

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**

UNCORRECTED

At Macquarie Room, Parliament House, Sydney on Wednesday 3 April 2024

The Committee met at 9:15.

PRESENT

The Hon. Dr Sarah Kaine (Chair)

Ms Abigail Boyd (Deputy Chair)

The Hon. Jeremy Buckingham

The Hon. Anthony D'Adam

The Hon. Rachel Merton

The Hon. Emily Suvaal

The Hon. Damien Tudehope

PRESENT VIA VIDEOCONFERENCE

The Hon. Bob Nanva

The CHAIR: Welcome to the second hearing of the inquiry of the Standing Committee on Social Issues into 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 respects 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. Welcome and thank you for making the time to give evidence.

Mr MURAT DIZDAR, Secretary, NSW Department of Education, affirmed and examined

Mr PAUL HANNAN, Group Director and Chief Procurement Officer, NSW Department of Education, affirmed and examined

The CHAIR: Would you like to make a short opening statement?

MURAT DIZDAR: I would, Chair, thank you. Thanks to the Committee for the opportunity to make an opening statement. I also start by acknowledging that we are on the lands of the Gadigal of the Eora, and I pay my respects to their Elders past, present and emerging. At the outset, I acknowledge the inextricable link between government and its impact on the social development of the people of New South Wales. As a proud product, parent and teaching professional of the public education system in New South Wales, I can speak with confidence about that impact in terms of the transformative power of public education. In New South Wales, there are more than 1.2 million learners in early childhood, in public schools and in training. A simple but powerful ethos in the department is that we believe in every one of them, and we seek to support them with an outstanding educational offering that enables them to realise their potential. In this way, we understand in public education the importance of what we do and the responsibility we have in terms of our impact on the social development of the people of New South Wales. And so it is that I understand the Committee's intent, and indeed the New South Wales Government's desire, to explore and expand the possibilities around procurement in terms of social development. Likewise, I understand the role that procurement plays in our organisation towards this end.

The Department of Education undertakes significant procurement activities across three major domains. The first of these is school construction and construction-related professional services, such as architects and engineering services. The second is asset management—essentially the maintenance and necessary upgrades of schools. The third and final is goods and services—everything ranging from school stationery supplies through to audiovisual equipment and IT hardware and software. With more than 2,200 public schools and the need to build many more to support New South Wales's growing communities, the bulk of our procurement relates to building and maintaining the significant infrastructure footprint required to deliver public education in New South Wales.

As outlined in the department's submission, we adopt a centralised approach to procurement with oversight by the Chief Procurement Officer. Further to our submission, I'd like to update the Committee that I have recently transferred the procurement functions from School Infrastructure NSW to our Operations Group. This change is one of many that I have instigated to best deliver our strategic direction set out in the Government's plan for New South Wales public education. Our procurements support the entire organisation, especially the day-to-day needs of our schools, and the move into our Operations Group will foster stronger relationships with other enabling teams and support functions, including our finance and risk teams, which are also part of the Operations Group.

The department's procurement activities comply with all government legislation, policies and New South Wales Procurement Board directions. Within those frameworks, the department ensures that we're obtaining value for money, with both non-price and price factors assessed as part of tenders. I can confirm for the Committee that the department is committed to ensuring that social procurement and sustainable targets are met and enhanced where possible. Beyond compliance, the procurement team provides guidance as well as assistance to business units in first considering small business, Aboriginal business, disability enterprise or a local business for engagement.

Let me share a couple of examples that demonstrate different kinds of approaches that support social development to the extent that we are able. The first is manufacturing for schools. Through the innovative Manufacturing for Schools Program, the department is using modern methods of construction to deliver a new age of school building construction. The program incorporates a range of cutting-edge construction techniques, including digital technologies, offsite manufacturing and onsite assembly of prefabricated elements to deliver high-quality school buildings faster and at a lower cost than that which traditional construction methods produce. The program allows us to leverage economies of scale through the bulk purchase of standard buildings. Ultimately, this enables the department to deliver schools, on average, 20 per cent cheaper and 30 per cent faster when compared to traditional construction methods. Whilst this approach is relatively new, over time we are confident it will deliver significant and improved social impacts through the creation of new jobs, expanded opportunities for local training, upskilling and harnessing inherent productivity, and safety gains to improve working conditions in the construction industry.

The second example is supporting social development through the department's new facilities management contract, which commenced in July of 2023. This approach requires our engaged facilities management partners to focus on engagement of businesses within a 50-kilometre radius or about 30 minutes of the school where the work is required. It also promotes engagement levels with Aboriginal businesses. While

there's more work to be done, Chair, I'm pleased to report that to date we've achieved more than 126 engagements with Aboriginal-owned business.

Lastly and more broadly, I want to give you a sense of the breadth of the Department of Education's procurement with regional and local businesses. Given the nature of the public education system in New South Wales, with more than 2,200 schools located in all parts of the State, the department actively uses procurement practices to promote widespread engagement of local suppliers. For school maintenance, the department seeks to work with local trades that are based in local communities, in order to be more responsive to the needs of schools and to provide better working conditions for local tradespeople, including faster payment terms. Chair, by numbers, for the financial year 2022-23, this translates to there being 13,170 engagements with metropolitan suppliers and 6,608 engagements with regional suppliers. In real terms, this constitutes significant engagement with regional and local businesses across New South Wales, supporting local economic sustainability and growth.

As the Committee is no doubt aware, the New South Wales Government is committed to reforming New South Wales government procurement practices, with particular emphasis on supporting local manufacturing, small business, local industry and jobs. The Department of Education is keen to play its role in leveraging these kinds of outcomes, and it stands at the ready to respond to the New South Wales Government's procurement reforms. Paul and I welcome the opportunity to inform the Committee's considerations in this regard.

The CHAIR: Thank you very much, Mr Dizdar. Over to the Opposition.

The Hon. DAMIEN TUDEHOPE: Mr Dizdar, you sound like a model agency. Who is the contractor supplying the new demountables?

MURAT DIZDAR: We have demountables—

The Hon. DAMIEN TUDEHOPE: No, the one that you described in your opening.

MURAT DIZDAR: On the modern methods of construction? I'll get Mr Hannan to add that detail. I can tell you particular projects where we've used—

The Hon. DAMIEN TUDEHOPE: Who was the contractor? Who is delivering this?

MURAT DIZDAR: —the modern methods of construction. We have recently run a procurement process and engaged a body to undertake that work for us. Mr Hannan might have that detail.

PAUL HANNAN: APP is the organisation that is going to be helping us with the integrated role.

The Hon. DAMIEN TUDEHOPE: Take us through the process of how they were selected for the process of delivering.

PAUL HANNAN: We ran an EOI initially in order to shortlist. That was done probably 18 months ago. I don't have exact dates. I would have to come back to you on exact dates. We ended up with a shortlisted group of organisations. We then went through an RFP process where we got down to two parties. We then ran parallel negotiations with those two parties, and the outcome being that APP was successful.

The Hon. DAMIEN TUDEHOPE: I'm interested in the extent to which, when you are negotiating, the Procurement Policy Framework is adopted in relation to those negotiations.

PAUL HANNAN: Everything we do within our procurement team is done within the Procurement Policy Framework, so I would need to understand your question a bit more specifically.

The Hon. DAMIEN TUDEHOPE: Do the tender documents in fact require the tendering parties to outline the extent to which they will comply with the Procurement Policy Framework?

PAUL HANNAN: Yes, they would do.

The Hon. DAMIEN TUDEHOPE: They would do or did do?

PAUL HANNAN: I would have to come back to you with specifics in terms of the actual documents themselves.

The Hon. DAMIEN TUDEHOPE: The tender document that you in fact require the tenderers to actually use for the purpose of tendering goes through the Procurement Policy Framework requirements?

PAUL HANNAN: They are required to meet their obligations under those, as opposed to us meeting our requirements. There's two different sides of that, obviously.

The Hon. DAMIEN TUDEHOPE: It's pretty important. The secretary has just told us how you do comply with all your obligations. Here is a contractor that you're engaging with. How are you monitoring their level of engagement with the Procurement Policy Framework?

PAUL HANNAN: That contract has only been signed about two months or so ago, so it is really in the ramp-up stage at this point in time. The business unit involved, which would be the school infrastructure team, would be the ones that are overseeing the delivery aspects of that particular contract and the contract management components, with guidance from the procurement team.

The Hon. DAMIEN TUDEHOPE: Well, for example, we talked about Aboriginal procurement policy. Has an assessment been done already in relation to that contract as to the ability of APP—

PAUL HANNAN: APP was the head of that consortium.

The Hon. DAMIEN TUDEHOPE: —to be able to comply with their obligations?

PAUL HANNAN: They would have had to have submitted an Aboriginal participation plan as part of that tender response, yes.

The Hon. DAMIEN TUDEHOPE: And was that made clear in the tender documents?

PAUL HANNAN: Absolutely. All nine parties would have had to have responded to that as part of the requirements to the tender.

The Hon. DAMIEN TUDEHOPE: In respect of contracts engaged by the agency, and that's in relation to whole-of-government contracts and specific for the agency, what percentage of suppliers are from New South Wales?

MURAT DIZDAR: We'd have to take the specific on notice and come back to you by way of contracts awarded and providers in New South Wales.

The Hon. DAMIEN TUDEHOPE: Would it be more than 50 per cent?

MURAT DIZDAR: I don't have that available here, but we're happy to come back to you.

PAUL HANNAN: Again, we'll have to come back to specifics. But because the vast majority of what we do is the maintaining of schools and, therefore, a lot of our tenders are run in that local kind of region, yes, there would be—I would suspect that the large majority is local businesses.

The Hon. DAMIEN TUDEHOPE: I would have thought more than 50 per cent would be.

PAUL HANNAN: I would suspect that you're right. I don't want to hesitate a guess as to what it is, but I would suggest that it is probably high end.

The Hon. DAMIEN TUDEHOPE: Do you have an oversight component of your construction team which actually oversees compliance with the Procurement Policy Framework?

PAUL HANNAN: The project delivery teams are also responsible for managing the contract and all of the conditions of the contract that go along with that.

The Hon. DAMIEN TUDEHOPE: Is there any report back about that?

PAUL HANNAN: We do monitor and report back, yes. For instance, on our Aboriginal participation we have to report that back to central government, back to NSW Procurement. We do that on a regular basis and that's part of the reporting that they put forward on buy.nsw.

The Hon. DAMIEN TUDEHOPE: Let me take you to a specific contract—the contract in relation to the contaminated mulch. How was that awarded?

MURAT DIZDAR: Are you talking, Mr Tudehope, about the Liverpool West site?

The Hon. DAMIEN TUDEHOPE: Yes—Allambie, Cranebrook, Liverpool West public schools.

MURAT DIZDAR: The ones that impacted on public schools.

The Hon. DAMIEN TUDEHOPE: How was that contract awarded?

MURAT DIZDAR: Mr Hannan might have that detail.

PAUL HANNAN: Given the nature of the immediacy of the response, that was done under emergency procurement provisions. We needed to get that school active again, so we didn't do a tender process. That was done through a direct engagement, which the procurement framework allows for in emergency situations.

The Hon. DAMIEN TUDEHOPE: Correct. I am interested in the original contract for the delivery of mulch to those schools. Surely that wasn't an emergency procurement?

PAUL HANNAN: No, it wasn't.

MURAT DIZDAR: I might dive in there, Mr Tudehope. There were about 12 public schools across that period where we were identified through the Environment Protection Authority to go and work with hygienists to take samples to test.

The Hon. DAMIEN TUDEHOPE: No, the original contract, Mr Dizdar.

MURAT DIZDAR: They would have been specific to each site. For example, Liverpool West was an entire major capital rebuild of an existing school, so that had a contract awarded to the builder of that site.

The Hon. DAMIEN TUDEHOPE: And who was the builder of that site?

MURAT DIZDAR: I don't have the detail—

PAUL HANNAN: ADCO.

MURAT DIZDAR: ADCO, yes.

The Hon. DAMIEN TUDEHOPE: In the contract awarded to ADCO, was there any provision which required compliance by subcontractors with the Procurement Policy Framework?

MURAT DIZDAR: Again, Mr Hannan might give the detail. But on all major capital upgrade contracts there would have been requirements around both the building facilities, landscaping, finished product—

The Hon. DAMIEN TUDEHOPE: But are the subcontractors, in the contract documents which they signed with the head contractor?

PAUL HANNAN: I would have to come back to you on the specifics of that particular engagement with ADCO. We used the standard GC21, which is the construction contract. We would make sure that our engagement with ADCO would have had that covered out. I can't comment about how ADCO engaged with the market to get those suppliers. I'd have to come back to you with specifics on the documents.

The Hon. DAMIEN TUDEHOPE: Is there any provision in the head contract with ADCO relating to ensuring that the contractors that they engage are complying with the Procurement Policy Framework, and what oversight does Education have in relation to the terms of the subcontracts?

MURAT DIZDAR: Again, let's come back to you, like Mr Hannan indicated, on the detail. We follow the whole-of-government contract for the construction of schools. We do have a project director that we appoint onto major capital builds, like the example at Liverpool West, who then makes sure that the deliverer of the contract is meeting all the requirements of that contract.

The Hon. DAMIEN TUDEHOPE: Going forward, now that we've had this issue relating to these schools, what steps are you taking now to have some sort of oversight in respect of the delivery of product to school sites which, in fact, will not be putting kids at risk?

MURAT DIZDAR: In what was a very unfortunate circumstance, particularly Liverpool West, where we had to take a step of decanting a school and moving it down the road to Gulyangarri public and cohabiting on that site for four weeks—what occurred there should not have occurred. It's the subject of proceedings against—

The Hon. DAMIEN TUDEHOPE: It's a specific question. Are you taking steps now to have more oversight in relation to the contracts with subcontractors to ensure that this won't happen again?

MURAT DIZDAR: We have written to all our major contractors on building sites around the matter of the mulch that occurred, and relayed back again our expectations of meeting landscaping requirements.

The Hon. DAMIEN TUDEHOPE: What was the total value of contract labour procured by the department in 2022-23?

MURAT DIZDAR: I'm not sure we've got that figure in front of us. Mr Hannan, do you have that—contract labour? Is that contingent labour?

The Hon. DAMIEN TUDEHOPE: Yes.

MURAT DIZDAR: Yes, I can talk to contingent labour. It varies on a monthly basis.

The Hon. DAMIEN TUDEHOPE: For the period 2022-23, what was the value of the work done, for contingent labour?

MURAT DIZDAR: Let me just see if I have that detail for you. I've got the monthly spend from July to January this year.

The Hon. DAMIEN TUDEHOPE: Well, you've got to reduce it by 25 per cent.

MURAT DIZDAR: Yes.

The Hon. DAMIEN TUDEHOPE: What steps are you taking, actually, to do that—to reduce that by 25 per cent?

MURAT DIZDAR: A number. From our peak of about 1,610 in July 2023, I've reduced it, under my leadership, to 1,116—about 600 positions.

The Hon. DAMIEN TUDEHOPE: So what were all those 600 positions doing before? Who's doing the work now?

MURAT DIZDAR: We've gone from a monthly spend of about \$34.5 million—

The Hon. DAMIEN TUDEHOPE: Who's doing the work that they were doing?

MURAT DIZDAR:—to \$17.3 million. Well, we've done a range of things. One, all of those were time limited and have, in some cases, met what was required to be delivered.

The Hon. DAMIEN TUDEHOPE: You were additionally required to reduce spending on contractors and management consultants by \$411 million over four years to help pay for the teachers' pay rise. Will any of this work need to be done in house? With respect to that work which is now going to be saved, where is that coming from and who's doing that work now?

MURAT DIZDAR: I was trying to explain to you, Mr Tudehope, and I'd like to give a fulsome answer, if that's okay, Chair, for the Committee. I indicated that, under my leadership, we've reduced about 600 contractor positions and brought the spend down from \$34.5 million a month to about \$18 million a month. That's got a range of mechanisms. Number one, in all contingent labour—as you'd appreciate, Mr Tudehope—some of them, they're time limited, so we don't require the role anymore. In other cases, we have created ongoing permanent employment inside the organisation.

The Hon. DAMIEN TUDEHOPE: That's not a saving then, is it?

MURAT DIZDAR: We've run a competitive process because we need the ongoing repeatable expertise in the organisation, and in some cases that contingent labour has been the successful applicant. In other cases, that hasn't been the case. I wouldn't concur with the premise that that's not savings because, in my experience at looking at those positions, for contingent labour we're often paying more than what it looks like for an ongoing role. So it's been a combination of both no longer requiring some roles as well as converting some roles into permanent repeatable expertise in the organisation.

The Hon. DAMIEN TUDEHOPE: It's a pity I've got no more time, Mr Dizdar.

Ms ABIGAIL BOYD: Since we last spoke about contractors, there's been more reporting about the so-called largesse of contractor spend within the education department. I note that in that latest reporting it's mentioned that the Government has now established a special taskforce of some sort to look into this. There's kind of two aspects here. There's the sheer amount of money being spent on contractors but there's also the way in which these people are coming to be contracted in the first place. This taskforce, will it be looking at both aspects?

MURAT DIZDAR: Yes. I have, as secretary, commissioned a small group to go and work with all divisions, all areas, to look at every single contingent labour role that we have: Is it required? Is it required on an ongoing basis—like I said earlier, Ms Boyd—by way of repeatable expertise? If it's repeatable expertise, I've even asked for the duration that that's been in place so that we can convert, if it's required, ongoing into permanent roles in the organisation and, if not required, then to remove those roles as well. I can tell you, Ms Boyd, since July last year we've been able to generate \$54 million in savings through that work. We've already been at work. I've indicated to the Committee that there's been 600 positions that have been removed, by way of contingent labour. But we're a very large organisation, Ms Boyd, and I believe there's more that can be done in that space and that's why I wanted a special team to look at that. Now, an organisation of our size will always require some degree of contingent labour. I'd like to bring that back to a healthy state.

Ms ABIGAIL BOYD: The question I asked had those two aspects, though. We heard yesterday from ICAC. They talked about the risks involved in contractors being appointed for long periods of time and being involved in employing other contractors from which they then benefit. Are those issues being looked at by your taskforce as well, to make sure there were no inappropriate appointments?

MURAT DIZDAR: Yes. It's a good question, Ms Boyd. I'd like to get oversight and that's what I've asked the taskforce to do for me, as secretary, on every single role: how that role came into being, the length of that role, how that role was filled, whether it should be removed or whether it should require a repeatable ongoing expertise in the organisation.

Ms ABIGAIL BOYD: Okay. But you will be looking at how they came about in the first place?

