes—do they ever close? I've anecdotally had people suggest that they do close and that that might limit competition, and there is a group of suppliers that get locked in for a period of time. Is that how it works?

MARK LENZNER: I can answer the question specifically for the ICT services scheme. That's always open. We're admitting about 100 suppliers a month to that scheme. It's continually growing; it now has just under 5,000 suppliers and it's always open. The intent is not to close that scheme. We've just extended that scheme for a further five years.

The CHAIR: Excellent, thank you.

MARK LENZNER: In answer to your previous question, NSW Procurement and our team have a very close relationship at all levels. I also sit as an observer on the Procurement Board to cover ICT matters as a member of the Procurement leadership group and NSW Procurement co-sponsor. The buy.nsw program and our policy

CORRECTED

teams work very closely so that any policies we put in place for ICT procurement are aligned to the broader NSW Procurement policy framework.

The CHAIR: Okay, except we have heard of some that have fallen foul of that recently. This procure-to-pay data architecture that is noted as being developed, which integrates buy.nsw and New South Wales Government agency procurement systems—where is that at? Is that meant to cover all agencies, or accredited agencies?

MARK LENZNER: The procure-to-pay architecture came from the notion that buy.nsw, as the central procurement system of government, has three specific mandates that are used by all agencies across government: supplier registration on the supplier hub, advertising of opportunities on eTendering and disclosure of contracts above \$150,000. What we wanted to do is create an ability for agencies to source that data and have the data located in one place. The procure-to-pay architecture is about creating interfaces between buy.nsw and those agencies that have their own agency procurement system so that we can share supplier registration information, share advertised opportunities and share disclosures.

Over time, that architecture will grow. That will allow us to share more data as it pertains to agency systems and for agency systems to share data with us. There will be three variants. Smaller agencies that don't have their own systems will use buy.nsw exclusively through the procurement life cycle, some may dip in and out based on their particular capabilities and some will just use us for the three mandated areas: supplier registration, advertising and disclosure. The architecture is all about having a consistent data platform of procurement and ultimately that will then integrate into the Spend Cube.

The CHAIR: Thank you. I know that we all have more questions. We will be supplying some supplementary questions, and you will have 21 days to respond to those. We very much appreciate you being here today and sharing your answers and expertise.

(The witnesses withdrew.)

(Short adjournment)

CORRECTED

Mr ANGUS BEGG, Chief Financial Officer, NSW Public Works, affirmed and examined

Mr DREW VARNUM, Executive Director, NSW Public Works, affirmed and examined

Mr SAID HIRSH, Head of Strategy, Planning and Innovation, Infrastructure NSW, affirmed and examined

Ms DEBORAH CHAPMAN, Chief Financial and Operating Officer, Infrastructure NSW, sworn and examined

The CHAIR: Thank you very much for coming along today to give your evidence. We will start with Opposition questions.

The Hon. DAMIEN TUDEHOPE: Thank you for being here. I have got two agencies here, effectively, so I don't care who answers these questions—just the one who thinks they are most adept at answering. Is there any difficulty in delivering the Government's commitment to increase local content to 30 per cent?

SAID HIRSH: Is there a difficulty?

The Hon. DAMIEN TUDEHOPE: Yes. It is 20 per cent at the moment. Is there any difficulty in going to 30 per cent?

SAID HIRSH: Not necessarily, in terms of construction procurement. If we talk about construction procurement, which is what—

The Hon. DAMIEN TUDEHOPE: Yes, construction procurement.

SAID HIRSH: Not necessarily. When the direction comes down on the agencies to—

The Hon. DAMIEN TUDEHOPE: If the Minister gave a direction tomorrow that the local content was going to be 30 per cent, there would not be any difficulty in acting on that in terms of construction procurement, would there?

SAID HIRSH: Not necessarily, no. I believe we would look at the detail and advise the agencies accordingly, but in terms of construction procurement, quite a lot of trades, non-trades and other subcontracting and other activities in the construction projects are procured locally in any case.

The Hon. DAMIEN TUDEHOPE: They are; that's right. There are some significant projects: Powerhouse Parramatta, Sydney Fish Market, Penrith Stadium refurbishment, Powerhouse Ultimo revitalisation, Barangaroo. They are all fairly significant projects that you are currently involved in. How many construction procurement people do you have on your team?

SAID HIRSH: In terms of the projects themselves?

The Hon. DAMIEN TUDEHOPE: No. Just in terms of Infrastructure NSW, how many?

DEBORAH CHAPMAN: We have about 150 people at Infrastructure NSW, and a division as part of Infrastructure is called Projects NSW, and there are about 40 people in that department.³

The Hon. DAMIEN TUDEHOPE: Who oversees the procurement process?

DEBORAH CHAPMAN: If it's a competitive process, the CEO signs off in the evaluation plans.

The Hon. DAMIEN TUDEHOPE: Going through that evaluation plan, you actually take into account the procurement policy framework.

DEBORAH CHAPMAN: Correct.

The Hon. DAMIEN TUDEHOPE: That specifies various things that you have to take into account. Currently the local content in relation to that is 20 per cent. You could increase that, could you not, to 30 per cent without too much difficulty?

DEBORAH CHAPMAN: For those particular projects, they are very high-spec, bespoke, large infrastructure projects, and we use, as you say, Multiplex and Lendlease on two of those. They obviously have quite large local content in terms of personnel and goods and services for delivery of those projects.

³ In [correspondence](#) to the committee received on 1 May 2024, Ms Deborah Chapman, Chief Financial and Operating Officer, Infrastructure NSW, clarified her evidence.

CORRECTED

The Hon. DAMIEN TUDEHOPE: In terms of the other requirements in relation to ensuring that we have ethical supply chains and we are meeting policy guidelines in relation to other social issues, who oversees that?

DEBORAH CHAPMAN: That would normally be the highest level, in terms of project manager. If I can give an example on one, Lendlease, who is currently building Powerhouse Parramatta. In the negotiation with them, they only needed to have a 1 per cent target on Aboriginal procurement, but they are actually delivering 5 per cent as that major contractor in terms of spend.

The Hon. DAMIEN TUDEHOPE: Does that go across all contracts in relation to Aboriginal Procurement Policy?

DEBORAH CHAPMAN: Yes. That particular one, in Lendlease, in terms of the delivery over target, was quite a good achievement from the team.

The Hon. DAMIEN TUDEHOPE: One of the issues that appears to arise is a criticism relating to bundling of contracts so that they cut out SMEs from potentially bidding for those contracts. Are you aware of that criticism? The civil contractors' submission effectively says that one of the issues that they face in relation to competing for government work is that the contracts are bundled so that they effectively are outside of their opportunity to tender.

SAID HIRSH: Yes. I think this is probably a broader issue. We've seen bundling and we've seen disaggregation of contracts depending on the market conditions. It's quite difficult to say there is one size there. Traditionally we've seen probably in the past where contracts have been let out in much larger bundles, in fact, but since the market got a bit more difficult, there's been kind of smaller packages being let out. So it does change, depending on the risk, the profile of the project itself but also on the conditions of the market and its ability to actually tender for various large packages. But we are aware of the CCF's criticisms on that, and there's been moves to break down packages.

The Hon. DAMIEN TUDEHOPE: So that there can be a tendering process by SMEs—

SAID HIRSH: So that there can be a tendering process, yes.

The Hon. DAMIEN TUDEHOPE: —and there would be more opportunity for local contractors.

SAID HIRSH: Yes, but potentially it is still a challenge for government to actually be able to take the risk and manage the interfaces on where you might have a significantly large number of packages. So it's still difficult to say that it's happening to the extent that some of the industry partners would like to see, because there is still reluctance over how much interface government agencies can manage with very large contracts like a metro contract. So they still rely on the risk being on the large, tier 1 contractor and how they subcontract their packages. There is no perfect position, and it will be depending on the project, its risk characteristic and what they can actually manage as a government agency.

The Hon. DAMIEN TUDEHOPE: Risk is a big issue in relation to awarding contracts, is it not?

SAID HIRSH: Of course. The entity that will win the contract has to manage some of the project's pretty significant risk on its balance sheet, so of course it's a big issue.

The Hon. DAMIEN TUDEHOPE: In relation to Public Works, one of the observations made in the submission is:

... there is a great opportunity and potential that a properly funded and dedicated centralised team to provide this service across government would potentially improve greatly procurement outcomes.

Is that a reference that you think that there ought be a bigger procurement team?

DREW VARNUM: I think the reference you are referring to is probably to do with a construction procurement category management role across government. With a devolved model, agencies who are accredited have a role in terms of basic category management, but there is limited centralised category management to a level which has really mature systems of engaging the market, understanding and analysing data that can provide better procurement outcomes, and there's money-spending analysis work across government. So, yes, definitely some more advanced category management and funding or teams to do that across government in a centralised manner—that doesn't necessarily mean that will take some of that role away from the infrastructure agencies who have visibility and contact with the contractors, but certainly a consistent conversation with some of those industries and contractors is something that's probably missing at the moment across government.

The Hon. DAMIEN TUDEHOPE: So it would operate like an information gathering?

CORRECTED

DREW VARNUM: I think a more advanced category of management would be, yes, a source of information gathering so we can use that data to properly inform procurement for all agencies across government.

The Hon. DAMIEN TUDEHOPE: There is a function review of the Department of Regional NSW, which has been conducted by—do you expect any changes in how NSW Public Works operates within the New South Wales Government as a result of that?

DREW VARNUM: In terms of the function review of DRNSW—no for Public Works. That's primarily because NSW Public Works operates on a fee for service commercial basis. We're not funded by government. That's a key factor in terms of how we engage and provide resources to infrastructure projects for government, for local government. So that's one of the factors that—largely, we sort of focus on a net cost of service return model, where we're required to provide a return to government. In that regard, we flex up and down with our resources in terms of the work that's there for us to do for agencies as a normal business as usual process.

The Hon. DAMIEN TUDEHOPE: How many people are in your team?

DREW VARNUM: Approximately 500 staff across New South Wales.

The Hon. DAMIEN TUDEHOPE: In terms of the procurement part of your team?

DREW VARNUM: We have a dedicated procurement team, which is probably about 12 people, which do certain tasks. But most of our staff are professionals in the construction—and are involved in managing construction procurement. The key thing about construction procurement is it's not just the engagement process, the tender process; it's actually managing the contracts over the life of the contracts or the design management. So those procurement activities effectively last for multiple years in terms of construction. Most of our staff, probably 400-plus, are involved in direct engagement and management of infrastructure projects.

The Hon. DAMIEN TUDEHOPE: One of the criticisms that some other submissions make is in relation to the standardisation of contracts so that there is consistency in relation to obligations which arise pursuant to contracts so that there is an understanding by the contractor about how they would manage risk. What do you say is the situation in relation to the standard contracts which are used by agencies in relation to procurement contracts?

DREW VARNUM: As you may be aware, there's a series of standard form construction contracts and consultant engagements available—

The Hon. DAMIEN TUDEHOPE: But they're always varied, aren't they?

DREW VARNUM: The ones that are by New South Wales don't vary; they're the standard form contracts. They've been written—so they'll apply for most types of infrastructure across a government. They probably won't apply for the big metro stuff or the large projects. But they're not mandated for use and/or they can be amended by agencies as they draw them down off the site. What we find is that there's a penchant to change those contracts, even some of the commercial terms in those contracts. That's where the industry has provided feedback—that the inconsistency in how those are changed creates a difficulty for someone to participate in the market even. So, yes, that's a problem we recognise. It's one we're looking at. We can only draft and write the contracts. How they're used by the agencies and/or the different players is not in our control, but it is one of the concerns where we at least get a greater participation from the industry if there's consistency in those contracts so that they know what they're picking up when they're picking up a government form standard contract, whatever the form might be in.

The Hon. DAMIEN TUDEHOPE: You gave some evidence in relation to the length of contracts. You make an assessment in relation to procurement obviously at the time that a tender is accepted. How do you monitor the contract for the purposes of ensuring the compliance with the Procurement Policy Framework throughout the life of the contract?

DREW VARNUM: Again, a contract and terms of a contract are monitored in terms of what the requirements of the contract are. That's one of the problems mentioned before. There are certain requirements in all the contracts and, if they're managing the contract in accordance with the terms of the contract, that is managed as part of the process. But one of the issues is not all that information is shared or available to others outside of the immediate team managing that contract.

The Hon. DAMIEN TUDEHOPE: We've had reference earlier to the Aboriginal Procurement Policy. Do we ensure that that policy is being adhered to throughout the life of the contract?

DREW VARNUM: Again, I can't comment on behalf of other agencies because we don't have a role for those agencies managing those contracts. But in terms of administering those contracts, the players that are administering those are supposed to, yes.

CORRECTED

The Hon. DAMIEN TUDEHOPE: And five years down the track?

DREW VARNUM: Again, the data is kept centrally for NSW Procurement, so it's probably a question for them in terms of what happens.

The Hon. DAMIEN TUDEHOPE: One of the criticisms in relation to the Aboriginal Procurement Policy is this issue relating to black cladding. Are you aware of that as an issue in respect of procurement, which effectively you would need to monitor? Do we monitor that as an issue?

DREW VARNUM: It may be best to describe what you're meaning by that. There are probably different definitions.

The Hon. DAMIEN TUDEHOPE: At the time of the contract they nominate potentially an Indigenous director of the company and potentially Indigenous employees of the company. How do we in fact monitor that there is continuing compliance with that policy during the life of the contract?

DREW VARNUM: Again, under the terms of the contract there are required submissions by contractors. That data goes into NSW Procurement. That's probably a question for that team. Because, as you're suggesting, it's difficult to know what they mean. But certainly in terms of the requirements of the contract and the submissions required, they're submitting that material that attests to that information.

The Hon. DAMIEN TUDEHOPE: What do you say, Mr Hirsh?

SAID HIRSH: I think, again, it's a central government policy around—that comes from the Procurement Board of NSW Procurement. My understanding is they've relied on two or three providers. But it's a question for them to provide that verification that this is being adhered to in terms of the issue you raised on black cladding. I believe it's a question for them as to how they would monitor that going forward because we definitely don't. I'm not sure Public Works—

DREW VARNUM: Only the contract that we're managing we can see the data that comes in. But, again, we're relying on the veracity of the data from the contractors that are providing it to us.

The Hon. DAMIEN TUDEHOPE: Is there a centralised place where all construction contracts are held? Is there some transparency in relation to the contracts? Rather than having to issue some government information applications, can I go and see a contract which is being delivered to a particular tenderer?

DREW VARNUM: Not necessarily. There is a requirement to post information about the contracts to NSW Procurement sites, but it doesn't necessarily mean the agencies post all their contracts, particularly lower level. The answer is it's a NSW Procurement question, but from our perspective we have visibility on the contracts we engage. INSW would have the same. The other agencies do. It's just about them transferring the information to a source which is NSW Procurement.

Ms ABIGAIL BOYD: I take you to page 52 of the Government's submission talking about this category management capacity. I just need to understand a little bit. Mr Varnum, you said that the Government doesn't fund Public Works. Presumably then you are getting your funding from client agencies. Is that correct?

DREW VARNUM: Most of our work is done for both State agencies and local governments. So we're a fee for service business. We win a tender or win an award. That is our main source of revenue.

Ms ABIGAIL BOYD: When the administration of the construction prequalification schemes was transferred to Public Works in 2017, did the Government enter into contract—did someone enter into contract with Public Works in order to fund that or are you funding that from your own operations?

DREW VARNUM: When that was transferred to Public Works, a very small amount of money was transferred with a couple of staff—nowhere near the staff cohort that could do a vastly bigger job in category management. But largely our main source of revenue is by our fee—if there's any remaining amount or ability to do that as part of our fee revenue, we do. But we're very limited in that capacity so we have a very closed requirement about what we do in a category management sense.

Ms ABIGAIL BOYD: So you would require more funding from NSW Procurement or whoever in order to beef up that team?

DREW VARNUM: There is great opportunity to get some great gains out of a much more advanced category management process across government, whether it sits with us or wherever in government. That would potentially provide some great results for construction procurement, industry development across New South Wales.

CORRECTED

Ms ABIGAIL BOYD: You say that the activity in relation to that category management capacity is limited to basic administrative tasks. You then talk about independent third-party advice confirming that a greater capacity could deliver a variety of different things. Firstly, that independent third-party advice—who was that?

DREW VARNUM: That was a consultant called Grosvenor.

Ms ABIGAIL BOYD: When you talk about only having capacity for the basic administrative tasks, does that impact on the robustness of overseeing and monitoring compliance aspects of the scheme as well?

DREW VARNUM: Again, we have no role or capacity to oversee the compliance of those schemes. It's not really our role.

Ms ABIGAIL BOYD: Things like assessment of scheme applications and the rest of it, that's not being hampered by your lack of capacity?

DREW VARNUM: The key aspects that we do under our role within category management is assessing, updating and administering schemes, but that is basically high-level administration. There's no greater level of detail about managing interaction with suppliers et cetera, and another aspect is actually the custodians of some of those standard form contracts but that's sort of limited to what we do.

Ms ABIGAIL BOYD: Is there any difference then from a Public Works perspective as to whether or not works are above or below the \$50 million mark? Does that make a difference in terms of the amount of oversight?

DREW VARNUM: No. Again, we don't oversee any of the activities below \$50 million in general. Certainly the projects that Public Works are involved in for agencies—we have some visibility on those, obviously. But in terms of the monitoring of the use of schemes or whatever, it's done largely by the agencies who deliver that. We have some information passed on to INSW above \$50 million but, generally, the answer is no to that question—both either or.

Ms ABIGAIL BOYD: It's not a magic figure.

DREW VARNUM: No.

Ms ABIGAIL BOYD: You say in your submission a large majority of the contracts within the construction category scheme are for works below \$50 million. I wonder if there is a significance to that figure there?

DREW VARNUM: From our perspective our major activity—Public Works. The number and locations of the works we work on are largely under \$50 million; 80 per cent of our contracts are probably under \$50 million. We work on bigger ones, but that's probably where our focus and our expertise is—on those contracts. They're largely in regional New South Wales as well. That's where we provide some insights into CLG in a more generic, whole-of-government perspective than some other agencies do. We provide insights from a local government perspective as well. A lot of those projects are under that banner. We work with INSW in terms of their collation of data and information above \$50 million across agencies as well.

Ms ABIGAIL BOYD: When you're providing services from Public Works to client agencies and local councils et cetera, who are you competing with?

DREW VARNUM: Two things: We are allowed to be engaged as a government body. Sometimes we're directly invited or single invited. But we are, effectively, competing with other private sector, commercial project management firms largely. We have a design and engineering firm. Similarly, we'll compete with design firms to do that. That's largely project management—some construction advisory services but the private sector. We work on a commercial market basis. Our rates are consistent with that sort of number.

Ms ABIGAIL BOYD: What do you do then to beat the competition? How do you attract more business?

DREW VARNUM: One of our requirements is we work under competitive neutrality principles. One of our goals is to not undercut; we can't undercut or buy jobs. One of our key things is to enable the development of the industry and market. We compete with them. That's about winning work, but we are also about how we not undercut the market. It's important that the market has capacity. We are, in large part, a stopgap—fill the gaps that are there in the market. In regional New South Wales, that's pretty regularly the case across more remote parts of New South Wales, but certainly in Sydney as well, in terms of times of big spend, which is significant in recent times.

Ms ABIGAIL BOYD: That's interesting. I was going to ask how that competitive neutrality principle perhaps holds you back but, from what you're saying, the reason for being of Public Works is not to, necessarily, gobble up that work but only to be there when the private market is not filling the need. Is that what I'm hearing?

CORRECTED

DREW VARNUM: There are lots more reasons, but in large part that's a good summation.

Ms ABIGAIL BOYD: I think the answer is going to be no; I'm not going to ask. Or maybe you could tell me where this sits then: oversight of contractors and subcontractors on these works. In particular, with things like ensuring that they are providing appropriate terms and conditions for workers and that kind of thing, who has oversight of that? Where does that sit?

DREW VARNUM: Again, it doesn't sit with Public Works. It doesn't necessarily sit with each of the agencies that are administering the contracts. Generally, most of the construction contracts refer to common-law or fair trade working practices, but it doesn't sit with the infrastructure delivery agencies per se.

DEBORAH CHAPMAN: Can I make a comment just on that? The obligations for our principal contractors that we use for our big projects at Infrastructure NSW are set out in their contract conditions, and all the subcontracting arrangements must be approved by us on those big contracts. Sorry, I just wanted to clarify.

Ms ABIGAIL BOYD: When you say big contracts, what does that mean?

DEBORAH CHAPMAN: The mega projects that were previously advised: Powerhouse Parramatta, the Sydney Fish Market.

Ms ABIGAIL BOYD: The ones over \$50 million, though, you would think.

DEBORAH CHAPMAN: I'm not sure of the actual threshold.

SAID HIRSH: All our projects are. We get asked to do these large projects, generally.

DREW VARNUM: Also that is the case with any contract. You could write any particular requirements around subcontract. There are standard requirements in all the standard form contracts. But the policing is another question. We can write different contracts for different reasons, I think.

Ms ABIGAIL BOYD: Who is doing that policing, as you say? Who is doing the monitoring of contractors and subcontractors? For example, insuring against phoenixing and other things—who is doing that?

SAID HIRSH: I'd suggest that the agency that is procuring would be monitoring its contracts, as we do. It's fine to say there's a contract which has kind of put the risk on a contractor to do certain things, but as government, we still have a responsibility on the sites, even though it's managed by a contractor or a principal contractor. Any subcontracting arrangements, any health and safety issues, anything else that still is on the contractor, our project teams have a keyhole through project control groups and other committees to monitor what's happening through site visits and going around. In some ways, whilst we might not have a specific contractual obligation as a client to do these things, we do have an obligation to make sure things are going fine even if the contract itself has kind of put the risk on another party to do so. So the specific delivery agency, the project team have a responsibility, even if it is not contracted to do these things.

Ms ABIGAIL BOYD: Maybe I'm confused about your role then because I thought that your organisations were basically managing these projects or having a role—

SAID HIRSH: Certainly for Infrastructure NSW, on projects like the Powerhouse Parramatta and others, we are the agency that has effectively procured the project on behalf of government and is managing the project on behalf of government.

Ms ABIGAIL BOYD: As the agency that has procured, are you actively checking that certain conditions have been met in these big contracts?

SAID HIRSH: Of course, yes.

Ms ABIGAIL BOYD: But that's not the case for Public Works?

DREW VARNUM: No, that is the case. Maybe there's a bit of nuance there. The contract requires, in the performance of carrying out the contract, the subcontractor—how they're engaged by the head contractor, how they're doing their work, the safety provisions, all that is monitored. We probably don't have—and INSW can talk for themselves. The agencies aren't looking at details about the financial capacity or, as you say, the phoenixing or those sorts of things; that's not part of the contract works. We're not responsible for looking at that. That might come up and we have to deal with some of the circumstances, but that's not the role under the contract. We're certainly looking at how they're behaving, how they're engaged in terms of the work they're doing on the contract. But certainly not looking at bigger picture financial capabilities, sustainability of those contractors in a contracting sense.

Ms ABIGAIL BOYD: If the Government was to put in additional—if we wanted to say that these contractors at every level had to comply with additional features such as a gender equality target or having

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particular types of conditions in contracts, would that then make its way into the standard contract? Is that where that would come through to be implemented?

SAID HIRSH: Yes, potentially.

DREW VARNUM: Yes, potentially. There are some of those requirements already in the standard contracts; some aren't. For example, I think the previous question about local contractor enforcement procurement provision means that contracts with a value over \$9.5 million or thereabouts can't have local contractors as a selection criteria in their tendering processes, but the contract can certainly be written to require certain levels of local contractor involvement. A good example—Mr Tudehope might be familiar with this—is the bushfire clean-up contract that we managed, which got 90 per cent local contractor involvement, but it had a tier 1 contractor as the head contractor because we put some provisions in to engage the lowest possible local contractor level in the terms of the contract.

The Hon. DAMIEN TUDEHOPE: It was a direction.

