

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

NSW Anti-slavery Commissioner

19 January 2024

Acknowledgement of Country

As New South Wales Anti-slavery Commissioner, I acknowledge that Aboriginal and Torres Strait Islander peoples are the first peoples and traditional custodians of Australia and the oldest continuing culture in human history.

I acknowledge that First Nations communities in New South Wales have survived practices that today we call modern slavery. The legacies of that treatment continue to affect Aboriginal and Torres Strait Islander people today, and through them affect the New South Wales community and economy.

My Office and I pay our respects to elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to country and acknowledge their continuing custodianship of the land, seas and sky. We acknowledge their ongoing stewardship and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes, self-determination and for real freedom.

We advise this resource may contain images, or names of deceased persons in photographs or historical content.

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The Standing Committee on Social Issues (Standing Committee) has expressed its intent to ‘inquire into and report on the procurement practices of government agencies in New South Wales and its impact on the social development of the people of New South Wales’.

In particular, the Standing Committee has requested that submissions address:

- (a) *the current state of procurement by New South Wales government agencies [...]*
- (b) *the effectiveness of whole of government and agency procurement arrangements [...]*
- (c) *current capacity of procurement officials in government agencies to assess suppliers and ensure they, and their subcontractors deliver value for money and comply with relevant policies and regulation, including labour laws, at the qualification or contract stage and throughout the contract management stage*
- (d) *any opportunities that may exist for co-regulation, and other incentives [...]*
- (e) *the evaluation criteria used in tenders and how they are weighted in making a decision to award a contract [...]*
- (f) *current approaches to transparency and accountability of procurement by New South Wales government agencies [...]*
- (g) *the New South Wales Government's procurement practices, in particular its ability to: (i) prioritise local content, local manufacturing, and local jobs (ii) improve opportunities for quality training and workforce participation (iii) provide opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities (iv) support local suppliers, and small and medium enterprises*
- (h) *procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally*
- (i) *any other related matters.*

In this submission, the Anti-slavery Commissioner (**Commissioner**) will outline:

1. the anti-slavery measures introduced into NSW government procurement practices by the Modern Slavery Act 2018 (NSW) and related legislation
2. the role of these measures in delivering social value returns to the people of NSW, and
3. his recommendations for implementing legislative anti-slavery measures in public procurement in order to foster the social development of the people of NSW.

The Commissioner’s submission will draw on two key sources: firstly, feedback received from NSW government agencies and other stakeholders in the course of preparing guidance for public entities with obligations under NSW modern slavery legislation; and an April 2023 research report, commissioned by the Commissioner and prepared by KPMG Australia, titled ‘Public Social Procurement: Social returns on global public social procurement initiatives and lessons for NSW’s anti-slavery efforts’ (OASC-KPMG Report).

Recommendations

The Commissioner recommends that the Standing Committee:

1. Take note of the April 2023 research report, commissioned by the Commissioner and prepared by KPMG Australia, titled *Public Social Procurement: Social returns on global public social procurement initiatives and lessons for NSW’s anti-slavery efforts* and its relevance for the

resourcing and implementation of social procurement measures in NSW, in particular under the *Modern Slavery Act 2018* (NSW).

2. Take note of the Shared Implementation Framework developed by the NSW Anti-slavery Commissioner in consultation with NSW government and other public entities, to assist them in managing modern slavery risks in their supply chains and operations, including the recently published *NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains*.
3. Report to Parliament on the need for adequate resourcing of the Office of the Anti-slavery Commissioner and of the more than 400 NSW government agencies and other NSW public entities with new modern slavery due diligence and reporting obligations. This resourcing should be adequate to allow for:
 - a. centrally-led or collaborative supplier engagement and contract management processes to facilitate due diligence on supplier modern slavery risks
 - b. leveraging existing systems such as Buy.NSW, Supplier Hub and Spend Cube to collate and analyse data relevant to supplier modern slavery risk
 - c. incorporating modern slavery provisions into whole-of-government prequalification schemes, and contracts, tender processes, and the NSW Supplier Code of Conduct in a clear and consistent manner
 - d. the creation of centrally-led or collaborative grievance mechanisms for reporting, investigating and resolving concerns related to modern slavery, and
 - e. establishing centrally-led or collaborative mechanisms for engaging with persons and communities impacted by modern slavery in NSW public value chains.