MURAT DIZDAR: Yes, I'd like to know that as secretary.

Ms ABIGAIL BOYD: What workforce consultation do you have in place for procuring things that impact on the workplace and workers? For instance, when you are trying to procure new software or design for new classroom layouts, things like that, what consultation is undertaken at the development stage before that procurement is finalised?

MURAT DIZDAR: I'll get Mr Hannan to give further detail, but anything of significance—and we've got controls in place that require deputy secretary or secretary approval—would be led by that business area and that deputy secretary for that division. It would come to the executive for discussion and then we would proceed with Paul and his team around procurement activity.

Ms ABIGAIL BOYD: Yes, but what about co-designing or consulting with teachers and other educators in the classroom, for instance, in terms of what you're looking for when you go out to tender?

MURAT DIZDAR: That's a really good question. If I take the premise of school buildings and school construction, we put together a project reference group on every single project, which has the principal and has the department represented on that project reference group. We do have a school facilities standard and that dictates the size of spaces, how many spaces per population of the school et cetera. It's not like a blank sheet but it allows for input at the local level about how to best optimise that build. If I give you a real example, Ms Boyd, I was at North Sydney public yesterday. It's had a major capital upgrade. In that major capital upgrade, we were able to achieve a new admin section for the front entry of the school for the SAS staff, who are the first point of contact for the school at the front of the school—it used to be at the side of the school. That was an enhancement that came along through representation of the project reference group.

Ms ABIGAIL BOYD: That's quite a localised example where you've got a particular school having input into how their school is being redesigned or rebuilt, but what about things that are department wide—software that gets used in school classrooms, that kind of thing? Are teachers and other people consulted with before those procurement decisions are made?

MURAT DIZDAR: We consult with the peak bodies—the PPA, the SPC, the federation—in line with that work, but we do follow a more standardised approach when we're then rolling those out. We don't consult on every single project. We consult on the directions we're taking, take that input and then make sure every classroom has that technology, for instance.

PAUL HANNAN: Can I just add a comment to that? For instance, at the moment we're looking at the educational resources. It is a fairly major project for us. We've spoken to, as Mr Dizdar mentioned, the part of the SPC and the PPA—the finance and administration reference group. That includes school principals. We asked those to provide us with school representatives in order to help inform that particular contract. I think that kind of touches on what you're looking for.

Ms ABIGAIL BOYD: I'm interested in when you use Public Works and when School Infrastructure NSW does things directly?

For instance, I understand that Public Works is doing the Smart Energy Schools Pilot program. When do you procure through Public Works and when does School Infrastructure do it directly?

MURAT DIZDAR: I'll get Mr Hannan again, Ms Boyd, to give you a bit more detail. In my opening remarks I spoke about the new move on the facilities maintenance contract, because a lot of our work—as you'd appreciate, 2,200 sites in every section of the State. In trying to support local business and get better outcomes, better efficiency and better employment opportunities, we have moved on a facilities maintenance contract where we look for local suppliers to do the carpet, the painting, the repair of the windows et cetera. That used to be a lot more centralised. We give those directions to local asset management units across the State and give them a lot more leeway to employ locally, rather than to send someone out from Sydney to Broken Hill and add to the cost and not add to the local economy. Did you want to add to that?

PAUL HANNAN: No, I think that pretty much hits the mark.

Ms ABIGAIL BOYD: Public Works for where we're doing more localised work across the State, is that the—

PAUL HANNAN: In certain projects we do work with Public Works. We did with the Cooler Classrooms rollout; Public Works was our partner on that public project. They used to run the whole-of-government facilities management contract that we were a part of. We stepped away from that because we found that we could get a better outcome. Their cleaning review is in place at the moment; the outcomes of that will determine what happens in that cleaning space. Where appropriate, we engage with Public Works. I would suggest that not everything is appropriate.

Ms ABIGAIL BOYD: When we were speaking with Public Works yesterday, we got to the point of understanding that, when they are procuring on behalf of another agency, they're not resourced, really, to do any kind of monitoring or compliance of contractual terms and that sort of thing. When you use Public Works, do you do any of that kind of monitoring and compliance of the end result?

PAUL HANNAN: I think when Drew was talking about that yesterday he was more specifically talking about those agencies that aren't accredited to do the work in their own right and because we are accredited to do that construction—we have a construction procurement accreditation—therefore we do that ourselves. We still do engage with Public Works from time to time, but we don't have the need. Unaccredited agencies kind of need to go through them. Does that make sense?

Ms ABIGAIL BOYD: Yes, but when you do use them—

PAUL HANNAN: We would still monitor anyway. That's kind of—

Ms ABIGAIL BOYD: Okay.

PAUL HANNAN: Yes. Our expectation is that the business unit involved—it could be a delivery on a school, it could be a planned maintenance. Whatever it might be, we would still monitor that engagement.

Ms ABIGAIL BOYD: Just back to the contractor point, given the issues we raised in the consulting inquiry, through budget estimates and the more recent reporting, have there been any new developments in terms of things like tightening up conflicts of interest, compliance within the department or anything else? Any other kind of changes that have been—I understand we're waiting for a review about particular contracts but, as an overall, more macro level, what has been done to ensure compliance with those rules?

MURAT DIZDAR: I've got to give a lot of credit to the leadership team that I lead, dep secs in a large organisation, because you can't remove 600 roles in that contingent workforce without having strong oversight. We've made it the case that if we're going to add to that number, if we're going to add new contingent workers, that it requires deputy secretary approval.

Ms ABIGAIL BOYD: In terms of the actual procedures and policies that are being followed, has there been any sort of improvement in the monitoring and compliance aspects of—

MURAT DIZDAR: It goes to an earlier question that you asked, Ms Boyd. I'd like the taskforce to give me some advice on that, if there's room for improvement there and further tightening that's needed in looking at our entire contingent base; that's what I'll look for and make sure I adopt. I want to make sure, as secretary, that we're meeting all necessary requirements, all conflicts of interest tabling and really hiring those that we need in the truest sense of a contingent workforce. Then, in the opposite case, making sure I've got repeatable expertise and not having—what I have found in my time in the 12 months as secretary—some roles that have gone on for too long as contingent workforce. I don't think that's helpful for the individual or the organisation. So, yes, I have asked the taskforce to look at that and give me advice on that.

Ms ABIGAIL BOYD: Back to that compliance, I'm bothered by the idea that we're setting up rules that don't get complied with, and even if we do a check now, but we're not necessarily going to set up more stringent processes for the future. Do you do any kind of spot audit? Or is there a potential for you to be looking at—even if it comes back to that question about Public Works, if there are contracts that aren't necessarily being monitored, do you do any kind of spot check to make sure?

MURAT DIZDAR: Let me add one other detail that I forgot to give. In my time, I've introduced a new requirement where any engagement that is over \$100,000 needs my approval as secretary, and any engagement below \$100,000 needs the deputy secretary's approval. That wasn't there before.

Ms ABIGAIL BOYD: Sorry, my question about audits and spot checks, is that something you do with any kind of procurement, so contractors and suppliers et cetera?

MURAT DIZDAR: We have just had an internal audit process that's wrapping up, so I'm looking forward to receiving that report, alongside whatever the taskforce might give me as well. But that has been an internal audit process that's been conducted.

The CHAIR: I'll pick up to maybe get an answer more directly to the question that Ms Boyd was asking. If I'm interpreting right, the question is about auditing of the contracts and the procurement process, which is a question we've been asking across government departments as they come and Mr Tudehope was also alluding to it earlier. What happens after the award of a contract? Are there spot checks that it's been complied with, what kind of process, and has that changed?

MURAT DIZDAR: Currently as it stands, Chair, the business area is then responsible for the oversight of that contract and can work with our procurement colleagues for assistance, but it is an aspect that the internal audit has just looked at. Their report is imminent. If there's further tightening there that's required, I'll adopt the recommendations of that audit process.

The CHAIR: Just to clarify, the internal audit process also includes what happens with those external organisations that are engaged?

MURAT DIZDAR: Yes.

The CHAIR: When you said internal audit I thought that was a Department of Education thing.

PAUL HANNAN: Contract and vendor management, yes—specifically, which is what you're asking about.

The CHAIR: Yes, it is.

PAUL HANNAN: Yes, absolutely.

The CHAIR: I just wanted to get clarity on that. I appreciate it. Also, though, Mr Dizdar, you mentioned in the submission that School Infrastructure NSW is still an entity because it features quite a large presence in the submission. I wondered if you could explain to me a bit more the changes that you made and the rationale for it?

MURAT DIZDAR: School Infrastructure is one division of the organisation. At times it maybe felt like it was in parallel to the organisation, as opposed to truly embedded in the organisation. Procurement, led by Mr Hannan, was a business unit in School Infrastructure. I've made the decision to lift and shift that function to another division, the operations group. I believe that's a healthier fit and embeds procurement as a resource and expertise across the whole organisation. While there was a lot of work in Infrastructure, I felt like its leaning and standing there would be better and healthier at arm's length, and I made that decision. I'm also recruiting for the head of Infrastructure and have retitled the role to "Deputy Secretary, School Infrastructure". When it was titled CEO it was almost like people thought it's another agency or another entity.

The CHAIR: That's what it read like in the submission.

MURAT DIZDAR: Yes, so I wanted to make sure I brought that into play. I would say, Chair, having been in public education for 27 years, School Infrastructure, which came on board seven years ago, was a masterstroke given what we need to do by way of construction of new schools, the capital upgrades, the maintenance and the cleaning. It is a massive machinery that was terribly under-resourced seven years ago, in my professional opinion. But, having said that, I think it's run a little bit parallel and I'd like to bring it tighter inside the organisation. That's why I've made those moves.

The CHAIR: You spoke about a commitment to social procurement and social outcomes. We've been having a discussion over the last couple of days in the hearings about how you determine, amongst those other priorities, value for money, which is of course one of the objectives of the procurement framework. I wondered if you could explain Education's view on how you consider or weigh value for money in your contracts.

MURAT DIZDAR: Yes, let me lean on Mr Hannan, who's at this every day. He'll have a lot more expertise on how we use the value for money—both the monetary and non-monetary items—in assessing how we go about delivering contracts.

PAUL HANNAN: So it very much depends on the particular component of work we're talking about. If we're looking at the construction side of things—if we're trying to engage an architect or what we would classify as construction-related professional service, we tend to try and weight more heavily on the non-price factors because that's where you need the expertise. That's where you need to make sure you get it correct, so it's less about the price. Whereas when it comes to the actual construction itself—because if we've done the job correctly with our professional services at the beginning, then we can rely more on getting value for money in the construction side so it becomes more about the price in the actual engagement of the construction contractor.

For goods and services, it's different. It depends very much on the particular product or service that you're looking for. You can't make an object claim to just say everything should be the same. If you're going out for pens and pencils and stationery, it could be much more about price because a pencil is a pencil is a pencil. Whereas if

you're going to get a very tailored piece of professional advice, then you might be looking for the very best outcome—in which case it should be less about the price and more about the outcome that you're looking for and more about the non-price component. So there is very much a piece of work that has to happen on every engagement. For the construction side, we pretty much stick to the same, as I mentioned. In the non-price is the heavily weighted architects, engineers and things like that—the important parts—but in the goods and services space it's more of a procurement-by-procurement type of nature. Does that make sense?

The CHAIR: You don't have guidelines with suggestions about value for money for different categories?

PAUL HANNAN: Absolutely. Every single procurement within the School Infrastructure portfolio above \$10,000 is looked after by a procurement person.

The CHAIR: A specialist person for each area or is it a teacher who is a specialist in education materials?

PAUL HANNAN: No, in the construction side—

The CHAIR: Obviously not construction.

PAUL HANNAN: In the construction side, anything that's over \$10,000 is done by a procurement professional. In the non-construction side, anything over \$150,000 is done by a procurement professional. It's about making sure we have oversight for those particular engagements.

The Hon. ANTHONY D'ADAM: Your submission doesn't deal particularly extensively with procurement of curriculum resources. I want to ask about that. Is it the case that the decision around curriculum resources is predominantly determined at a school level so schools will decide what curriculum resources they purchase?

MURAT DIZDAR: An excellent question, Mr D'Adam. At the end of the day we have to put trust in the professionalism of the teaching workforce. As you know from other committees, we do have policies in place that go to controversial issues and the code of conduct. We have been, as a system, providing more guidance across the last five years and we have ramped that up with the new curriculum rollout, where we've had experts employed by us producing scope and sequences lessons—

The Hon. ANTHONY D'ADAM: My question, Mr Dizdar, is about whether most of the procurement of curriculum resources—that decision lies with schools?

MURAT DIZDAR: At the end of the day it's a school decision what resource they'll use.

The Hon. ANTHONY D'ADAM: I want to ask about particularly MultiLit. It's a provider of curriculum resources that supports the transition to focus on phonics. Do you have any idea how much is being expended on contracts with MultiLit at a school-by-school level?

MURAT DIZDAR: It'll be a school-by-school decision, as you indicated earlier. It's not a whole-of-department contract that we've entered into so we won't have necessarily a centralised figure on what that looks like.

The Hon. ANTHONY D'ADAM: Is that problematic? Because, ultimately, you could be dealing with millions of dollars in procurement for the same product split up over—for MultiLit I think it is predominantly primary schools, so 1,500-odd schools are making this decision. My concern about MultiLit is that they've been particularly strong in terms of advocating a particular policy shift, which they then have a commercial interest and benefit from, and then those decisions are being effectively made at a local level without any proper oversight about whether that's an appropriate decision and whether there are alternative products that might be better placed to deliver the same outcomes. Why isn't the department taking an overarching decision on what it knows is going to be the same procurement occurring in multiple schools?

MURAT DIZDAR: I understand your concern. It's a good one. That's why I was trying to indicate earlier that we are providing a lot more centralised resource and material to say, "Here is evidence-based material produced by teachers"—whether that's in kindergarten, year 2 or year 3 with the rollout of the curriculum—"that should go to abating the need for you to go to other providers to get that resource." We do have a universal resource hub. It's well utilised with the curriculum rollout and familiarisation of curriculum. We've been producing units of work, scopes and sequences material. As you know from a former committee, we also have created a marketplace where we can give guidance to schools and say, "This is resource and material that we've verified. It's in line with the evidence base. It's got the heart tick."

The Hon. ANTHONY D'ADAM: I understand that, Mr Dizdar. I've got one further question. I want to ask about the use of Sentral. This is an enterprise-based software that helps with school administration. The decision to use Sentral—is that a decision that's made at a local level?

MURAT DIZDAR: It is, but what we've done with student administration is our IT directorate has worked with a few providers that we've found schools predominantly use to make sure we can have value for money if schools choose to use them. In our experience, there are only a couple of providers that schools have made the local decision to use for student admin and we have centralised to get better deals for them.

The Hon. ANTHONY D'ADAM: What about ClassCover? Is that in the same bucket?

MURAT DIZDAR: ClassCover is a resource that's provided by us for daily casual cover.

The Hon. ANTHONY D'ADAM: It's owned by the department, is it?

MURAT DIZDAR: It's a whole-of-department contract for ClassCover.

The Hon. ANTHONY D'ADAM: Right, so all schools are required to use ClassCover?

MURAT DIZDAR: No, we make it available for all schools. All schools will require casual teachers on any given day so we pay for the ClassCover and say, "If you'd like to use that resource, here it is available to you." The vast majority, Mr D'Adam, use that service.

The CHAIR: Thank you very much. That's the end of our time. We appreciate you coming along and making yourselves available to give evidence and for the details in the submission. If there are supplementary questions, they'll be sent to you and you'll be given 21 days to reply.

(The witnesses withdrew.)

Adjunct Professor ALFA D'AMATO, Deputy Secretary, Financial Services and Asset Management, and Chief Financial Officer, NSW Health, sworn and examined

Mr MICHAEL GENDY, Chief Procurement Officer, NSW Health, sworn and examined

Ms EMMA SKULANDER, Chief Operating Officer, Health Infrastructure, affirmed and examined

Mr ALEX ARAUJO, Executive Director, Procurement and Supply Chain, HealthShare NSW, NSW Health, sworn and examined

The CHAIR: Welcome. Thank you all for making the time to give evidence. We will start with Opposition questions.

The Hon. DAMIEN TUDEHOPE: Do the witnesses want to make an opening statement?

The CHAIR: Thank you, Mr Tudehope, I stand corrected. Would you like to make an opening statement?

MICHAEL GENDY: Yes, thank you, Dr Kaine. Good morning, Chair and members of the Committee. Thank you for the opportunity to appear in front of the Committee today and contribute to this inquiry. I'm the Chief Procurement Officer for NSW Health. My role resides within the Financial Services and Asset Management division of the Ministry of Health. I am joined by Deputy Secretary, Financial Services and Asset Management division, and Chief Financial Officer, Adjunct Professor Alfa D'Amato; Chief Operating Officer, Health Infrastructure, Ms Emma Skulander; and Executive Director, HealthShare, Mr Alex Araujo.

My role is to provide leadership, vision and direction to the procurement function of NSW Health to drive effective and efficient procurement planning, sourcing and contract management aligned with NSW Health statewide priorities and business needs, and to ensure compliance with legislation and whole-of-government policy and direction. The CPO also has an assurance role to ensure compliance with New South Wales government procurement frameworks and NSW Health procurement policy and procedures. NSW Health conducts its procurement in accordance with its obligations under legislation and the whole-of-government procurement policy framework, which incorporates the New South Wales government procurement objectives of value for money, fair and open competition, easy to do business, innovation, economic development, social outcomes, and sustainability.

In financial year 2022-23 NSW Health spent a total of \$7.54 billion on goods and services procurement. Of this, approximately 99 per cent, equating to circa \$7.47 billion, was spent with Australian ABNs. Some \$1.7 billion, approximately 22 per cent, was spent with 26,575 SME and regional businesses; \$41.8 million directly with Aboriginal businesses, exceeding the NSW Treasury-assigned target of \$23 million; and some 152 goods and services contracts valued at over \$10,000 were awarded to Aboriginal businesses, exceeding the NSW Treasury target of 63. Approximately \$2.42 million was spent with 35 social enterprises. Some \$2.64 million was spent with 45 Australian disability enterprises.

NSW Health operates under a devolved procurement model. Shared service entities, namely HealthShare and eHealth NSW, lead tactical and operational procurements, including whole-of-health contracts and a small number of whole-of-government contracts. Health Infrastructure leads the delivery of NSW Health capital projects. Local health districts and specialty networks operationalise statewide contracts and manage local procurement according to system needs.