DREW VARNUM: That's possible by any agency within the terms of any contract, and that's why it's difficult to mandate a specific clause that works for every contractor or every agency. But, certainly, if you set some targets and have some clever procurement people that understand how to write those contracts, it is a really key requirement about how they can put that in there.

Ms ABIGAIL BOYD: Can I just give an example? I understand that, for example—I think it was a hospital or something got built very quickly. Was it housing for health workers as part of the Hunter New England and western New South Wales local health districts? It was organised by Public Works. Public Works is employed because clearly that local health district doesn't have that procurement expertise in construction. Public Works comes in and there are standard contracts entered into. From what you're saying, there's no active monitoring of those contracts and the contractual terms. The local health district is not really up to the task either; that's why they've got you involved. As we've heard from Mr Tudehope's questions, there's no publicly available place for people to look at the contracts in order to work out if they're being complied with. So how do we make sure that they are complied with? If the answer is that there's no-one doing that, should there be?

DREW VARNUM: It's certainly one of the areas we're looking to improve, no question.

The CHAIR: If we can go back to that consolidated list, you've just confirmed to Ms Boyd that there isn't a publicly available list consolidating public infrastructure or construction projects. Is there a private list? Do we hold, anywhere in government, a comprehensive list of public infrastructure or construction projects, even over a certain amount?

SAID HIRSH: Just to confirm the question, you mean a list of contracts awarded to—

The CHAIR: Yes, and which is the agency that's responsible for it. Some way to track what's going on in the construction and infrastructure space.

SAID HIRSH: I believe—and I'll check—the eTendering website that's managed by NSW Procurement does hold information on all contract awards that government has made.

The CHAIR: But that would require someone going through and putting in everything and hoping that they didn't miss anything. What I'm saying is that, even for government use, there's no list so you could say, "I'd like a list of these construction projects and which agency is delivering them".

SAID HIRSH: Probably every agency—I won't speak on their behalf, but they would have a list of all the contracts they've awarded and how they're tracking against it. From the perspective, at least, of Infrastructure NSW, obviously we don't have that many projects. But of the ones we do, we would have a list. Then through projects that we assure through our infrastructure assurance—investor assurance—there would be quite a lot of information about the projects and how they're tracking through the stages of the assurance. But I'm not aware of a single list that you can just get.

The CHAIR: Infrastructure NSW does chair the Construction Leadership Group, doesn't it?

SAID HIRSH: That's right.

The CHAIR: To your knowledge, has it never been thought to be a good idea amongst that group to have a consolidated list of who's doing what, even if just to understand the market for construction materials, companies et cetera?

SAID HIRSH: Government would know the contracts it has awarded et cetera. That information can be had in government; that's not the issue.

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The CHAIR: Can you tell me where? I've tried to find that, so where would you find that?

SAID HIRSH: I would probably defer to the NSW Procurement and eTendering around all the contract awards, and it's the only entity that looks across entire systems across agencies to collect information around spending and so on.

The CHAIR: So, again, it's not a list. You go in and you hope that you find everything.

SAID HIRSH: Yes, but for the use of work that happens through the Construction Leadership Group and other things, there is a lot of information that comes. Obviously, a lot of it comes privately. But in terms of analysing things like supply chains, market, industry and so on, it's not just the current issue that we look at but the forward pipeline of activity, which we collect information on.

The CHAIR: There are two follow-up questions. One is, potentially, the Construction Leadership Group could decide that it could create a consolidated list of activities. That's one question, and then your submission states that the Construction Leadership Group works to ensure progress towards a 10-point commitment to the construction sector. When was that 10-point plan determined, and by whom?

SAID HIRSH: The previous Government, in 2018, had a 10-point commitment to the construction industry. The Construction Leadership Group was set up to effectively implement that commitment and tracks its progress on an annual basis.

The CHAIR: So it was a 10-point plan set up by the previous Government, and the role of the Construction Leadership Group was to ensure progress to implement it.

SAID HIRSH: To implement it, yes.

The CHAIR: The NSW Public Works submission notes that you've identified to the Construction Leadership Group "opportunities for improvement of the construction accreditation program". Is that correct, and could you talk us through those recommendations?

DREW VARNUM: That is correct. Yes, when we implemented the construction procurement accreditation system, I think back in 2018 or '19, again it was based on a self-attestation process, largely. There are certain recommendations we've made to CLG in that regard, and they would include things like—the way that it's set up at the moment is it's a one size fits all. Certainly, if different agencies have different pipelines of procurement coming up, there's no particular need for a small agency, if they seek accreditation, to have the same requirements as a Sydney Metro or bigger agency. That's how it's set up at the moment, and there's the question as to whether that small agency actually needs accreditation in terms of the pipeline.

Things around a strategic position from a policy perspective—how the portfolios or the clusters have several agencies with accreditation—there's a question there about whether that's appropriate or otherwise. A lot of questions were thinking how we can develop it further and/or repair it—even some of the potential downstream delivery risks due to pre-construction works under \$1.3 million requiring no accreditation. Sometimes in construction, that's where a lot of the risk lies in the construction spend, which is the big-dollar-value one—so just some requirements about how we amend and repair that accreditation. We're also looking at things like how we might centralise some more activities, again working with NSW Procurement and other agencies on what that might look like.

The CHAIR: What was the response to that from the Construction Leadership Group?

DREW VARNUM: Again, all that work requires funding and commitment, and we don't have that funding. There's a small amount of money that the Infrastructure leadership have to do certain activities. At this point in time, that's one that's probably been on the agenda. It's still not a no-go; it's just probably stopped in terms of this inquiry, for one thing, in terms of what might be the outcome coming out of this. But certainly it's still on the agenda for activity.

The CHAIR: I understand Public Works manages whole-of-government contracts for cleaning, facilities management and security. Is that correct?

DREW VARNUM: We manage some, yes.

The CHAIR: Those industries top the list of sectors that are characterised by vulnerable workforces, and particularly exploitation through contracting supply chains. Does Public Works do anything, or is that whole-of-government arrangement set up to mitigate the particular risks in those industries?

DREW VARNUM: The short answer is yes. We don't manage all of the cleaning, facility management and security contracts across New South Wales. We manage a multi-agency facilities management contract, a small one now; the current whole-of-government cleaning contract, but there are other cleaning contracts; and the

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security contract. In each of those contracts there are those provisions built into those contracts—social procurement targets and lots of requirements around cleaning, for example, in terms of working with children. All those requirements are built into those contracts. So the answer is yes, in the ones that we manage, but there are many that we don't manage or aren't involved with.

The CHAIR: Obviously, I'm only asking you about the ones that you do manage. I think this echoes Ms Boyd's questions. To be on a panel or be prequalified, how does a supplier demonstrate compliance with labour law down the contractor chain, given that we know it is a particular risk in those industries? And how is that verified?

DREW VARNUM: Again, the current facilities management contract we run is very small value, so it is probably not relevant, but the cleaning and security contracts are still rather large. They have requirements in them that don't allow subcontracting to a certain extent, so that is monitored regularly in the administration of those contracts. Definitely in the tender process and assessment of all the contractors there's a lot of information and a lot of work done to understand what those subcontractors are and/or will be. But yes, definitely throughout the life of the contract the contractors' activities are monitored. With the cleaning contract, we have regular discussions with unions et cetera about that process. But, again, we don't manage all of the activities in that space across government.

The CHAIR: Sure. Again, I've heard that, in attempting to get access to panels for whole-of-government et cetera, these are only open for a period of time and then they get closed off. Is that the case? Or are there open panels or prequalification schemes for those that you can access any time?

DREW VARNUM: Again, I'm only talking to the whole-of-government panels we use. They are normally period contracts. There are mechanisms, and the assessment process to put the panel together is quite a detailed expression of interest/tendering process so that they have the right bona fides. At various points, as those contracts are either extended—most of the contracts have extension options in them—there is a mechanism to put further contractors on the panels. They do require to meet some significant requirements because they are whole-of-government, working across the whole State. It's not an easy fix. But if we do need to put extra ones on, normally it's a process of re-looking at the whole panel given the security, financial et cetera requirements around those ones. Obviously, as the contracts are renewed, the whole process starts again and they have that opportunity. That's the process.

The CHAIR: So there are particular moments in time where there might be an availability to access, as opposed to completely open.

DREW VARNUM: Yes. And that is open to the full market at that time.

The CHAIR: I've been asking questions about value for money and what that means. I note again that in the Public Works part of the submission you suggest that it might be helpful to provide a clearer policy on value for money across government. Can you describe how you consider or how you determine value for money now, and why it is you've suggested that there might need to be this clarification?

DREW VARNUM: Again, without talking for anyone else across government, and talking from the experience of the contracts that we deal with, there are a lot of different things that point to value for money—and it is not necessarily about price every time—and different value for money imperatives for different agencies. It's not an easy question to answer. It is different based on place by place, local contractor capacity—all sorts of different things come into that. But it would be good, at a high level—again, part of the procurement policy reform. I'm not sure if that's answering your question.

The CHAIR: How do you assess it now? Are you saying that you refer to agencies and see what they do?

DREW VARNUM: From our work in terms of managing and delivering projects, we will compare a lot of things. For example, pricing information comes from the latest cost estimates that we have access to. No agency has great visibility on all the costs estimates across government, so that is difficult. Certainly, then, how it might link to local contractor procurement, social procurement objectives—again, all set pre the construction of the job. It is about how the procurement strategy for the whole project works. Sometimes it might point to a more direct engagement to get things happening faster. That's got to come into the question about value for money as well.

The CHAIR: Can I ask about weightings? Where there are no mandated weightings—we heard earlier today that agencies and even just people involved in the project were determining what the weightings might be for different criteria to get to the value for money. Is that how you work in Public Works? Do you have that level of devolved activity where people down the chain are determining the weightings?

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DREW VARNUM: Again, I make the point that we're working for other agencies. They are the clients and they are involved in establishing some of those non-price/price weightings. We might bring our expertise to bear in recommending what might be appropriate or otherwise for the local circumstances, but largely those weightings are determined by the local requirements, the local needs, the desires of the agency in terms of whether it is price, non-price, what the non-price might be.

The Hon. ANTHONY D'ADAM: So there is no common formula across the sector?

DREW VARNUM: There are some recommendations within New South Wales documentation, but that is just recommendations and no common formula.

SAID HIRSH: I think part of the challenge is, when we talk about procurement and contracts, a lot of infrastructure construction is talking about a point in time in the life cycle. That has happened because of a lot of decisions from the time that the project was a thought to the time it is actually contracted. Quite a lot of things have happened that determine things like what is the value for money, what is the delivery and procurement strategy that works. Then you are coming under procurement, and really there is a contract that is trying to accomplish or achieve all of those objectives and outcomes that happened over time. It is very difficult to talk about one specific part of the life cycle without understanding how the planning, how the design managers have got the project to a certain state once it went to market to be procured.

The CHAIR: I think the point you're getting at is that value for money is an extremely subjective term. If it is being interpreted by any number of people across any number of agencies, then the likelihood is that we're going to get very, very different interpretations.

SAID HIRSH: There are probably common themes. I think the challenge becomes when you are trying to implement one value for money for all types of projects which are government procures, and managing assets of all kinds and trying to have one set of rules that applies to all of them is very difficult. That's probably why we have the model we have, which is not perfect, but it is because it is trying to achieve value for money for quite different asset classes, different delivery risks, and it is very difficult to have just one size that just applies to all of them equally, if that makes sense.

The CHAIR: But you could consider assets classes, couldn't you?

SAID HIRSH: You could, and that is why the agencies that are responsible for the procurement are responsible for implementing Government policy and having the procurement frameworks effectively fit with that broader policy, because they are managing different asset classes, effectively.

The Hon. ANTHONY D'ADAM: Are they required to publish the criteria that they apply in terms of how they arrive at the value for money determination?

SAID HIRSH: I think that's been one of the criticisms from contractors recently—that they don't have visibility clearly how the agencies are actually assessing and what criteria they use. It is something we are definitely working towards and something to improve so that the market that is bidding for work understands what it is being measured against. That's right, yes.

The CHAIR: That is the end of our time here. We very much appreciate you coming along today and your parts of the Government submission. It has been very helpful. We may send you some supplementary questions, for which you will have 21 days to provide the answer.

(The witnesses withdrew.)

(Luncheon adjournment)

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Ms BELINDA RITCHIE, Executive Director Commercial Services, Infrastructure and Place, Transport for NSW, affirmed and examined

Mr JOSH MURRAY, Secretary, Transport for NSW, affirmed and examined

Mr ROB HALSALL, Executive Director Procurement, Goods and Services, Transport for NSW, sworn and examined

Mr PETER PERDIKOS, Executive Director Commercial and Procurement, Transport for NSW, sworn and examined

The CHAIR: Thank you all very much for joining us today for our procurement inquiry. Would you like to begin by making a statement?

JOSH MURRAY: I'll make some short comments. You've heard my colleagues introduce themselves, representing our construction tendering division and also central finance and procurement divisions. They can answer questions around the technical detail of Transport's procurement agenda. Over the next four years, Transport is delivering a \$72.3 billion capital works program. Transport is committed to its role in delivering that program as a custodian of public money and ensuring that it is spent in a way that meets the outcomes the community rightly expects. One in four taxpayer dollars in New South Wales is spent on transport infrastructure and services, so a key part of us driving this value for money, while utilising our procurement buying power, is to advance those key social and economic values.

We see our responsibility very clearly in advancing that agenda. We see that also spooling out mostly around areas like Indigenous engagement and gender diversity, the need to build skills into our workforces, and also sustainability—in particular, the emerging fields of carbon in infrastructure. Transport is committed to leading with integrity, transparency and a strategic vision in our procurement activities, while also noting that we have been subject to three recent ICAC investigations into procurement activities. We have reformed in relation to the recommendations that have been published in two of those inquiries, and we await the third. We understand the impact our procurement practices therefore have not just on the economy but on the social development and environmental sustainability of New South Wales.

This procurement landscape is dynamic, embracing whole-of-government arrangements to maximise value and efficiency. Our procurement and development unlock other services across government, and we are very conscious of this. They are also extremely high-profile community activities that will generate benefits for decades to come. The strategy allows us to leverage the buying power of Transport through the development of these activities, achieving cost savings and improving service quality. But at the heart of our procurement strategy is a commitment to driving social outcomes and a collaborative approach to work hand in hand with this Committee, our construction partners, government agencies and the industry more broadly to refine our procurement approach.

Indeed, in my relatively short time in Transport, I have participated in numerous sessions to educate and engage with the market about our upcoming procurement pipeline, and those have been oversubscribed from the industry to say the least. As you heard in the introductions, Ms Ritchie can assist the Committee in providing evidence related to Transport's construction procurement. Mr Perdikos and Mr Halsall can assist the Committee on questions related to Transport's goods and services procurement and broader processes and compliance. Thank you for your time this afternoon.

The Hon. DAMIEN TUDEHOPE: Mr Murray, you'll recall from your time at Laing O'Rourke, Laing O'Rourke delivered very successfully a program for the reconstruction of fire-damaged property as a result of the bushfires. Do you recall that?

JOSH MURRAY: Yes, I do.

The Hon. DAMIEN TUDEHOPE: You'll recall in relation to that program that there was a direction in relation to local contractors for the purposes of doing that work. Do you recall that?

JOSH MURRAY: I recall the generalities. I wasn't involved in the project delivery of that. I was overseas at the time.

The Hon. DAMIEN TUDEHOPE: I'll remind you, to the extent that you were overseas. Laing O'Rourke effectively managed a significant component of reconstruction for bushfire-affected areas as a result of using local contractors to go and do that work. I wonder whether you thought that that was a good model for the purposes of, in specific areas and specific circumstances, engaging local contractors by way of a direction to the Procurement Board?

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JOSH MURRAY: Indeed. I am aware of the immense gains that were made throughout that process and the rigour and regard in which it was held within Laing O'Rourke. While not wanting to speak on behalf of my former employer, I certainly know and have seen the communities that benefitted from having people on the ground very quickly and mobilised very quickly and then engaging with local providers to get to the heart of the issue. In terms of the organisational approach, government was able to also unlock certain avenues to ensure that the commerciality around that contract, in terms of the time taken to make approvals on insurers and the like, was prioritised, and that brought a lot of relief to the home owners.

The Hon. DAMIEN TUDEHOPE: One of the election commitments that the Government has is, in fact, to set a target of 50 per cent minimum for local content for future rolling stock contracts, to be reached by March 2027. How do you understand the concept of local content?

JOSH MURRAY: We adopt the Treasury rules around local content. In regard to the future fleet rolling stock, as you've said, we are aiming for 50 per cent local content to be—

The Hon. DAMIEN TUDEHOPE: What is the Treasury rule, do you say, in relation to local content?

JOSH MURRAY: I understand you've had the Treasury here earlier today.

The Hon. DAMIEN TUDEHOPE: What do you understand?

JOSH MURRAY: We are going through a process at the moment of market testing with the industry capability network, and we are gathering further intelligence that will enable us to put together the future fleet rolling stock provisions, and we will bring that back to the market as we go.

The Hon. DAMIEN TUDEHOPE: Mr Halsall, do you have a concept of what local content is?

ROB HALSALL: Absolutely. It's probably aligned with what Treasury shared earlier today, and that's Australia and New Zealand at the moment. But we realise that that's being worked on currently, and that may evolve.

The Hon. DAMIEN TUDEHOPE: If there was to be 50 per cent local that would, in fact, potentially be someone in Western Australia or Victoria who would provide that local content?

ROB HALSALL: Within the current definition, that's correct.

The Hon. DAMIEN TUDEHOPE: Would that create jobs in New South Wales?

JOSH MURRAY: Our understanding, speaking with my interstate colleagues around this and also the National Rail Manufacturing Advocate, is that the benefits for all States in having a vibrant local manufacturing economy would flow. That might be windscreens being created in regional towns or cities across Australia. It might be bogies or other elements of rolling stock, but I think it is difficult to assume that everything has to be built out of one specific regional centre in New South Wales. As we rebuild manufacturing, we have to, as the Government has instructed its delivery agencies to do, look at places where we can increase sustainable procurement through those areas.

The Hon. DAMIEN TUDEHOPE: Let's look at current rolling stock or train rolling stock which was purchased from Korea, say. What amount or component of that rolling stock was manufactured in New South Wales?

JOSH MURRAY: I'd have to get—

The Hon. DAMIEN TUDEHOPE: Are there the same opportunities, if it came from Korea, to benefit by virtue of installing components in New South Wales?

JOSH MURRAY: Each of the past rolling stock contracts has had different elements of local content or local supplier provisions that have been attached to those contracts.

The Hon. DAMIEN TUDEHOPE: Generally, what's the percentage?

JOSH MURRAY: I'd have to take that on notice in terms of exact percentage.

The Hon. DAMIEN TUDEHOPE: Mr Halsall, do you know what percentage?

ROB HALSALL: I would have to take that on notice, Mr Tudehope. It's not—unless Ms Ritchie may have an answer.

BELINDA RITCHIE: No, Mr Tudehope. We could take that on notice. Perhaps to add to what the secretary has said, in relation to the future fleet, I would say there's an intensive exercise going on at the moment to actually map local industry capability nationally and in New Zealand. Part of that includes breaking up work

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packages. At the moment we've got 65 businesses in New South Wales who have registered an expression of interest for the Future Fleet program, and we're working with the industry capability network to understand what the supply chain capability is, both in New South Wales and nationally.

The Hon. DAMIEN TUDEHOPE: But in respect of previous contracts, there was that same opportunity, was there not, for local industry to be involved in the fit-out or whatever it is of train rolling stock when it arrived in New South Wales?

BELINDA RITCHIE: I can't speak to the arrangements in place for the previous contracts.

The Hon. DAMIEN TUDEHOPE: Is that information available?

JOSH MURRAY: I think we'd have to look specifically at the different elements.

The Hon. DAMIEN TUDEHOPE: In relation to previous contracts, the extent to which work had been done by local contractors for the purposes of either a component of the manufacture or delivery of those train systems—that information would be available, would it not?

JOSH MURRAY: Yes.

The Hon. DAMIEN TUDEHOPE: You can take that on notice to provide us with—

JOSH MURRAY: We can.

The Hon. DAMIEN TUDEHOPE: In relation to the buses, in your submission you say:

The first term of the Zero Emission Bus Program, between 2024 and 2028, will create opportunities for local growth in buses with a target of 50 per cent local content. ... Manufacturers will be required to confirm claimed local content percentage materiality using a consistent method of measuring local content.

Again, is that local content in Australia and New Zealand or in New South Wales?

JOSH MURRAY: That's by the previous definition, which is in Australia and New Zealand.

The Hon. DAMIEN TUDEHOPE: So a bus manufacturer in New South Wales would potentially have to compete with a bus manufacturer in Victoria or Western Australia?

JOSH MURRAY: Yes. However, with the scale of the bus, in particular the ZEB rollout, we anticipate requiring a number of providers. In fact, we think that the growth of this as an industry is very important for all States and Territories.

The Hon. DAMIEN TUDEHOPE: I'm entirely with you, in relation to that. Have you identified already the bus contractors who can potentially be providers of buses for New South Wales?

JOSH MURRAY: Yes, our Bus Panel 4 was the latest round of approvals to go out, and a number of providers have already been attached to that. I was with one of them on Thursday last week, hearing about their preparations to supply under that contract, but we would expect that other providers would also join that rollout.

The Hon. DAMIEN TUDEHOPE: In respect of the shutdown of the south-west metro, those buses have been sourced from China, have they not?

JOSH MURRAY: That's correct.

The Hon. DAMIEN TUDEHOPE: Was any work done to source those buses from Australia, New Zealand or New South Wales contractors?

JOSH MURRAY: Yes, thank you for the question. It's important to note that this is a twin-track process. Under Bus Panel 4, we anticipate providing hundreds of buses and building to the 50 per cent local content provisions that have been stipulated in those contracts. In terms of the temporary transport plan for the Sydenham to Bankstown corridor, that's a short-term stint that is required by a bus contractor to provide services, start up from nothing and then to finish them once the metro conversion is there. So there is no ongoing life for those buses after that contract. It was determined that the best way to do that, the most sustainable for the industry, is to continue the procurement under Bus Panel 4, which will provide us with the latest high-quality buses with local content provisions, including mostly zero-emission buses, and at the same time to procure the 60 or so buses quickly from China, where they can be provided via the company that has won that contract. They will then be not used and not taken into the ownership of Transport for NSW.

The Hon. DAMIEN TUDEHOPE: On the completion of the contract, what happens to those buses?

JOSH MURRAY: They are owned by the contractor that is providing the temporary transport plan.

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The Hon. DAMIEN TUDEHOPE: So the only thing which really specifies the purchase of these buses from China was the speed with which they were required. Is that right?

JOSH MURRAY: That's correct. That's part of the requirement that we asked the industry to respond to us, to be able to meet our time line around provision of the metro service.

The Hon. DAMIEN TUDEHOPE: How long have we known that this metro was going to shut down?

JOSH MURRAY: We've been working on it all the way through, but we have also been developing the Bus Panel 4 to provide hundreds of buses under that contract.

The Hon. DAMIEN TUDEHOPE: The urgency arises—we must have known for a significant period of time that there was going to be a shutdown of this line and that there was going to have to be a requirement for buses. What you're saying to me is that it has become urgent but no work was done to see whether we could source those buses anywhere else in Australia or New Zealand.

JOSH MURRAY: No, my advice is that the best, most efficient use under this contract—a reminder that we have our private bus operators in New South Wales and in Sydney, in particular, providing these services. We need to provide that service, we need to procure hundreds of new buses under Bus Panel 4, and we need a short-term fix for the metro corridor, where we do not want then the taxpayer to be burdened or to upset the other two processes through the provision of that service. That was the task that was taken to market.

The Hon. DAMIEN TUDEHOPE: On the basis of that response, would you say that value for money in fact includes consideration of the urgency with which a particular piece of infrastructure is required?

JOSH MURRAY: I think the Government has already said that this is not a perfect solution. That is why the New South Wales Government and the taxpayer are not taking these buses into their own ownership as we have with the rest of the New South Wales bus fleet that is provided through private contract. What we are doing is we are contracting out this service to the provider because it is required for this short-stint service provision, and then the provider will dispose of those buses afterwards.

The Hon. DAMIEN TUDEHOPE: I understand exactly what you're trying to tell us. What effectively you have suggested is that there are contract conditions which may arise, which in fact dictate that value for money would involve contract terms of the sort that you've identified for the purposes of getting the best value for money and that is including not taking them on as part of the fleet, sourcing them from China as part of the consideration for that contract. So that represents, for this contract, value for money?

JOSH MURRAY: The primary consideration was the speed of provision of wheelchair-accessible, Opal-enabled buses.

The Hon. DAMIEN TUDEHOPE: And it could not be done in Australia or New Zealand?

JOSH MURRAY: And it could not be done, is my advice, without upsetting the other procurement processes, where we're attempting to build a sustainable, long-term supply of particular zero-emissions buses, rather than taking on additional diesel buses.

Ms ABIGAIL BOYD: Good afternoon to all of you. Can we start with ICAC's submission to this inquiry? Have you read that submission, Mr Murray?

JOSH MURRAY: Yes, I'm aware of the particulars. I haven't read every element of it, but I have gone through it, yes.

Ms ABIGAIL BOYD: One of the bits that interested me most was in relation to the contractors involved in procurement activity. We know from budget estimates and also from the consulting inquiry that we found a lot of contractors within Transport and within Transport's agencies, and there were concerns raised around contractors sitting on procurement panels and things. What has been done within Transport since those revelations have come out in relation to meeting ICAC's expectations and ensuring that we don't have a corruption risk?

JOSH MURRAY: Thank you, Ms Boyd, for the question. I may ask Mr Perdikos or Mr Halsall to expand further on my comments. In relation to the two ICAC investigations into procurement that have been published, Transport has taken those recommendations very seriously and has embedded those findings into our procurement processes. Obviously there are some broader elements that you've raised and that have been covered extensively in the budget estimates hearings around Sydney Metro and, by extension, Transport for NSW. In relation to those, we have also made some changes in relation to the way that in particular subcontractors and those people who own their own consulting firms can engage with both Sydney Metro and Transport for NSW. That is something that is being embedded in the agencies at the moment in relation to those findings. We have also, as was covered in last month's budget estimates hearings, engaged a third-party legal representative to ensure

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that the consistency and the accuracy of all of our processes around the treatment of such consultants and subcontractors was robust and that those measures would be sustainable going into the future. That process, again, is all being embedded in both agencies.

Ms ABIGAIL BOYD: Did you want to add anything, Mr Halsall?

ROB HALSALL: Thank you for the question, Ms Boyd. I guess when we shared at the consulting inquiry, we talked about a number of internal controls that we were already in flight in introducing. I will maybe take an opportunity to share some of those. Given that we span across a diverse set of industries, I think it was acknowledged that there will always be a need for external strategic advice, depending on the project, to augment any internal talent. Some of the definitive actions that we've taken over the last 12 months specifically—I will give you an example. We've introduced identity systems in management from June last year, which consolidates the number of systems used to onboard professional services contractors.

So we capture any relevant data in a single system, which provides greater visibility for management and reporting. We've also introduced, between June and September last year, improved access control for professional services contractors. So we're reviewing the access that they may have and improving the restrictions or controls around the access that those personnel may have. Visibility from last year has also improved. A simple but important internal display for any professional services contractors used within Transport is now visible on the directory. We can see that when we're engaging. For example, if you have a meeting with someone, that would be shown on the screen. If they're on a Teams meeting, they would be visible.

Ms ABIGAIL BOYD: I remember that one being raised before. I was astounded that it was not the case already.

ROB HALSALL: I can't talk for whole-of-government, but I know that that's been a significant visibility piece, which also helps from a conflict-of-interest discussion or confidentiality when sharing information in those conversations. Another example is where we have harmonised the onboarding for professional services contractors into a single process across Transport. Also from September last year we've assigned mandatory training to professional services contractors.

Ms ABIGAIL BOYD: Sorry, I will just interrupt you there in the interests of time. If I could ask in relation to two particular aspects of this work. In the submission it says:

Transport for NSW is undertaking a significant program of works to uplift transparency, oversight, governance and accountability in procurement—

and it includes—

active management of conflicts of interest when and where they arise ...

Can you explain more about what that is, because I think when we spoke during the consulting inquiry it was very much training and relying on people to do the right thing?

ROB HALSALL: Yes.

Ms ABIGAIL BOYD: Is there any more active monitoring?

ROB HALSALL: Yes, there is. It's definitely a parallel piece of work. We've introduced a procurement risk oversight committee, which meets monthly. That's on the goods and services procurement. That looks at a number of performance metrics in the plan, source and manage part of the life cycle. For example, it would be COIs—conflicts of interest—being declared by the tender evaluation committee. We would also ensure that those tender evaluation committee members have completed probity and ethics training before becoming part of the tender evaluation committee.

Ms ABIGAIL BOYD: Are there circumstances in which people are simply excluded on the basis of their conflict of interest?

ROB HALSALL: Absolutely. The tender evaluation committee chair would be responsible for reviewing those conflicts of interests and then making a decision as to the configuration of that tender evaluation committee itself. So if there is deemed to be a conflict and that's been declared and disclosed, then it's the role of the tender evaluation chair to manage that process.

Ms ABIGAIL BOYD: Have there been examples of people being excluded by the tender evaluation chair from activities based on a conflict of interest?

ROB HALSALL: I'd need to take that question on notice, Ms Boyd. We definitely track that as a metric. We can show over the last period of time—roughly 12 to 18 months, since we've implemented this risk oversight

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committee—the samples that we check each month and what the percentage completion of conflicts of interest declarations is. So we're actively tracking that and playing that back into the relevant division owners.

Ms ABIGAIL BOYD: If you could take that on notice, that would be great.

ROB HALSALL: Sure, absolutely.

Ms ABIGAIL BOYD: The other aspect that I'm particularly interested in, which the ICAC submission points out as well, is in relation to this revolving door between people who have become privy to what's happening within an agency and then go on to become a supplier. So whether they're in Transport for NSW as a contractor or as an employee, they then go over and sit on the supplier side but they've got a bit of an unfair advantage because they know all the information from Transport for NSW. Has there been any work undertaken in relation to tracking those personnel movements?

PETER PERDIKOS: Thanks for the question, Ms Boyd. There's a range of work activity that's underway with respect to this. On one side, it's ensuring through what Mr Halsall's just commented on from a procurement risk oversight perspective. What I mean by that is specifically ensuring that we don't have contractors, professional services or labour hire sitting on tender evaluation committees. That's the first thing. We're also very close to—later this month—rolling out a VMS for professional services. That will give us much greater clarity and insight as to the individuals, their ongoing work programs or different work programs within Transport, what that looks like and the different information that may have been shared with them, including their engagements and lengths of engagements—all those normal things as well. That's a pretty significant uplift for us. It gives us a lot greater insight into that cohort of people within the organisation. That builds on reporting that we rolled out late last year in October/November. It automates it and takes it a lot further but effectively gives us that visibility and transparency over the individuals that we're talking about.

I understand from some of the ICAC recommendations, which Mr Halsall and I and a broader set of people are accountable for implementing and responding to, that there are other controls and mechanisms as well, such as ensuring we do supply checks moving forward. As part of that we do have, through Mr Halsall's team and other parts of Transport through our sourcing teams, activity that has a role in that, ensuring that we do check suppliers—the validity of those suppliers and so forth. If we look in totality at the individual side and the supply side, together with what we're doing from a procurement risk oversight committee perspective, we're in a much better position than what we were even 12, 24 months ago.

Ms ABIGAIL BOYD: It seems from everything you've been saying, both in this hearing and in previous hearings in other contexts, there's very much a piece of work being done and some improvements being made, and you're still in progress, or there's a bit of a journey. When do you expect to be able to sit here at a hearing and say, "Yes, we believe that what we've done now is the most robust that we can do."

PETER PERDIKOS: Mr Halsall started with us just over two years ago now, probably 2½ years ago. We went through a reform whereby we invested quite heavily into the procurement function just over two years ago, towards the back end of 2021 we stood that up. If I think about the journey we've been on since that time, it's been significant. That includes not just in risk and compliance and assurance but also in value for money in the fiscal aspects, driving some of the financial sustainability outcomes across the function of procurement.

Ms ABIGAIL BOYD: So this is an ongoing process?

PETER PERDIKOS: Yep.

Ms ABIGAIL BOYD: But when will we reach a point where we can have a look at where you're at and give more pointers, as opposed to being told, "Yes, we're still working."

ROB HALSALL: I think it's a great question. As Mr Perdikos said, there's a range of activities. If you look at every one in isolation, we can show progress against each of those themes. We've introduced guidelines; we've introduced better reporting; we changed the delegations of authority already, so all engagements of this nature need to be approved by deputy secretaries. So there are a number of controls. We can already show the RAG status against those. I think the VMS—the vendor management system which, as you recall, when we met last in the consulting inquiry we committed to a time line of April 2024. We're in April 2024 and we're in user acceptance testing currently. That's digitising some of the workflow which we referred to previously, which gives us much greater visibility, much greater control and the ability to report automatically on statements of work on engagement.

So I would say we can already give you a very clear progress status against the commitments that we've made internally. I don't think there's ever an end point, but I do believe post-VMS we will go live. We will add to our labour hire controls that are already in place. We will add scheme five, which is the PMS scheme. Phase two of that is looking at scheme twenty, which is an ICT scheme, and phase three of that would look at construction.

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So if you look at it through that lens, we have at least got another year of runway enabling different whole-of-government schemes through the vendor management system. I hope that gives you extra context.

JOSH MURRAY: Ms Boyd, perhaps I could very quickly add to that that I don't see that it naturally draws to an end. Not only are there the technical improvements that we will continue to work through, but we have to respond to a very dynamic industry as well. We are reducing, as you're aware, the number of consultants to Transport, the number of contractors and the number of labour hire contracts that we have in place, and we have done that quite significantly. But it is still a small industry in Australia where we need to ensure we get the best and brightest to provide some of our major projects, and that means we are often dealing with a small group of people, which is why we need those technical elements in place.

The CHAIR: Thank you. A bit of a theme emerging today has been value for money. We have heard Mr Tudehope ask a question on it and Mr Perdikos refer to it, and I note that in your part of the Government submission you talk about Transport for NSW incorporating socially responsible procurement practice considering factors such as ethical sourcing, local content and manufacturing, fair labour practices and environmental sustainability in assessing value for money. Could you tell us a bit more how that works in practice?

ROB HALSALL: Yes. That's a really great question, Chair. If I can just touch on that initially, Mr Perdikos. One of the pre-sourcing elements that we have introduced recently that is also a theme within the ICAC report is around supply of due diligence. We have introduced a risk navigation tool which essentially looks at 11 key risks including WHS risk, modern slavery risk, operational risk, privacy risk, cybersecurity risk, subcontracting risk, sustainability risk et cetera—and country risk—and depending on the inherent risk that's been determined in that pre-sourcing. This is, essentially, before we run a market engagement we're assessing the needs against these inherent risk profiles. Depending on how that pans out for each individual procurement activity, we also then run a deeper supplier assessment questionnaire, so when we engage the market we're sending very tailored questions to the market specific to one of those 11 risks.

We've also introduced contract management frameworks which look at fair work practice. We have introduced that into our subcontractor guidelines as well. That is heavily mentioned in there, and we are just about to introduce an assurance program which will systematically work with the contract management groups across the whole of Transport to assure against the numerous obligations that are in there, including fair work practice at a subcontractor level.

The CHAIR: Could I ask two quick follow-up questions? We may be able to get it elsewhere, but it would be lovely if you could supply that fair labour practice aspect. If we could have a look at that, on notice, that would be great.

ROB HALSALL: Absolutely. I can take that on notice.

The CHAIR: Thank you for that, Mr Halsall. I might redirect to Mr Murray. That spoke very much about the risks and making sure that they're identified. It seems to me like an opportunity; there is a large infrastructure spend in Transport—significant buying power. You've identified that there's this broader way of assessing value for money. Do you see opportunities for leveraging that purchasing power to deliver particular outcomes against those broader areas of value for money?

JOSH MURRAY: Thank you for the question, Dr Kaine. Yes, I think—as Mr Tudehope did—it draws on what I saw on the other side of the fence in the tier one delivery side of government procurement, in that we have very willing major international organisations and Australian organisations waiting to partner with government and, in fact, the social outcomes for the staff of those organisations are as important as they are for government departments and for the communities involved. And I guess if I could draw out a couple of elements: When I spoke to our industry partners at our last pipeline event of 500 industry partners, we had 325 individual projects in delivery, large and small, city and regional. That, I think, speaks to the ability to influence that you referenced in your question about, if we set clear parameters on delivery there, then we can deliver against them. So to leverage our partners in the communities in which they operate and they have boots on the ground and to assist government is a key example that we want to set and that we want to ensure that those buying gains are available for.

One example—a clear one—would be around sustainability, and I would just call out that Parramatta Light Rail stage one, for example, was awarded the highest ever as-built rating by the Infrastructure Sustainability Council, and as we go into procurement for Parramatta Light Rail stage two, that's something that we'll not just be looking to emulate but we'll ensure that the learnings over the last couple of years from the industry can be brought to bear on that project. To do this, we set up joint workshops with our key stakeholders, in particular the Australian Constructors Association and Consult Australia. The latest of those was held just last month, and the work with those member organisations is to collaborate on our processes like design reviews, personnel

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requirements and culture so that when they show up to tender they're not doing so in just this blind acceptance of paperwork passed across the gap, but they're telling us where our procurement methods don't work or don't deliver on those elements that we expect to turn up in the field. One of the elements that we have picked up is 360-degree health checks on projects not just so that we rate the construction delivery partner on their performance but so they can give us very clear feedback on where what we're doing isn't getting the most benefit in the field.

Another element is the Construction Industry Culture Taskforce, chaired by Gabrielle Trainor, which also has created a culture standard, and that provides a framework for clients and contractors to work together on what we see as the biggest issue in transport infrastructure and that is: Where are the skills for the future going to come from? The construction industry, by most guesses, is 250,000 people short of new entrants every year in Australia. So we have to do more in New South Wales to ensure that our transport infrastructure is attractive, it provides the right working environment for people, and it builds the skills that we're going to need around digitisation, off-site manufacture and other critical construction elements that we see playing out in Transport in the next few years.

That culture standard is being trialled on around about six projects nationally at the moment. In New South Wales in Transport it's being trialled on the Mulgoa Road stage one project. It involves a range of initiatives around working hours, flexibility, diversity and inclusion and just the way people need to be treated when they're on site at work. It's more than just a feel-good though or targeting those personnel elements. We've got an economics provider who is lining up around the contract as well who will give us a full update on the productivity benefits of working on a culture standard alongside major infrastructure improvements, and that's something that we not only would expect to see in all of our major transport procurement going forward, but we would hope to share that with the industry more broadly.

The CHAIR: Thank you very much. Again, if there are documents you could share recording the 360-degree health checks and the culture standard, that would be most useful. That leads me to a question perhaps for Mr Halsall and Mr Perdikos. You obviously had to do some work arising from ICAC reports, Auditor-General reports et cetera, and you've described how that's going. Is there any best practice in the public sector or in other agencies? Aside from getting together and thinking about sensible options, where else did you go to get information, best practice or guidance on what might work?

PETER PERDIKOS: I'm happy to jump in, and Mr Halsall might provide some further information. The key part for Transport is that Transport is a large organisation. We have capability through which we tap internally and we work through these aspects. Really importantly, though, our relationship with NSW Procurement is critical. For example, we work with them across issues such as consultants and professional services and we work really closely and collaboratively with them around definitions, guidelines and fact sheets, which we then publish and communicate back internally in Transport. Those aspects are really critical.

That relationship is broad and deep. What I mean by that is that Mr Halsall sits on the Procurement leadership group. We have representatives from the Infrastructure and Place division and Sydney Metro that sit on the Construction Leadership Group. We have a Transport procurement board. As part of that Transport procurement board we have a representative from Infrastructure NSW representing the Construction Leadership Group and, similarly, we have a representative from NSW Procurement with respect to the PLG—the procurement leadership group. They have complete insight and transparency on what both our opportunities and challenges are. We work with them closely on a day-to-day basis but also through formal governance forums. I think that's the really critical relationship for us from a whole-of-government perspective.

The CHAIR: I don't think it's related but it could be. There was a discussion paper released in 2022 about productivity packaging, and I note on the website that there's still some information there. I wondered if you could, one, tell me what that is and, two, what has happened? It still says, "We are exploring opportunities to trial a three-phase procurement model on upcoming projects." Has that been melded with the other conversations and the other initiatives that perhaps Mr Murray has spoken about, or is that something that has been dropped? I'm not entirely sure what productivity packaging is.

PETER PERDIKOS: Thanks for the question. Off the top of my mind I'm unaware of the document—although Ms Ritchie looks like she may be so I'll hand over to Ms Ritchie.

BELINDA RITCHIE: I might be able to help, Chair. I think you're referring to the three-phase procurement model that we've been in consultation with industry around, particularly in relation to the Princes Highway upgrade. That is part of addressing industry capacity and efficiency in procurement. It's absolutely still under consideration.

The CHAIR: It says it's a three-phase model. Could you very briefly explain, or provide me on notice, if it's too much?

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BELINDA RITCHIE: I can provide you with more information afterwards but just very briefly, it involves, essentially, early contractor engagement. It's a form of early contractor engagement and it involves engaging design companies to support through the whole procurement phase and essentially reducing the burden on industry and completing the transfer of knowledge in a more efficient way to reduce risk and ultimately reduce cost—is the aim.

The CHAIR: Okay, thank you very much. I have another question about a previous policy. There was a Premier's Memorandum in 2021 about procurement for large, complex infrastructure that sought to increase the capacity of tier 2 contractors to partner with tier 1 contractors. That's about developing local capacity. I wondered how that's been implemented. Is there an update? Has it been changed? Is that you again, Ms Ritchie?

BELINDA RITCHIE: Yes, it probably is, Chair. I might need to take that on notice, in terms of the current status of that document. I would say, though, that there's ongoing work in terms of packaging strategies to engage with tier 2 contractors. So we actively—as part of developing a delivery strategy for a project, we look at how the project can be packaged to efficiently engage with industry.

JOSH MURRAY: Chair, I might add that we've been very clear with industry that we would expect in the next 12 months around about 16 contracts to come to market that will be below the \$500 million mark, which opens the door for more contracting for tiers 2 and 3.

The CHAIR: Excellent. Mr Murray, if I could ask as a final question—you were talking about local content and I wondered if you could describe a bit more. We were talking about Australia and New Zealand and local content and I think you were beginning to talk about benefits that flow to New South Wales by potentially specialising in components even if other parts are manufactured elsewhere in Australia. Is there anything more that you'd like to add about that? I felt that we didn't get quite the time there.

JOSH MURRAY: Perhaps I could call out a very recent example and that is the provision of the new Parramatta River Class ferry fleet. Much has been discussed about the fact that they are manufactured in Hobart on the Derwent but they are designed very much by an established New South Wales and Sydney-based shipbuilder. I think that's an example of using the best talents from where they are available. The shipyard in Hobart is a 40-year-old family business that is extremely well-credentialed in terms of the sorts of vessels and the local supply chain links that they have. At the same time, the designer is one of the leading lights in terms of digital twins and digital design of the craft, which gives us not just the benefit in the speed of delivery and packaging and the certainty of the delivery but also the ongoing maintenance and futureproofing of that fleet, which we hope will one day be an electric-powered ferry fleet. So I think they're the benefits that I would see coming out through the use of Australia-wide, and potentially New Zealand-wide providers and not just saying it must be a New South Wales-based procurement.

The CHAIR: Thank you all very much. We're out of time. I think we all have more questions. We will probably send those to you and you'll have the customary 21 days to reply. We very much appreciate you taking the time to be with us today.

(The witnesses withdrew.)

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Mr MUSTAFA AGHA, Executive Manager, Policy, Business NSW, affirmed and examined

Mr DAVID HARDING, Executive Director, Policy and Advocacy, Business NSW, sworn and examined

The CHAIR: Thank you very much for coming today. We very much appreciate it. Would you like to start by making a short opening statement?

DAVID HARDING: Yes. Business NSW welcomes the opportunity to be here today as a witness to the inquiry into government procurement. Business NSW is the State's peak business organisation, with almost 50,000 member businesses across New South Wales. We work with businesses spanning all industry sectors, including small, medium and large enterprises. Operating through our network in metropolitan and regional New South Wales, Business NSW represents the needs of business at the local, State and Federal levels. Business NSW sees small and medium-sized enterprises as the heart of our State's economy. A thriving SME sector enables economic growth, greater productivity, reduced monopolisation, community engagement, greater workforce participation and economic resilience, strengthening our social fabric too. Our advocacy has, to date, been focused on enabling greater participation of SMEs in all parts of our economy, including government procurement.

For a small business, the first government contract can be the most important. For medium-sized businesses, we should encourage them to grow and reinvest in New South Wales skills and capability through appropriate transfer-of-risk commercial arrangements. Strong procurement policy can do so much more than merely provide the program, project or service; it can deliver added capacity and capability for New South Wales as a whole. Our own recent BCS, or business condition survey, a few weeks ago showed that New South Wales businesses rank "trading locally" fourth most important on all things to do with business, and perhaps there's a lesson for all of us in there somewhere.

The New South Wales Government spends more than \$34 billion annually on goods, services and construction. This pipeline can often make or break businesses and has far-reaching impacts on the productivity of the State and the size of our gross State product. The ability of businesses to access government contracts is critical as they provide certainty of work, and support growth and investment. Without the New South Wales Government actively identifying local small to medium-sized enterprise suppliers and making it easy for them to engage with government procurement, we can put at risk the ability of local firms to provide critical services and local jobs.

Ahead of the 2023 State election, Business NSW set a challenge to the prospective government to grow the value of government procurements through SMEs to over \$10 billion per annum. The Government has since indicated that SME procurement has surpassed the \$9 billion mark. We acknowledge also that the focus on ease of government procurement has been a focus for successive governments in New South Wales. We will continue to advocate for the importance of building State capability and capacity through appropriate SME procurement pathways. Open and transparent dealings, as well as wider competitive market access across government procurements, help us become stronger and, in fact, are the best antidote to procurement constraints and a lack of choice, and are a good defence against bad procurement outcomes.

There is still much more that can be done to continue to increase procurement departments' and agencies' confidence and capability in dealing with SMEs. There is a very real hesitancy to deal with SMEs on larger contracts, for a number of good reasons, including financial viability and the expertise to manage risk. We've often seen a government announce their intent to engage more SMEs on key contracts, only to see those efforts hampered by commercial practices that drive contracts away from SMEs towards those who can more easily manage that risk transfer. Internal government initiatives need to be undertaken to provide those departments with the ability to retain risk where necessary and where it makes sense, and to encourage smaller work packages to be brought to market where possible.

Ultimately, initiatives which encourage smaller players to become government contract ready, to collaborate with peers to provide greater scale and to register on e-procurements and panel arrangements would all, of course, be welcome. We do welcome recent insurance reforms to remove prequalification costs for SMEs seeking government work and, of course, the ongoing work to reform the emergency services levy cost distribution is also welcome. Business NSW would support the Committee's efforts to get accurate and up-to-date procurement data published by government and to recommend annual publication of government-wide SME procurements. What we measure, we value. Business NSW appreciates the opportunity to provide input to this inquiry.

The Hon. DAMIEN TUDEHOPE: Mr Harding, in your submission, a lot of which you've just repeated in your introduction, one of the things you talk about is up-to-date procurement data published by the Government. How would you say that it is currently deficient? Is there no portal where you can view up-to-date SME data?

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DAVID HARDING: In our understanding, there is no regularly published data which is easily understood by the small to medium-sized enterprise market. I think we could always look for improvement there.

The Hon. DAMIEN TUDEHOPE: How would you see that happening?