The Financial Services and Asset Management division is currently overseeing a procurement reform program. The program has been established to promote improvements in governance, technology, and efficient and equitable procurement practices. The four key procurement reform program workstreams include the following. The first is the operating model workstream, which is focused on expanding and empowering the procurement workforce statewide with additional resources, a new contract management framework, a refined contract implementation process, improved governance and greater role clarity, all supported by the NSW Health procurement policy.

The next stream is the NSW Medicines Formulary. This will develop a holistic framework governing the procurement and usage of pharmaceuticals to support optimum clinical and better-value health care, leading to improved patient outcomes. The third stream is named DeliverEase. This stream will transform the medical consumables supply chain by enabling more efficient and easier ordering and optimisation of the inventory management processes. It will also provide visibility in order to facilitate tracking of products from the point of receipt of goods at the hospital dock right to the ward storeroom.

The final stream is labelled SmartChain. This SmartChain stream is really about creating a single integrated system to simplify and optimise our processes. Procurement of supply chain will be transformed by improving how data is collected, used and managed by NSW Health, ensuring decision-making is based on reliable and trusted information. Through these initiatives, the reform program will sustain and strengthen the core procurement and supply chain ecosystem within NSW Health, in addition to further centralisation. This will enable a greater level of support to NSW Procurement via improved data and insights.

The vendor management system—from a professional services perspective, NSW Health has also implemented a number of process changes from 30 June 2023 for the procurement of all professional services, which includes consultants. NSW Health entities must seek CPO approval for all engagements valued at or over \$30,000 prior to seeking quotes from suppliers. The CPO is also required for variations and extensions to existing professional service engagements. The NSW Health CPO has also mandated the use of prequalification schemes, even where these are only considered recommended under the Procurement Board direction.

NSW Health entities are also required to ensure that the supplier signs the appropriate confidentiality and conflict of interest undertakings and agrees to the NSW Government Supplier Code of Conduct. Appropriate contract management of these engagements is required, and the NSW Health entity must complete a post-engagement evaluation before the engagement can be closed. My branch is currently implementing the VMS, or vendor management system, which is the end-to-end procurement solution for professional service engagements. That system will ensure compliance and automation of all the above requirements that I just mentioned. This VMS is in its early stages of implementation. It's anticipated the full rollout across all entities will be complete by September 2024.

Finally, regarding sustainability, NSW Health has committed to an environmentally sustainable footprint for future health care as part of the Future Health strategy. NSW Health recognises its responsibility to reduce our carbon emissions, minimise waste and optimally manage our resources. These will have positive impacts for the health and wellbeing of our citizens and reduce the environmental impact of the health system. As part of our procurement sustainability innovation journey, we recently held a supplier forum which brought together a number of our key suppliers and NSW Health representatives to discuss some of the key challenges and opportunities for savings and sustainability innovation. Thank you again for the opportunity to appear today. We welcome the Committee's questions in relation to this inquiry.

The CHAIR: Thank you very much. Now we go to Opposition questions.

The Hon. DAMIEN TUDEHOPE: Thank you, Chair. You'll appreciate that that was a very expansive opening. I have 10 minutes and 21 seconds to ask you questions and I can't possibly cover the range of materials. Can I start by asking this: Local health districts have budgets that they are responsible for, is that correct?

MICHAEL GENDY: That's correct.

The Hon. DAMIEN TUDEHOPE: How does the relationship between NSW Health and the local health districts operate in terms of oversight of expenditure by local health districts?

ALFA D'AMATO: Let me cover that. Mr Tudehope, as you would appreciate, the ministry has a function as a system manager. As a system manager, we have a particular arrangement with the districts and networks as well as pillars. The arrangement is constructed around what we call a service agreement, which is also a requirement under the national reform agreement. The service agreement is issued once a year. The details contained in the service agreement include, among other things, the specific details of the budget allocation to the district for the particular financial year.

The Hon. DAMIEN TUDEHOPE: Is there a procurement officer in every local health district?

ALFA D'AMATO: Do you want to cover that part?

MICHAEL GENDY: Absolutely there is. There is a procurement team at every district, yes.

The Hon. DAMIEN TUDEHOPE: And overseeing that procurement officer, the ministry or the department has its own chief procurement officer?

MICHAEL GENDY: In essence, the procurement team within a district would generally report to either the director of finance within the district, the director of corporate services or some senior executive within the district. They would have their own delegation at that level. But there is only one procurement policy across NSW Health, and that is what governs that.

The Hon. DAMIEN TUDEHOPE: So every local health district procurement officer would be required, obviously, to comply. Who oversees that to actually do an audit of the manner in which local health districts are implementing their procurement contracts?

MICHAEL GENDY: There is an internal audit function within the system and generally most districts would have an IR internal audit group.

The Hon. DAMIEN TUDEHOPE: How often does that take place?

MICHAEL GENDY: I would have to take that on notice to come back to you.

The Hon. DAMIEN TUDEHOPE: Are there spot checks in relation to individual contracts entered into by local health districts?

MICHAEL GENDY: They do occur.

The Hon. DAMIEN TUDEHOPE: How often?

MICHAEL GENDY: I'll take that on notice and come back to you.

The Hon. DAMIEN TUDEHOPE: In 2019 the Auditor-General issued a report into HealthShare, which found:

HealthShare has a procurement framework that should support effective contract management, but it is not applying it consistently. In particular, the audit found that HealthShare was not applying key contract management elements to over 80 per cent of the high-value contracts it manages. The audit also found that HealthShare's contract management practices were limited by inadequate performance monitoring.

Mr Araujo?

ALFA D'AMATO: Sorry, before we get to Alex, perhaps it would be important that we frame these as one of the reasons why we kicked off procurement reform.

The Hon. DAMIEN TUDEHOPE: No, I get that. In fact, I'm asking him to expand on that procurement reform as an answer to the Auditor-General's—

ALFA D'AMATO: No, that's okay, but what I was suggesting is perhaps we need to cover the contract management that is led by the CPO and how their approach then affects—or, if you want, address some of the challenges that were documented by the Auditor-General?

The Hon. DAMIEN TUDEHOPE: I'm in your hands. Whoever answers questions is a matter for you.

ALFA D'AMATO: No problems.

MICHAEL GENDY: Just to expand on Mr D'Amato's point there, the findings of that report essentially were not just limited to HealthShare, but I think what it highlighted is there were some opportunities across the system to better optimise the contract management, but also ensure that the contract implementation across the system is optimised. We do a lot of great work in actually getting the tender done and completed, but then what can happen is that the contract implementation and management of the piece is potentially not optimised and may erode some of the value that we thought we would get. This is the piece that we really targeted as part of the procurement reform program.

The first stream of that reform is really the operating model and that operating model was really targeting how we can improve contract management across the entire system. That included a heavy investment of approximately 76 staff across HealthShare and the districts to ensure that that contract implementation is being completed and conducted to the optimal level, and then the follow-up to that implementation is the ongoing contract management is done as well. With that came visibility on contracts within the system, making sure that the repository for all contracts is being completed is also in place and in ensuring that the reporting back of the benefits and value of those contracts is also visible to us.

The Hon. DAMIEN TUDEHOPE: And compliance with procurement policy, no doubt?

MICHAEL GENDY: Correct, yes.

The Hon. DAMIEN TUDEHOPE: At some stage someone will no doubt do some sort of audit again in relation to the manner in which NSW Health is actually doing this. Has someone read the submission from the Medical Technology Association of Australia?

MICHAEL GENDY: Yes.

The Hon. DAMIEN TUDEHOPE: Have you got any observations you'd want to make in relation to the recommendations in respect of value-based procurement? It goes to this point: What I understand them to be saying is that value for money, when it comes to health care, includes the best outcome for a patient and in fact it is a patient-centred approach to value for money, which they suggest should be adopted in relation to procurement policy.

MICHAEL GENDY: I couldn't agree more with you, Mr Tudehope. Ultimately, that's how we approach it as well. When we think about value for money—because, again, value for money can mean different things to different people.

The Hon. DAMIEN TUDEHOPE: The best price.

MICHAEL GENDY: I think that's a perception, but the reality is very different from that.

The Hon. DAMIEN TUDEHOPE: Correct.

MICHAEL GENDY: When we look at how we evaluate products for use within NSW Health, the reality is over two-thirds of the weighted criteria is not price driven. It's all about fit for purpose, total cost of ownership, patient outcomes—so there's a whole non-weighted price criteria that is set. Of course, every category and every contract may be different, based on its own merits and whatever device that we're procuring, but in most cases 30 per cent to 40 per cent is only price and the rest is actually all non-price weighted, based on the outcome and the fit for purpose of the product.

The Hon. DAMIEN TUDEHOPE: But there can be, in relation to goods and services contracts—and we just heard this in relation to education—components, of course, where you can concentrate on other outcomes, including who the contracting party is and whether it meets Aboriginal Procurement Policy or whatever other social components there are. But in respect of most of the provision of health services, it's patient focused, is it not? And that should be the driver of value for money.

MICHAEL GENDY: Absolutely.

The Hon. DAMIEN TUDEHOPE: If, in fact, there was a direction that there has to be 30 per cent local component, that sometimes may conflict with actually delivering best patient outcomes.

MICHAEL GENDY: Correct. It can be challenging, particularly when we're talking about the types of goods that we're procuring. It can be challenging from that perspective, yes.

The Hon. DAMIEN TUDEHOPE: What you would say in relation to that is it would need, would it not, to have a tailored approach for each particular department, according to the specialty that they need to be able to deliver?

MICHAEL GENDY: That would seem appropriate, yes.

The Hon. DAMIEN TUDEHOPE: Can I just ask about Health Infrastructure? One of the recommendations which is called for by the nurses and midwives union calls for:

An explicit 'Local, Secure and Fair Jobs' code that outlines industrial rights and conditions for contracts and requires suppliers to submit to WHS and Industrial audits, put together compliance plans and model industrial clauses in major contracts.

Don't you already do all that?

EMMA SKULANDER: Yes. I think that the requirements within the Health Infrastructure contract documentation would point to the need to comply with legislation in relation to that.

The Hon. DAMIEN TUDEHOPE: It's the law.

EMMA SKULANDER: Correct.

The Hon. DAMIEN TUDEHOPE: You'd require contractors to comply with the law. Is there any benefit, in terms of the delivery of health infrastructure? Is there a panel of, I suppose, entities or contractors that you use for the purpose of delivering health infrastructure? How are they actually identified, or how do you get onto that panel for the purpose of delivering health infrastructure?

EMMA SKULANDER: In relation to the building contractors?

The Hon. DAMIEN TUDEHOPE: Yes.

EMMA SKULANDER: Health Infrastructure has established its own panel of contractors—it's called a procurement list of contractors—that it uses. It was established with the purpose of ensuring that the contractors were appropriate for the delivery of health infrastructure, which there are nuances in relation to the construction of health facilities. In terms of being able to get on that panel, it's an open eTender expression of interest that is consistently open through the year. We do at least one annual review of the submissions to that scheme to make sure that we are scooping up any new applications coming through, or sometimes contractors request review of their previous submissions, which we do.

The Hon. DAMIEN TUDEHOPE: How does the tender process work, though, if there is someone else who says, "I want an opportunity"?

EMMA SKULANDER: The link would be available on the eTender website.

The Hon. DAMIEN TUDEHOPE: Is that regular?

EMMA SKULANDER: It's always there, so you're able to submit at any time. What we do is ensure that at least one time per year we do a full review of who is on that list.

The Hon. DAMIEN TUDEHOPE: I told you my time was short. I have about 10,000 other questions I wanted to ask, but you'll get them, no doubt, in the mail.

Ms ABIGAIL BOYD: Good morning to all of you. Thank you for your time. Can you clarify for me—because I'm getting increasingly confused the more agencies we speak to. For instance, with Health it seems that we can have procurement through HealthShare, through Health Infrastructure, through Public Works. We can have a sort of top-down procurement or we can have a procurement that's directed by the local health districts themselves. What determines who's doing the procurement and at what level it happens? Is there an overall, overarching policy for that?

MICHAEL GENDY: Yes, there is. There's only one policy, which is the NSW Health Procurement (Goods and Services) policy, so I'll talk about goods and services first and I'll pass to my colleague for construction. For goods and services, there is one policy and what dictates who and how that procurement is conducted is ultimately the type of procurement, the threshold, of the approximate value.

Up to \$250,000, the districts have that delegation to conduct a procurement themselves through their procurement team. Anything above \$250,000 gets referred to HealthShare as a shared service entity to have oversight over that procurement, based on a delegation from the secretary. Any contract which is a whole-of-health contract—in other words, if HealthShare is conducting a whole-of-health contract on behalf of the cluster for a particular good or service, any whole-of-health contracts will be signed by me. The approved procurement strategy and the actual contract recommendation in the end will be finalised and approved by me. Any exemptions to the procurement policy would have to be approved by me. In a nutshell, the thresholds within the policy dictate who, and how that procurement is conducted.

Ms ABIGAIL BOYD: On goods and services, then, say a particular local health district decides that they want a certain thing that actually another LHD probably wants as well but that district wants to get it locally. At what point does HealthShare say, "Well, actually, everybody is wanting the same thing. It would be more efficient if we did this through HealthShare"? How does that then impact on localised procurement at a district level? How do you make that decision? There seems to be a bit of tension between allowing a district to do that local procurement versus the cost efficiencies of a bigger contract through HealthShare.

ALEX ARAUJO: The way that we approach the scenario that you've just described is that we all love consultation with the system in relation to where the maximum benefit will be, whether it's a statewide contract or a local contract. We take into consideration in relation to the clinical settings that we get advice from the clinical folk and also we take a view that, economically, the contracts that we are operating are at large scale and it gives us the opportunity to commit to volumes. We also, which you may not be aware of, have a central warehouse that's out at Western Sydney. A lot of the medical consumables that you would see in common use in a ward are all predominantly coming out of that one location. What we look at is not only the procurement strategy but we also look at the supply chain impacts in relation to whether you buy from a local provider or a central provider.

Ms ABIGAIL BOYD: When we talk about the size of the contract, the size of the contract will obviously depend on whether you've decided to do it as a centralised procurement or by district. How do you make that decision, in terms of whether or not it will be centralised in the first place?

ALEX ARAUJO: A good example will be things that are really appropriate to be bought locally. For example, for lawnmowing services there is no need to do something from a central perspective, or even some local trade requirements. But when you are looking at highly specialised medical equipment, like medical devices, that is where it best fits to be bought centrally rather than locally.

Ms ABIGAIL BOYD: Is that done on a discretionary basis, then, as to what you're bringing in versus what you leave out to the local health districts?

ALEX ARAUJO: Yes.

MICHAEL GENDY: There's always, in terms of how you come about to decide what the benefit looks like by having a tender evaluation committee or communities of practice that exist already—and there's a multitude of other procurement groups that exist across Health, with membership from procurement officers or managers from across all the districts. That does tend to generate feedback to HealthShare around, "Hey, there's an opportunity for this particular category or this particular service or good. Have you guys considered doing it

as a whole of health?" That generally is how things do bubble up to the surface as well. There are a number of community practices or procurement meetings and subgroup meetings that occur across Health, and that tends to generate some of the ideas and thoughts around where the potential opportunities are as well at a local district.

Ms ABIGAIL BOYD: We've talked in this inquiry about how we have this devolved procurement structure across government, but then Health itself is probably the most devolved department that we have in terms of the 15 local health districts and all of the shared services. What do you do in addition to what other agencies would do to manage the additional risk from that? We heard from the Auditor-General that she didn't necessarily have oversight of all of the local health districts. Do you do spot checks? This is one of the questions that Mr Tudehope asked as well. How do you keep yourself happy that things are being complied with?

MICHAEL GENDY: I'll first touch on the fact that our goods and services procurement policy is quite tight in terms of threshold and delegation compared with what the recommended policy framework across New South Wales is. We're at \$250,000 whereas the New South Wales procurement policy framework is at \$680,000, in line with EPP requirements. We've taken a very hard approach to say, "Only up to \$250,000 is what you can actually conduct on your own." The second piece is that we do conduct a contract and policy compliance, where every year we run a report to look at all the spend that is at \$150,000 and above and see whether that has been declared or has been put into our contract repository called Procure, which you may have heard of before.

We do, as a ministry and within my branch, actually conduct that check to ensure the transparency of any of those contracts and purchase orders. Someone could have actually raised a purchase order for \$160,000 and it doesn't have a contract and doesn't have anything but we will pick it up and we will look at all those purchase orders and see whether they've been declared or whether they've been put on the contract repository system or not. If not, we will go back to the district and say, "You have to upload these." Anything that's unsavoury will tend to bubble up and we'll have that visibility as well. I'll come back on notice with some of those points that I mentioned to Mr Tudehope.

ALFA D'AMATO: Ms Boyd, may I just add a couple of things? One is that, yes, we may have a devolved model but it's fair to say that it's highly integrated. It's highly integrated because most of the things that we buy actually influence also how we deliver care. We want to make sure our workforce is mobile and therefore we use items that can be utilised across the system. The other part I want to stress is that one of the areas we've been focusing on with the procurement reform is the quality of the data. Ultimately, that gives us an opportunity to run compliance, if you want due diligence. That's what the CPO just mentioned. That's where I feel that we might not need to have a proper audit conducted all the time because we have sufficient visibility having one EAP system. What I mean by one EAP system is that from the Minister we can see everyone's cost centres, everyone's purchase orders and all the procurement practices. That's where I think the strength of that data and the effort we put into the procurement reform to improve the quality of the data gives us an opportunity to be on top of it.

Ms ABIGAIL BOYD: There was a submission put in by the Laundry Association Australia that was saying that basically there has been this increased use of single-use products—so curtains and gowns and things—instead of laundered products. How does that fit within the sustainability goal that you mentioned at the beginning and what weighting is put on environmental factors when you're doing that kind of procurement?

MICHAEL GENDY: I will say my bit but I am not the foremost expert on sustainability. I will add my bit around how it relates from a procurement perspective and then I will pass to my colleague. Ultimately, there are certain products that can and can't be used from a re-usability perspective. Some things have to be single-use and others can be re-utilised over and over again. It really depends on the item that we are talking about. If it's a curtain for an examination room, again, there are certain requirements that are on that medically that we have to comply with. Again, it really has to be case by case. I will pass to Mr Araujo for that.

ALEX ARAUJO: Given that we operate seven linen services across the State, we're looking—there's been a pendulum change. Previously, it was a lot of moving down to single-use products and now that pendulum is switching back to re-useable. We are currently looking at curtains and looking at which direction we're going to go in relation to whether we continue to use disposable or re-useables and the same goes with other linen-type products that we can launder through our linen service as well.