DAVID HARDING: I think there could be a range of ways that we could do that. But I think, as I say, what we measure, we value. If we could make a regularly updated register of local and small- to medium-sized enterprise contracts with government, that would be helpful.

The Hon. DAMIEN TUDEHOPE: If contractors were required to publish details of subcontractors that were SMEs, would that be something that your organisation would welcome?

DAVID HARDING: Maybe I'll go to personal experience. There are very few contracts which can be set in motion without subcontract and subconsultant arrangements. It is, though, of course, relatively easy for that to be published. I think where there are larger government programs of work, projects or long-term service arrangements, then it would be very sensible. In the same way as we measure other metrics, such as Indigenous and apprenticeship levels, we could also quite easily measure how much is local procurement and how much is SME procurement.

The Hon. DAMIEN TUDEHOPE: In relation to SME procurement, there is currently the Government's procurement framework that they are required to operate in. Do SMEs raise with you any issues relating to complying with the framework?

DAVID HARDING: Not specifically with the framework, per se. The issues that small to medium-sized enterprises bring to us are the lack of transparency about what's coming to the market and how, and being able to read the government tea-leaves, as it were, from a procurement perspective, before the cup of tea is made and drunk by someone else. The other one is, of course—and I dealt with it in my opening statement—prequalification levels, specifically in insurances, which, as I've noted, are being dealt with. There are other things I think we need to be wary of, which are overmuch prequalification or pre-information being required. Maybe the buyer needs to beware more than the seller when it comes to these things. When it comes to a lot of the information, it's already in the public domain.

The Hon. DAMIEN TUDEHOPE: One of the observations you make is that many of your members do, in fact, register for eTendering and the like, in accordance with opportunities, only to find that they're constantly overlooked. What is your experience in relation to that? What is the rationale for your members always being overlooked, or some of your members always being overlooked, in relation to opportunities for procurement?

DAVID HARDING: It's quite difficult to answer that one scientifically. I suspect that good performance of incumbents leads to good relationships and perhaps repetition of contracts, and there's nothing wrong with that. But, nonetheless, it is disheartening for smaller businesses if they go through the process of prequalification—and in some technical areas, of course, take on considerable expense in getting themselves into a marketplace where they can be put on a panel—and then don't get any feedback as to why they haven't been picked. I think it's perhaps more that feedback loop. I'm wary here of imposing on both governments and small business even more administration, but I do think that a "Why fail?" kind of approach is quite useful to let businesses grow. They're keen to learn, and they will learn if they're not doing quite the right thing. Without going into any detail which leads me away from my oath, I've heard stories about people being on panels for a long time and not getting work.

The Hon. DAMIEN TUDEHOPE: Have you surveyed them as to why they think that they missed out on that work?

MUSTAFA AGHA: Having spoken to a few members who have gone through this, generally their perception, like Dave has mentioned, is that there is a preference for a certain small businesses. That government agency has worked with them for a very long time, so they just continue to engage them. So they go through the process and they sit on the panel, but they're never successful.

The Hon. DAMIEN TUDEHOPE: How would you solve that problem?

MUSTAFA AGHA: I think probably diversification of small businesses. It's not just a target for small business but ensuring there's diversification, and probably measuring the number of new businesses that you engage during that period. You can well and truly engage 10 small businesses throughout the year, but if it's the same business every time then that's another measure of it as well: How many new businesses have you successfully built capacity in?

The Hon. DAMIEN TUDEHOPE: So you would build that into a component of procurement that there is a diversification—

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MUSTAFA AGHA: A measure of new business engagement. It's the same feedback we've given to the Small Business Charter. It's about building capacity in those small businesses, so giving everyone a fair go.

The Hon. DAMIEN TUDEHOPE: I might be wrong on this, but one of the things that you haven't addressed is the simplicity of contracts. What do your members say is the difficulty in tendering in circumstances where contracts are not plain English contracts?

DAVID HARDING: If I may answer that in two parts, one is simplicity and the other one is their ability to manage a commercial environment where for a long time government procurement agencies and of course the legal support that they rely on seeks to transfer risk away from government in exchange for dollars. That's because—it's a very well-known commercial thing, and from personal experience—where you take on smaller companies, mum and dad companies and the like, there has to be a quid pro quo where the contract allows for some retention of risk on the principal side. I know that that can be quite hard work and you have to be quite passionate to bring these smaller businesses along and teach them what they need to know.

So I think it's less the simplicity of the contract; it's more the terms of the contract landing risk on small businesses which, either because they have no parent company guarantees or they do not have access to the insurance markets or whatever else it might be, they might not have the ability to pay any of the liquidated damages within the contract. It's less simplicity; it's more the onerous nature of contracts which typically, as I say, will transfer risks through, rather than looking for a collaborative approach whereby government may have to, in certain circumstances, retain some of that risk.

The Hon. DAMIEN TUDEHOPE: Some of the proposals from some of the unions who have made submissions require contractors to have secure job codes in relation to qualification for procurement work. What do you say about that?

DAVID HARDING: I haven't seen the detail of that so it's a bit difficult for me to make a comment on the hoof, but in general I think we need to be very careful that we don't ask small businesses legal questions that they could only answer with legal advice or which they could only answer with specific professional advice that they don't have access to. I don't think it's reasonable or fair to ask a small business to prequalify themselves to the level of a multinational or a regional. It's difficult to ask someone a legal question unless they're a lawyer, as it were.

The Hon. DAMIEN TUDEHOPE: That's true, but in relation to the procurement policy framework which might be put in place, would it be a significant impact on a small business if it had to comply with those secure jobs code?

DAVID HARDING: We would seek for it to be easier for business to engage with government and, where necessary, to have the support to grow—to grow on the job as opposed to come in perfect through the front door. As a long-term contractor, that's always the attitude that I've taken over my career, that you bring in and bring along and grow smaller businesses.

MUSTAFA AGHA: What we've seen is a lot of businesses do get away from the red tape. Our fear is the more things you introduce, the less likely you are to have these small businesses engage in this. They might be perfectly compliant, but it'll scare them away because they're worried, "Maybe I've done something wrong." We are concerned with just increasing red tape for the sake of it. It's about having a good environment, but we don't want to overburden businesses.

The Hon. DAMIEN TUDEHOPE: The Insurance Council of Australia in its submission said:

... the New South Wales Government and its agencies continue to contract out of proportionate liability, requiring small business professionals to assume liability for other parties' negligence. This practice undermines the proportionate liability regime and urgently needs to cease.

Do you have a view on that issue?

DAVID HARDING: I think you've just had the Secretary for Transport in here and I know from hard won experience that small businesses on the railway network have to carry very large insurance burdens which effectively does drive the work towards those who hold regional or global covers.

The Hon. DAMIEN TUDEHOPE: That's a problem for even tendering. Is that right?

DAVID HARDING: I would agree.

The Hon. DAMIEN TUDEHOPE: One of the things that the Small Business Commissioner also has set in place is a scheme for educating small businesses about how to tender for government work. How many of your members have actually taken up that opportunity to educate themselves on how to be successful to tender for New South Wales Government contracts?

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DAVID HARDING: Over the years there have been a number of initiatives that have been taken up in various levels around learning how to tender for government work. In fact, Business NSW is in the process of negotiating again with a tender consultant to provide initial free advice to small businesses looking to get into government work. I think the need is always there. I do wonder whether knowing how to engage with government pre-tender is perhaps as important as knowing how to tender itself. I think knowing what's coming down the line and gaining those human relationships is as important as the tender work itself.

Ms ABIGAIL BOYD: Can I start by picking up on that point about insurance? I understand that the Government has taken away the requirement for there to be insurance up-front on certain contracts for tendering. Can you explain what happens when the insurance requirement is then put on a small business? Are they aware at the time of the tender as to what that requirement is going to end up being?

DAVID HARDING: Yes, they are. They can take advice from their insurance broker as to the costs of that insurance cover and what their prequalification needs to be in general terms to achieve that cover. In fact, they can be given advice as to whether or not they would achieve that cover. The key here is the costs of taking on an insurance policy on a gamble that you may or may not need to have it in place. We think it's a very sensible move, but it doesn't lower the costs of insurance. It just delays it.

Ms ABIGAIL BOYD: So the request for tender goes out, there's a certain amount in there which might be a prohibitive amount for somebody who's thinking of tendering, so that might discourage some small businesses to begin with. Can you give us examples of where there's been an amount put on liability insurance by a government requirement that is quite out of keeping with the type of work being contracted for?

MUSTAFA AGHA: I come back to the market example where they've had to tender for it—this is before this new arrangement—but they required a public liability insurance of \$10 million for a marketing contract. It's one of those ones where it's not proportionate to the work being taken. It's the same level of liability for someone actually taking work on a worksite with physical labour. So it's stuff like that where we see examples of it being disproportionate.

Ms ABIGAIL BOYD: Do you know if that's negotiable?

MUSTAFA AGHA: It's non-negotiable, unfortunately.

DAVID HARDING: It's not negotiable.

Ms ABIGAIL BOYD: You can't point out to the Government the error of its ways in that context.

DAVID HARDING: No, and if I can add to Mr Agha, one of the things I think we've had in the past with very well-meaning procurement moves from government to make it easier is that you do actually need to get to the risk transfer area, where government lawyers quite reasonably require as much transfer of risk through as they can get. Even if that turns out to be \$20 million for a small business doing relatively innocuous track maintenance work, for example, that's what it's been. Somebody—whatever you decide in this room and is taken up and becomes legislation, we do need to tell the lawyers.

Ms ABIGAIL BOYD: I don't know if you've got the evidence for this, but you would think that from the insurance companies' perspective you've got a captive audience here because you've got an entity that has won a contract on the basis that they will get insurance. Have you seen that push up the prices of insurance premiums? Have you seen any research on that?

DAVID HARDING: No is the short answer. I've not seen any research, or not seen any evidence either, of these being the factors that are pushing up insurance. Insurance globally is going up for a whole heap of reasons and we don't have the time in the week to be able to talk through all of them. Within the bailiwick of what the government can control would be reasonable transfer of insurance risk appropriate to the size of those entities that they seek to do the work, rather than appropriate to the size of the overall, one-size-fits-all approach. That is what we're coming from.

MUSTAFA AGHA: I think the other thing we've seen in our *Insurance at the Speed of Business* report is that, for example, the average public liability claim sits at around \$115,000 but on average you require liability of \$20 million, so there's a real mismatch. I do understand there's average claims and there's stuff that sits at the ends but it's one of those things.

Ms ABIGAIL BOYD: Yes, which, again, has to benefit the insurance companies because you're taking out a larger policy than what's required. Another aspect that I'm interested in your opinion on is that we've heard that obviously there's a desire from the Government to use our procurement dollars to improve social outcomes. We've seen targets around disability employment, First Nations organisations et cetera. Against that there's a concern expressed by some that you will end up with basically people trying to game the system so that you might

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have some small businesses being outbid by others who have tried very hard to get themselves into a particular bucket. Is that something that you are seeing on the ground?

DAVID HARDING: I think there's always an element of knowing your market and knowing your buyer and that comes back to this pre-tender knowledge of what it is that is required, whether it be in the nuance of the approach or whether it just be in the provision of the service to what the government needs. It's the marketplace; there will always be some that will do better than others. I think what we're trying to do in our advisory here is to say, "Let's lower the barriers for all so that we have less and less opportunity for some"—as you say—"to find the gap in the wall. Let's make it more of an open playing field," not that that will, of course, mean that everybody gets an equal share because that's not what's going to happen. Those who are best at delivery and those who are best at understanding their client will always win through.

Ms ABIGAIL BOYD: Accepting that your position is lowering the barriers for everyone, if the Government decides to continue with incentivising particular types of businesses through the procurement rules, would you like to see more monitoring or enforcement of conditions on contracts to ensure that there is a fairer playing field, for example, to make sure people aren't gaming and putting out that they have particular attributes that they don't have, or something along those lines?

DAVID HARDING: As a general point, in the ideal world both sides of a procurement deal are smart and understand the job at hand well. That's the ideal scenario. In some cases—of course, we've already talked a little about this—there's a necessity to bring newer players on to the market and allow them, under the right guidance, to grow and learn on the job. That's perfectly normal but it does require two things. It requires the procurer to be smart, have the time and be on top of the work, and, therefore, there may be some degree of expense incurred to provide that. Then there's the contract, where the contract shouldn't necessarily help one player above another but it should be maybe allow more flexibility in the way that risk is distributed to a number of players and some retained, perhaps, by the principal.

Ms ABIGAIL BOYD: This is probably a final question from me. In relation to transparency you've talked about getting more data and having more transparent data from the government more generally but would that also apply to being able to see standard contracts, having more visibility over what a standard contract looks like or how it's been applied in different circumstances? How would that benefit your members if we did have that?

DAVID HARDING: Typically how contracts arrive in the hands of a successful tenderer is in the form of a contract that says, "You're not allowed to change a word of this or you can't get the job." That's normal for government contracts. They don't allow any negotiation or change. If you were one of two or three major players in the marketplace, you might have some ability to negotiate that after being named as the preferred contractor. You may well have an ability but that would be through Executive rather than a legal channel because the legal commercial channel will just say, "You can't make any change." To your question, I think it would be very useful to have a suite of government contracts and say, "If you're likely to win this one, this is the kind of contract you're likely to get. This is what it means for you and these are the things that you'll need to have to perform the contract," but in a way that every person in New South Wales in the small business community can understand. I don't think it's being patronising to small business to say that not all of them understand contract law entirely.

MUSTAFA AGHA: The only thing I'd add on transparency is the ability to provide transparent feedback as to why they weren't successful would be fantastic because that way you can build capacity at every rejection. At the moment you go through the process and you might spend a month—you might spend hours and hours—in putting something together only to fail time and time again. You might be missing something basic and fundamental but you just don't know so transparency goes a few ways. Providing that feedback would be really important as well to build that capacity.

The Hon. DAMIEN TUDEHOPE: One of the observations which has been made is in respect of SMEs missing out because of large contractor bundling, where they take the value of the contract over the \$500 million or thereabouts so that SMEs cannot compete in that market. Do you have any experience in relation to that, or do your members have experience in relation to that? The civil contractors are very big on this.

DAVID HARDING: I understand; I used to be one. It's a difficult question to say: Are large contractors doing anything other than trying to make a margin in a world which traditionally has extremely low margin points and trying to distribute the risk appropriately? But I do know that what it's ended up with in the Australian context is a few very large whale-like fish in the marketplace and an extremely large gap to the small ones because the ones that get large enough to compete tend to be bought and assimilated in the marketplace. I do think that it's a real opportunity for government contracting to split the size of packages appropriate to some of those medium-sized players that are large enough to reinvest in their community, reinvest in skills and play to the global market while standing a little bit taller for themselves.

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The CHAIR: Thank you both, again, for appearing. I have a question which maybe follows on but also draws on your comments about providing a level playing field. To me there seem to be some sort of internal tensions around what you're saying. On the one hand, things like high insurance is a barrier to SMEs being involved with government tendering but on the other hand, you're arguing for a level playing field. You also then talk about how there's no negotiation around contracts unless you've either got a monopoly or an oligopoly or you have some market power that allows you to negotiate, which suggests to me that you're unlikely to be able to have a level playing field for small business. At what level do you think the playing field is set? How do you determine where that playing field is set if there are these inconsistencies?

DAVID HARDING: I think perhaps what we're calling for is not an entirely level playing field between those largest businesses in the marketplace—with all those resources that they have at their disposal and their ability to deliver projects which others can't, which is why they're capable of managing that risk—and those smaller ones. I think it's more of an appropriateness of approach. I think if you can take costs out for smaller businesses—those SMEs—to be able to spend the time and have a fair go effectively, and take as much time and cost out of the process, then we would find that incredibly welcome. And then the points around negotiating on contracts, I don't think any government or bureaucratic organisation would like to spend weeks in negotiation on every contract, but nonetheless finding the most appropriate risk point for small businesses to engage so that they're not written out by not having the right parent company guarantees or whatever it is that's required.

The CHAIR: If I'm hearing you correctly—and, Mr Agha, you might want to say something—it's not about a level playing field; it's about creating appropriate access and risk points.

MUSTAFA AGHA: It's probably a weird thing to hear from us, but it's probably equity versus equality. We want to ensure that small businesses can get the same outcome in the end, but we might need to make some exceptions for them to help them get there. Small businesses provide the social outcomes that we need for the State. It's about creating that level playing field for them, in many ways.

The CHAIR: That's a really great segue, Mr Agha, to my next question. We've been talking a lot today about value for money and what that means and how we define that. I wondered, from the perspective that you're coming from, what do small SMEs provide in terms of value for money, if they're engaged by government?

DAVID HARDING: I think it's the difference between highest and best value and highest and best purpose in a way, or highest and best future. If we don't encourage the growth of businesses from small to medium and indeed medium and, in due course, to large, we have the problem we have on our hands at the moment where we have a very large gap between those who can manage the risk for large government contracts and those who cannot. As I think Mr Agha has just said, perhaps we need to think about some different treatments to enable those smaller businesses to grow. They might not provide, as you say, the best value for money within the bounds of the narrow treatment of that contract, but it's highly likely also that they won't be far off the mark. From my personal experience working with multiple small and medium enterprises as a prime contractor, that has been rewarding and highly efficient as well. You just need to get the engagement right and the contract right and the right supervisors on the job.

The CHAIR: That brings me to something you talk about in your submission, which goes to the confidence and capability of dealing with SMEs by those in agencies who are tasked with procuring. I think you talk about hesitancy and maybe internal capabilities and a lack of confidence. Could you speak about what might be done to overcome those factors?

DAVID HARDING: I think it's around cultural confidence and perhaps flipping the asset earlier—you've got to tell the lawyers, noting that those who are buying understand the broader benefit of what we're trying to achieve here. It has been done before. We know that it has been done through measures around the number of apprentices on site, for example, on a government contract. We're not entering a whole new world here; we're just looking for those slightly broader ways of thinking about what's important and what's valuable to prioritise New South Wales businesses to be in a place where they can get their first government contracts or get their growth government contracts if they're a little bit larger.

MUSTAFA AGHA: The only other thing to add there is ensuring that there's appropriate training so that they're not just awarding sandwiches to small businesses locally and that they've got the confidence that they can award and manage the risk of small- to medium-sized contracts as well. That's the thing we're seeing there.

The CHAIR: We have heard today that there are varying interpretations of value for money and that each different contract has a different understanding, interpretation, definition. Have you had any feedback from your members about anything to do with having to demonstrate that or having to include that or different weightings?

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DAVID HARDING: I think perhaps that's the other side of the wall from our members. We would have a fair understanding of where the business case sits and where wider economic benefits might come into that or not. But, from our members' perspective, I suspect that they would probably not be up on that machination.

MUSTAFA AGHA: I have nothing to add.

The CHAIR: So there wouldn't be an understanding that there's this list of considerations and it's the lens that's going to be applied to their bid?

DAVID HARDING: I think it would very much change. Government is obviously, as we have said, placing many billions of dollars worth of contracts every year and those contracts are awarded in different ways. But the more transparency of what government wants the better and the more it can be in layman or small business language the better because common language and common understanding will bring that confidence to both sides that we've been talking about. The confidence to award and the confidence to understand each other are pretty much the same thing.

The CHAIR: We have spoken a bit about insurance requirements as an eligibility aspect and the issues and the barriers that creates. Are there other eligibility requirements that are frequently raised with you? Obviously, the insurance one is a biggie, but are there others that stand out?

MUSTAFA AGHA: I think the ones like QMS systems and ISO certifications for some level contracts are a real barrier. It's one of those ones where at the moment you have to navigate there yourself and figure out how to get there. There are barriers like that that, for smaller contracts, are really prohibitive as well. There are other barriers that we have seen that at times are even more difficult than any other barrier because they require months of implementation and assessments. It's not just something you can buy off the shelf and get going; it requires time and investment.

DAVID HARDING: I will add that it's a much broader issue. Again, we won't have time to get into it in detail today. A lot of the foundational and technical skills are the same across sectors but they are applied under separate qualifications and prequalifications. If you're building a railway bridge, you might have to have a very different set of qualifications from building a road bridge, which is in fact the same design just with a road on top and not a railway.

MUSTAFA AGHA: I have one more thing to add. The demonstration of references is probably the other one. It's interesting. Where you go from a subcontractor to directly, it's sometimes difficult to prove that you were working all these various projects across the State. That's a difficulty there. How do you then demonstrate your experience when you're limited to having worked through one or two parties who may not want to give you references because they enjoy having you as a subcontractor doing that work? There are a few barriers there as well.

The CHAIR: That's an interesting one as well. I think you mentioned in your submission the Industry Capability Network. Are you able to talk about that?

MUSTAFA AGHA: Ian Hudson runs a great organisation there building capacity in manufacturing. They run a series of events and you can just call them up, speak to them and get information on how you can build capacity. They run a great program. We sit on the board of that organisation and we help support their work. They've got great initiatives, including trying to build the next set of trains in New South Wales. They do great work. They are run by New South Wales grants. Anything that can be done to further to support that work would be valuable.

The CHAIR: You have spoken about the barriers with regard to qualifications et cetera. What about in terms of just the systems to be engaged with, so the portals, the platforms and that kind of thing? What feedback do you get on the ease of use?

DAVID HARDING: Generally improving over the years, but perhaps could improve a little bit faster. There has been a huge amount of work and expense put into making it easier to deal with the New South Wales government. We see the rollout of the Business Bureau as being an important extension of the great work done under the last Government for Service NSW. There's a great deal of hope out there. Of course, businesses are used to the modern world where dealing with each other is relatively simple and often done online. The more we can encourage government to continue to make it simple for businesses, for example, to prove qualification information quickly and simply online the better.

MUSTAFA AGHA: The only thing to add there, with local government being a creature of the State Government, I think each one of those councils have their own portal and/or their own tendering. There is a leadership position here for the State Government to go in and bring more portals into that single one so that

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businesses don't have to then follow-up each individual council when they're tendering for things as well. There is a real centralisation role that we could have there as well.

The CHAIR: They fall outside the terms of the Act that we're looking at, but point taken and noted. Thank you very much. We very much appreciate you being with us this afternoon, gentlemen. If we have extra questions, we will send them to you and you will have 21 days to provide answers.

(The witnesses withdrew.)

(Short adjournment)

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Mr ALEX CLAASSENS, State Secretary, Rail, Tram and Bus Union NSW Branch, sworn and examined

Mr DAVID BABINEAU, Divisional Secretary, Tram and Bus, Rail, Tram and Bus Union NSW Branch, affirmed and examined

The CHAIR: Thank you both for making the time to come and give evidence today, and for the submission that you supplied for this inquiry. Would you like to start by making a short opening statement?

ALEX CLAASSENS: Yes, thank you. Obviously, we put a written submission in, which probably better articulates than I possibly could, but I think everybody knows the history of transport procurements during the period of the Liberal Government, and the many fights that we had with that Government during that process. It's quite clear to everybody that looks at it objectively—they understood that the process was fraught from the get-go. Even as late as the weekend there were more articles in the paper about people having to go overseas to inspect things. Previously in the railways, of course, we had a long history of doing many inspections at Cardiff and other places a lot closer to home.

I think the public of New South Wales deserve a better explanation than what they've ever been given. I think the whole system of buying stuff from overseas and making sure that the end users are kept out of the whole process has to be exposed. Even the contracts—the fact that nobody could get access to any of the contracts and what's in the contracts. Even today, we still don't know what's in some of those contracts and I think the public of New South Wales deserve a better explanation than what they have been given in the past. Certainly a spotlight needs to be shone on it into the future so that people are fully aware that when a government spends money—taxpayer money—there is a process that's around that that is very transparent and people are held accountable. That's certainly never happened during the many years of the Liberal Government. At that point, I'll stop.

The Hon. DAMIEN TUDEHOPE: It's been disclosed that during the shutdown of the south-west train line for the delivery of the metro that they were going to buy 60 buses from China. When did you first become aware of that?

ALEX CLAASSENS: I'll hand over to David for this.

DAVID BABINEAU: The union first became aware of that at a peak meeting between Transport for NSW and unions which would have been held several weeks ago now.

The Hon. DAMIEN TUDEHOPE: It was suggested in the submission that you found out about it during budget estimates.

DAVID BABINEAU: To be fair, I didn't write the submission and so no doubt that is the case. But personally, where it was first talked directly to me—

The Hon. DAMIEN TUDEHOPE: Do you say that there was capacity in New South Wales to deliver those buses?

DAVID BABINEAU: I think that the established or the newly established model of building everything from the bottom, including the chassis of buses, creates challenges, and it's not something I could answer without more information.

The Hon. DAMIEN TUDEHOPE: If they couldn't have been built in New South Wales, you'd agree, would you, that the Government was justified in seeking to have them built elsewhere?

DAVID BABINEAU: No, I don't accept that the project itself is justified, so anything that flows from that—

The Hon. DAMIEN TUDEHOPE: Well, putting that ideological assumption aside—

DAVID BABINEAU: No, it is purely practical.

The Hon. DAMIEN TUDEHOPE: Putting the ideological assumption aside that you do not like the project, however, if you had to deliver 60 buses urgently and you couldn't do it in New South Wales, it justifies the Government in seeking to source them elsewhere, does it not?

DAVID BABINEAU: Again, purely objectively, yes. My objections to the project are not philosophical, though.

The Hon. DAMIEN TUDEHOPE: Mr Claassens, you cost the New South Wales Government \$3.2 billion by the delay of the NIF, did you not?

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ALEX CLAASSENS: No, I don't accept that. I don't know. You and other Ministers were very good at throwing lots of numbers around.

The Hon. DAMIEN TUDEHOPE: It is in your submission that that's how much it cost.

ALEX CLAASSENS: We know that's what is now being reported.

The Hon. DAMIEN TUDEHOPE: That's what you're suggesting in your submission.

ALEX CLAASSENS: That's what the submission says, and that's the number that—

The Hon. DAMIEN TUDEHOPE: That's what it says. Do you accept that's what you caused the—

ALEX CLAASSENS: I wouldn't accept that we caused that.

The Hon. DAMIEN TUDEHOPE: One of the things you have sought to suggest, have you not, Mr Claassens, is that the union should be consulted in relation to safety?

ALEX CLAASSENS: Absolutely—from day one.

The Hon. DAMIEN TUDEHOPE: And, in fact, the delay in relation to alterations to the NIF was chiefly caused by your concerns in respect of safety, was it not?

ALEX CLAASSENS: There were lots of issues around our concerns around the train—

The Hon. DAMIEN TUDEHOPE: But safety was primarily the one?

ALEX CLAASSENS: —but safety was definitely one of them. Yes.

The Hon. DAMIEN TUDEHOPE: And the alteration of the trains which you demanded from the Government was in relation to the installation of guard compartments, was it not?

ALEX CLAASSENS: To have guards put back on the trains, absolutely. We have 140 people a year, last reported, fall down between the train and platform, and the guards are critical to ensuring their safety.

The Hon. DAMIEN TUDEHOPE: And, in fact, would you agree with me that the technology on those trains was state-of-the-art technology?

ALEX CLAASSENS: No, I don't. I've made many—

The Hon. DAMIEN TUDEHOPE: Do you agree with me, Mr Claassens, that, in fact, those trains are operating in many other overseas jurisdictions without guards?

ALEX CLAASSENS: No, I don't.

The Hon. DAMIEN TUDEHOPE: You don't accept that?

ALEX CLAASSENS: I don't accept any of that. I said—

The Hon. DAMIEN TUDEHOPE: You don't accept that the—

ALEX CLAASSENS: —we operate trains in New South Wales in a particular fashion. I don't know what happens overseas. I'm not an expert on overseas transport travel. I'm a New South Wales union secretary who just happens to be a train driver. I know how we operate trains in New South Wales and the way we've always done it to keep people safe.

The Hon. DAMIEN TUDEHOPE: The way you've always done it often means that you don't potentially keep abreast of upgraded technology.

ALEX CLAASSENS: And I do know that when the Waratah trains were delivered, they had a better system which actually offered an enhancement of the safety features which allowed the guard to actually do their job even better than what they were doing—

The Hon. DAMIEN TUDEHOPE: Where did those trains come from?

ALEX CLAASSENS: I think they were made in China.

The Hon. DAMIEN TUDEHOPE: Correct. So there was no problem with those being made overseas, was there?

ALEX CLAASSENS: Well, there was, actually. There were a lot of arguments at the time about buying them from China.

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The Hon. DAMIEN TUDEHOPE: But just because they're made overseas doesn't mean that they are necessarily an inferior product, does it?

ALEX CLAASSENS: But the difference, of course, was that those trains were specified out by railway engineers. Railway engineers were part of that whole process. There was proper consultation all the way through. Everybody knew what they were building and why they were building it, and subsequently they actually made enhanced changes to those as well. When they did the subsequent changes out later, they improved them.

The Hon. DAMIEN TUDEHOPE: Do you say that there was no consultation with unions in relation to the delivery of the NIF?

ALEX CLAASSENS: Hardly any, and certainly not at the concept stage. Later on we did get some—

The Hon. DAMIEN TUDEHOPE: You've taken an oath here, Mr Claassens. Are you sure there was no consultation at the concept stage?

ALEX CLAASSENS: I never had any.

The Hon. DAMIEN TUDEHOPE: You may not have. Were any other members of the union potentially consulted in relation to these trains at the concept stage?

ALEX CLAASSENS: I'm not aware of any that were consulted at the concept stage.

The Hon. DAMIEN TUDEHOPE: Has there been any consultation in relation to the delivery of the new regional fleet?

ALEX CLAASSENS: There was slightly better consultation around the new regional fleet because we did actually have some people talk to us at a more reasonable stage, so we were involved a lot earlier in the new regional fleet than what we were at the NIF.

The Hon. DAMIEN TUDEHOPE: In fact, union representatives accompanied officials from Transport for NSW overseas, did they, when they went to inspect the trains?

ALEX CLAASSENS: I made the decision as the secretary of the union to send some of our people over there, yes I did—

The Hon. DAMIEN TUDEHOPE: Well, that was a level of—

ALEX CLAASSENS: —to have a look because we were concerned about where the train was up to. Because, up until then, we had no clue as to how far they'd gone in their building of them and the trialling of them et cetera.

The Hon. DAMIEN TUDEHOPE: One of the things that you've suggested in your submission is that the union needs to be consulted to ensure the safety of the trains which are being delivered.

ALEX CLAASSENS: That's correct—like we've always done.

The Hon. DAMIEN TUDEHOPE: So the National Rail Safety Regulator has no role to play. Is that what you're telling us?

ALEX CLAASSENS: No. The National Rail Safety Regulator does have a role to play, and part of its legislation actually specifically states that the end users have to be consulted. But because these trains were bought overseas, there is no requirement for the national rail regulator to make sure that the end users hear until the trains actually arrive in Australia.

The Hon. DAMIEN TUDEHOPE: You'd agree with me, would you not—

ALEX CLAASSENS: There is a flaw in the legislation, quite clearly.

The Hon. DAMIEN TUDEHOPE: Would you agree with me that the National Rail Safety Regulator signed off in relation to the safety of these trains?

ALEX CLAASSENS: The National Rail Safety Regulator will tell you that they don't sign off anything.

The Hon. DAMIEN TUDEHOPE: They, in fact, gave the okay for the delivery of these trains.

ALEX CLAASSENS: I don't know what they did or didn't do because I've never been given anything that says that they've approved anything. You often said it, but—

The Hon. DAMIEN TUDEHOPE: I do say it and I continue to say it, Mr Claassens.

ALEX CLAASSENS: And that's your right to do so, as it is my right—

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The Hon. DAMIEN TUDEHOPE: Because I've seen the documentation, Mr Claassens.

ALEX CLAASSENS: That's nice, but we didn't get to see it.

The Hon. DAMIEN TUDEHOPE: In fact, that's the standard that we should be looking to apply in relation to ensuring that overseas-purchased rolling stock complies with Australian requirements. It's not you, Mr Claassens, but the National Rail Safety Regulator, is it not?

ALEX CLAASSENS: And part of their legislation specifically says the end users and their unions have to be consulted.

The Hon. DAMIEN TUDEHOPE: Does it say "unions"?

ALEX CLAASSENS: Absolutely, it does.

The Hon. DAMIEN TUDEHOPE: Well, Mr Claassens, I'd have to suggest to you that the regulator, in certifying that the trains were ready to be tested and rolled out in New South Wales, certified that they were of a standard ready to be delivered and operated in New South Wales and that the technology in relation to those trains was sufficient—in fact, exceeded sufficient—to guarantee the safety of all the issues which you subsequently raised. Do you deny that?

ALEX CLAASSENS: Look, I can't speak on their behalf. All I can say is what our view was at the time. We continue to say and I continue to say to the national rail regulator, "You let us down in that process. We are supposed to be consulted and we weren't."

The Hon. DAMIEN TUDEHOPE: What it goes to, Mr Claassens, is this: that you were much more interested in ensuring the jobs of your members than you were in protecting the taxpayers of New South Wales for the purposes of getting these trains on the track. This is the truth of the action taken by you during the course of last year.

The Hon. EMILY SUVAAL: Point of order—

The CHAIR: A point of order has been taken.

The Hon. EMILY SUVAAL: The member is continually seeking to make an adverse reflection on the witness. I also just remind everyone of the procedural fairness resolution around extending courtesy to witnesses in respect to the way in which they're questioned.

The Hon. DAMIEN TUDEHOPE: To the point of order: This witness has heard all this from me before. I don't think he finds any of this adverse.

ALEX CLAASSENS: I make no apology for always doing the job that I've been elected to do, which is to look after our members' interests and also the travelling public of New South Wales. That's the oath that I swore when I joined the railway in 1978 and I have never deviated from that and I never will. Till the day they carry me out in a box, I will always argue that our members' rights have got to be stood up for and the safety of the travelling public is paramount. While ever 140 people a year fall down between the train and the platform, you will always hear me out there saying, "This is not on. It is not appropriate."

The CHAIR: Thank you, Mr Claassens. Mr Tudehope, I just wanted to clarify that you were entering into territory which I would have found to uphold the point of order.

The Hon. DAMIEN TUDEHOPE: So you do agree with me that one of your primary considerations was the interests of your members?

ALEX CLAASSENS: Always. I've been elected, like you have, to do a job. I've always been elected to do my job and I will always do my job. Part of that is also the fact that I grew up in the railway. I'm part of the railway family. And I want to do nothing more than keep people safe in the role that we do.

The Hon. DAMIEN TUDEHOPE: Mr Claassens, I'd never have any doubt that that may well be your motivation, but what I'm putting to you is this: You may well come from a position where you are blind to the advances in technology for the purposes of ensuring—

ALEX CLAASSENS: Definitely not.

The Hon. DAMIEN TUDEHOPE: —that those 140 people would not have been exposed. Because those 140 people are falling between the tracks now with guards on the trains, are they not?

ALEX CLAASSENS: All I know is that, when we see a system of safe working or a particular type of equipment coming in that we do not perceive to be safe, you will never gag us. We will always have a view about keeping people safe and it was quite clear that the technology on those trains was substandard to what we currently

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have as part of the Waratah fleet. The cameras were nowhere near as good. They weren't positioned correctly and the fact that you were deliberately designing these trains to do away with the guard was obviously of real concern to us.

The Hon. DAMIEN TUDEHOPE: One hundred and forty people are falling between the tracks with guards still now in place, are they not?

ALEX CLAASSENS: I don't know what the current numbers are. I haven't seen the current—

The Hon. DAMIEN TUDEHOPE: You're the one who has quoted them to me, Mr Claassens.

ALEX CLAASSENS: I quoted the last number that I was party to—was 140. I haven't checked them lately. If I'd known that I was going to be cross-examined on that today, I would've gone and done my homework, but I didn't do that. I would have to ask Transport what those numbers are today.

The Hon. DAMIEN TUDEHOPE: If you took the time to actually do a full inspection of those trains, you would have observed the camera systems which existed on those trains and the mechanisms introduced for the purposes of ensuring that the train would not move in circumstances where either there was an impediment to the train or alternatively the driver had not checked the individual cameras before that train commenced. Did you do that?

ALEX CLAASSENS: No, I personally didn't, but there is a whole bunch of other people that did. And there was an expert report that actually said that those cameras were nowhere near the same standard as the Waratah trains were and they weren't positioned correctly.

The Hon. DAMIEN TUDEHOPE: Would that have been a better solution then?

ALEX CLAASSENS: In fact, in one video evidence that I saw, the cameras were actually obscured when the doors opened on the train, which, to me, as somebody who has been around for a long time—

The Hon. DAMIEN TUDEHOPE: Did you advocate for potentially a change in the cameras rather than the installation of the guard compartment?

ALEX CLAASSENS: All we know is that the Waratah train at the time presented a much better solution for us that we were happy to embrace.

The Hon. DAMIEN TUDEHOPE: I put to you that, in terms of the union involvement, what would be better to do in terms of ensuring that the taxpayers of the State were not exposed to \$3.2 billion worth of additional cost was accept the certification from the national safety regulator.

ALEX CLAASSENS: No way.

The CHAIR: Was there a question? We'll take it as a comment.

Ms ABIGAIL BOYD: Good afternoon to the two of you. Procurement—let me just start with a simple one. We have seen concerns that wages and conditions and other things are the first things to be cut when people are working towards providing the lowest cost tender. What safeguards would you want to see put in place if we were to suggest some as part of this inquiry to make sure that that doesn't happen?

DAVID BABINEAU: Yes, I can certainly speak from the bus space. This is something that was never foreseen by the advocates of privatisation—is that State Transit semi-professionalised a non-professional industry. And they conducted a great many activities that resulted in alterations to procurement. The fire suppression system would be an example of that, where that was an STA-driven initiative and eventually came to be included within procurement as something that was of value. That process was done internally through the fleet safety committee, which was a direct consultation between a range of our division's delegates and asset management out of STA. A lot of after-market modifications were done to make the buses safer and more fit for purpose and no-one has picked up that work. Instead, unfortunately, we're in a situation where we don't have oversight over a lot of things.

There are a lot of anecdotal issues coming to the fore now in terms of maintenance not being done on time, the general poor quality of the buses, wages, conditions et cetera. Obviously from our perspective we'll always advocate for better wages and conditions. The last five years has been spent actually trying not to go backwards or to minimise how much we go backwards, because in none of the privatised areas have we actually managed to hold exactly where we were. I think the general principle of designing something—and we're talking between 750,000 to a million dollars per bus now. Not having the end user involved in that—it's lunacy. It really is.

The fact that you can lock the external buttons outside the bus where you can press the button and you can open the doors independently—the fact that there is a lock on that hatch is an STA after-market modification.

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They didn't come with hatches. Anyone could just press the button and get on a bus at any time, wherever it was parked. These are commonsense things that, objectively, you look at and you go, "Okay, well, that makes sense", but nobody is saying them because this is not how Transport has been operating. Now that the rest of what was STA is gone, their higher standard is gone, and what has been the status quo for the rest of the network is washing into that space, unfortunately.

Ms ABIGAIL BOYD: I remember the inquiry into bus privatisation, where not only was the contract not made transparent, so people didn't know what the contract said or what the specific terms said, but also there was nobody within the Government who was providing that sort of monitoring and oversight of compliance with the contract. It was based on a kind of self-reporting from the contractor. But then, even when there were breaches, they weren't called to account for breaches of contract. I don't know if that's improved. Would it help, then, if we had a greater standard of transparency over all of those contracts, to enable people like yourselves to call out when there have been breaches of contracts?

DAVID BABINEAU: Without a doubt, the single biggest impediment to our bus network running efficiently for all parties—for taxpayers, for end users and for drivers—is to have a modicum. I'd settle for a modicum of transparency, because at the moment there is absolutely nothing. You've got over \$3 billion in bus assets, and I believe you have two people in Transport looking after them. There is absolutely no oversight and, to my knowledge, there has always been very little oversight. Again, STA, running the core regions of Sydney, where over 75 per cent of trips daily are done, held themselves to a higher standard as the embodiment of the authority to employ the Transport secretary. They're gone, so now the entire network has been run in the same way, which is that there is no oversight. It is generally self reporting.

The Opal data imposes some form of threshold but, again, the Opal data is indicative. The network itself has been allowed to run down so badly that it was only through moving heaven and earth that they managed to reduce down to 10 per cent how many bus trips daily weren't being tracked by the PTIP system. The technology was orphaned. It comes down to, I think, the fact that Transport is a monolith. There are kingdoms within kingdoms in there. The very fact that you have to pull parts of Transport together into one area so that it can functionally deal with the bus network speaks for itself.

Ms ABIGAIL BOYD: When the STA did still exist, how did it work when it came to tendering for a particular contract region? Were you coming up against the competitive neutrality principle at all? I understand that obviously the STA had better wages and conditions, but were you caught by government services having to provide some sort of competitive situation with the private bus companies? Was that a factor?

DAVID BABINEAU: It was. To what degree I can't say. I can say, because I was a driver at that time, that we went through the Rowley reforms—for better or worse named after Peter Rowley, one of the CEOs of State Transit. We underwent a huge amount of, you'd call it, optimisation, for lack of a better word, where operations were overhauled from top to bottom and streamlined significantly. That was, no doubt, a result of comparison between private operations, I suppose, although it's unfortunate that the comparisons will never be genuinely valid because the operational areas that STA covered are nothing like the operational areas that run in the rest of Sydney, which is something that every single one of the successful tenderers has come to realise—some a bit late, but they've all come to realise it. Yes, it's unfortunate. STA was actually quite lean and efficient towards the end and would have stood up against any of the operators that bid for it. Certainly in hindsight, since those tenders have gone across, you'd have to say that in a huge range of measures, they're absolutely failing.

ALEX CLAASSENS: I will expand on that, because it wasn't just in the bus area that we've got the problem. Transport for NSW, of course, for some of us that have been privileged enough to be around for a number of years—when the previous Government got rid of RailCorp because it was an overweight bureaucracy, they created this new organisation called Transport for NSW, which has now become an absolute behemoth. Ever since it's been in place, that's where the problems have started.

Like I said, the original trains—for example, the Waratah trains—were bought under the RailCorp days. You had RailCorp engineers who set out the specifications, made sure there were a lot of people looking at all the contracts et cetera. Since Transport for NSW has been around, there's been no accountability—very little oversight from government. They seem to be able to just go out and do whatever they like. Pretty much every time they've bought something, they've done it without consulting the end users, or even the old engineers that were around or anybody that knows anything. Transport for NSW just went off and did its own thing. That's still happening today. There are still contracts being let today where Transport for NSW seems to be able to do it without any transparency or any accountability.

I would argue, even as a normal taxpayer of New South Wales, that shouldn't be allowed to happen. If there's any contract that goes out there that's got any number of zeros behind it, it's got to be open to transparency. It's got to be open to questioning, and that should be from anybody. It doesn't have to be within government, but

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it would be nice if people actually paid some attention and actually looked at all that stuff. You would then address all these other things. And you're right: Wages and conditions do suffer under privatisation, absolutely, which is why I gave it to David. His members suffered under it more than anybody because there was a philosophical position reached.

It was given to Transport—privatise it all you like. In one case they let contracts out two weeks before caretaker period. Nobody saw any of those contracts. We don't know what was in the contracts. I was quite often getting grilled by people: "What's in this contract? What's in that contract?". I had no idea, and that's got to stop. At some point somebody has got to get out there and be big enough to say, "Enough's enough. From now on, when we're spending money out of the public purse, we're going to be accountable and we're going to be transparent."

Ms ABIGAIL BOYD: You would think, where a proportion of your members were going to be moving from one employer to another under privatisation, that you would have been consulted on the terms of the contract. It's interesting because obviously you say in your submission—and I agree—in an ideal world, you would have all of the people needed at the beginning, who would be able to help in terms of the specifications of a new fleet of trains or contracts for a bus service. Whatever it happens to be, you would get all of that input to begin with. What valid reason would they have for not doing that, given, as you say, they used to with RailCorp? Is that correct?

ALEX CLAASSENS: Yes, we were always consulted about everything, and that goes back many years. It just made sense. Even if they didn't particularly like the union view, because sometimes it's a hard conversation with the union guy, they still had their own experts. They had their own managers; they had their own engineers. They had plenty of people they could call on. But for whatever reason, the ideology shifted. The bureaucracy that was deliberately created under Transport for NSW went out of its way to get rid of anybody that knew anything. They don't like the fact that people like me are still here talking, years later, defending people. They don't like that because they know that we've got the history.

It's been a real problem because there shouldn't be a hard conversation when you're at the beginning of a project. You should be able to talk about anything and everything because there's no such thing as a stupid question or a stupid statement. Everybody's got to have input into that, and I think that's part of the problem that we've created. For whatever reason, these problems have been created for us. I'm not saying that we're part of the problem, but it was quite apparent to us that the minute that people stopped talking and communicating, it became an issue. In pretty much every project that Transport for NSW took part in, there have been these issues. If you talk to the people down at the ferries, they'll give you exactly the same story.

Ms ABIGAIL BOYD: And then it costs more money in the long run because we're doing modifications after the event—

ALEX CLAASSENS: Because you've got to modify things, right? So you buy something on a PPP project. It's a set fee, off the shelf. Sounds great in theory, but it doesn't work because you haven't had the proper conversations with people to say, "We might need to tweak that. We might need to do this."

Ms ABIGAIL BOYD: This most recent bus contract for the Sydenham to Bankstown line conversion where you weren't consulted, are those buses disability-accessible, for instance?

DAVID BABINEAU: We have no idea. We don't know anything about that operation. We don't know what conditions people will be employed under. We don't know what the specs on the buses are. Again, before the point was put that it was a philosophical objection, I don't have the luxury of being philosophically motivated. Private me maybe, yes, but union me has not got that luxury. At the end of the day, it comes down to results, and it remains the case that, from our perspective, there's no appreciable benefit here, compared to the outlay. We talk about taxpayers—there really isn't, and this is a continuation of the policy that was put in place in the previous Government. If we can get to a point where there is an appreciable outcome that's worth the expenditure, then certainly we can talk about the specifics, but at the moment Transport are just charging along the course they've been set.

The CHAIR: I have a question about consultation. It has been raised already a couple of times, and, Mr Claassens, you noted that there wasn't the appropriate consultation by the national safety regulator. I wondered if you could talk us through what is meant to happen. What was meant to happen there? Are there conditions in the award, any agreements? Are there consultative arrangements that do exist that haven't been used?

ALEX CLAASSENS: Like I said, I'm not a legal expert, so please don't hold me to any of this, but my understanding is that there are two pieces of legislation which, in our case, have not been followed. Under WHS legislation, there is apparently a requirement for people to be consulted and work through. That certainly never happened. The WHS people were totally shut out of the whole process around the NIF train. I know later on in

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the new regional fleet there were conversations to try to ameliorate some of the issues that had been raised there. Like I said, the national rail safety legislation also quite clearly describes the fact that the end users have got to be consulted, and that never occurred, despite our protestations to the national rail regulator, which I did do myself, personally. They said, "We have been told that you have been consulted." And that's it, end of story.

Of course, I went to great lengths of saying, "No, that hasn't happened. We haven't been spoken to." Time and time again, the national rail regulator has led us down that path where they've said, "Yes, you have been consulted." But they haven't. They've talked to somebody else but not necessarily the union. They may have talked to one or two individuals who were nominated by the employer. As we all know, that happens in the EA world as well, where the Fair Work Commission from time to time gets these interesting agreements pop up and they've got three people saying, "Yes, we voted for it." So that stuff happened, and we've been very disappointed in that. Having said that, we have been quite deliberate this time around of advocating and trying to get a review of the national rail safety Act, which is now happening. There's an independent review being carried out by the NTC. They're looking into that.