MICHAEL GENDY: Just to add, we do have the appropriate weightings as part of the New South Wales Government's policy of 10 per cent that is incorporated in any tender process anyway. We do comply with all of those additional 10 per cent of SME and 10 per cent for sustainability.

The Hon. EMILY SUVAAL: Thanks so much to you all for appearing today. When referring to your submission, you talk about the evaluation criteria that is used in tenders. Are you able to explain to us what that evaluation criteria is and perhaps provide it on notice? It refers to each NSW Health agency having its own set of standards. Can you explain, when you refer to agency, what that is? Is that LHDs—or at what level?

MICHAEL GENDY: Sure. At a very high level explanation of that, the evaluation criteria is really product by product dependent. Depending on what you're actually procuring, there's a non-weighted price element in there, as mentioned, which is roughly 70 per cent, generally speaking, for most medical consumables and items. That 70 per cent will be made up of quality attributes, fit for purpose, any specific patient outcomes that would be delivered by the use of the product.

The Hon. EMILY SUVAAL: Are you able to provide those weightings to the Committee?

MICHAEL GENDY: We can definitely provide some examples for you on notice, yes.

The Hon. EMILY SUVAAL: Does each Health agency have its own set of standards? When it refers to agencies, is that LHDs? Is that Health Infrastructure? What is it?

MICHAEL GENDY: It's not by agency—well, not by district or agency specific, but rather by product and category specific. Really, it's based on what you're actually procuring and how you can make an evaluation—how the tender evaluation committee can make an assessment of what product is actually best fit for purpose for that particular scenario.

The CHAIR: Who decides? I understand what you're saying about product by product, but who is the decision-maker about which is applied to what?

MICHAEL GENDY: The tender evaluation committee is generally made up of clinicians. If we look at medical consumables—

The CHAIR: Sorry, I'll just stop you there. You said that the committee was provided with the criteria.

MICHAEL GENDY: No, the committee comes up with the criteria. Before any go-to-market activity is conducted, the members of the tender evaluation committee would agree upon a set criteria for this particular contract. Once that's agreed, then the rest of the procurement activity can proceed where you actually conduct a go-to-market.

The Hon. EMILY SUVAAL: So that tender evaluation committee will be different for different LHDs, depending on what it is that they want, and in terms of the make-up of clinicians—but it will vary.

MICHAEL GENDY: Yes.

The Hon. EMILY SUVAAL: In terms of operational costs, what weighting does that have, particularly when you're looking at value for money? Where are operational costs factored in?

MICHAEL GENDY: The operational costs will fit into the total cost of ownership. Ultimately, we can't have a short-term view of whatever product we're using. In other words, we can't be paying a small amount for a product that is going to last three years versus a product that can potentially last 10 years and not necessarily take into account the operational maintenance and costs. If we talk about lifts or HVAC equipment, we do take that whole-of-life total cost of ownership approach.

The Hon. EMILY SUVAAL: When we are looking at building—so, construction—and obviously the capital costs, what weighting again does operational cost have for Health Infrastructure when you're looking at your projects?

EMMA SKULANDER: I think in construction it has been an evolving piece to incorporate whole-of-life-cycle cost in construction procurement. Historically, I think that construction and the model for construction procurement has looked at the cost of the construction procurement itself rather than the facility that you then hand over. Driven by the asset management policy for the construction sector and by a lot of the work that has been happening within NSW Health around whole-of-life-cycle costing, we have been slowly embedding whole-of-life-cycle cost considerations into our tendering methodology. Within our overall criterion for construction procurement, there is a very small whole-of-life-cycle cost consideration, but within each specific equipment procurement that gets undertaken we are reviewing the whole-of-life-cycle costing as part of the evaluation.

The Hon. EMILY SUVAAL: When you say it's evolving and you're looking at embedding it, is it factored in at all at the moment to a new build?

EMMA SKULANDER: Yes, it is factored in at the moment to a new build.

The Hon. EMILY SUVAAL: And what weighting does that have?

EMMA SKULANDER: In the example that I'm looking at here, which is the Tamworth Mental Health Unit, there is a 1 per cent in the non-price criterion weighting given to whole-of-life-cycle cost management.

The Hon. EMILY SUVAAL: I find that quite extraordinary.

EMMA SKULANDER: But the overall price criterion is sitting at 70 per cent and the non-price at 30 per cent in that particular example.

The Hon. EMILY SUVAAL: When you are looking at 1 per cent of the weighting of the operational costs, when you're building a hospital, for example, the cost in terms of the life span is going to increase enormously—

EMMA SKULANDER: Absolutely.

The Hon. EMILY SUVAAL: —if you increase the footprint and increase the single rooms and whatever else. At the moment, it's really not factored in at all?

EMMA SKULANDER: Certainly that gets embedded into the procurement evaluation, in a minimal way and an evolving way—into the actual design of the facility, though, very different. The design, obviously, and the progression of the design is a different element to the procurement of the facility. The design progression and the materials selected through design, the criterion and the standards that we base the design on are very much taking into consideration the whole-of-life-cycle cost.

The Hon. EMILY SUVAAL: How is that calculated? Who works that out?

EMMA SKULANDER: In the financial impact statement, which is part of our business cases, there is some cost estimate around the maintenance cost of facilities and that is absolutely considered in the evaluations of options throughout the business case process in the delivery of an infrastructure facility.

The Hon. EMILY SUVAAL: When you're talking about the maintenance, does that include things like cleaning the facility?

EMMA SKULANDER: Yes, it does.

The Hon. EMILY SUVAAL: Does that include the amount of labour that it will entail to deliver meals and patient care and all of that?

EMMA SKULANDER: Yes, it does. It's a full forecast of the facility cost at a point in time during the design, and that gets updated throughout the project life cycle to aim to forecast what the cost of operations will be.

The Hon. EMILY SUVAAL: When you say it's an evolving area, is it foreseeable that that 1 per cent may change?

EMMA SKULANDER: Yes, I can imagine that it will. One of the comments that we put forward in our submission was around how goods and services and construction procurement are quite complex and intertwined. Certainly a lot of the goods and services procurements that we're looking at do factor in the whole-of-life-cycle cost at the moment. Construction materials, I think, will continue to evolve in that regard, particularly around the available data to inform decision-making in construction.

The Hon. EMILY SUVAAL: That picks up on my next question. You said there's greater opportunity within the New South Wales Government policy framework to provide greater clarity in what is considered construction and should be procured that way versus what is goods and services. What do you mean by that greater clarity?

EMMA SKULANDER: I think Michael earlier alluded to the example of a lift. A lift is an integral part of a building and a facility. I think at the moment the construction procurement framework has particular requirements for construction procurement that we will follow as we are putting together the components of a building. But we are also, within NSW Health, trying to drive some of those whole-of-life-cycle and consistency elements through identifying elements that we can procure consistently across the NSW Health system. Accordingly, some of those elements need to be treated as goods and services to be aligned and, therefore, at the moment within Health Infrastructure we are using a construction procurement approach but also considering elements of goods and services.

MICHAEL GENDY: If I may add to that, probably a clear-cut example would be if we're talking about an MRI machine or a CT scanner. As part of that evaluation of total cost of ownership, the price-weighted criteria would be completely made up of the total cost of the life of that machine, which would include maintenance costs every year et cetera. That whole weighted criteria for price, which could be 30 per cent et cetera, would be really made up of the total cost over the life span of that machine, and that can be 30 per cent.

The Hon. EMILY SUVAAL: I will move on, with the time I have left, to ask about the electronic procurement management system that HI have got for recording sourcing and contract management activities. Is this data shared with any other agencies, including NSW Treasury?

EMMA SKULANDER: In particular the contracts themselves?

The Hon. EMILY SUVAAL: You talk about it including supply performance, for example. Is that data that you're capturing shared?

EMMA SKULANDER: I might just take it on notice to confirm the extent of sharing. Certainly across the Construction Leadership Group, there is a lot of conversation about the performance reporting and where it gets centralised. I did note in another of the submissions there was a note—I think it was Public Works, who own the centralised system—around the system not being fit for purpose or modern because it hasn't been invested in and, accordingly, should the agencies have been storing their own data?

The Hon. EMILY SUVAAL: Just gone their own way, yes.

EMMA SKULANDER: We do share performance information across the Construction Leadership Group through conversation, where feasible. Obviously we're always looking to collaborate with our colleagues across the construction agencies, which we do through that Construction Leadership Group.

The Hon. EMILY SUVAAL: But it's not shared in any formal way? You talk about by conversation.

EMMA SKULANDER: Yes, and I will just take on notice whether we provide that specifically, in the form of the data being provided into the system.

The Hon. BOB NANVA: Given that procurement policies, approaches and outcomes are inextricably linked with governance accountability and how NSW Health funds health services in public hospitals and community settings, what insights have you provided the Special Commission of Inquiry into Healthcare Funding about the different procurement settings that are available to drive not just value for money and immediate cost savings but also medium to longer term innovation, service delivery and structural cost savings down the track?

The Hon. DAMIEN TUDEHOPE: Big question.

MICHAEL GENDY: I'll try to break that down. I have appeared before the Special Commission of Inquiry into Healthcare Funding, and I have provided some details regarding our approach to the whole procurement and supply chain ecosystem, and how we can actually add value along the way. Certainly, as Mr D'Amato mentioned, data is crucial and critical to everything that we're doing. So how do we ensure that the end-to-end supply chain adds value? In terms of looking at other jurisdictions, we do look outside of NSW Health. However, it's fair to say that procurement and supply chain practices and principles are fairly standard. They are obviously specific to the setting that you're in. Whether you're in health care or whether you're hospitality, they do differ. But ultimately, we have benchmarked what we're doing, and we're on track in terms of addressing some of the key components within the supply chain ecosystem.

The CHAIR: We appreciate your indulgence in taking that last question after the bell. Thanks so much for being here today and for your submission. As has been foreshadowed, there will be supplementary questions, which we will send to you and you'll have 21 days to respond.

(The witnesses withdrew.)

(Short adjournment)

Mr ANDREW MIRICH, Senior Tenders and Contract Specialist, Stryker, and Chair, Procurement Forum, Medical Technology Association of Australia, sworn and examined

Mr PAUL DALE, Policy Director, Medical Technology Association of Australia, sworn and examined

The CHAIR: Thank you for making the time to give evidence and being flexible about the time at which you give evidence. We appreciate that. Would you like to make a short opening statement?

PAUL DALE: Yes, please. The MTAA is the peak body for the medical technology industry in Australia. Medical technology, or med tech, encompasses a vast array of technologies that have either a therapeutic or a diagnostic purpose and are regulated by the Therapeutic Goods Administration. These can include consumables, such as syringes and wound dressings; implanted devices, such as pacemakers or hip and knee implants; and major capital equipment items, such as MRI machines; right through to digital health technologies that leverage software solutions. Our members develop, manufacture, and distribute all these types of medical technologies that assist in the diagnosis, prevention, treatment and management of disease, enabling millions of Australians to live longer, healthier and more productive lives.

A major reason that New South Wales has a high-quality and accessible healthcare system that contributes to the overall social development of the State is its ability to procure the most advanced medical technologies. This was never more evident than during the COVID pandemic. However, as I'm sure you are aware, in common with other systems, the New South Wales health system is experiencing long-term funding challenges, with people living longer, the rise in chronic diseases and health workforce shortages. There is clearly a need to find ways to deliver high-quality care that is financially sustainable.

Procurement of medical technology is a key lever in addressing these challenges. However, NSW Health agencies, in accordance with existing policy directives and internal capabilities, typically focus on standardising and aggregating purchasing decisions to generate savings. While this has merit, and NSW Health has led the way in this approach, it has limitations in addressing the long-term challenge. Procurement, if it undergoes the right reforms, can help generate the value needed to improve patient outcomes and savings across the healthcare system, leading to greater social development for the people of New South Wales.

Looking to the future, MTAA believes there is a need to fully embrace value-based procurement, which focuses on purchasing decisions that improve health outcomes for patients against the total costs of delivering care using a particular technology. We see a role for NSW Health to build on its established body of work in value-based health care by committing to a procurement stream in its value-based healthcare program and to lead the creation of a community of practice. This community of practice would bring together all the key stakeholders across the health system to share best practices, pilot value-based procurement initiatives and, ideally, lead to scaled-up solutions.

At the same time, there are actions that can be taken in the short term to help address the existing challenges across the healthcare system. MTAA members have endorsed a set of procurement principles that we suggest serve as a helpful guide to improve the baseline standard in procurement practices for medical technology. Additionally, the recently introduced New South Wales standard offer arrangements for medical technology, whilst beneficial in streamlining processes, embed the ability to later include any government or not-for-profit customer across Australia in the contract, making it difficult to provide appropriate offers. We need to ensure that the people of New South Wales have equitable access to the highest quality health care in the public system, and focusing more on value in the procurement of medical technologies is an integral part of the solution. Thank you again for the opportunity to appear before this Committee and we look forward to your questions.

The Hon. DAMIEN TUDEHOPE: Thank you for being with us today. You're at the very pointy end of procurement practice. You're not in the sense of the ordinary cleaning services, gardening or delivery of infrastructure, although there would be a component of infrastructure, I would think, that does involve med tech, does it not?

PAUL DALE: If you're talking about larger capital equipment, that can be wrapped in infrastructure programs.

The Hon. DAMIEN TUDEHOPE: As a component of, say, building an operating theatre, there would be purchase of pretty high-end technical equipment as part of the delivery of that outcome. You heard the evidence given by NSW Health earlier. Do you agree with the evidence given by them that they are adopting value-based procurement as part of the manner in which they go about their procurement operation?

PAUL DALE: We would say that there have been signs of willingness and there have been situations where there has been an attempt to apply value-based procurement. There is certainly a lot of talk of value-based

health care across NSW Health in general. We wouldn't say that New South Wales is radically behind. This is an evolving area, but we would say that they can take some significant steps forward in terms of thinking through how technology could be used in more creative ways, and how the contracting can be used in more creative ways, to produce better health outcomes for patients over the longer term and more efficient and effective use of services. It was talked a little bit about in relation to capital works, but there is also the whole of life cycle. Can you think through the whole of life cycle when you're undertaking purchasing?

In one case, we have seen the orthopaedic hip and knees contract, which we made reference to in our submission. At the HealthShare NSW level, there were a lot of good things about it. The problem was that there wasn't sufficient communication down into the local health districts of the opportunities that could be taken up. To elaborate a little bit on that contract, the idea was that hips and knees—joint replacement—is a piece of hardware. The contract did allow—and Andrew could elaborate on this—opportunities for LHDs to engage not just in purchasing of the hardware devices themselves but also in the uptake of, for example, robotic surgery and potentially digital health or patient support solutions. While we saw a reasonable contract approach at that level, we didn't see LHDs take it up.

The Hon. DAMIEN TUDEHOPE: They may not have had the budget to take it up, though.

PAUL DALE: They may not have had the budget, yes. Budget doesn't flow with the contract, so that might be the issue. But also, we do consistently still notice a disconnect between HealthShare and the LHDs themselves. You can do as much as you like with HealthShare NSW but if the LHDs are not brought in, then it's not going anywhere. I don't know, Andrew, if you want to add to any of that.

ANDREW MIRICH: Yes. From what we've seen happening within other States, they've implemented contracts in a similar way to the New South Wales orthopaedic contract for hips and knees, and we've seen examples where the contract manager from those other States will go out and sit down with the directors of orthopaedics from the various hospitals and explain what the benefits are for this particular arrangement, where there are opportunities for rationalisation of the number of suppliers they're using, uptake of market share discounts and that sort of thing. We just haven't seen that level of conversation happening at the LHD and down to a facility level.

The Hon. DAMIEN TUDEHOPE: If you were designing a model of procurement, there would be some things, potentially, you would take out of LHD decision-making because they are for the benefit of the whole health system?

PAUL DALE: There is the tension that is not resolvable with a silver bullet between the local and the State. I think what was intended to be positive about this orthopaedic hip and knees contract is that it did allow for individual negotiation at the local level within the framework of the contract as a whole that was New South Wales wide. I wouldn't say that that's a bad concept in principle; it's that the implementation didn't work out as it should. The contract set the guardrails under which negotiations could take place at a local level to meet local needs. But, as Andrew was saying, unless that's actually implemented, as it appears to have been more successful in other States, it won't be taken up.

The Hon. DAMIEN TUDEHOPE: Who are the members of your organisation?

PAUL DALE: I'm sorry, I should have said that from the beginning.

The Hon. DAMIEN TUDEHOPE: Are they all locally based?

PAUL DALE: We have about 120 members of which about 85 are suppliers of medical devices. They range from startups to local Australian distributors right through to global, multinational companies who are working out of Australia.

The Hon. DAMIEN TUDEHOPE: In terms of some of the specific items of health expenditure, are some of those unable to be supplied by the local market, if I define "local" as Australia and New Zealand?

PAUL DALE: If I've understood your question correctly, I think it is fair to say that the medical device industry is a global industry on the whole. This was one of the challenges during COVID. The reality is that 90 per cent of our needs for more sophisticated medical devices—I'm using a rough figure, so please don't consider that a precise number—are going to and were going to have to be met from global supply chains. A lot of medical devices are manufactured in other countries and that's just the nature of it.

The Hon. DAMIEN TUDEHOPE: Except I could say this: In relation to the COVID experience, it did, in fact, trigger an explosion in the local technology market.

PAUL DALE: Yes, absolutely.

The Hon. DAMIEN TUDEHOPE: In fact, respirators came out of the University of Sydney or Newcastle or somewhere for the purposes of dealing with that so we didn't have to source them, and we became the providers to overseas markets in relation to that piece of technology.

PAUL DALE: We're a big supporter of the local industry, and we've seen some fantastic success stories—be it Cochlear or be it ResMed—of device companies growing and becoming international suppliers. I think there's a very exciting ecosystem here in Australia. You're right—we have sovereign capability questions that we have to answer. I think the important thing, though, is that we need to consider what our actual health and sovereign capability needs are. We wouldn't support discriminating simply on the basis of where a company is coming from. It's important that the right product is purchased at the right time.

The Hon. DAMIEN TUDEHOPE: I accept that submission, but if there is a weighting given to a local component, that would be something which New South Wales procurement already does—give 20 per cent weighting. If it was increased to a 30 per cent weighting, is that something—

ANDREW MIRICH: I think where there is potential challenge with regard to this in the medical devices space is that it does come at a significant expense to suppliers to look at manufacturing and going through the Therapeutic Goods Administration registration process to manufacture devices within Australia and New Zealand. That is certainly one of the barriers that we have with regard to—

The Hon. DAMIEN TUDEHOPE: But wouldn't international competitors or providers have to comply with the same TGA requirements?

ANDREW MIRICH: Yes.

The Hon. DAMIEN TUDEHOPE: So it's an expense for them as well.

ANDREW MIRICH: It's an expense for them as well. But it's the up-front expense and the time it takes to go through that process with the TGA as well.

The Hon. DAMIEN TUDEHOPE: How difficult is it for a startup to gain access to the delivery of high-end technology to the health industry?

PAUL DALE: As in how hard is it for them to bring a product and say get it on a government contract or the like?

The Hon. DAMIEN TUDEHOPE: Correct.

PAUL DALE: It's not easy. And, of course, the more we think about reforming procurement approaches, inevitably they become more complex and for good reasons. Sustainability is just an example of that where I think we'd all want to see more sustainable supply. And yet, at the same time, the more you introduce those things, the greater the barriers, and small companies are going to struggle, in the main, to meet those requirements. A startup, by definition, is pre-revenue, but if you're talking about a company that—

The Hon. DAMIEN TUDEHOPE: Even a small—

PAUL DALE: Yes, it's small and it's got one product. We certainly have those members who really only have one or two products. They consistently tell us that it's difficult to meet all of the requirements. For example, while a larger company might consider the insurance requirements—they'll pay it and move on, even if they think they're excessive, which sometimes we do—a smaller company says that's a really big deal.

The Hon. DAMIEN TUDEHOPE: Does eTendering work as an opportunity for small to medium enterprises to actually get contracts with HealthShare and NSW Health?

PAUL DALE: Yes, when our smaller members report the challenges to us, one of the challenges that they have is—understandably, there is a request to make an offering of many devices across a whole portfolio area and the smaller you are, the harder it is to actually do that. If you have two products, for example, and yet the contract is across a whole spectrum of areas, it's difficult to—you can't put a whole proposition before HealthShare NSW to meet the requirements of that tender. You're saying, "I've got two products to offer, but there are many parts of your tender which I can't fulfil." Whereas a larger company obviously is able to spread—they have a broader portfolio. So I think that is something. Along with the complexity, that's frequently reported as a challenge.

The Hon. DAMIEN TUDEHOPE: There is a proposal to make contracts much more transparent in terms of seeing who wins tenders or who doesn't win tenders. What do you say about that in terms of the commerciality of the manner in which your members operate in if there was more transparency in relation to the contract tendering and the contract acceptance?

PAUL DALE: I might ask you.

ANDREW MIRICH: Certainly within other States that information is made publicly available through the tendering portals. Obviously things like pricing and the commercial side of things is kept confidential, but there would be an overall contract value that's attributed. In the event of a contract being awarded to a panel, the names of the suppliers that have been awarded onto that particular panel arrangement is made publicly available—so Queensland, Western Australia and the Northern Territory.

The Hon. DAMIEN TUDEHOPE: You would not want the amount of the actual—

ANDREW MIRICH: The overall contract value for something like it because with a panel arrangement, there's generally no commitment to volume in there. But at a line-by-line pricing, certainly that's commercially sensitive information.

Ms ABIGAIL BOYD: Just a couple of very basic questions. When we were speaking with the Health representatives earlier, they were talking about the different levels at which procurement would occur. I'm particularly interested in when something gets decided by a local health district versus when something gets decided at the HealthShare level. How does that work when we're talking about what is, ordinarily, quite expensive technology? Do you have many situations where a particular local health district wants to have that technology but HealthShare as a whole is not convinced? How does that play out?

ANDREW MIRICH: The challenges we've seen have been from a resourcing perspective in terms of being able to run a statewide tender process. When HealthShare are running a statewide tender process, they're trying to get involvement from all LHDs and have clinical input with regard to this. I know from personal experience, having worked on the other side of the fence within another State, that that is a particularly challenging and time-consuming activity. Invariably, the need for particular technology is it's needed now or in the short term rather than having the ability to wait and undertake a statewide procurement process, which can take anywhere in excess of 12 months to run through the process. It does tend to be a decision that is made if there is no statewide contract in place, then they will look at running their own local tender activity. Maybe for something, for example, like a waste management system in a hospital, like a suction device; it could be \$200,000 of capital outlay, but it's enough to fall underneath that \$250,000 threshold that HealthShare has.

Ms ABIGAIL BOYD: If there's a new technology developed that is a better way of doing something and a company wants to effectively pitch that—so it's not something that the department or the LHDs are actively looking for because they don't know about it—how does a company go about trying to get a contract for that new bit of technology? Do you go to the LHD? Do you go to HealthShare? What happens?

ANDREW MIRICH: I think it's a combination of different approaches. We would have conversations. If we already had alternative products that would fall under the scope of that as an example. Say, for example, we had a brand-new endoscopy camera stack that had come to market that had fluorescence imaging capabilities. We may already have a different endoscopic camera stack on contract. As part of the contract management process, we would make the contract manager aware that we have new technology that falls within the scope of the existing arrangement and would then work on the process of putting forward a submission to be considered for a clinical evaluation to add to contract.

Ms ABIGAIL BOYD: But does that then benefit incumbents—people who already have a contract for that particular technology? What happens if you're a competing company that has a different technology? How do you get in to pitch?

PAUL DALE: This does happen to smaller companies sometimes, too, that might have more niche products, as well. I was a little surprised they didn't mention it, because I don't want to explain for NSW Health what their own policies are—and I would need to go back and get the correct terminology—but they do have, essentially, a new technology framework or a new technology policy where, if one or more LHDs are interested in a new technology that's not being routinely used, firstly, they have guidance on how to look at that locally and they do have the ability to escalate the evaluation of that and notify NSW Health. It's actually not, I believe, HealthShare NSW. I think it's the Agency for Clinical Innovation but I would have to double-check that.

Inevitably, the conversation starts with clinicians. You have to have clinicians who say, "I understand this technology and I want to trial it. I want to begin using it." It's certainly not appropriate to stick it under a statewide contract at that point because you're not looking at widespread use; you're looking at the process of evaluating and taking it up. I think what happens is that if it is a technology of broader interest, it's more likely to be elevated to the focus of the State. If I understand the process correctly, if it's going to exceed the \$250,000 number, HealthShare is still going to run—or NSW Health is going to run—a view over it before it's actually purchased.

That's a different thing to actually saying, "We're going to make a whole statewide contract about it." There is meant to be flexibility in that and, I think, in general, our industry welcomes the fact that there is this opportunity for a bottom-up approach for clinicians to say, "Yes, I've seen this." Our devices are very close to the clinician. The clinician themselves often has to be absolutely persuaded that they want to use it, because they're the ones who might be putting it into the patient or using it as part of surgery. They're the ones who essentially say, "Yes, this is something we want to see taken up." But very often it's still the LHD who has to make the decision to buy.

Ms ABIGAIL BOYD: I'm delving into something I don't know much about so please help me out. When you have certain local health districts that have research centres, universities or other entities that are attached or associated within that LHD, is that LHD able to capture that technology more easily than other LHDs? Is there anything—not anti-competitive pressures—that might hinder that technology getting further out? Have you got any examples of anything like that?

PAUL DALE: I don't know if I have any examples. I think it's generally true that the large teaching hospitals and those places that have, generally speaking, large numbers of that particular procedure being done and are usually considered a centre of excellence—those are the places typically where any new technology will first be used. In some cases, they may actually have even been part of the clinical trial or evaluation, or the process of actually generating data, or they might even be part of a post-market process of gathering data. I think that's inevitably true—that you will have these centres as being the place where you start with using those kinds of technologies. I'm trying to think of an example. I'm not sure that I can, specifically. I'll look at Andrew in case he can.

ANDREW MIRICH: I can't think of one.

PAUL DALE: But that would be the case for any significant new technology. Again, it's so dependent on the clinician being skilled, interested—has probably seen it in overseas conferences in some cases—and then also having the right infrastructure around it. If, for example, in order to use a therapeutic device you need a certain level of diagnostics and certain kinds of diagnostics, those would need to be available. I'm sorry I can't be more specific but you would absolutely expect that the big centres—especially where they're doing a lot of these procedures and where they're probably undertaking a lot of research—would be the places you would see the take-up of that technology.

Ms ABIGAIL BOYD: On the flip side, then, I've read a lot of local health district board minutes, for my sins, and I've noticed that proud relationship between the health district management and its centres—its academic and teaching hospitals and things. Is there a potential for bias for that local health district to then adopt technologies created within its own district to the exclusion of competing products?

PAUL DALE: Can I just make sure that I understand you? Are you talking about maybe technologies that they themselves have developed locally? Is that what you mean?

Ms ABIGAIL BOYD: Yes, pretty much.

PAUL DALE: Yes. I want to say that, as suppliers of products, that's typically not the situation with our products. Generally speaking, as you would expect, our members are trying to supply a whole market, if they can, so there is this inevitability, as I said, that technology does not diffuse straightaway. There is an element where there's a safeguard component to that. Medical technology doesn't just work magically. To be used effectively and safely it needs to be used by people who are trained in it and are close to it and familiar with it. Unlike a pharmaceutical, which could be made available very widely straightaway, there is a learning curve that's involved. You might say, "Necessarily that involves inequity of access," but you wouldn't want to diffuse the technology straightaway. I would say that if something is locally developed—all the evidence I've seen is that organisations are very excited to share that, particularly if they can commercialise it with others, so I don't know that they would keep it to themselves necessarily.

Ms ABIGAIL BOYD: There's that tension, isn't there, between needing to have it at that clinician level and to be advocated for by the clinicians while at the same time ensuring that those clinicians have access to competing technology as well?

PAUL DALE: Yes, that's right. The standard of care should be available everywhere.

ANDREW MIRICH: Can I just add something on there? I know HealthShare take their conflicts of interest and their probity requirements as part of any tender processes very seriously. Suppliers are expected to declare any conflicts of interest, whether they're perceived or actual conflicts of interest. We, as suppliers, will provide details of where we may have clinicians that have fellowships within particular hospitals and make them aware so they're able to manage those conflicts of interest accordingly when they're running their process.

The CHAIR: Thank you again for your submission. The case studies are really fascinating. I think the case study about preventing surgical site infections is quite stark in that you've shown that there's the proven way of reducing those infections yet it doesn't seem to be mandated practice. I'm interested in your linking this to value-based procurement because it actually seems like there must be barriers there because it seems fairly common sense. Whether you use VBP or any other way, it seems like it's common sense. You've suggested a VBP approach to overcoming it, but I wonder, if looking at it the other way, what are the barriers do you think that mean it hasn't been adopted as a procurement option overall?

PAUL DALE: One of the challenges, I think, is measurement, and we would wholeheartedly endorse the statements of the witnesses from NSW Health that the ability to measure and to be confident that you are getting the benefit you hope for is really important. I think it's very exciting. We're really at an exciting threshold in terms of the healthcare system, because I think we are finally getting to a place—there are still a lot of barriers—where we can track much more effectively what's going on in the healthcare system. We're very supportive of the investment in the single-patient record that has occurred in New South Wales. There are situations where maybe it's not clear as to whether the outcome that you hope to get will be achieved. In that case, you do want to be able to measure it and get to the end and say, "Yes, we thought this would happen and it did happen," or it didn't.

There are situations where it doesn't need to go that far. There are plenty of situations where you say, "Look, the evidence is well understood. The opportunity is here. What we need to do is not take a short-termist view to take the lowest price but, rather, recognise that we should invest in, frankly, a higher priced product that nonetheless generates benefits through the system." I think cost does become a barrier sometimes. It's even been captured in a study looking at the NHS, the National Health Service in the UK. This happens here, too. You get top-down directives to save X dollars by next year. This particular study, which I would be happy to provide to the Committee, if that's of interest—

The CHAIR: Yes, please.

PAUL DALE: It talked about how that changed everyone's behaviours within the system. Suddenly, value-based procurement was put on the shelf because they had an immediate imperative to save money. Saving money is a good thing where you can do it without compromising longer term value, compromising patient outcomes. But I think the reality is that can be a barrier, and sometimes you have to spend more to get a better result and save money over the longer term. Many have talked about this, and we would add our endorsement of this statement: The system is not funded to innovate. Generally speaking, the system is not funded to innovate. Purchasing by giving just a haircut—you can achieve some savings over time but it will only get you so far. If you were to take away one point from what we wanted to say, that would be it.

The Hon. EMILY SUVAAL: With regard to the case study about preventing surgical site infections and the use of antimicrobial sutures, are these used currently in New South Wales LHDs?

PAUL DALE: They would be used, yes. I would have to take it on notice as to how widespread their use is. Certainly we would argue that they could be much more widely used than they are.

The Hon. EMILY SUVAAL: What about private hospitals? Would private hospitals be using them?

PAUL DALE: Yes, private hospitals would. They essentially would have widespread use of these products. I'd have to get you a response on notice, though, if I can. I'm sorry, I'm not close to it yet.

The Hon. EMILY SUVAAL: That's alright. No, I'm just particularly interested in understanding, obviously, where—

PAUL DALE: Is there a difference between the public and private, yes.

The Hon. EMILY SUVAAL: Yes, and we as a State have an obligation to do what we can in terms of reducing those complications.

PAUL DALE: Yes.

The Hon. EMILY SUVAAL: But, equally, we are in a health system that has been privatised, in some ways, and many of these procedures are occurring in the private system. Thank you.

The CHAIR: You mentioned that the system is not funded to innovate. I note that you've made reference to other jurisdictions. Also, in your submission you talk about some of the things in which New South Wales comes out quite well, better than other areas. But I wondered, thinking about that innovation question and about other jurisdictions, are there examples elsewhere that allow for more innovation or that adopt a best practice in aspects that we should be considering?

PAUL DALE: I might look at Andrew on that one, in terms of the procurement side.

ANDREW MIRICH: I was just going to mention that certainly the Queensland Government has worked in collaboration with one of MTAA's members with regard to the development of a research and development laboratory at the Royal Brisbane and Women's Hospital. That's a partnership in collaboration with Metro North Hospital and Health Service, the Queensland Government and one of the MTAA members. That's an R&D facility that has been set up in the last 12 months or so, I think it was, or 18 months or so. That's an example where we have other State health services working in collaboration with industry to look at R&D opportunities.

The CHAIR: I know the head of our research area in NSW Health, Mr Levesque, comes quite often to these inquiries. We do have that aspect of it. I'm wondering what the procurement system can do, because I'm presuming when you said, "the system is not funded to innovate" there is the R&D, which is separate, but what aspects of the system might be changed to assist or to foster?

ANDREW MIRICH: When we talk about the system not being funded to innovate, the whole DRG funding system for hospitals nationwide is designed to track an average and then, effectively, provide payments to services based on the average. Of course, as you would expect, what behaviour it encourages, therefore, is to try to come in under the average—and that's what it's meant to do. It's meant to encourage a savings approach whilst not compromising care. But if you were to ask the question, "Well, what if we need to make an investment up-front to get a longer term, better result, how is that going to help me with my budget this year or my budget next year?", we do know that there are payments that come from NSW Health for these kinds of pilots or for scale-up projects. They're not very visible. It's not very visible as to how that actually takes place. I think it would be a very interesting area for us to get more information as to how that occurs.

But what we have emphasised as an industry is that when new technology is on the horizon, funding actually needs to follow it. We would look at the National Health Service in the UK. I'm certainly not holding it up as an exemplar in all respects, but nonetheless if there is an assessment that a certain kind of new technology is worth funding then money actually flows with that recommendation. I wouldn't say that across Australia that necessarily happens in any way that you could say, "New South Wales should be doing that." But I think that principle of investing and giving LHDs the opportunity to invest is missing from the funding arrangements at the moment.

The CHAIR: I think Mr Tudehope asked you about what an ideal system would look like. I guess we're trying to get quite practical in this Committee about what we can change in the New South Wales procurement system. I know you talk about standard offer agreements at that LHD level. I wonder if you could talk through a bit what some of those challenges are? Maybe there are some specific recommendations. I'm hearing you about funding, but I'm also trying to get very practical about the lower hanging fruit, so to speak.

ANDREW MIRICH: Certainly we see as an industry that every State is trying to purchase and procure the same items, goods and services. What we tend to see is there are six or seven different ways of going about procuring the same items. Trying to encourage the States to collaborate in terms of developing specifications—we understand that with things like terms and conditions, there's never going to be any uniformity regarding Ts and Cs. But development of a scope—in terms of, "If you want a widget, it needs to be packaged in such a way. It has to have TGA approval. It has to have certain requirements"—would make things, from an evaluation perspective for respective States, so much easier. It would make the burden on industry so much easier, in terms of responding to tender documents, as well.

Not every supplier that MTAA represents has got a contracts and tenders team that has a dozen people working for them. Invariably you will get a tender that is managed by one person who is also the office manager for a distributor. They're expected to fill the same documentation in as a Johnson and Johnson or a Medtronic of this world. By having some collaboration between States and just a bit of common sense in terms of how you're asking for particular specifications, I think that's an opportunity that just seems really—as you say, you're looking for low-hanging fruit. This is a—

The CHAIR: Cooperation with States is not necessarily seen as low-hanging fruit, to be fair.

ANDREW MIRICH: It's not, but I know certainly there is a forum of contract managers that meets from across every State and jurisdiction. There is one that is set up, for example, for prostheses, where the contract managers will get together and they will understand, for example, who's going out to market for a particular item at any one time so that they're not saturating the market by everybody going out to market for hips and knees at the same time. From my perspective, I would see that as a really good opportunity that would benefit both HealthShare NSW but also benefit industry as well.

The CHAIR: Thank you.

The Hon. DAMIEN TUDEHOPE: Chris Day would agree.

The CHAIR: Yes. We've got lots of suggestions for Federal consultation and Federal cooperation, which obviously we will consider duly. We thank you very much for your participation today, for being flexible about appearing early, and for your submission, which was very interesting and gave us much food for thought. We will probably be asking for some more information through supplementary questions, and we'd ask that you supply answers to those within 21 days. Thank you very much.

ANDREW MIRICH: Thank you, Chair. Thanks so much for the opportunity.

PAUL DALE: Thank you.

(The witnesses withdrew.)

(Luncheon adjournment)

Ms KYLIE YATES, Chief Executive Officer, Civil Contractors Federation (NSW Branch), affirmed and examined

Mr MICHAEL BOYLE, Board Member, Civil Contractors Federation (NSW Branch), affirmed and examined

Mr BRENT CROCKFORD, Chief Executive Officer, Australian Owned Contractors, affirmed and examined

Mr TREAVEN MARTINUS, Director, Australian Owned Contractors, affirmed and examined

The CHAIR: Welcome and thank you all for making the time to give evidence to the Committee today and also for your submissions, which I know we've all found very helpful. Would either group like to make an opening statement?