Obviously, one of our submissions there is better consultation, better involvement from the end users et cetera. So people are listening now. They are starting to realise that you're much better off having the conversations up-front—even the difficult ones—than at the end of the process. So we are quietly confident that—at a national level, at least—there are now proper conversations about reviewing the national rail safety legislation, buying stuff in Australia, consulting Australian workers and doing all that stuff properly. That's now certainly the view that's coming out of people in Canberra, and I'm obviously applauding that because that's something that needs to happen. It would be really good if we do a similar thing in New South Wales and make sure that we—I mean, it is disappointing that we've ended up having to buy some buses from overseas. We're all scratching our heads with that one.

Given that we've all known that that bad decision about closing the Bankstown line—a perfectly usable railway line, closing that and turning it into a metro line is of extreme disappointment for us. People would have seen our submissions. In fact, it was also a recommendation out of this body, I think, at some point to say that they shouldn't do that, but, anyway, it's happening. So it is happening, and we've just got to deal with what we've got, and we'll make the best of it as we can, and we'll try to work through it. But, clearly, we would like greater transparency, more conversations early in the piece and collaboratively trying to work out what's best for all of us, including the travelling public. I fear that the travelling public are going to miss out badly, as far as the Bankstown line goes, for a period of time until it gets sorted.

The CHAIR: Noting your earlier comments about writing—or not—the submission, your submission does indicate that there was an absence of clear guidelines and oversight and that that contributed to delays and cost escalation in the procurement processes you go to in your submission. When you're referring to the absence of clear guidelines, during which stage of procurement, in particular, are you referring to? What guidelines do you think are required or should be in place and at what stages?

ALEX CLAASSENS: I'm not saying that's happening now, but the problem was that back then, it was always—sometimes we would only find out about things because they were in the media. *The Sydney Morning Herald* would ring you up and say, "Are you aware that this is happening?" That was the sort of thing that used to go on. It was really appalling. Then you'd even talk to the railway managers, and the railway managers would say, "We're not allowed to talk to you about that." It was pretty much at every part of the process. Even when we were getting to the point where we were quite clearly being very angry and very articulate, it just continued to escalate. It just became crazy at times. It was just really bad. Then it fell into the EA process, and then the rest is history, really.

You don't have to be a genius to work out how bad it got and where it started. It just continued the whole way through because the decision had been made, and I think that decision was from the very get-go. They made the decision, "We're going to introduce driver-only trains. This is going to be our way of getting rid of the union and its membership." In fact, some members of the Government were quite public about that; they're on the public record saying that. So is it any wonder that things escalated to the point that they did? But the disappointing thing, of course, was that it did jeopardise safety. We were never going to back off from that. We were going to make sure that we maintained a safe network. That's what I have always committed to, and that's what I'll always do.

The CHAIR: Mr Babineau?

DAVID BABINEAU: Bus lanes are probably a little more straightforward in that—I think that there needs to be a rebuilding of parliamentary oversight of Transport's activities. I think there's probably nothing that exists really now, and, regardless of the government of the day, there needs to be some objective policing of what goes on within that particular cluster. I think that anything that is rebuilt around procurement needs to have transparency and accountability built in as independent a way as possible. It needs to be done at a level where

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consultation is actually meaningful before decisions are made. Consultation is not some security council veto power. It is simply sitting down and having a conversation, getting another perspective on something that you're considering. That's what we're after, in essence.

I don't want to make major decisions about what buses are bought, but I would like to be able to look at a console and, having driven a bus, go, "That doesn't make sense there," or "Maybe this should be here," or "What's the purpose?" Those discussions need to be had at a point within the procurement stream before they're locked into the design that's agreed upon. For five years I have been trying to get some sort of feedback mechanism to Bus Panel 4, which handles procurement of transport. You hear positive things on an ongoing basis and nothing ever happens, and that just seems the way it is. So we're forced externally to come at it from other angles, which, ultimately, shouldn't be necessary—to sit there and publicly talk about safety and this and that. These things should be considered. In a grounded, well-rounded operation they would be.

The Hon. BOB NANVA: Good to see you again, Mr Claassens and Mr Babineau. I have a few quick questions. Is it the case, particularly with rolling stock and transport infrastructure, that there are significant technical, accessibility and end-user requirements or standards that are unique to the needs of Sydney, which would have a bearing on a design and tender process—things like curvature of platforms, driver sightlines, platform lengths, tunnel widths and those sorts of things? Can you speak to any of that?

ALEX CLAASSENS: Absolutely. As you'd be aware, there are also disability guidelines that we've got in New South Wales which are specific to us. We're operating on a 150-year-old railway system that was designed a long time ago. We didn't have the benefit of being able to make sure that every station had a perfectly straight platform and that there was no gap between the train and the platform, because we run freight trains through our network and we do all sorts of things. So you're right: All those things were catered for by the engineering standards. There are braking standards. We've got a thing called the TOC Manual, which outlines all the specific conditions for every type of rolling stock and all the things that were designed by the engineers and put in place by the previous RailCorp engineers.

All those things are there, but when they went to the procurement of the NIF, they threw all that stuff out the window. They didn't worry about any of that. They just said, "We don't want to be tied up with that. We're going to design our own train or, worse, buy one off the shelf. Then when it comes to Australia, we'll see where it stacks up." That, of course, is our problem. We didn't want any of that to happen because we knew that we had specific requirements in New South Wales. Everybody likes to compare us around other systems, but the reality is our system doesn't compare with anybody. We run double-decker trains. Nobody else in Australia runs double-decker trains, for example. We've got a whole bunch of things on our network that nobody else does. So to try to say that we're all the same is just ridiculous, and anybody who knows railway knows that we're not. We are totally different to everybody else, be it for better or for worse. Does that help?

The Hon. BOB NANVA: Mr Babineau, I don't suppose you have anything to add to that?

DAVID BABINEAU: No, but thank you.

The Hon. BOB NANVA: With the fact that there are so many Sydney-centric requirements and technicalities, if a government is driven by a value-for-money proposition that leads them to off-the-shelf rolling stock, it's inevitable that there are going to be additional expenses to retrofit that rolling stock to suit Sydney's needs. That leads to the obvious question: Are those cost savings then outstripped by the additional costs involved in retrofitting that rolling stock like the NIF?

ALEX CLAASSENS: The only way you'd ever know that is if the whole project was truly transparent for everybody to see. Part of the problem that we had with the whole NIF project, and even the NRF project for that matter, is nobody knows what the figures were. We don't actually know whatever the numbers are. The only way you'd ever know whether it stacks up or not is to be able to have all the information from the get-go, and that never occurred under the previous Government. In theory, there is no reason why you couldn't buy an off-the-shelf train and then modify it to suit, but you can only do that if you know what you're paying for it up-front and what needs to be changed on it, and you need to consult very early in the piece. You need to see what it is that needs changing, and then you've got to get the costs for that.

Part of the problem that we've always had, and particularly if it's a government project—we always joke about the fact the power point in your house might cost you \$200 to get an electrician to put in, but if a government contract is in the offing, add another zero onto the end. It's probably 2,000 bucks to put a power point in because the government is paying. That's just me anecdotally saying that. That's part of the problem. We've seen this in a number of cases through the transport sector, even in privatised freight. I saw it happen when they bought wagons from overseas because they thought they were good and cheap. They brought them over here and then they realised, "Hang on a minute. We've got to make all these modifications." And to make the modifications here in

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Australia costs a lot more money than what it would have been to do them over in China. The cost overrun happened there, too. It is one of those situations where open transparency and accountability right from the get-go is the answer to the dilemma that we're faced with.

The CHAIR: Thank you, Mr Claassens and Mr Babineau, for being here, for your union submission and for the work that you do.

ALEX CLAASSENS: Thank you for the opportunity. We appreciate it.

(The witnesses withdrew.)

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Dr CHRISTOPHER DAY, Honorary Associate, Institute of Transport and Logistics Studies, University of Sydney, sworn and examined

The CHAIR: Welcome Dr Day. Thank you for making the time to give evidence. Would you like to start by making a short statement?

CHRISTOPHER DAY: Yes, sure. I think we all understand here that government procurement has a big impact on the health of the economy. We've got these two schools of thought. On the one hand, we want to minimise the cost to government when we're buying something and get really competitive, efficient markets. On the other, we have this school of thought where we need to achieve broader policy goals with procurement. These two objectives often conflict with each other, except I think there's quite a lot in common with these two approaches. It's just about doing the evaluation effectively, which is partly what I've looked at in my research. If we look at the broader financial benefits involved when we manufacture something domestically and bring those into the cost, do the costs of bringing that onshoring to New South Wales or Australia exceed the benefits that it's creating? It comes down to whether the costs outweigh the benefits of what we're doing.

What we need to be careful about is, when we're bringing something onshore, what tends to happen is that we'll specify what we want and this can become very expensive. It becomes open-ended and vulnerable to gaming. But if we work out how much it's actually generating, we can put parameters around it. We can be very transparent to the private sector about the things we're measuring. This can ensure that, instead of getting, say, high-cost assembly jobs where it can be done cheaper elsewhere, we're getting the higher value componentry manufacturing that really adds value to this State. It's going to drill down on where the sources of comparative advantage are that we have.

Whilst I mainly speak about transport procurement in my research, the principles that come out of this can apply to a wide variety of procurement that the Government is engaged in, especially where it's purchasing something that requires advanced manufacturing and in particular cases where it's a very specialised product, where the Government is the dominant player in the market. When it comes to train procurement, one of the big challenges that we've had is that, ideally, we'd have one train design that suited everybody. Unfortunately, the way that networks have been created around the world and even within Australia means that they're all different. Gough Whitlam tried to create a suburban train for Australia decades ago now, and that attempt unfortunately didn't work because he realised that all the different loading gauges and electricity voltages are a little bit different. The best trains that have come for this country have generally been the ones that have been designed here, even if they've been manufactured overseas. It requires that local input and expertise.

In order to stimulate the domestic economy, there are five key areas that we need to look at. We need to smooth order volumes in order to reduce this peak-to-trough nature of investment. If you're a business, you're only going to invest if you know that there's order certainty which you can use to capitalise your expenditure. The principle of competition—it's often thought that if we bring more overseas suppliers into the market and more bidders, that's going to be really good. But the challenge is that if you've got a very specialised sector such as Transport where government is a big buyer, if we bring in too many people, it can dilute the work across too many suppliers, so nobody is competitive. If you're a large multinational company, what I would do is build a few trains for here, build a few for Beijing and build a few for Los Angeles. I can manage that. But if you're a local firm that focuses on this market, it simply can't be done.

Then we look at financing as well. In this country in the past 15 years or so, there was a move towards public-private partnership deals. The challenge with using private financing—and this happened in the UK a lot as well—is that it tends to skew the playing field in favour of much larger multinational companies, which can use their parent companies' credit rating to get much cheaper financing. You're not looking at the technical quality of the stuff anymore; you're looking at the financing component as well.

Also overseas countries have often been very good at using export financing, even if they're State-owned companies, in order to undercut the costs of suppliers which are working on the free market approach that don't have any of these extra subsidies when it comes to financing. One of the consequences of doing this is what has actually happened here. If you penalise a firm too much with a really clever contracting structure, we're kind of shooting ourselves in the foot sometimes if it's a local firm. What's happened here before is a local company has actually withdrawn its bid in another State because it was having trouble due to the unfavourable terms of the contracting structure.

Lastly, local content requirements I think is a really important issue in Australia where we have State and Commonwealth responsibilities separated. The State governments are often putting local content requirements on that are really narrow. When you're doing something which is advanced—we have created a world with lots of large global value chains now. That means there are lots of speciality, and we want this because that's what makes

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things more productive and efficient. But the challenge is, if we put a very narrow local content requirement in—in this particular State and we've got the same one in every single State in Australia—a manufacturer that wants to fulfill that requirement needs to duplicate its work in every single jurisdiction that it bids in. This becomes really inefficient because you've got to set up the same tooling again and again. So what you're going to do is you're going to set up things that are really easy to put in for the duration of the contract and then pull out again. These tend to be really labour intensive. When you think about a country like Australia, our costs of labour are much higher than in other places. Why would we want to prioritise local content that has higher labour input relative to higher capital input? I think this is the challenge.

When we think about local content we've got to be really careful. Just because it's manufactured in another State doesn't mean it's bad, and we need to think beyond the final assembly of something as well. What you've seen with things like the ferries, recently, that was manufactured in another State, instead of saying we want to fabricate that here and duplicate the work being done, we might want to think about higher value aspects of the same supply chain, such as electric propulsion, because that's going to generate a lot more research and development, a lot more higher order skill sets, which are far more important to our economy, and they're going to generate exports and be a lot more sustainable.

The challenge with making companies reliant on the government's contracts is it just becomes a drip-feed of government orders. As soon as they stop, the whole industry collapses. But if we can create component manufacturing which is world leading, that is what's going to sustain that and make it free of government support, which is ideal, because we don't want these industries to just rely on government contracts. We want them to be able to go out, compete and win orders for work from other governments around the world and other private sector entities.

The Hon. DAMIEN TUDEHOPE: Thank you, Mr Day. That was very comprehensive. If you go to table 1 on page 5 of your report, there are some adjustment figures that you included for the purposes of the illustration which you have created. How did you arrive at those figures?

CHRISTOPHER DAY: Most of these are from Australian States. Everything except for domestic design and manufacture are from Australian State case studies. The domestic design and manufacture is from a UK manufacturing facility just because there's not very much full manufacture of rolling stock that actually takes place in Australia anymore, so I wanted to look at something that was really efficient. These adjustment factors were developed by looking at actual company spending in the economy. I looked at train completion works, so I looked at the Dubbo Regional Rail fleet work that's being undertaken for train assembly; I looked at the Perth C series trains which are being built by Alstom and being assembled in Perth.

For domestic design I looked at the Queensland next generation rolling stock, which was designed in Queensland but built in India. For domestic design and manufacture, I looked at the Crossrail trains being built in the UK. I looked at the number of cars that were being created, the amount of investment into facilities that was required for each of the order, the amount of employment that was created, the length of time that employment was created and the amount of training that would have been put into those employees in order to make that happen. In the very latter case, the adjustment doesn't include this but I also looked at follow-on orders that they were able to get because of the investment they had put into it. I took that out because that's a fairly objective area because you can't presuppose what the exports are going to look like.

The Hon. DAMIEN TUDEHOPE: But to a degree they involve a lot of assumptions. Would you agree with that?

CHRISTOPHER DAY: No, they were based off the broader financial spending of companies in the economy to fulfil those contracts.

The Hon. DAMIEN TUDEHOPE: Go to the Dubbo one, for example, of \$119,162.

CHRISTOPHER DAY: Yes.

The Hon. DAMIEN TUDEHOPE: Break that up for me.

CHRISTOPHER DAY: You can read the full thing here. I won't go into it now, but you can read through it all if you'd like to. All the assumptions are in there. You can look at labour costs per hour. I don't have exact data, and this had to be scaled for inflation so that's why you would get into a slightly odd number if you're wondering why it's not 120,000, for instance.

The Hon. DAMIEN TUDEHOPE: The line above then includes the price of the contract. How did you assume what the value of the contract was for the purposes of getting to those figures?

CHRISTOPHER DAY: For train completion works?

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The Hon. DAMIEN TUDEHOPE: Yes.

CHRISTOPHER DAY: I worked out what it would cost to make a standard six-car electric multiple unit in Australia where you bring in basically the very minimal amounts of onshoring. It was a very conservative estimate that I came up with. In this particular case with the train completion works, the Dubbo contract required making trains that were regional in nature: They've got much longer distance to travel; they required bi-mode technology. So the actual costs of buying the carriages wouldn't have been comparable for this estimate because I wanted to make it an electric multiple unit. What I did was I basically took the cost of offshoring it and then made it a little more expensive for onshoring; so that's an assumption. But the actual adjustment, those numbers are real, based on what you would spend.

The Hon. DAMIEN TUDEHOPE: The assumption is in the hidden cost of the contract.

CHRISTOPHER DAY: Yes, but I've assumed—

The Hon. DAMIEN TUDEHOPE: If that's wrong, of course all those bottom line figures—

CHRISTOPHER DAY: I've assumed it to be much lower than it is. I think it would be much higher than \$2.6 million per carriage. I deliberately went quite low because you're requiring the manufacturer to set up a whole facility in addition, basically disrupt their global supply chains in order to do a little bit—

The Hon. DAMIEN TUDEHOPE: Does it take into account for example that labour costs might be significantly lower and you might be able to get a purchase price which is significantly lower?

CHRISTOPHER DAY: Because it's being done in a regional area?

The Hon. DAMIEN TUDEHOPE: No, because it's being done, potentially, in an overseas jurisdiction.

CHRISTOPHER DAY: No, because that's the amount that's being adjusted for.

The Hon. DAMIEN TUDEHOPE: I'm not talking about that. I'm talking about the offshore design and manufacture. It might be considerably lower than the \$2.4 million which you've—

CHRISTOPHER DAY: No, that's based off trains that have been offshore designed and manufactured. That's a real tender price.

The Hon. DAMIEN TUDEHOPE: Are we comparing apples with apples, though, when you go to the next line when you are starting with the price range of \$2.6 billion?

CHRISTOPHER DAY: It is more expensive to do a train completion job than it is to completely offshore design and manufacture it.

The Hon. DAMIEN TUDEHOPE: And why is that?

CHRISTOPHER DAY: Because you're disrupting global supply chains in order to ask for it. In this particular case you'd be putting seats in, windscreen wipers, vinyl siding and all these pretty easy things to put on and you're doing it with fairly expensive labour. The company that's doing it in this case, CAF—they don't want to do it; they want to do the whole job in Spain, so you are paying quite a large premium on it. I've added less than 10 per cent premium on that and I suspect it'd be much higher than that.

The Hon. DAMIEN TUDEHOPE: My understanding of the fundamental point that you're making is that simply setting a target for local content in rolling stock—say it was a 50 per cent target for rolling stock as the current Government has committed to achieve by March 2027—runs the risk of focusing on a relatively easy-to-achieve local assembly, maintenance and depot construction with low job skills and poor value-adding. What is needed is a more sophisticated approach that necessarily includes cooperation across the States.

CHRISTOPHER DAY: Yes.

The Hon. DAMIEN TUDEHOPE: And with the Commonwealth?

CHRISTOPHER DAY: Yes.

The Hon. DAMIEN TUDEHOPE: And a pre-tender and tender process that fully explores opportunities for value-adding, especially through local design and local advanced manufacturing components.

CHRISTOPHER DAY: Yes.

The Hon. DAMIEN TUDEHOPE: Is that a fair summary of the point that you would be making?

CHRISTOPHER DAY: That's fair.

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The Hon. DAMIEN TUDEHOPE: And that setting the 50 per cent target potentially encourages local manufacturing just to create the low-hanging fruit—

CHRISTOPHER DAY: Yes.

The Hon. DAMIEN TUDEHOPE: —rather than having a comprehensive model which would, in fact, encourage the whole of a manufacturing industry in Australia.

CHRISTOPHER DAY: Yes. You raise an excellent point. In the past what has happened, I think in Victoria, is they set a 50 per cent target and they didn't specify what went into it and it all got fulfilled through the maintenance contract which added no extra value at all. It's got a little more sophisticated since then—they have specified that it has to go into manufacturing. But you're spot on that that manufacturing—the easiest manufacturing to onshore is the labour-intensive stuff and you often just pass on that cost to the Government who will increase the price of the train. That's why you've got to be really careful about that. What I'd really urge the Committee to think about is that you don't want to put a 50 per cent requirement on and specify the train has to be made here if there's a Victorian facility sitting idle which could do the assembly work when we could do something else that was more productive with that. We could make the traction equipment. We could make the bogies and all these—we could make pantographs.

The Hon. DAMIEN TUDEHOPE: Can we do that?

CHRISTOPHER DAY: In many instances, yes. Some of the suppliers around the Hunter still exist from when we had a strong train manufacturing sector. You'd have to do an audit of where does comparative advantage lie but then, more importantly, strategically you need to think about where would competitive advantage sit in the future and what would we like to become good at. That's where you really want to coordinate with the Commonwealth Government. We don't want to be pulling in one direction while the Commonwealth Government's pulling in another. You've got to be really careful. Coordination becomes really important because you've got to remember our competitor countries are doing that very well.

The Hon. DAMIEN TUDEHOPE: If you were giving advice to the State Government, which you now have an opportunity of doing, what would be the first steps they would take now to achieve the results that you wanted to see them achieve?

CHRISTOPHER DAY: I would suggest that they look at the framework which I have developed here—where they look at the broader effects. So instead of specifying what you want, you put it out to tender and you say that you're looking to increase domestic industrial capacity and then you value—so you make it very transparent how it's being done and you value the actual broader benefits being created. This involves where you are going to do the activities as well because we need to adjust it—whether it's stealing from existing economic activity or whether it's genuinely adding something that we didn't have before because the last thing we want to do is poach from one area in order to fund another—then actually valuing the company spending in the economy that's additional and using that to adjust the price to retain competitive tension. The beauty of this is that if the value of the benefits being created by domestic producers exceeds the extra costs that they're charging, then we'll go with them but if they're unable to show that the extra benefits they're creating are exceeding the extra costs, then the foreign manufacturer is still going to win. So that competitive tension is still there.

As soon as you say, "We want 50 per cent," you become very exposed to gaming by manufacturers because they know they're going to win the contract no matter what. As soon as you tell people they're going to win it—that's the problem. As soon as you start to calculate what these benefits are actually worth and compare them against the additional costs that you're paying, then you've got a very strong argument. That's where it does allow you to support domestic industry within this neoclassical framework because we're maintaining competitive, free markets, which is really important. That enables us to maintain our standing with trade rules but it also allows us to support domestic industry where it's genuinely competitive. What we don't want to do when it's genuinely competitive is discard all these real financial benefits and do a cost-benefit analysis that's looking at all the first order costs but not looking at the first order benefits. So you've almost taken half the equation and thrown it out. That's what we want to avoid. We want to steer clear of both extremes.

The Hon. DAMIEN TUDEHOPE: For the purposes of doing your research, did you take into account the NSW Procurement Policy Framework?

CHRISTOPHER DAY: Yes, I did look at it.

The Hon. DAMIEN TUDEHOPE: Does that have an impact in terms of the manner in which domestic delivery would be valued?

CHRISTOPHER DAY: I looked at it a couple of years ago so unless it's changed since then, I couldn't find anything that looked at these broader financial effects. There was discussion about support for small to

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medium-sized enterprises social procurement environmental benefits but these were often mandates that you would stick into it. For instance, if you're supporting a company which employs disabled people, you're not too worried that it's a bit more expensive because you're deliberately using government money for more. This actual methodology to try to take broader financial costs and benefits within a framework that's cost competitive rather than just trying to support a deliberate sector—that wasn't in there.

The Hon. DAMIEN TUDEHOPE: So is there any way you can cost that?

CHRISTOPHER DAY: Sorry?

The Hon. DAMIEN TUDEHOPE: Is there any way that you can cost the value of the procurement policy framework as a component of the delivery of domestic manufacturing?

CHRISTOPHER DAY: I'm not quite sure what you mean.

The Hon. DAMIEN TUDEHOPE: If there are add-ons because a tenderer has to comply with the procurement policy framework, can you value what that is?

CHRISTOPHER DAY: They're the components that I don't particularly worry too much about because they're not cost components. When you're using procurement to achieve a policy objective, which I'm steering clear of—this is actually financial effects that we're looking at. If I wanted my train manufacturing to support some Aboriginal businesses in the Central West then I wouldn't worry that it's costing more because that's a specification in my procurement contract.

The Hon. DAMIEN TUDEHOPE: Yes, but it may cost more.

CHRISTOPHER DAY: Yes, I might put aside an extra \$10 million to achieve that but I'm willing to do that because I know that it's going to bring out positive outcomes. That's a policy decision. What I'm saying is, with manufacturing, if we strip all of those things out—because I'm not worrying about social procurement or environmental procurement—and we just stick to the financials and the costs and benefits and make those adjustments. These are the real ones. These aren't economic effects; these are real price effects. That's how we can maintain competition in the market and really try to do what you're saying—an apples-for-apples comparison. That's really what I was trying to get at with this.

Ms ABIGAIL BOYD: Thank you, Dr Day, for your interesting submission and for your time today. I've only got a couple of questions. Do you have any suggestions for overcoming the structural advantages of multinationals when it comes to their financing costs versus local?

CHRISTOPHER DAY: Using public financing is probably the easiest way of doing that because that gives you the cleanest approach—comparing the technical capability of the two offerings, what broader benefits they're delivering to your economy and using that. I work in finance and government can borrow more cheaply than the private sector so I would avoid using that. In fairness to government, both here and in other jurisdictions around Australia and in the UK as well, they've actually tended to move away from private financing in the last 10 years and back towards contracting where the government funds the up-front bill. They might outsource the maintenance contract to get the efficiencies from that but the actual funding all comes from the government quite often now. I think that was a really positive step in the right direction.

Ms ABIGAIL BOYD: Thank you. You've talked a lot about how it doesn't make sense for New South Wales to be producing every single thing and then for every State to be doing the same thing and we need that national coordination. To your knowledge, are any of the other States and Territories doing that work of coordination? Where are they at in this process that we're now at?

CHRISTOPHER DAY: Unfortunately not that I'm aware of. I did discuss with Queensland and Western Australia. You might be aware that, in the past, Western Australia used to buy its trains from Queensland. They use the same gauge. There are still differences but they were close enough that they could do that. The trains were made in Maryborough for the Perth system until these latest ones. They did discuss that maybe one State makes the bodies and the other State makes the bogies, but that all fell through unfortunately.

I did hear there was discussion, but nothing has happened. I guess because each State sets quite stringent local content requirements, a lot of the manufacturers know that they're most likely to win the contract if it's really within State content. It's become very difficult. In the absence of Commonwealth fiscal transfers, that becomes quite hard. Ideally, if New South Wales was to spend money that was going to create benefits in another State, the Commonwealth Government would be able to I guess repay those benefits knowing that they're accruing to the country as a whole. But without that sort of thing, it's very hard to align the incentives of different purchasing authorities.

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The CHAIR: Dr Day, Mr Tudehope asked you about your cost estimates and your adjustments. I know in your opening statement you did refer to aspects of the broader financials of this, but I wondered if you could walk us through, as novices to your framework, your adjusted cost model and once again, perhaps, restate the difference between what you're looking at in terms of these financial costs and traditional ways of valuing bids.

CHRISTOPHER DAY: Of course. I originally came from an accounting background instead of an economic one, and I got more interested in economics. That's how this framework came about. Often the criticism of economic benefits is that they're non-price effects and that somebody sort of plucked them out of the sky and brought them here, and that you can come up with any outcome that you desire. I thought, well, I can understand why people would criticise that. But when I was actually working in the UK, I was hearing a lot about these train factory closures. I thought, "They're actually generating a lot of actual spending in the economy when they're there."

Places like Derby, with all the supply chain cluster that's formed around it, has actually added a lot of value to the UK economy. When companies spend there, it's keeping people in employment. It's investing a lot in their training and upskilling them. The facilities need to invest in research and development to remain competitive. They develop things like new bogie technology because their track's rougher than in Europe. Then they've also got to invest quite substantially in their facilities in order to test new trains, longer trains, develop new techniques or put robotic welding in. All of these things are really beneficial to the economy.

When you've got the private sector doing all of this for you, that saves the government from having to do it. We don't need to send people to TAFE and pay for their fees in order to train them. We don't need to pay them unemployment benefits, if they would have been unemployed because that region has a high unemployment rate. We don't need to sponsor publicly funded research and development through things like universities because it's coming from the private sector instead. It generally has more productivity benefits because it's linked much more to what is generally going to improve company performance, while basic research is a lot further a leap to achieve that.

What I did is I thought that if we look at the company's actual financial statements, if they're building a train and they say, "We're going to employ 100 people on \$100,000 a year, whatever, for five years in order to complete this contract," they're going to take on 20 per cent of those as apprentices and they're going to fund them all to get a certificate IV in welding or something like that. Then they're going to have to build a new production facility or upgrade the existing one with new cranes and new robotic welding equipment that meets world standards to do that. We know that if we develop the technology in this platform, we might be able to potentially win an export contract because we pooled all this money into designing a train and we know that other cities around the world are looking for something quite similar. So I look at all these actual companies' spends in the economy and then adjust that for the price that it's costing them to do it in our local jurisdiction. Then I get my new, adjusted price and I compare this with, say, the cheapest foreign alternative that's available—which one comes out cheaper?

With the adjusted price, it's very important that you look at the prevailing economic circumstances of the regions. It has to be done on a case-by-case basis. I couldn't do this, because I was looking at multiple cases at once and it would be up there. If you do it in an area where unemployment's quite high, economic activity—you've got a lot of skilled people or maybe a huge facility shut down, or you've lost mining jobs or something—then in that sort of area, you're going to get a lot more uplift than, say, if you try to do it in downtown Sydney here, where real estate values are very high. But basically, if you can take those real company spends, adjust them for the actual additional benefit you're going to have based on looking at the prevailing economic circumstances of a place, and then compare that against all the other bids, whether they're overseas or domestic—you could get multiple domestic bids in the scenario which you're comparing against, and different forms of onshore manufacturing that you're comparing against—then you can work out which one actually truly provides the best price for the economy after you've adjusted it for the price-level benefits that it's creating.

The CHAIR: In an earlier answer you talked about basically allowing—in some ways it's a mixture of allowing for market outcomes because you're using accounting principles for individual firms rather than those broader economic benefits, which are much more amorphous and difficult to quantify. But what I'm hearing is that you're also suggesting that there has to be some level of government coordination about the areas in which that advanced manufacturing might be situated and other factors. There's the market aspect and looking at the accounting bottom line, but there is a level of coordination that a government would need to provide in order to maximise those benefits, is that correct?

CHRISTOPHER DAY: You'd need to tell the private sector, "These are the things that we're going to measure." You can potentially change how they're measured based on how much value they're adding. If they say that they're going to provide a bunch of jobs where you get the screwdriver and you put the Lego set together-type

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approach, you might only give them like 0.5¢ in the dollar back in terms of a benefit. But if they're saying they're going to invest in a robotic welding facility, where that's going to be much more productive, then you can give them 1.5¢, even. You can play with it a little bit based on, I guess, what seemed to be the most valuable. But you're not specifying to the private sector what benefits to put in domestically, necessarily; you're saying to them, "If we measure what you're actually creating for us, adjusting the price based on that, then you're going to win the contract if you can give us the best overall deal."

The CHAIR: We've been grappling with value today a little bit. What I'm hearing you say is that when you look at these adjusted costs and you look at the value that each organisation is contributing, you're less reliant, then, on defining value or measuring value in the later stages, or in the output, because part of what you're measuring in value is that input.

CHRISTOPHER DAY: Yes.

The CHAIR: Thank you. As I said, we've been grappling with value across numerous witnesses today.

The Hon. ANTHONY D'ADAM: So that figure is reliant on a detailed assessment of company accounts—is that how you arrive at that?

CHRISTOPHER DAY: Yes, you would ask them to send in the information of how they're planning to do it as part of a tender and use that to make the adjustment. You should be able to get pretty granular level information and bind that to the contract. If they don't fulfil what they've said they're going to do, you'd be able to be compensated for any deviations from that, unless they were negotiated.

The CHAIR: The broader financial effects that you include in your model were employment, expenditure on R&D or equipment, and exports.

CHRISTOPHER DAY: No, capital investment as well—and also training on staff.

The CHAIR: Okay.

CHRISTOPHER DAY: Exports are not in any of the adjustment figures. I took those out because I knew that exports are something—they're nice to have, but in a lot of industries we're not going to get any. Even if we do, how can you measure them before they actually occur? They're sort of a bonus factor. They can be quite substantial; in one of the cases I looked at, they were quite large. But I don't include them because it's a bit of a fuzzy area.

The CHAIR: So those factors that you included, do you consider those to be comprehensive? How did you make the choice to include those particular factors?

CHRISTOPHER DAY: They're all things that appear, I guess, in company financial statements. They're real things that I could actually measure without me trying to derive how they were worth. That's why I chose them—and the literature said these are factors which generate value to the economy. That's how I narrowed in on those.

The CHAIR: Excellent, thank you.

The Hon. ANTHONY D'ADAM: Doesn't that then just make the tendering process more expensive for domestic tenderers? Then, of course, the compliance side of that—actually validating that—makes the tendering assessment process much more complex and more, I suppose, labour intensive. Is that a fair assessment of the consequence of adopting a framework like this—that, one, it would cost more to put in a tender because you'd have to have a level of granular detail that's not currently required; and then, on the other side of the ledger, the assessment side would be more expensive and more time consuming to do a proper assessment?

CHRISTOPHER DAY: It definitely would add an extra step in the tendering process. Tendering processes are already fairly complicated. With companies, in terms of how onerous it was, I would expect them to have a pretty clear idea of the breakdown of costs before bidding. If you bid for one of these contracts and you get it wrong, you get really burned. If you assume you're going to win the contract, I would hope that they've already done a fairly detailed assessment. In terms of the governance role in assessing it, if they've provided that information, I wouldn't see it taking a huge amount of time to do it. Don't forget, it is contractually bound. If they've made it up, they're going to pay for it if you don't actually see these benefits arising. So they have a very strong incentive to make sure that they are true and faithful representations of what they're claiming to achieve.

The CHAIR: In your submission, and I think in your broader thesis, you talk about comparable jurisdictions, and we've had Treasury in here today talking about New South Wales's obligation under trade agreements. I think, as I said, in your submission you talk about comparable jurisdictions and how they have

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managed local content issues, despite having very similar trade agreement obligations with Australia. Could you talk a little bit about that?

CHRISTOPHER DAY: That's a good point. That one perplexed me at first. When I first looked at this, I was thinking: How do some countries seem to add whatever factors in that they want to adjust prices and seem to get away with it and they're under the same WTO rules that we are? The first thing is that the approach that I've taken has tried to avoid that problem because we're looking at financial benefits so straightaway we wouldn't be breaching any rules. We're not providing additional favour to domestic factors. We're simply looking at the benefits they're creating.

But, aside from that, an academic at UNSW about five years ago looked at South Korea. They're a very prosperous industrial economy. They follow exactly the same rules as we do, except they've used significant State support to build their manufacturing sector. They've substituted imports. They've turned their small and medium enterprise into these large global players and supply chains. They've financed strategic industrial expansion and they've all been able to do this within the rules. It explains how they've been able to do that. Our rules look very, very similar as other countries but their approach and their interpretation has been very broad and they've obviously been able to do that.

Then other papers also talk about the wriggle room that we see within world trade organisations and other bilateral trade agreements that actually favours greater technologically advanced economies. We do stand to benefit. The wriggle room isn't in the lower value stuff. You can get away with things where it involves R&D and capital investment because that's often where the exemptions are being negotiated.

The CHAIR: You spoke about South Korea. I think Canada is another example. Is there anything particular or different in that example?

CHRISTOPHER DAY: In terms of?

The CHAIR: In terms of trade agreements.

CHRISTOPHER DAY: No. They're bound by very similar agreements to us, and if you look at the United States, it is bound by a lot of trade agreements and they've got all sorts of Buy America exemptions, small business innovation research grants. Even currently, their Inflation Reduction Act is an absolutely massive industrial strategy, and you can see that. It's got China rattled in terms of how big it is and they fit in a lot of these agreements. We've got free trade agreements with them. I've actually seen the Commonwealth Government trying to step up its investment to try and compete with theirs right now. The wriggle room that's there—it's certainly quite large.

The Hon. DAMIEN TUDEHOPE: The Commonwealth would have to do it, though, wouldn't they?

CHRISTOPHER DAY: Sorry?

The Hon. DAMIEN TUDEHOPE: It'd have to be a Commonwealth decision to—

CHRISTOPHER DAY: No, I'm saying the wriggle room is there. We're not particularly bound by anything. Nothing that we've spoken about here would breach the WTO rules. I just think the Commonwealth Government is already doing things that are trying to match what the United States is doing. They're a very large peer economy and they're spending trillions of dollars at the moment bolstering their renewable energy generation sector and semiconductor sector.

The CHAIR: The key thing in your broader work is innovation and advanced manufacturing. You've touched on it here. What role does domestic procurement or local procurement play in fostering advanced manufacturing and innovation?

CHRISTOPHER DAY: The way the world's changed, as things have gone up the value chain, they've got more complicated to build. The success of manufacturing is becoming less based on an individual person, or individual companies' success and the skill of their management, but much more of the ability of that firm to learn from those around them. That's why they have this idea of industrial clusters. It's kind of like if you put lots of smart people in the room together, they're going to come up with good solutions together because they can bounce ideas around with one another, and the same thing's starting to work with firms, including what we call advanced manufacturing firms because they're able to share much deeper supplier bases with one another so you get much more specialised equipment than if you're outside that. They can trade staff with one another. The individual firm doesn't like that but the cluster as a whole benefits from that.

As the world's becoming more and more advanced in its manufacturing, the line between services and manufacturing is started to blur. Even though we see the manufacturing sector might not be doing as well now, a lot of what used to be manufacturing—industrial design, research, engineering consulting—that used to all be

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counted as manufacturing, but now it's being counted as services so that makes your services look a lot better. The challenge is, if you've got this strong services sector that developed off the strength of a former manufacturing sector but you lose the manufacturing, you're losing that link between them. A lot of learning that comes from services comes from learning from what's actually happening in production: You're improving product processes; you're looking at errors that might be arising because that tacit knowledge is passing up and down.

If you're an engineering consulting firm and you're no longer doing that on a day-to-day basis, you become gradually less competitive. With advanced manufacturing, it's a lot easier as well to lift productivity growth through that. With services, it's often very difficult to lift productivity and it's often undesirable. A quote that's often used by people is that a string quartet trotted through a 27-minute piece in nine minutes. One wouldn't say the productivity has tripled because you'd be unhappy that the level of service delivery had actually declined. It's like self-service checkouts. Often people are frustrated with it taking longer. With manufacturing you can use chemical processing, automation, robotics and you can feed that in, and the amount of inputs required to make the same outputs can be lower over time very easily.

It's that whole process that works through where manufacturing aids the improvement of services sectors because a lot of these innovations actually flow through. Things like the logistics and transportation of each service sector—a lot of their actual productivity gains have come from things like jet engines, which were all originally made from the manufacturing sector. And then, in terms of export for the balance of trade with a country, it's very easy to export manufactured goods. It's very difficult to export services in comparison. If I want a cheap haircut in South-East Asia, I can't just pop over there for half an hour and come back again, but they can send us a cheap television. In that sense, 85 per cent of world trade is in manufactured goods. I think, yes, 1.6 per cent is in commodities so even though it looks it's a big piece of our pie, in terms of the global standing of things, if we want to lift it, actually advanced manufacturing is a very good place for us to do that.

The CHAIR: Thank you. Now I just want to go to your submission, which concludes by indicating:

... buying locally manufactured trains is not necessarily a subsidy or form of social procurement. It is the most fiscally responsible course of action for governments in jurisdictions which possess and nurture this capability through effective contracting structures.

You've spoken about that today and expanded on your framework about taking into account those broader financial effects and how we might do that. Is there anything else that you wanted to say or to highlight about your research, or any closing remarks you wanted to make with regards to this? I will let you answer that and then my colleague has a question.

CHRISTOPHER DAY: On that last point especially, existing capability becomes a fairly important factor here. The framework I've tried to outline to you is not trying to create some new killer industry. To actually create an industry from scratch requires huge levels of capital investment and sustained periods of time. If we wanted to match Taiwan with semiconductor manufacturing, it would take us 20 years to get there and we'd have to be pouring in hundreds of billions of dollars to do it. Adjusting the benefits to the local economy—because especially the higher value stuff is going to be worth more. Being able to do that, if you don't have an industry here or it's a really uncompetitive industry, it's not going to work. So it's very much that, if you've got something that's already competitive or you've got one that, if you can assist it in other ways—there might be other government policies that try to do it but you want to push to be competitive and you might actually win the contract. But if it's totally uncompetitive or it doesn't exist, it's very unlikely that a manufacturer from overseas can promise to do locally manufactured things here and actually do it in a cost-effective manner.

But if they can do it, that's great and it'll show up in the framework. But if they can't do it, they'll continue to make it overseas, so it is very much looking at how we support what we've got. Let the market decide what's going into the local content and try to make sure that when we do have local firms, we are supporting them and that the contracting structures through the five points I mention in here as well are set up to really allow domestic industry to thrive. But the big problem is that a lot of contracting structures, ironically, undermine the competitiveness and health of our local firms to the advantage of overseas firms. That's the very first basic level. We don't want to skew the playing field against ourselves using our own procurement. If we can get that right and then we bring in these adjustments, I think we'll find that a lot more contracts will go towards domestic firms on a financial basis.

The Hon. ANTHONY D'ADAM: Taking trains as an example, if I understand your proposal, it would necessitate some Commonwealth level agreement around the apportionment of various components of the manufacturing process amongst the States, and they might have differential values. I think I heard you say that you would then adjust for that with Commonwealth transfers. To me that sounds like a recipe for a lot of argument. How do you ensure that New South Wales, if we agree to manufacture our trains in Victoria, is getting a fair adjustment?

The Hon. DAMIEN TUDEHOPE: GST, maybe.

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The Hon. ANTHONY D'ADAM: What's the mechanism for quantifying that adjustment, in terms of the various apportionment of the componentry of the manufacturing process?

CHRISTOPHER DAY: I'll provide a quick illustration as to how I'd see it happening. It costs \$2 million to buy it from China and \$2.2 million to buy it from Victoria and it generates \$400,000 and it all goes to the Victorian economy. We'll just pretend that it all does, but some of it might come to New South Wales in reality because we might make some of the components. Victoria would think it's great that we picked that. We think it's a stupid idea because it's costing us \$200,000 more. If that was one of the bids and one of them was in China, we would crunch the numbers and then we could actually say, "This one's costing us \$1.8 million instead of \$2 million but the benefits are accruing to Victoria Federal Government. This is how much it costs. Do you want us to go with this one?" There would be an expectation then that these are the numbers that have been provided and we have all agreed that this is a way of evaluating it. Here it is.

The Hon. DAMIEN TUDEHOPE: Good luck with that.

The Hon. ANTHONY D'ADAM: I'm sure you would get a good deal from the Commonwealth on that.

CHRISTOPHER DAY: That's really the sad challenge.

The Hon. ANTHONY D'ADAM: It falls down with federalism.

CHRISTOPHER DAY: If they don't want to be able to do that, it becomes very difficult to put the onus on the State to actually cough up the extra money even though they're not getting the benefit. You could have between-State agreements because it would be in the Victorian Government's interests to create \$400,000 worth of benefit per carriage for a \$200,000 cost. If you went to the Victorian Government, I would hope that they would think that was a good idea.

The Hon. ANTHONY D'ADAM: One of the arguments for why we have trade commissioners is that we can't trust the Commonwealth to actually represent New South Wales interests. If we don't have that level of confidence in the ability of the Commonwealth to assure us—

CHRISTOPHER DAY: State to State negotiation might work better.

The CHAIR: We do want to make things other than just trains.

The Hon. ANTHONY D'ADAM: Sure. That's just the example. There are lots of things that could be manufactured if we had some level of national coordination as well.

The Hon. DAMIEN TUDEHOPE: We've got a constitutional issue as well.

The CHAIR: Dr Day, thank you for joining us this afternoon. We appreciate your submission and your evidence here today. If we have supplementary questions, we will provide them to you and you will have 21 days in which to reply. Thank you very much, again.

(The witness withdrew.)

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Mr LEWIS RANGOTT, Executive Director, Corruption Prevention, Independent Commission Against Corruption, affirmed and examined

Dr BENJAMIN MARX, Principal Officer, Corruption Prevention, Independent Commission Against Corruption, affirmed and examined

Mr CHRIS LAMONT, NSW Small Business Commissioner, NSW Small Business Commission, sworn and examined

Mr MARK FROST, Director, Advocacy, NSW Small Business Commission, affirmed and examined

The CHAIR: I thank our next witnesses for joining us this afternoon. Would either group like to make an opening statement?

CHRIS LAMONT: I thank the Committee for the opportunity to make a submission and provide evidence today. As NSW Small Business Commissioner, my team and I provide assistance, information and support to the almost 850,000 small businesses in New South Wales. Our assistance has included the development of the selling to government program and a suite of resources since October 2021 to assist small businesses in tendering to government. As a major purchaser, the New South Wales Government is an important client to many businesses both big and small. At times, however, we see small businesses who could make a greater contribution to supplying goods and services to government miss out due to complexity, overly onerous contractual or tender obligations or just a sheer lack of awareness. This is not just a loss for business but a loss of competition.

The New South Wales Government should support measures designed to encourage small business participation, not only to maintain a vibrant small business sector but to ensure a diverse and competitive market, which is vital for ensuring best value for money for the New South Wales taxpayers. Reducing procurement and contractual complexities along with measures to promote opportunities for local content and small businesses will boost competition, enhance and, importantly, help demonstrate value for money, all of which is good for New South Wales small businesses, the New South Wales Government and New South Wales. Thank you.

LEWIS RANGOTT: Madam Chair, thank you. Just a minute of your time. I make a couple of brief comments about our submission. The ICAC is certainly not against local preference, per se. What we're trying to achieve with our submission is that we're against contracts for mates. Where preference manifests as a conflict of interest and it generates a situation that will infer improper benefits on friends and relatives, that's what we're against. I will just make that point quite clearly. Every now and then in our advice work and some of the complaints we receive, we find that local preference policies could be used as a form of fig leaf for someone wanting to confer an improper benefit on a counterparty. That is what we're concerned about. This tends to happen more in the local government sphere than anywhere else and it tends to happen more in small contracts than anywhere else.

Some of these issues can be designed out with some improved controls. Some of the ones that we mention are just getting a firm grasp of what you mean by "local" and properly defining what "local" means. Again, it's more of an issue in local government than State government contracts. And also properly designing your evaluation criteria methodology when you apply that preference. Those are the key points we are making in terms of local preference policies. In closing, I would just say that at the heart of our work there's a bit of a paradox. New South Wales is a low corruption jurisdiction and a low corruption country but, at the same time, probably a small majority of our work does involve procurement—it's the activity that keeps us busiest. You would point to our activities and say that procurement is high risk, but the asterisk against that is that New South Wales is a relatively low corruption jurisdiction.

The Hon. DAMIEN TUDEHOPE: Mr Lamont, we heard earlier from Business NSW. One of the issues we raised with them was the small businesses which, being well educated by you and the tendering programs or how to tender with government programs that you have developed, often tender for work within New South Wales Government but repeatedly miss out and generally the same contractor who has won the confidence of the agency is selected time and again. What would you do, if you were making a recommendation, to ensure that more small businesses got opportunities to be successful in their tendering with the New South Wales Government?

CHRIS LAMONT: I guess first I'd make the point that the more businesses that write tenders, invariably the more will miss out. That's a consequence of having, I guess, greater contributions and greater tenders to any government procurement process. That's something we need to understand. By equipping people with the skills to tender—generally speaking, there can only be one or two. That said, though, I think there are things that can be done, and debriefings on tender assessments are really important. A lot of times businesses will interpret a question in a certain way, and that interpretation is subsequently held to be the inappropriate way to actually respond to a question. Tender debriefings are really important.

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The other comment I'd make is that there are New South Wales Government panels with literally hundreds if not thousands of businesses on them, so the chances of a small business, particularly in a regional, remote location of New South Wales, winning any work on that panel is sometimes, pardon the pun, remote. I guess a degree of appreciation for what being on a panel actually means—it's no guarantee of work—and for agencies, to the extent possible, to look at ways to actually rotate panels through. Where there is an opportunity to diversify, where there is an opportunity to spread work, to look at that realistically.

The Hon. DAMIEN TUDEHOPE: Thank you for that. We had a program called Business Connect. Has there been a reduction in the assistance offered by Business Connect over the past 18 months?

CHRIS LAMONT: Not that I'm aware of. Their focus may have changed. There was a period during COVID where businesses were being assisted to respond to various government—State and Federal—programs to secure finances and funding. I think the needs of businesses have probably changed since that period to some extent, but I'm not aware of any change in the service.