BRENT CROCKFORD: I would, Chair. I'll kick off. From the outset, Australian Owned Contractors is joined by the Civil Contractors Federation NSW and is most pleased to do so. In terms of procurement of transport and infrastructure civil projects, AOC and CCF are very much aligned in our advocacy and our policy reform views, with only a few exceptions that are understood and respected, in our collaborative efforts to make the New South Wales civil construction industry the best it can be. Put simply, Australian Owned Contractors represents 16 mid-tier—that is, tier 2 and 3—civil contractors that are majority Australian owned and controlled. Our membership is specific to contractors who can perform projects of up to about \$500 million in their own right, or in joint ventures, but require a tier 1 joint venture partner to consider major projects above this size.

I am also joined by AOC's Director, Treaven Martinus, who is the founder and CEO of Martinus Rail, an Australian-owned market-leading full service railway infrastructure company that builds and maintains large-scale railways and intermodals across Australia, New Zealand, North America and Chile. Treaven speaks for the AOC and is a proud New South Wales resident. I know Kylie will introduce the CCF and Mick following my brief statement. We are both heartened and optimistic that the Committee can verify and recommend some very collaborative, positive recommendations that will reflect a wide range of the policy analysis within many of the submissions that were received—I might argue, that were a high quality—including by New South Wales unions and like-minded leading industry associations such as the Australasian Railways Association and Consult Australia.

We observe that there is a strong public policy basis and ministerial and parliamentary intent to recognise that harnessing the procurement power of the New South Wales Government through deliberative and considered procurement design and encouraging rather than restricting open competition for major infrastructure is a legitimate and acknowledged policy approach. We implore the Committee to recommend to the Government in no uncertain terms the positive impacts on the social development of New South Wales residents, where shaping future domestic industries is carefully considered in developing an approach to market. For the interest of the Committee, this was further underscored by the Minister for Domestic Manufacturing and Government Procurement just last Thursday, when Minister Houssos said alongside the Prime Minister, with respect to manufacturing solar panels:

This is a new and innovative way of leveraging our government procurement spend. What we will do is gather together the spending capacity of the NSW Government and use it to foster local manufacturing opportunities ... Countries around the globe are rebuilding their sovereign manufacturing capability and we want to be able to do that right here in NSW.

In this sense, AOC could not disagree more with submission No. 18 from the NSW ICAC short snapshot on local content, which included what we would argue as waving the white flag and abandoning aspirations to a better definition of local content. ICAC could pick up the phone to the Commonwealth Department of Defence and indeed the Federal Department of Finance, as well as Kristy Ponting at the private enterprise Australian Owned, to see some of the regulatory work being done to help overcome this.

I make some final points in summary on behalf of AOC to further highlight aspects of our submission that we feel the Committee ought to focus maximum attention on. One is the relatively recent House of Representatives Standing Committee on Infrastructure, Transport and Cities inquiry into major infrastructure, chaired by former New South Wales Federal member for Bennelong, John Alexander. I comment and reflect that the recommendations from this report were supported across industry, including by no less than CCF National, Australian Owned Contractors, Consult Australia and the Australian Constructors Association. Those recommendations are available and I would be pleased to reflect on them.

There are tried and tested examples of innovative procurement design within other jurisdictions that have helped shape the market and led to market diversity—particularly of head contractors—where AOC argues strongly that a deliberative approach, further market concentration and oligopolistic outcomes would otherwise be perpetuated, had some of this procurement and innovative thinking not been arrived at. The analysis includes MRPV's panel approach in Victoria, which I know from yesterday's testimony was not reflected on in the approach

discussion paper from the New South Wales Government on productivity packaging, and also the Bunbury Outer Ring Road model, which AOC holds up as a gold standard in successful and market diversity procurement.

The operations and evaluation of former New South Wales Premier Berejiklian's memorandum of procurement for large, complex infrastructure projects is also a sensible framework. I reflect from yesterday's testimony some disappointment that the department did not have more to say on the aspirations of that and its continuing role in today's market. Lastly, AOC speaks very carefully around public money and public projects. Our focus is delivering and defining better, broader economic benefits through social procurement of these projects. To that extent, we talk about procurement. In doing that, I will hand over to Kylie.

KYLIE YATES: I thank the Committee for the opportunity to appear before you today on behalf of the New South Wales civil construction and maintenance industry. I am joined by Mick Boyle, elected CCF NSW board member and president of the CCF National. Mick started Abergeldie with his wife, Robin, in Sydney 30 years ago. Abergeldie now has offices throughout eastern Australia and New Zealand and has grown to a team of over 800 skilled people, delivering the complex infrastructure needed to build better communities. Mick has a wealth of experience across New South Wales that we are happy to draw on today.

CCF NSW is agnostic about the geographic origin of our members' businesses, but they must have a presence in New South Wales and carry out civil works in our State. Our interest is building a sustainable and skilled local civil construction industry. We represent 400 members, all of whom are proud local employers and 50 per cent of whom are based in regional New South Wales. We represent the broad spectrum of the supply chain, from multinational tier ones right through to mum and dad businesses. To that end, CCF NSW is a State branch of a national body—CCF Australia. CCF works to support a skilled, sustainable and competitive civil construction workforce across all States and Territories nationally. We do this because a having local, skilled civil industry is central to delivering high quality infrastructure, well-connected communities and a robust economy for the benefit of all Australians.

Our submission to this inquiry focuses on the procurement practices of New South Wales Government bodies as they relate to construction procurement. Our view is that the primary objective of the New South Wales Government at all stages of construction procurement should be the enduring public value of the investment. That should include sustaining and creating local jobs and economic growth by ensuring a viable civil construction industry. The experience of our members is that the current construction procurement practices of the New South Wales Government are increasing the total cost of projects for both government and industry, and they fall short in delivering the public value we could achieve together.

Some of the obstacles our members commonly experience when doing business with State bodies is an apparent fixation on lowest project cost within government, deficient scoping of projects, incomplete tender documentation, unfair risk allocation, deviation from standard form construction contracts, poor contract administration and protracted delays. Through all of this, there is a lack of robust evaluation and learning across government. There is no shared learning.

One point to highlight is that we're asking the Committee to take a broad definition of State Government procurement to include all State entities rather than only agencies, which is narrowly defined under the State Government's procurement framework, and to recommend that the Government does the same in reforming its procurement policies and frameworks. That is because we believe a major barrier to effective construction procurement practices in New South Wales, both currently and for future reform, is the inconsistency and complexity across all government entities. The longstanding practice whereby State bodies such as State-owned corporations and other commercial businesses use bespoke procurement arrangements, despite being among the largest procurers of infrastructure in New South Wales, makes no sense to CCF NSW when considering how to deliver the best value through infrastructure delivery to the State of New South Wales. Examples of some of these bodies include Sydney Water, WaterNSW, Hunter Water, EnergyCo, Essential Energy, Land and Housing Corporation and others.

While Transport for NSW has been the largest government buyer of construction services in recent times, this can and will change, depending on our State's infrastructure needs and government policy priorities as they change over time. For instance, as we deliver the energy transition and more housing stock for the State, EnergyCo and Homes NSW will become larger procurers of construction. Should water security become an issue requiring infrastructure investment down the track, we would see an uplift of construction investment by water utilities, as we did in the 2000s. We want to leverage this opportunity to have broadscale improvement across all government entities.

A major concern to our industry is the prevalence of project bundling by State government agencies and bodies, which cuts out small- to medium-tier enterprises, stifles industry development and increases costs to government by having to deal with the largest of the large players in the construction industry. We believe

government tender packages must be available to contractors of all sizes. This will improve the Government's internal capability to procure and deliver infrastructure works for our State. It will help grow our local industry by allowing them to compete and bid for head contractor opportunities. It will reduce costs to the Government and create greater value from infrastructure delivery for the people of New South Wales. Thank you.

The CHAIR: Thank you very much. If you could provide the written copies of your statements to Hansard, that would be very helpful.

KYLIE YATES: Sure, will do.

BRENT CROCKFORD: I'm happy to.

The Hon. DAMIEN TUDEHOPE: Ms Yates, on page 3 of your submission you set out a lot of the issues which you've just described in your opening statement. In the pre-contract stage you've identified a number of issues which beset contractors, and the first of those is poor quality of information provided at tender. Do you say that applies to New South Wales Government tendering processes?

KYLIE YATES: That's correct.

The Hon. DAMIEN TUDEHOPE: Does that vary across agencies?

KYLIE YATES: Our information is that it does vary across agencies, but it is almost universally true that there is a lack of quality information provided at the tender stage for contractors to prepare their tender bids.

The Hon. DAMIEN TUDEHOPE: That flows into the problem that you also identified, which is that sometimes in answering tenders your members may take on unfair risk, and in many respects they do not have any opportunity of recovering the expenditure they are engaged in in meeting the tender process.

KYLIE YATES: That's correct.

The Hon. DAMIEN TUDEHOPE: In relation to improving the quality of the information provided at tender stage, what would be your recommendation?

KYLIE YATES: That there should be minimum standards of documentation required at tender stage. I might throw to Mick in a while because he lives this experience, but our advice from all our contractor members is that when contracts come to market they rarely have been scoped efficiently. The risks haven't been identified accurately or they haven't been designed correctly, which leads to a whole lot of rework. That requires a contractor bidding for the work to take on a whole lot of risk because they haven't got the accurate information available to them at the contract stage.

The Hon. DAMIEN TUDEHOPE: Do you want to add anything to that, Mr Boyle?

MICHAEL BOYLE: Yes. It is variable across agencies and even within agencies. There is not a uniform standard within agencies or within tenders, but there are often tenders which do not have adequate information and there are often situations where the risk allocation is not—it is not possible for the contractor to make a reasonable assessment of the risk.

The Hon. DAMIEN TUDEHOPE: Is it presented as a take-it-or-leave-it approach?

MICHAEL BOYLE: You have to submit a conforming tender to be considered so, in essence, yes. There are other situations. If you look historically, there have been problems with design on some projects which have added to additional cost. Unfortunately, I think agencies have been given poor advice and so their solution has been to make nearly every project a design-and-construct contract, so the risk is transferred to the contractor. But the actual cost that is created by doing that—it has evolved over the last 15 years—is that government departments virtually design a project, they do all the geotechnical assessments and reports, and then they present the contract out to the marketplace and say, "You can't rely on anything we've given you and therefore you have to come up with your own design", and the risk transfers.

The Hon. DAMIEN TUDEHOPE: I've got very limited time. The New South Wales Government has a procurement policy framework. Your members, when they tender for projects with the New South Wales Government, are aware of the procurement policy framework and what they're required to provide.

KYLIE YATES: Broadly, yes.

The Hon. DAMIEN TUDEHOPE: In terms of social outcomes, is that something which all of your members would be embracing? An Aboriginal procurement policy—is that something your members would be embracing?

KYLIE YATES: Yes, they are embracing that.

The Hon. DAMIEN TUDEHOPE: That's part of your tender process?

MICHAEL BOYLE: Yes.

The Hon. DAMIEN TUDEHOPE: Are any of your members outside of New South Wales?

KYLIE YATES: Not for CCF NSW, no.

The Hon. DAMIEN TUDEHOPE: If there was a provision to increase New South Wales agencies—or a requirement when they contract that they increase the local contact from 20 per cent to 30 per cent, that wouldn't worry you?

KYLIE YATES: No, I wouldn't think so. I'll let Mick answer, if he has a different answer. I would say our definition of local is within New South Wales, Australia and New Zealand. We are part of a national body. We want a strong industry.

The Hon. DAMIEN TUDEHOPE: Do members that you would be contracting for New South Wales work from interstate?

MICHAEL BOYLE: I think there are members that work right—

The Hon. DAMIEN TUDEHOPE: Across Australia?

KYLIE YATES: Across the State.

MICHAEL BOYLE: The company that I founded works across multiple States and New Zealand as well.

The Hon. DAMIEN TUDEHOPE: You have no problems with any recommendations that this Committee might make in terms of expanding any requirements for local contracts?

MICHAEL BOYLE: No. The difficulty, in my experience over many years, is defining what local is and being able to ensure that that is actually delivered on during the whole project process.

The Hon. DAMIEN TUDEHOPE: Let me just put it to you. If there was a contract for a job in Bega, is it reasonable that the Government would look for a contractor in Bega?

MICHAEL BOYLE: It depends on the size of the project.

The Hon. DAMIEN TUDEHOPE: But, first and foremost, in terms of trying to prioritise connecting with local communities and delivering jobs and opportunities in local areas, would it be reasonable for the Government to specify that it would look for a local contractor?

MICHAEL BOYLE: I think it's difficult if you start to go right down to postcodes.

The Hon. DAMIEN TUDEHOPE: Well, let me put it to you. When the bushfire clean-up was on, most of the contracting was done by local contractors, was it not—even the civil work in relation to that clean-up?

MICHAEL BOYLE: Yes—many of our members.

The Hon. DAMIEN TUDEHOPE: Most of your members would have benefited from the direction that local contractors be used for the purposes of that clean-up work, would they not?

MICHAEL BOYLE: Yes.

KYLIE YATES: Yes, they did, and that's absolutely the work that they would have been skilled in doing. Many of our members would support the opportunity to work in their communities.

The Hon. DAMIEN TUDEHOPE: One of the considerations of this Committee is to seek to make opportunities for contractors more connected with local areas. That wouldn't be something that you would quibble with, is it?

KYLIE YATES: No, we wouldn't quibble with it, but we would expect that it's still open to other contractors within New South Wales to bid for.

The Hon. DAMIEN TUDEHOPE: One of the submissions is from the CFMEU. Have you read that submission?

KYLIE YATES: Yes, I have.

The Hon. DAMIEN TUDEHOPE: They are calling for New South Wales Government civil construction tenders to include a mandatory requirement that the contractor hold a certificate under a proposed New South Wales secure jobs code, as well as a requirement to only use subcontractors who also hold such a

certificate. The certificate could only be obtained where there is a commitment to offer employment to existing workers on wages and conditions no less than an outgoing contractor, among other commitments. Are you familiar with that sort of proposal?

KYLIE YATES: No, I haven't seen that before, until this submission.

The Hon. DAMIEN TUDEHOPE: What would you say in relation to that sort of proposal?

KYLIE YATES: We wouldn't support that proposal. We are a registered organisation. We provide IR advice to our members. There are currently workforce shortages across construction, so they are very proud local employers but we would expect that they would be able to be trained and qualified in their role but have freedom of association.

The Hon. DAMIEN TUDEHOPE: So they comply with the law?

KYLIE YATES: They comply with the law and the awards and everything else, but we wouldn't expect to put extra bureaucracy or requirements on employers.

The Hon. DAMIEN TUDEHOPE: You've identified bundling as a big issue for your organisation. Perhaps both of you can explain what the issue is in relation to bundling.

BRENT CROCKFORD: You go first, Kylie.

KYLIE YATES: The issue with bundling is that projects are rolled up into large values that cannot be tendered—that cannot be bid for by local contractors. I'll let Brent explain in more detail from his perspective. But it really stifles the industry, because the way industry grows is you start small and you have experience on a certain type of work, and then you are able to bid and you have qualifications to bid on larger and larger projects. I'll hand over to Brent.

BRENT CROCKFORD: Mr Tudehope, AOC's—one of our three advocacy priority points is to encourage all State governments and the Federal Government to de-bundle procurement packages to under \$500 million, the reason being, at about that level, you attract far more competitive tension in the bid and there are far more contractors who, on their own or in joint ventures, can bid to tender. When it starts to go south of there, the pool of tier 1 contractors restricts quite severely. There are examples—and I include the Rozelle Interchange from some years ago—of the quality of bid returns being quite poor and, to the New South Wales taxpayer, quite unacceptable.

Ms ABIGAIL BOYD: Can I come back to the question around the CFMEU submission? I apologise that I didn't catch the response properly, but do you support or oppose that recommendation?

KYLIE YATES: I'd like to get some more detail, potentially, from the CFMEU. But I don't think any more obligations on employers are necessary, because there's a whole range of industrial instruments that they work to, and we don't understand that there are any issues in New South Wales.

The Hon. ANTHONY D'ADAM: You're at liberty to take the details on notice and be able to—

The CHAIR: Order!

The Hon. ANTHONY D'ADAM: Just in terms of assisting the witness, they can take a question on notice and provide further detail once they've had the opportunity to review the material and provide a written response.

Ms ABIGAIL BOYD: Sure.

BRENT CROCKFORD: Could I add, Deputy Chair, AOC is agnostic in terms of the industrial relations landscape that the State Government of the day sets. However, we acknowledge the CFMEU manufacturing submission, particularly the point that points out:

The NSW Procurement Policy Framework emphasizes compliance with international obligations, but it lacks clarity on preferencing local procurement.

There's a strong recommendation in there, number 9, that we support. I think it's Travis Wacey at the CFMEU who looks after this, to note just another comment on CFMEU manufacturing, along the lines of your question.

Ms ABIGAIL BOYD: Thank you. You both represent national entities so you're familiar with jurisdictions outside of New South Wales. I understand that both the ACT and Victoria have fair jobs codes, so this is not some new idea coming out of the CFMEU. Ms Yates, you must be familiar with those codes in the ACT and Victoria.

KYLIE YATES: Broadly, but CCF NSW is New South Wales based.

Ms ABIGAIL BOYD: Alright, I'll go to AOC. You're familiar, then, with both of those codes in the other—

BRENT CROCKFORD: Again, broadly, but AOC's remit is to focus on procurement reform. With respect to industrial relations and codes, AOC doesn't take a formal view other than respecting the regime or the industrial relations law of the day in each State that we participate.

Ms ABIGAIL BOYD: Okay, but this goes beyond that, and I think that's the point here. I understand that Mr Tudehope has asked a question along these lines of previous witnesses as well. No-one is suggesting that people aren't complying with the existing law. The fair jobs codes ensure that we're actually setting really high standards for worker pay and conditions because, even if they're not public sector workers, they're effectively doing public sector work. That is a very common thing for the public sector to do, at least under a good progressive government. If the Victoria and ACT jobs codes apply within that procurement framework in those jurisdictions to enable that higher standard to be set, then have your members identified any sort of problem with that? Why wouldn't we do it in New South Wales?

BRENT CROCKFORD: That would be a decision for the New South Wales Parliament. However, I'd say in terms of standards—and I'll hand over to Treaven to talk about his experience—local companies, Australian companies, particularly compared with others, are very proud of the community relations and the deep-rooted excellence they have in and out of social procurement delivery, whether it be First Nations, whether it be gender diversity or whether it be supporting local communities, as Mr Tudehope spoke of in that example. We are proud of the fact that, when given the opportunity, we can excel and meet Government expectations, including the one you talk about. Are there any particular projects, Treaven, where you've met and exceeded what was expected of you by the client in terms of local content and delivery?