The Hon. DAMIEN TUDEHOPE: One of the other issues you raised was in relation to ISO requirements. Have you raised that as an issue with the New South Wales Government?

CHRIS LAMONT: Yes, we raised this in a submission. We have heard from a number of businesses and industry associations that increasingly they're seeing tender requirements that include new ISO requirements and at times draft ISO requirements—this is an ISO that has been in consideration, but not actually mandated or published yet. That's been a concern that we've received from businesses themselves and from industry associations.

The Hon. DAMIEN TUDEHOPE: I suppose that's a contract issue.

CHRIS LAMONT: It may well be a tender specification issue. I think a lot of projects, there's a—having been on both sides, there's an adage that you defer risk whenever you can, and potentially including an ISO requirement may be seen by some as a way to de-risk a tender assessment. I guess the issue with that is it proportional with the benefit that's gained and does it allow competition within a tender to take place, or are we simply limiting it to larger companies, which may be multinationals, and because of their standing, their size and their sophistication they have ISO qualifications that may not actually be necessary for the work that is being requested.

The Hon. DAMIEN TUDEHOPE: There are provisions in the Local Government (General) Amendment (Tendering) Regulation relating to offering ongoing employment to employees of a previous contract before being able to tender for a new contract. There are proposals in several submissions before this Committee from unions that would impose commitments to secure employment for employees before a supplier could tender for certain kinds of government procurement. Would that act as an impediment for lots of small business in tendering with government?

CHRIS LAMONT: Potentially. I would need to see whether they would be contracts or have an understanding whether they would be contracts that a small business would actually tender for in the first place. Some of these contracts are actually very, very large and you may not have that many small businesses that would be interested in tendering for them.

The Hon. DAMIEN TUDEHOPE: The Insurance Council of Australia says:

... the New South Wales Government and its agencies continue to contract out of proportionate liability, requiring small business professionals to assume liability for other parties' negligence.

We heard some evidence about that earlier today. This is a practice which requires small business to take on a disproportionate amount of the insurance obligations. Do you think this needs to be looked at, and have you got a view about how that would be properly apportioned?

CHRIS LAMONT: I have mentioned that in my submission. Queensland, in one particular industry, prohibits that practice. The other States are either silent or allow it by virtue of history. That is something that we have been receiving representations on.

The Hon. DAMIEN TUDEHOPE: Thank you very much for your opening remarks and clarification in relation to the weighting for local—you said that that can be ameliorated to a degree by proper scrutiny or, alternatively, proper contracting. I want to expand on that a bit more. How would you eliminate the potential corruption risk associated with mandating local content?

LEWIS RANGOTT: We see most of the corrupt conduct that we uncover happens in that six-figure—under a million dollars. The reason for that is there are fewer eyeballs on those smaller contracts. Once you get into the land of open tenders, you have tender committees, more robust assessments, so those extra sets of eyes

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de-risk it to a significant degree. It's more difficult for an improperly motivated individual to carry the day, if you like. That's one factor. Another way is to just try to make it as objective as possible. You can imagine a situation where there's a lack of rigour around the assessment criteria and it says if you are local you get extra points. What does that mean? So, a clearer definition of what it means to be local. Does it mean where your post-office box is? Does it mean where your employees are? Some reasonably objective way of measuring the thing you're trying to achieve, which is not an easily done thing, necessarily, but making it less objective than more objective is usually the way to go, if possible.

The Hon. DAMIEN TUDEHOPE: In the cases you have investigated, what are generally the red flags you would identify for agencies in terms of those smaller contracts where there are fewer eyes on them? What are the other red flags you would see in relation to those contracts which would alert you or should alert the agency to potential corruption risks?

LEWIS RANGOTT: The main one we see is groupings of purchase orders or contracts just below some relevant thresholds. We know from our work that corrupt individuals try to minimise the amount of scrutiny. You would see, for instance, groupings of contracts just below \$250,000—whatever the relevant thresholds are. That's a bit of a telltale sign, which we call order splitting. The other one we're seeing quite a bit of is inadequate due diligence. It's the same problem again. If you're buying nuclear submarines, there's a huge amount of due diligence done on the proponents even before you go to market. But if you're getting someone in to fix the plumbing, there would be much less due diligence, and it is easier to steer a corrupt purchase order through. Those are probably the two main ones.

The Hon. DAMIEN TUDEHOPE: But there is some tension that exists between agencies which want to be able to buy local and also having the due diligence to make sure that we're not looking after the mate, as you described it. If I'm a school in a regional centre and I have a relationship with the local stationer and I want to buy my stationery from that store, it's often the same person that I see at the golf club or the pub of an afternoon. We don't necessarily think that that is corrupt conduct.

LEWIS RANGOTT: No. You've touched on an interesting point that colours a lot of our work. Merely having a relationship with a person—an acquaintance or a knowledge of who that person is and some dealings with that person at the golf club—wouldn't trigger a personal interest and wouldn't trigger a conflict of interest. This is difficult in small towns, and it's difficult in industries where everyone knows everyone. Where that relationship essentially crosses the line and has characteristics of a personal relationship, a friendship or a romantic relationship, that's where a different sort of line is crossed. And where, in the mind of the procurer, they are buying the thing because of the relationship, you're crossing the line into corrupt conduct, potentially.

The Hon. DAMIEN TUDEHOPE: In a small town that's very difficult.

LEWIS RANGOTT: It's a challenge, yes.

The Hon. DAMIEN TUDEHOPE: One of the suggestions that we've heard a lot about today is transparency in relation to contracts generally and having some way where head contracts and subcontracting contracts are more transparent. Is that something that the ICAC would be recommending in terms of potentially a safeguard against corruption activity—more transparency around the contract process and the subcontract process which may arise between a head contractor and a subcontractor?

LEWIS RANGOTT: There's a famous saying in our industry that sunlight is the best disinfectant. We're all taught that on day one of the ICAC. The general proposition is true. Transparency does cost money, however. Imagine forcing every element of every procurement decision out into the sunlight. This costs taxpayer money. So there's a sweet spot. Also you need to think about, if it's made transparent, who could practically make use of that data. Who would look at it? Who would do something with it? Sometimes it's the media.

The Hon. DAMIEN TUDEHOPE: You.

LEWIS RANGOTT: Sometimes it's us. Well, we've got our own powers so we can get to these things. So sometimes it's the media. Sometimes it's committees like yours. Standing Order 52 orders are used sometimes for this function. There is a bit of a sweet spot but, as a general proposition, of course, more transparency is a good thing.

BENJAMIN MARX: I think sometimes also certain information can be used by competitors, as an example. So they realise—well, they didn't get the bid. "Hold on, I bid less than that", or, "Why did they do it?", "They claim to have that." I think there is some scope there they could also use. Without going into details, from time to time we hear complaints from people that didn't get the job. It's not to say there was always corruption or anything, but—

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The Hon. DAMIEN TUDEHOPE: Then it becomes a complaints regime because they've now looked at the terms of the winning tender and said, "I want to lodge a complaint."

BENJAMIN MARX: Yes.

The Hon. DAMIEN TUDEHOPE: There is a process for challenging a tender with the Procurement Board for the purposes of re-examining that procurement process.

BENJAMIN MARX: But I'm not sure it applied to local government.

Ms ABIGAIL BOYD: I might start with the representatives from ICAC. We were hearing earlier from NSW Public Works in relation to contracts below \$50 million for construction public works that are—one of the examples was some housing that was built in fairly urgent circumstances for a local health district, where Public Works had got involved to help the procurement so that we could get contractors busy building those houses quicker. But when I asked them who monitored and enforced the contractual terms of those contracts that they had helped procure, the answer was that it wasn't them. But you've got a government department that's called in Public Works because they don't have that expertise.

I went through a little bit of difficult questioning but finally came back to it seems that nobody, really, is overseeing those sorts of contracts. Because they're not publicly available for the public or the media or unions to look at, there seems to be no sunlight and no scrutiny. From your submission, it seems that these sorts of smaller contracts—and that's probably larger than a lot of the smaller contracts that you're talking about in your submission—are in a riskier category than the larger ones, yet we have Government trying to encourage those smaller contracts for small business et cetera and local procurement. How do we resolve that tension? Is there a way to do it where we can still be reducing the red tape but doing it in a way where we're not opening up the doors to corruption?

LEWIS RANGOTT: It's not an obvious magical answer to this, because some of the red tape you can point to and say, "Aha, that's red tape. That's clogging up the system." Then perhaps people like Ben and I would say, "Well, this is necessary red tape because it's weeding out problematic suppliers." One way to answer your question is—sort of go back 15 years ago, men and women would do this analysis with Microsoft Excel and they would do analyses and they'd work out, "Here's our high risk suppliers." I think, increasingly, machines can do some of this work. This is work that's coming. I know that Dr Kaine's got an interest in the artificial intelligence side of things. Some of those analysing risky transactions can increasingly be done after the transaction on a risk basis with a piece of software. That's one way to speed up the process. But there is definitely a trade-off and a tension between good red tape and bad red tape, and it's not an easy solution to that one.

Ms ABIGAIL BOYD: One of the recurring themes we found in our consulting inquiry—something that the Auditor-General had pointed out—was that there seemed to be very little post-engagement evaluation work done on contracts as a whole, whether it's consultants or contractors or anything. In circumstances where Government is seeking to make payments to small and medium enterprises quicker because, obviously, they have different cash flow issues, is there another tension in terms of that then precluding some sort of post-engagement evaluation to occur prior to payment being made? Is that something you've looked at?

LEWIS RANGOTT: Not directly. I don't think you should ever not pay a valid invoice because you haven't done your post-project assessment yet. That's not good enough. What we do sometimes see, though, is suppliers, whether they're large or small—they don't put in proper invoices. "Pay this"—but the thing they're charging you for hasn't been properly itemised. GST is not properly itemised. It's just a bad invoice; you can't pay it. The second you get a properly rendered invoice, you should pay as soon as possible. There should be no barrier to that.

Ms ABIGAIL BOYD: Because a lot of the evidence we got from certain departments in the consulting inquiry when we asked them to list out all of the consultants that they had used over the past however many years and tell us whether or not they'd done this post-engagement evaluation—a lot of them came back and, instead of telling us that they had done it or not, they just said, "The amount was paid." When I asked them about that in the hearing, they were like, "Well, if we've paid it, it means that we thought we were satisfied with the work." Is there a compromise position where at least there should be a certain percentage of these contracts that are being randomly chosen and evaluated to capture—

LEWIS RANGOTT: That would be welcome. I think in the mind of every contract manager—they finish their job and they know whether or not the supplier was any good. It's in their head. It might be buried in their emails, but they're moving on to their next piece of work. So they give truthful evidence—they'd say, "Look, we just don't get around to doing the paperwork. It's a nice to have. We're busy public servants." Were they to give that evidence, that would be the truth. It wouldn't just be consulting; it would be all sorts of types of procurement.

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Ms ABIGAIL BOYD: But maybe one in every one thousand of those examples, somebody was deliberately covering up bad work for whatever reason and we wouldn't know.

LEWIS RANGOTT: Possibly. I haven't seen that specific example of—where they've given that evidence and they say, "The fact that we paid means it was okay." I don't think you can put too much weight on that.

Ms ABIGAIL BOYD: Another area that came up in our consulting inquiry a lot was, of course, in relation to contractors and the use of contractors, where we found examples of contractors sitting on recruitment panels for other contractors in which they potentially had an interest. You've made some comments about that in your submission. Is there ever a circumstance in which, even if you've declared your conflict of interest, you should still be allowed to be on a recruitment panel in those circumstances?

LEWIS RANGOTT: Preferably not. I could imagine a situation where that individual's expertise is so important that they need a seat at that table. You'd rather not have them voting. They'd be better off just as an adviser. That would be the one exception that leaps to mind. But it sounds fraught.

Ms ABIGAIL BOYD: In another part of your submission you talk about the potential for contractors or employees to leave a department and then go and work on the other side for a supplier and have a bit of an advantage having been there and known what the department was after. Do you have concrete examples, or have those concerns been brought to you in any form? Or was that statement more a statement of what could potentially occur?

LEWIS RANGOTT: No, this is a real issue, and I can come back with some detail on notice if you wish. It's a difficult one because you can't stop people from quitting their job and going and getting a job elsewhere, and nor do we want to prevent that from happening. There's a short-term issue. If they walk out the door with time-sensitive information in their head—so what's about to happen in the next two months—and they can turn that into a commercial advantage for their new employer, that's a problem. That's why sometimes people get put on gardening leave the second they tell their boss they've taken a new job. But beyond that, there's not a hell of a lot you can do; otherwise you're stopping people from getting a job. But the medium-term issue is that that now former employee may have relationships with their now former colleagues. If they're trading on that relationship to get a benefit, that's a problem. It would be a classic conflict-of-interest scenario, which can be managed.

BENJAMIN MARX: We've also seen cases where access to systems hasn't been turned off. It's a bit of an older investigation, but there was an investigation where someone left Land and Property Information. They worked for a valuation company, and they basically had free access to the LPI database and ended up downloading almost every strata plan in New South Wales. That was one case where that's also—and going back to what you were saying before, it's typically where you have contractors, where they're less likely to have robust exit procedures in the same way that you would for staff. That's definitely a different sort of risk, but the same kind of space around people leaving and going off to work for someone.

Ms ABIGAIL BOYD: Another frustrating aspect of our consulting inquiry was conversations around conflict of interest. Many times when a specific conflict of interest or potential conflict of interest was identified, the response from the department was that it was disclosed—end of story—or that it was disclosed and training was given to all employees or whatever, but no actual change in circumstance resulted from that disclosure. Do you have any thoughts on that? Ideally, particularly in the context of the public sector, is that good enough?

LEWIS RANGOTT: It gets over one important hurdle: It effectively takes dishonesty off the table. You're not concealing anything, as long as it's a timely and accurate disclosure. In a lot of ways, part of the definition of corrupt conduct is dishonesty. It takes that off the table, so that's a good thing. Effectively, it puts the onus back on the management to whom the disclosure has been made to do something about it. We do see these things under-managed or undercooked. The person can disclose and promise to be honest, but their biases still potentially take over. We definitely see that.

Some of the research around the psychology of these disclosures does suggest it's not good enough to just disclose and remain as a decision-maker. You're better off getting out if you can. It takes the risk of bias out of the equation. Traditionally, we say, if that person's just one member of a six-person or a five-person evaluation committee, that dilutes the problem to a degree. There would be certain situations where we would say, if there are other decision-makers that could make the decision, why not have the person recuse themselves? Why bother taking the risk? That might be our default advice.

The Hon. DAMIEN TUDEHOPE: Chair, can I just ask one more question?

The CHAIR: We'll come back to you, Mr Tudehope. I've got a couple of quick questions before I pass over to my colleagues. I might go to Mr Rangott and Dr Marx first. I just want to be 100 per cent clear, given how

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your submission is written and the commentary around it. I think—and I wrote this down—that you're not against local content preferences, per se.

LEWIS RANGOTT: Yes.

The CHAIR: So what you're talking about and what your concerns are about is oversight, not something inherent to do with local businesses or local SMEs. It's about oversight.

LEWIS RANGOTT: Correct. Our main concern—this is a big quotient of the jobs we do—is what I described in three words as "contracts for mates". That's the thing that's driving our concern here, and that can be dealt with.

The Hon. DAMIEN TUDEHOPE: So you're withdrawing recommendation 5, are you?

The CHAIR: Mr Tudehope.

The Hon. DAMIEN TUDEHOPE: My question followed from yours.

LEWIS RANGOTT: Yes, we've said there "discouraging". We're still not a fan of them, especially in local government, but perhaps you could strike out "discouraging" and put "better managing". Can we agree on that?

The CHAIR: I have a related question, and I appreciate your clarification and restating of that. You mentioned local government being the source of many of those smaller referrals or complaints. Have you done any comparison, aside from local government, between complaints or referrals received about international companies and locally based companies?

LEWIS RANGOTT: Nothing formal, but I can say that we've never had a matter that I'm aware of that involved some sort of breach of a trade agreement, if that's what you're asking.

The CHAIR: More in terms of the local content. Is it that you've had more complaints for local businesses than you have about international businesses? Is it not something you've looked at?

LEWIS RANGOTT: Yes, but that's probably just because there are more of them. I can certainly give this evidence: It's almost exclusively confined to local government.

The CHAIR: Brilliant, thank you. Well, not brilliant that they're in local government, but I appreciate the answer. Commissioner, your submission raises concerns about exploitation of the definition of "small business" and "regional businesses" by large businesses and international companies, and I wonder if you can elaborate a bit on that.

CHRIS LAMONT: Thank you, Chair. I guess the definition of "small business", depending on which jurisdiction you come from, varies. I've heard five. In New South Wales we use an FTE test plus a turnover test—so no more than 20 FTE and \$10 million turnover. But at times we have seen, in the past, the local office of a multinational turn up claiming to have the benefits that a small business would otherwise have in a particular regional or remote location. We're concerned about that where there's a link to, obviously, a multinational parent.

The CHAIR: You talk about value for money, and we've been talking about value all day. You indicate that small businesses might be more competitive if there was a more expansive definition or understanding of "value for money". Could you describe what your vision of that is?

CHRIS LAMONT: Thank you, Chair. The previous speaker spoke about manufacturing content and service, where you might start off with a construction contract and then a through-life maintenance contract. Where we see particular benefit is where local businesses are involved in manufacturing or installing or constructing something and then the government has an obligation or a requirement to maintain that asset for 30 or 40 years. Where we've seen particular benefit is that, where local content was used to build, it is actually best placed to maintain and provide significant savings in that regard. That's a very practical example of where we see value for money—and value for money can be what the government determines it to be—being set out with those longer term benefits beyond the original procurement decision.

The Hon. ANTHONY D'ADAM: This one is directed to ICAC. In your submission you have quite an extensive contribution about labour hire. Obviously, with labour hire, you're not necessarily procuring goods and services; you're actually procuring people. The contribution highlights a whole range of issues that could be boiled down to measures that appear to be trying to avoid the requirements under the Government Sector Employment Act around how you recruit and retain people.

I know that the Public Service Commission in the past had some frustration in terms of the development of a workforce strategy that didn't encompass—or couldn't encompass for jurisdictional reasons—consideration

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of what is actually a component of the overall public sector workforce. You don't make any recommendation about labour hire in your conclusion. Do you think it would be appropriate that the management of the Contingent Workforce Scheme should be shifted to the Public Service Commission and treated as part of the overall process of how the public sector sources labour, both directly and through contingent labour schemes? I wanted to get your commentary on whether you think that would be an appropriate course of action.

LEWIS RANGOTT: I have a memory that the PSC already has at least some guidance material on short-term labour hire. I can correct my evidence later, hopefully. I think they might have some sort of oar in the water there.

The Hon. ANTHONY D'ADAM: They have guidance, no doubt, but they don't have any official jurisdiction.

LEWIS RANGOTT: Yes. If I can just back up one step, we see this a lot in our work. It's something that a normal person would see as an employment activity, but on paper it's a procurement activity. So it does sometimes fall between those two stools. We'll see sometimes an investigation where we're examining the activity, and we'll say, "Where was the HR department in all this?" and they didn't even know it was going on. That split of responsibility, even at agency level, I think I would say that is a problem. Whether handing responsibility from NSW Procurement across to the PSC would solve that or whether that would be a good idea, I don't think I can give a clear answer on that.

The Hon. ANTHONY D'ADAM: If we're procuring labour, should we have a different set of arrangements to the kind of arrangements that we apply to procuring other goods and services? It is a different kind of category, isn't it? I mean, you're dealing with people.

LEWIS RANGOTT: Yes. I think I would say that it's good advice for an agency, as part of its overall workforce planning, to think about all of the different types of employee or staffing they might have—that would include permanent, full-time, part-time and short-term labour hire—and how they go to market and how they blend those together. That, I think, is just a statement of common sense. Whether putting the PSC in charge of all that is the answer—I'm just not quite sure.

The Hon. EMILY SUVAAL: My question is also to ICAC. Just referring to your submission, it talks about the existing system of accreditation, which I'll quote:

... the existing system of accreditation should not be seen as a robust mechanism for ensuring that agencies comply with the Procurement Framework.

This is under the title of "Accreditation". I wondered if you had thoughts about what is a robust mechanism or if you could suggest something to the Committee about what a system would be that would be robust.

LEWIS RANGOTT: I think your colleague Ms Boyd talked about potentially the benefits of some sort of assurance—maybe it's auditing or checking—whether it will comply with these various Procurement Board directives. So some auditing, but you can't audit everything. Sometimes you can only audit 5 per cent or so of things, and, again, increasingly that can be done in a less labour-intensive manner. But I think one of the fundamental problems is NSW Procurement do a lot of really good work, but they're a very small organisation. It's not fair to ask them to police all procurement activity in New South Wales. There has to be a significant degree of responsibility put back on the individual agencies. When it involves corrupt conduct, we're the police officer; sometimes the Audit Office checks. But it's quite common for central government agencies to put out directives and for the frontline agencies to be expected to comply with their own systems.

The Hon. EMILY SUVAAL: So would it be, in effect, best if the agency was doing the auditing or is it for NSW Procurement?

LEWIS RANGOTT: A combination would be good. Don't get me wrong—just about every agency has a well-run internal audit program. Procurement gets onto the audit program from time to time, and audit and risk committees all across the public sector check these things and get reports. So there is some compliance work going on. Some degree of assurance applied from central government would assist.

BENJAMIN MARX: It's often a case of where the holes lie. In our Operation Paragon investigation, we looked at the area and we went to the chief procurement officer, and they said, "This isn't my area. We're only goods and services. This is construction procurement." So none of the assurance activities I do around accreditation would apply. We then went and spoke to the person who was in charge of construction procurement, and they said, "I didn't even know that unit did construction procurement. So while I did these assurance activities, it never ever actually landed on that unit because no-one had told me that they did it." Often it's a structural-type issue internally. I don't know whether there's scope to give advice about how to do that, because each agency has a different structure, but that's often what we find. There are often pockets and stuff. They have assurance regimes

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around the accreditation so that when people sign, there are things there, but often you find these little isolated units where things tend to happen.

The Hon. BOB NANVA: Again, this is directed to ICAC. In your submission, you've stated:

Most agencies have adequate, documented policies and procedures that align with the ... Procurement Policy Framework ... However, the corrupt conduct results from failures to monitor compliance with and enforce these policies and procedures.

This is a bit connected to the last question, but how satisfied are you or what utility do you see in each of the guardrails that's afforded by the framework from annual self-attestation, oversight of the CPOs, oversight by the Procurement Board or the accreditation process? What other practices have you identified in other jurisdictions that might be worthy of consideration in this space?

LEWIS RANGOTT: I should start my answer by just pointing out that the stuff that we see in our in-trays is the bad stuff. We see all the noncompliance, all the stuff that's red flags. We don't really get to see the stuff that goes perfectly; no-one complains about that. I'm sure there's a high degree of compliance—most public servants do the best they can and act honestly. So I suspect that policy regime does a great deal to act as a useful guardrail. We just see the stuff that tips over the side of the guardrail, so we have a jaundiced view of the world, you might say. So we can point to endless examples of where it has gone wrong.

One thing we pick up on in our submission is that generally the power and the decision-making power lies with the budget holder in an agency, and less power is with the procurement department. I have spoken to many, many procurement professionals, and they will say to me, "I told the buyer, 'Don't do X; it's a waste of money. Don't do X; you're breaching policy,' and I just got ignored. I'm just the poor ignored procurement officer." I think some consideration of transferring some decision-making power or veto powers or whatever it might be to the procurement unit would be a better balance. It's more easily said than done, but that would be a reform worth considering, I think.

The CHAIR: We're at the end of our time. Thank you all very much this late in the afternoon for coming in and making yourself available and for your submissions. If there are supplementary questions or questions taken on notice, you'll have 21 days to provide those. Thank you very much again. We do appreciate your time.

(The witnesses withdrew.)

The Committee adjourned at 17:35.