TREAVEN MARTINUS: Yes, definitely. Mr Tudehope, you mentioned about setting targets. As an Australian business, born and bred in New South Wales, we meet and exceed all targets that are set in any procurement for the jurisdictions that we work in across Australia, including New South Wales. We go up against foreign international tier ones. There have been recent examples where—one company came to Australia in 2020. It only had 20 people here in Australia and succeeded to, before delivering any projects in New South Wales or Australia, secure \$3 billion worth of work across three projects. They don't have any experience in building their own capability in Australia or New South Wales, or building a supply chain here in New South Wales.

Ms ABIGAIL BOYD: Sorry to interrupt you. I think my question got hijacked somewhere in that little process. Can we just come back to the question about establishing a fair jobs code in New South Wales? I take it that there's no evidence from either organisation in relation to how that's played out in other jurisdictions. Ms Yates, you said you weren't familiar with it so, as Mr D'Adam said, perhaps you could just take that on notice to have a look at it.

KYLIE YATES: Yes, absolutely. It hasn't been raised by our members with us, so I'm happy to take it on notice.

Ms ABIGAIL BOYD: Which gives me hope that perhaps it hasn't really been a big deal for companies in the ACT and Victoria to comply with it. Mr Crockford, in your opening statement you mentioned the ICAC submission. Can you just explain what your criticism of that was?

BRENT CROCKFORD: Yes, I'm more relying on a news article from about two weeks ago where ICAC—and I don't think I have the specific submission in front of me—were critical of attempts by the New South Wales Government to promote or encourage local content as a form of weighting in procurement.

Ms ABIGAIL BOYD: I think that was perhaps an exaggeration or a misreporting of what the submission actually says. When you read the submission, it's very much around a more cautious approach. Obviously there are identified risks when it comes to local procurement and smaller procurement, but I didn't read the submission as necessarily saying that we shouldn't do it on that basis.

BRENT CROCKFORD: I recall having read it on that basis, so I'll be happy to take that on notice and clarify, Ms Boyd.

Ms ABIGAIL BOYD: That would be really good, thank you. That would be useful.

The CHAIR: Thank you to both organisations again for your submissions. We've been talking about value for money. Ms Yates, in your opening statement, you said that one of the issues is that a fixation on project cost is seen as value. That doesn't necessarily sit with the New South Wales Government procurement framework, which is meant to be about other things, like innovation and social outcomes. How did you or your members reach the conclusion that it seems to be about lowest cost? In your view, what should be considered in thinking about value?

KYLIE YATES: The feedback from our members is their common experience is that the lowest bid wins—the lowest tender price wins. That's their common understanding. I don't know. We don't see the data. It's not necessarily reported, but that's their understanding. So having a broader definition of what public value is would be helpful. In our view, it should include jobs growth and sustaining local industry as part of that. While it's part of the procurement framework, I don't think the aspirations and the intent of that framework are being realised in the construction procurement processes as they being conducted now.

The CHAIR: Maybe this is to both of you, as a follow-up question. Also, perhaps you could address the value question, Mr Crockford. We've heard a lot about criteria and weightings and how they're considered in an evaluation. I wondered if your members across both organisations know about or engage with those criteria? Is there transparency around how those different aspects are taken into consideration? Anecdotally, it seems lowest price, but is there a sense of how the bids are evaluated?

MICHAEL BOYLE: We're talking across lots of different organisations, so there's not one consistent approach. A lot of what we've said in our submission is that it would be helpful if there was a consistent approach across the whole of government and agencies so that what's important is established and people can address that and work towards it. But there isn't a standard across all the agencies at the moment, and that's part of the problem. There isn't a standard contract. That adds a lot of cost. Every time you do a tender, you have to learn what this agency—or within this agency, what this group—is trying to achieve and try to assess the risks of that. Then as people, not just on the contractor side, move across, as our company works for multiple—they're all different contracts. It takes a while to prepare a tender to understand that. But even if, on the client side and the government side, people move from different agencies, they have to learn what that agency does. If there was a way we did work in New South Wales, it would be much more efficient and save a lot of money.

BRENT CROCKFORD: Chair, AOC members take pains to point out that we can compete on cost, but we've got to be given the opportunity to be able to bid for major projects, let alone have the chance to make the shortlist and succeed them. There was an example yesterday, I understand from memory, from the Secretary of Transport for NSW who talked about stage one of the light rail in Parramatta. That project was held up to have some excellent virtues, which is commendable. It is the case that, on the shortlist of three tenders for that package, there was not one mid-tier company. Consequently, there's not one mid-tier Australian company that has the opportunity to evolve, grow and take on the experience of that major project and to excel, as Mr Murray points out, for the stage two contract, potentially. Treaven, do you have another example of New South Wales procurement where shortlists have been denied through the tender process?

The CHAIR: My question was about the value aspect and the weightings aspect. Am I hearing that the answer is, "We don't even get to consider whether that—"

BRENT CROCKFORD: In short, Chair, that's correct.

TREAVEN MARTINUS: On major civil infrastructure projects.

The CHAIR: So you're not even worried about that yet because you're not getting there. Could I then ask you perhaps to get to where I think you're most keen to give us evidence, which is about this situation for tier 2 and tier 3 contractors? Could you perhaps articulate as succinctly as you can the connection between the procurement system, potential local content requirements and why it's important to foster tier 2 and tier 3?

BRENT CROCKFORD: Yes, sure. As the CCF have rightly pointed out, aggregational bundling is becoming more common and, for the reasons I outlined to Mr Tudehope, knocks out mid-tier Australian-owned contractors from bidding. The reason is the risk profile and the bonding and surety that smaller companies have to put up is mostly too great for them to be able to bid at jobs above \$500 million. The example we use when it comes to foreign-owned companies is that they often enjoy the experience of a parent company guarantee that is not available to Australian-owned mid-tier contractors. In terms of the other parts of your question, Chair, there is no incentive—and the history and evidence of successful contractors in New South Wales bears this out—for tier 1 contractors, who are wholly foreign owned in Australia, to joint-venture with non-tier ones.

The CHAIR: Could I ask a follow-up question? Haven't there been a whole lot of policies and Premier's memorandums that say that there should be this partnering?

BRENT CROCKFORD: Yes.

The CHAIR: What has happened that means that that hasn't occurred?

BRENT CROCKFORD: What has happened is that we would argue the Premier's memorandum of some years ago has not followed through from its intent in terms of market diversity outcomes. The way to start that is to disaggregate projects to under \$500 million. I know that Transport for NSW and Ms Drover and her team work very hard at that, and we have a good acknowledgement and engagement. But there's a propensity for

major projects, when they're announced, to be bundled up rather than, as the Premier's memorandum points out, the "if not, why not" default to start at the de-bundling approach.

The CHAIR: I'm trying to get super practical. It's day two and we're headed towards the end. There are two things that I've heard that are quite specific. One is de-bundling, if there is such a word.

The Hon. DAMIEN TUDEHOPE: Disaggregating.

The CHAIR: Disaggregating is much more elegant. Thank you, Mr Tudehope. And local content provisions of some kind. Are there other very specific initiatives?

BRENT CROCKFORD: Briefly for AOC, where projects are above \$500 million—we understand you can't build half a bridge or half a tunnel—we would like to see, and in fact we are encouraging State governments to adopt, the encouraging of tier 1 contractors to joint-venture, in their head contract party or joint venture team, with non-tier 1 contractors so that public money outcomes can be shared, not just amongst international tier 1 contractors but in locally owned businesses to use that experience to excel and grow their presence in Australia, and one day hopefully beyond.

The CHAIR: Thank you. Ms Yates, do you have any specific initiatives?

KYLIE YATES: One specific thing that could be done fairly easily would be to mandate the use of standard form construction contracts. They exist; they are just not used. That would take out a whole range of complexity and cost for everybody and build capability within the public sector and within industry. Related to that, if there were standard form construction subcontracts, that would provide greater clarity and would solve a whole range of those issues that we outlined that cascade from having a whole lot of bespoke contracts and a lack of capability to administer those.

The CHAIR: Thank you. I have one quick question for Mr Crockford. I think you talked about how one benefit of the Victorian major road project was that there was visibility and certainty in the infrastructure pipeline. Very briefly, because we're pretty much out of time, can you describe what that looked like and how you got access to that information?

BRENT CROCKFORD: The PDA, or the program delivery approach, of MRPV is a panel-type approach, and it divides contractors on what projects they can bid for based on a size of project. One is between \$50 million and \$150 million. The next one is \$150 million up to \$250 million. You have to play in your own pit, so to speak. You can only bid for the projects for which you have joined the panel. So it still allows competitive tension, but contractors of a size have the opportunity to deliver slightly larger projects and take on slightly more risk so that they can grow, evolve and become larger companies. The panel benefit as well is that when you have grown, you have the opportunity to move into a greater panel if your aspiration is to be a larger business. I know that Transport for NSW has looked at and issued a discussion paper on a panel-type approach in New South Wales. Unfortunately, I understand from yesterday's response—

The CHAIR: Is this a productivity packaging thing?

BRENT CROCKFORD: Yes. Correct.

The CHAIR: Which I only discovered reading your submission.

BRENT CROCKFORD: Chair, there are two parts to that. One was talked about whole of yesterday, which, in and of its own, the Committee can make their own call on. The part that wasn't discussed was a mirror-type approach to MRPV in Victoria, a panel-type approach. AOC endorses it very strongly and responded to the department in those terms. We would love to see a reason, perhaps, why that hasn't been continued or the Committee's view to encourage further investigation to continue that.

The CHAIR: Our time is up. I am fairly certain we all have more questions that we would like to ask you and we'll provide them to you as supplementary questions. We'd like to have answers to those questions within 21 days. Thank you for your submissions, your time and your evidence today.

(The witnesses withdrew.)

Ms MARGARET CRAWFORD, Auditor-General, Audit Office of New South Wales, affirmed and examined

Mr IAN GOODWIN, Deputy Auditor-General, Audit Office of New South Wales, sworn and examined

Ms CLAUDIA MIGOTTO, Assistant Auditor-General, Audit Office of New South Wales, affirmed and examined

The CHAIR: Welcome and thank you all for making the time to give evidence today. It is very helpful to committees such as this and we appreciate it very much. Before we begin with questions, would you like to make an opening statement?

MARGARET CRAWFORD: Thank you very much for your invitation to provide evidence to this inquiry. Your terms of reference are broad. As you would understand, the Audit Office can only comment on matters reported in relevant tabled audit reports. Our legislation also precludes the Audit Office from commenting on government policy, so there may be some matters related to your terms that we will not be able to comment on. In that context, the audit reports that are likely to be most relevant to your inquiry are *Procurement of services for the Park'nPay app*, which we tabled in December 2023; *NSW government agencies' use of consultants* in March 2023; *Internal controls and governance 2022*; *Ensuring contract management capability in government - Department of Education* in June 2019 and *Ensuring contract management capability in government - HealthShare NSW* in October 2019; *Procurement and reporting of consultancy services* in September 2018; *Contingent workforce - management and procurement* in April 2017; and *Agency compliance with the GIPA Act* in October 2016.

Our recent audit on the procurement of services for the Park'nPay app, for example, made specific references to performance gaps in procurement, in particular the lack of justification for entering into a direct negotiation procurement strategy, the lack of consideration for how to demonstrate value for money, the failure to implement key probity requirements, and inadequate record keeping regarding key decisions and discussions. Our *Transport 2023* report tabled in December 2023 contained findings in relation to Sydney Metro's management of contractors and conflicts of interest. We identified deficiencies in the oversight of Sydney Metro's conflict of interest declarations processes. In some cases, contractors failed to declare their interests in entities that transact with Sydney Metro. Our report *NSW government agencies' use of consultants* in March 2023 found that agencies do not procure and manage consultants effectively and do not have systems for managing and evaluating consultant performance. The report also found there is a lack of visibility over the government's total spending on consultants as there is no single data source that accurately captures this.

Other common findings from our audits include: ineffective centralised oversight, reporting, accountability and transparency for the total expenditure of public funds on procurements; lack of central monitoring of strategic risks and lack of responses to agency noncompliances with procurement requirements; variations to contract values which exceed allowable limits, inadequate record keeping and the lack of engagement evaluations; incomplete contract registers, risking noncompliance with the GIPA Act; failure to establish the grounds for entering into procurements and contracts, including for direct source procurement and failure to establish mechanisms to demonstrate value for money; lack of adherence to internal delegation processes; and lack of adherence to key probity requirements, such as identification and management of conflicts of interest, and accurate documentation of decisions and processes.

In summary, our reports over recent years have highlighted consistent issues with the oversight and application of procurement management requirements in New South Wales. In closing, Chair, I should also note that in 2021 amendments were made to the Modern Slavery Act 2018 to allow the Auditor-General to perform a "risk-based audit of all or any particular activities" of a government agency to ensure those activities are not a product of modern slavery. Those amendments commenced in January 2022 and my annual work program reflects this mandate by foreshadowing that we will consider audits in that space at an appropriate time. We are happy to answer any questions.

The CHAIR: Thank you, Ms Crawford. I will go to the Opposition first.

The Hon. DAMIEN TUDEHOPE: It's a bit hard to prepare for—although Ms Boyd will say that a lot of the submissions we've had have footnoted references to the Auditor-General's report—because one of the things we don't have in front of us, except for what you've just said then, are recommendations that potentially you would make arising from those reports which you have made. If I go to the modern slavery potential audit, there is a modern slavery commissioner in place, who is charged with overseeing compliance with the provisions of the Modern Slavery Act, is there not?

MARGARET CRAWFORD: There is and his role goes to putting in place the framework and the guidance for agencies to comply. If we conduct an audit, it would be looking at, really, compliance against the arrangements that the commissioner might put in place.

The Hon. DAMIEN TUDEHOPE: You say that the only role of the commissioner is to put in place the framework—

The CHAIR: He doesn't have inspection powers. Sorry, I beg your pardon.

MARGARET CRAWFORD: It's a good answer! I don't want to comment more broadly on that. I'm just looking at that from the perspective of an Auditor-General, and it would be compliance against a framework. Because we have to always—against that.

The Hon. DAMIEN TUDEHOPE: But it wouldn't be replicating the work that the modern slavery commissioner is already doing.

MARGARET CRAWFORD: I would hope not, but there are times where the assurance provided by an Auditor-General looks at things slightly differently.

The Hon. DAMIEN TUDEHOPE: One of the reports which you didn't reference in your opening was, in fact, the audit report you did into the procurement regime relating to the Nominal Insurer.

MARGARET CRAWFORD: The one that we tabled yesterday?

The Hon. DAMIEN TUDEHOPE: Yes.

MARGARET CRAWFORD: Yes, I could have mentioned it, but it was only yesterday.

The Hon. DAMIEN TUDEHOPE: One of the claims which you were making was in relation to the manner in which service providers have, in fact, been taken on by the Nominal Insurer. In fact, you were critical, as I understand it, of the fact that business cases weren't available in relation to—have you seen a response by icare in relation to the observations made in your report?

MARGARET CRAWFORD: Yes, I have and, in fact, that response was included in our report.

The Hon. DAMIEN TUDEHOPE: What do you say in relation to the response by icare? Does it answer some of the concerns which you have identified for the purposes of the criticisms which you made of icare?

MARGARET CRAWFORD: I will pass to Claudia Migotto in a moment to talk to the detail of that. To answer your question, no, not really. They're saying, "Look, we did all of these things that we think are appropriate or helpful." What we say is, "All those things don't constitute or don't meet the requirements laid down by the Treasury framework." Claudia, could you speak to the detail?

CLAUDIA MIGOTTO: I can say that we obviously reviewed icare's formal response to the report in detail before we tabled our report and considered whether there was anything that we needed to take on board. There was no additional information provided in that response that wasn't furnished or put forward during the audit process. So we didn't consider the need to make changes to the report on that basis. But I would need to ask for some information or some more clarity about the specific issues that you would want to go to.

The Hon. DAMIEN TUDEHOPE: One of the findings that you made is that icare did not assess its existing claims management model or conduct a comprehensive options analysis assessing alternative claims management models before selecting its new claims management model for the Nominal Insurer. They gave a very comprehensive answer to that. You say that that didn't change your opinion?

CLAUDIA MIGOTTO: The board and icare management had said that it was their policy to take on the New South Wales Government procurement framework in relation to the preparation of business cases related to—

The Hon. DAMIEN TUDEHOPE: What about the McDougall review?

CLAUDIA MIGOTTO: What about the McDougall review?

The Hon. DAMIEN TUDEHOPE: Wouldn't you expect icare to comply with the observations made in the McDougall review?

CLAUDIA MIGOTTO: I don't think we make any judgement about whether they should or shouldn't comply with the recommendations made in the McDougall review.

The Hon. DAMIEN TUDEHOPE: I'm sure you've read what icare says, but they do say:

The McDougall Report, and icare's evidence provided to the McDougall Review at that time, acknowledged the issues with the previous claims model, the analysis done on the model and the need to move away from a single provider model.

Now, you were critical of that. "Prior to this, Janet Dore's 2019 report explored this matter extensively"—I shouldn't have to read this to you, but it seems to be that you have made a finding in relation to icare and its management in relation to addressing the claims management model which icare appear to answer pretty comprehensively.

CLAUDIA MIGOTTO: The McDougall review is not a business case, and icare had committed to, with the investment of potentially \$6.7 billion, in compliance with New South Wales government frameworks, developing a business case to guide that investment. It didn't, and that's what the report is calling out.

The Hon. DAMIEN TUDEHOPE: I respectfully suggest to you that possibly that is a bit of a gloss. But anyway, what I perhaps put to you, Ms Crawford, is this: If you were advising an agency now in relation to ensuring compliance with the Procurement Policy Framework, what would be the things that you would look for most in relation to ensuring that they actually complied with their obligations under that framework?

MARGARET CRAWFORD: I will speak at a high level and, again, I'll defer to Ian and Claudia. For a start, you'd be looking for total transparency, absolute clarity about what's being sought and how proponents would be assessed to deliver to those specifications. You would be looking for options. You would be looking for some sort of competitive process, if possible, to ensure that you are looking at the broadest range of options and considering the merits of different proposals—those sorts of things. Ian and/or Claudia, did you want to add to that?

CLAUDIA MIGOTTO: I think you've covered it.

The Hon. DAMIEN TUDEHOPE: If you were assessing, for example, value for money, what would be the definition of value for money that you would be using for the purposes of assessing compliance with the procurement framework?

MARGARET CRAWFORD: Can I ask you to take that one?

IAN GOODWIN: Our role as the auditor is not to make the judgement for management; it's to look at whether management has actually complied with the framework. The first thing we would do is to see whether there is guidance or a framework, and there is. Treasury puts out guidance and policies. We would be then, to your question, looking for compliance against that framework. We would be looking for, to the question—value for money's not the only aspect. But one of those aspects of compliance is value for money, is looking for—to test value for money is that there were options.

An easy way to test that is to have an open market tender process. But if you don't go down an open market tender process, then you would be looking that there are options within that and, if you're doing a more narrow tender process, that you're also complying with other guidelines such as the ICAC guidelines. If you're looking for an answer that says, "This is the definition of value for money", it's not—there is no single definition. What we'd be looking for is options, and I would also add that value for money is not the cheapest option.

The Hon. DAMIEN TUDEHOPE: No, and I think we're all agreed that that isn't the cheapest option. Do you make any observations in relation to the manner in which agencies are accredited to be able to carry out procurement work?

CLAUDIA MIGOTTO: We have made some observations around the accreditation process, I think, in relation to our report on HealthShare NSW. For example, we look at how that entity is accredited to perform its various procurement functions there. I think I could summarise some of those findings by saying that the accreditation process provides a baseline for how agencies should perform, but it also needs that central monitoring to ensure that agencies are actually performing to those requirements, because there's no point in having accreditation if agencies are slipping away from those parameters and there's no monitoring of that process.

The Hon. DAMIEN TUDEHOPE: There is a central monitoring process, is there not?

CLAUDIA MIGOTTO: The Procurement Board is tasked with that role.

The Hon. DAMIEN TUDEHOPE: In preparing the audits which you have prepared, do you make any observations in relation to the varying quality or training of chief procurement officers or those people who are charged with doing procurement on behalf of those agencies that you have audited?

CLAUDIA MIGOTTO: I think in terms of capability, our reports on HealthShare and also on contract management capability within education talk broadly around organisational capability to manage what can be sometimes complex procurements. I would need to take on notice if we commented specifically on the roles of chief procurement officers. I can't recall an instance of that off the top of my head, I must admit.

IAN GOODWIN: I was just going to say, I think that we haven't specifically made, in the context of the Auditor-General's reports, any comments about the CPOs. What I would offer, though, is that obviously CPOs—it's a profession. You would be looking—if we were looking at that—to make sure that they're professionally qualified. The other thing you'd be looking for is to make sure they've got sufficient seniority to be able to hold ground in making decisions around procurement.

The Hon. DAMIEN TUDEHOPE: What is your observation in relation to that?

IAN GOODWIN: We can only speak to what we've done as an audit. I'm simply just making an observation that if you're looking to ensure that CPOs are able to do the job and hold the ground to ensure good governance, sufficient seniority in that role is important.

The Hon. DAMIEN TUDEHOPE: My last question is this. One of the things that agencies are required to take into account is potentially local content. You would be aware, of course, that ICAC made an observation in relation to local content. How would you assess whether an agency engages with local content?

CLAUDIA MIGOTTO: I don't think we've made any commentary on the concept of local content.

MARGARET CRAWFORD: We haven't audited anything that has gone specifically to that, so that's why we can't comment.

Ms ABIGAIL BOYD: Good afternoon to all of you. Thank you for coming along and giving us the benefit of your expertise. Can I just check—we've heard a lot about these evaluations and the weightings given to different criteria throughout the hearings today and yesterday. Has the Audit Office ever done any assessment of the validity of those tender evaluations? It's fairly open to interpretation, as we've heard, but also there's different amounts of detail on the eTender side as to what's gone into those weightings. Is that something you've ever looked into?

MARGARET CRAWFORD: I think that goes to the comments Ian made before—that we don't step into the shoes of management. We're looking at: Has management set out criteria, have they allocated weightings, and have they applied those weightings? That's what we would be looking at to provide assurance over that, as opposed to saying, "You didn't really measure that correctly," or the like.

IAN GOODWIN: It would be unusual for an auditor to offer a view on the weightings. What we would be looking for is that there were criteria established. I think we would always test the bona fides around that criteria to make sure that they're evidence driven, and driven to ensure the right outcome—the right outcome being good governance. Our role would be simply to, once those weightings have been established, ensure that's complied with. There will be times, and I think we always recognise that, while you might do the weightings, you might get to an outcome when senior management might take a different decision. I think we have to be realistic enough to know that that is always going to be an outcome that can unfold. What we would be then looking for in that process is that there's a documented decision. That decision is, therefore, transparent too.

Ms ABIGAIL BOYD: Maybe not on a per project basis then, but what about across agencies? Have we ever looked at—particular agencies might be constantly coming up with a certain weighting for one category that is way out of whack with someone else. Is there any data at all that can point to whether or not they're applying these things consistently?

MARGARET CRAWFORD: Not from our work, I'm afraid. Again, I would think that that is more a role for the Procurement Board to be oversighting that sort of thing and to be looking for trends in the data as opposed to the auditor trying to comment on that.

Ms ABIGAIL BOYD: I had a discussion with Public Works yesterday where we were talking about—I used as a particular example a project that one of the local health districts got Public Works involved in where they were building a bunch of houses for health workers, I believe, in quite an urgent manner. When I was asking about who had responsibility for then checking on the contracts to make sure the terms were being complied with or that there was value for money or whatever, it appeared there was no-one really tasked with that. Although Public Works held the expertise, that wasn't their job and it seems that it's also not the job of the particular agency either, or perhaps they don't have the expertise for it. There are thousands of these contracts. I understand we can't check them all but what would you recommend in terms of trying to ensure some sort of accountability or integrity of that process?

MARGARET CRAWFORD: I think we have done some work. Sorry, Claudia, I'm going to put you on the spot. Remember the bus contracts in Transport, where we talked about monitoring of contracts?

CLAUDIA MIGOTTO: I think maybe, again, the audit on HealthShare NSW—although it's not specifically in the infrastructure space, it does go to using workflow processes to manage high volumes of

contracts and the effectiveness of the inbuilt controls in that contract management process. It's probably not directly to what you're inquiring about there, but I think perhaps that audit does offer some insights.

Ms ABIGAIL BOYD: Maybe it's not a role for the Audit Office but what if there was some way of doing spot checks? Not every contract is caught but at least everybody's on their toes a bit because they know that their contract could be looked at. Is that something that's been done anywhere that you can think of, or maybe in another jurisdiction?

MARGARET CRAWFORD: On the face, it would be good practice to have built into your process of contracting some sort of checking process. I think we've done work in different areas that is similar. I'm thinking Infrastructure NSW. When they do grants programs we recommend that there be a random spot check to ensure that the funds were used as intended. I'm not sure, Claudia, if you can think of a specific in relation to procurement.

CLAUDIA MIGOTTO: No, it probably goes centrally to the issue around applying relevant guidance on contract management and actually ensuring that there's a concept of value for money for the life cycle of that contract. With HealthShare contract management capability and contract management in Education, we're calling out the need to apply what does exist in terms of contract management guidelines and protocols. With HealthShare we called out at that time that 80 per cent of their contracts were not actually being monitored in compliance with their own protocols. I would say start with the adherence with the contract management requirements that are set by the agencies and then audit processes can come in after that to ensure that it's actually working effectively.

Ms ABIGAIL BOYD: Sorry, you looked like you wanted to speak, Mr Goodwin.

MARGARET CRAWFORD: No, I think you were agreeing.

IAN GOODWIN: I was agreeing. I was going to add that you'd want to not necessarily see the Auditor-General as being your auditor of last resort, if I could use that term. Management has a role here and management has tools such as internal audit to do their own compliance checks as spot checks, and I would encourage that.

Ms ABIGAIL BOYD: You've spoken in a number of the reports around this focus on self-attestation, or agencies saying, "Yes, we've done this," without necessarily doing internal audits or without necessarily doing any active monitoring to ensure compliance. What is a better way of doing that? Are we unusual in this regard compared to other jurisdictions?

MARGARET CRAWFORD: I'm not sure that we can comment on other jurisdictions. What we would say is that the policies, the procedures, the guidance and the frame is there. It really is about leadership in the sector complying with those arrangements and that there be some process of assurance over their compliance. If all of that worked, I think we'd all be thinking we've got a pretty good arrangement. I think that's what we would say.

Ms ABIGAIL BOYD: We do see that reliance in a lot of—whenever we're asking about these issues where we're concerned about conflicts of interest or breaches of process. The response is always that we have the rules there and we have the training and everything else set out but what we don't have is that enforcement element. And when there's an instance identified where process hasn't been followed, there's no consequence for that. Should we be building up the Procurement Board to have more of an enforcement role?

MARGARET CRAWFORD: Again, I would repeat that I think the arrangements are there. It is about leadership and building a culture in the sector of understanding that these are important things. They're not just a whole series of red tape to be disregarded. If the most senior people in an agency set that tone, public servants will follow that.

Ms ABIGAIL BOYD: This is probably my final question; I can't remember if I asked you about this in a different inquiry recently. The "follow the dollar" powers, when they were legislated, there were some exemptions from those, maybe even some that applied to contractors and consultants. In practice, have you come up against any obstacles in the "follow the dollar" powers? Do we need to make any changes to allow you to do your job better?

MARGARET CRAWFORD: It's still really early days. We're using those powers in respect of two current performance audits that are on foot at the moment—haven't tabled yet—and we haven't come up against any obstacles, but it is very early days. It's got a long way to go before we could possibly evaluate to say, "Actually, we have got these obstacles that would need to be addressed." At the moment we have two on foot and they're working quite well.

The CHAIR: Just going back to that example of the internal audits and random selection, I'm pretty sure that a recommendation that came out when you were looking at SafeWork's compliance function was that

DCS review a random selected sample. That's something that other agencies, you're suggesting here, should potentially consider?

MARGARET CRAWFORD: Yes.

The CHAIR: We were looking for examples, and that's one that came out quite recently about the procurement of that air-quality machine. I wanted to ask you about modern slavery again. Noting that the commissioner doesn't have inspection powers, which is why I presume it's been tasked to your office—and I know I've heard you talk about it before in other hearings—you did mention that it's part of an ongoing plan of work. I wondered if there had been any consideration, because it's so tied to procurement, of the aspects, factors or general approach that might be taken? I understand it hasn't been done yet, but has there been consideration of how that might be approached?

MARGARET CRAWFORD: I'm not sure I quite understand your question. Are you saying, have we made any suggestions about how?

The CHAIR: More whether you have considered where you're going to look and what you're going to do. I know it's part of the plan and it hasn't been done yet.

MARGARET CRAWFORD: Okay. Look, no, I think that will be a matter for the next Auditor-General to tackle. We have been watching and working with the commission over many years now, really. It was only late last year that specific guidance was provided to agencies, so it is really only now that I think we've got some framework that we can start to audit against. We have foreshadowed that work in our program but, again, that will be a matter for the next Auditor-General to decide on whether to do it or when.

The CHAIR: A very general question arising from that: With a new sort of system—a new policy, a new framework—what's a reasonable time for implementation before you start trying to audit?

MARGARET CRAWFORD: It depends on the nature of the audit. Again, I might ask Ian to speak to this, if you wouldn't mind. We prefer to audit against a well-established frame, but there are types of audits that can be done which are sort of almost "in flight". Ian, would you like to speak to that?

IAN GOODWIN: Thanks. It's a little bit like answering the question of how long is a piece of string.

The CHAIR: Sure.

IAN GOODWIN: Not to be unhelpful. At a minimum, you'd want to see 12 months of the framework settle into place. The way the Auditor-General selects the topics that we would then audit, though, is always going to be based around performance gaps. Performance gaps might dictate an acceleration of that if a performance gap became identified. It may dictate a slowness on it to say that the system is actually bedding it in and working quite well. We will continue, as part of the way we develop the audit work program through Claudia's team and the financial teams, to monitor that and then respond, if there's a performance gap, as to whether we need to accelerate or let the system continue to bed it down. But at a minimum, you'd want to give a solid 12 months.

The CHAIR: A solid 12 months and then criteria around prioritisation that then gets—

IAN GOODWIN: Yes.

The CHAIR: That makes sense.

IAN GOODWIN: The Auditor-General's forward performance audit only has about 7¢ per every \$1,000 transaction spend, so it is a fairly judicious consideration. But when the mandate came in for modern slavery, there wasn't a supplementation of resources for the audit so we have to consider it in the broader of the audit program.

The CHAIR: Of course. One of the themes that came out of the consultant's report—but it's come out of a lot of the other submissions to this inquiry—has been about data. You talk a lot about monitoring and needing to monitor, and that being part of the process, but I wonder if you had some comments on the role of data and how we collect it in terms of ensuring a more robust compliance?

MARGARET CRAWFORD: Claudia, did you wish to speak to that? It was a key focus in our audit of consultants.

CLAUDIA MIGOTTO: Yes. I think a lot of the commentary around data in the consultant's report goes to collating the total spend. It talks about the lack of visibility of a source-of-truth number about the total spend on consultants across the sector, which we were able to estimate as being about \$1 billion between 2018 and 2022 across 10,000 engagements. For our purposes, we triangulated various sources of data to identify the trajectory of spending on consultants across the sector and ultimately landed on pulling information out of

individual annual reports to reach that amount. There would presumably be similar issues across various of the schemes—for example, contingent labour and so on—about how much government is spending on these programs. But the learning from that report, in particular, is that there was no central visibility. But, in response, I understand that TCO had taken forward the recommendation to develop up that consolidated picture using our report as a baseline there.

The CHAIR: One last question—it might be to you, again about the consultants report. We have had questions asking about central monitoring self-attestation and that kind of thing. In your consultants report, you did talk about that NSW Procurement within Treasury should monitor strategic risks and agency compliance with New South Wales procurement policies et cetera. Did you find any level of oversight from NSW Procurement of those things, or was that completely absent?

CLAUDIA MIGOTTO: It's probably hard to be nuanced there. Because we looked at 10 individual agencies there, there's probably an answer that relates to each agency in each case, in terms of how their particular systems were set up and Procurement Board's visibility of those systems. I could probably take the detail on that one away and come back to you on notice.

The CHAIR: That would be good, if you could. That would be excellent. Thank you.

CLAUDIA MIGOTTO: Sure.

The Hon. ANTHONY D'ADAM: You touched on the contingent labour scheme in your previous answer. There was extensive commentary in the ICAC submission to this inquiry about labour hire obviously raising a number of issues that go to the opacity of the scheme and issues around subverting recruitment arrangements. ICAC don't make any specific recommendations about what should be done to address some of these issues. They're not necessarily explicit corruption concerns, but in terms of prudent public management, they are obviously issues that fall within your ambit. I wanted to ask about the idea that perhaps do we need a separate set of arrangements for labour hire—take it out of the procurement framework and put it into a specific or separate set of guidance? Is it appropriate that that be done by an agency like the Public Service Commission that has oversight of the workforce needs of the whole sector and therefore can take a holistic view of where contingent labour fits into an overarching workforce plan?

MARGARET CRAWFORD: I'm not sure that we can answer some of your direct questions other than to say a couple of things. That very early report that we did—I can't remember—

CLAUDIA MIGOTTO: 2017.

IAN GOODWIN: 2017.

MARGARET CRAWFORD: —did comment on the lack of workforce planning. It looked at the employment of contractors in the context of poor workforce planning, so there is definitely that linkage. Back then, too, though, there was an awful lot of work going on about development of a whole-of-government tool and a contract for around labour hire, which at the time we were quite positive about. But I think it's just not really fulfilled the early promise of that scheme. I'm not sure that it matters where it sits. It really is, again, about having a good process and people complying with that process.

The Hon. ANTHONY D'ADAM: There is an incentive, though, isn't there, if it sits with Procurement NSW that the bigger the scheme, the more of the sort of administrative cap that they get. They're sort of incentivised to actually have the scheme grow rather than contain that. What do you say about that kind of perverse incentive operating in the system?

MARGARET CRAWFORD: I couldn't offer an opinion because it's not something that we have audited.

The Hon. EMILY SUVAAL: You mentioned earlier in your remarks the framework that exists sort of being sound, and then talked about that the role and function of the Auditor-General was the audit of last resort, which I quite like. In terms of the internal audits that are being done within agencies, does the Audit Office have any role, or have you audited any audits, for example?

The CHAIR: Auditing audits.

MARGARET CRAWFORD: Look, our role is usually as colleagues, you know. We come in as external. The internal is, as its name suggests, internal reporting to management, but certainly our auditors do consult with internal audit and take into account work that they have done, and we also look at the work that internal audit has done when we frame our performance audit plan, again to not so much avoid overlap but to build on in the work that agencies have done themselves. I don't think that we've audited internal auditors, have we?

IAN GOODWIN: No. We've not audited the internal audit function per se, but we would work with the internal audit if it was relevant. As the Auditor-General said, in our financial audit work, if an internal auditor is doing work in the payroll area or even in procurement, we would look to see whether there is something we can rely upon. There are auditing standards that place a burden on some of the work that we need to do, but if we could, we would look to do that so we don't sort of have too much overlap. In the performance audit space it would be more to get an understanding of risk and that understanding of risk may then inform or shape how we look at the audit and take it forward, so it is part of that evidence base that you would gather.

The Hon. EMILY SUVAAL: If you'll just indulge me for a final question, there's no current requirement within the framework for agencies to audit themselves—or is it inherent?

IAN GOODWIN: No, it's not.

The Hon. EMILY SUVAAL: If we were going to make a recommendation, that may have some sort of bolstering impact effect in terms of the guardrails.

IAN GOODWIN: Bear in mind that internal audit is a profession in its own right and the governance around it is the Institute of Internal Auditors. In a well-functioning internal audit function, you would expect to see that management gets a review of their internal audit. Now, the Institute of Internal Auditors can facilitate that review. That would be a review of the effectiveness of internal audit for management. What we simply would be looking at is it would just be part of the evidence base that would inform or shape how we look at an audit topic.

The CHAIR: That has brought us to an end of our time. We thank you again, particularly the Auditor-General on your final afternoon, for making the time to come and see us. We appreciate it. You may take comfort in knowing our supplementary questions will go to Mr Goodwin and Ms Migotto, and if they could respond within 21 days, we would appreciate it. But, again, Ms Crawford, thank you so much and for all of the work that you've done on behalf of the State. We wish you well.

MARGARET CRAWFORD: Thank you so much. I would just say that it's been an incredible honour and privilege to serve the Parliament of New South Wales and I wish everyone here and more broadly all the best for the future.

(The witnesses withdrew.)

The Committee adjourned at 15:00.