Consultation with public buyers may be necessary to assess these resourcing needs, including through the creation or expansion of whole-of-government arrangements such as those discussed in Part 2 of this submission.

4. Report to Parliament on the need to fully finance the Commissioner's monitoring function under section 9(1)(e) of the *Modern Slavery Act 2018* (NSW).

1 The OASC-KPMG Report

Discussion

In early 2023 the NSW Anti-slavery Commissioner worked with KPMG Australia to prepare a report insights and lessons learned from social procurement reforms in the Netherlands, Sweden, the United Kingdom, the United States, and the European Union. This OASC-KPMG Report is enclosed with this submission as **Appendix A**. The report was commissioned to inform work then under way to assist NSW Government and other public entities to meet new modern slavery due diligence and reporting obligations (discussed later in this Submission).

This report considers:

- What are the common factors that influence the impact of public social procurement initiatives on government practices?
- What are the common factors that influence impact of public social procurement initiatives on supplier practices?
- What are the factors that influence societal outcomes of public social procurement initiatives?

The Report concludes that successful social procurement reforms require the following to be successful:

1. Normative frameworks
2. Financial resources and capability
3. Impact measurement
4. Clear policy objectives
5. Engagement with the broader market, and
6. Technical implementation support.

Recommendation

The Standing Committee has expressed in its Terms of Reference an intention to inquire into and report on procurement best practice to encourage ethical conduct and promote social development in other jurisdictions, both nationally and internationally.

Accordingly, the Commissioner recommends that the Standing Committee take note of the April 2023 research report, commissioned by the Commissioner and prepared by KPMG Australia, titled 'Public Social Procurement: Social returns on global public social procurement initiatives and lessons for NSW's anti-slavery efforts' and its relevance for the resourcing and implementation of social procurement measures in NSW, in particular under the *Modern Slavery Act 2018* (NSW).

Insights from the OASC-KPMG Report which are relevant to the Commissioner's other recommendations are discussed further in the Parts below.

2 Anti-slavery, social procurement and the current state of NSW public procurement

Discussion

What is modern slavery?

'Modern slavery' describes situations where offenders use coercion, threats or deception to exploit victims and undermine their freedom. It is an umbrella term used to encompass a number of exploitative practices including forced labour, slavery, servitude, debt bondage, human trafficking, deceptive recruiting for labour services, the worst forms of child labour and forced marriage.

Modern slavery is a systemic issue which results from a failure to intervene to address other harmful practices that do not rise to the level of modern slavery. These practices may include workplace abuse and harassment, discrimination, wage theft, substandard working conditions, fraud, and violations of freedoms of movement and association.

NSW government agencies may cause, contribute or be directly linked to modern slavery through their procurement activities. These connections arise from intersecting factors: notably, the regulatory context in which the goods and services the agency procures are produced, the manner in which these goods and services are produced, and / or the vulnerabilities of workers and communities involved in their value chains.

The term '**value chain**' refers to the full range of activities carried out by an agency, and by entities upstream and downstream from the agency, to bring the agency's products, services and activities from their conception to their end use.

Modern slavery legislation in NSW

From 1 July 2022, the *Modern Slavery Act 2018* (NSW) (**NSW Modern Slavery Act**) and related amending legislation introduced new modern slavery due diligence and reporting obligations for a wide range of NSW public entities. The main obligations applicable to government agencies are:

1. **Due diligence:** to take reasonable steps to ensure that goods and services procured by and for the agency are not the product of modern slavery, and
2. **Reporting:** to report annually on the reasonable steps the agency has taken in the reporting period, as well as actions taken in relation to any significant operational issue raised by the Anti-slavery Commissioner in the reporting period.

Obligations under the NSW Modern Slavery Act are distinct from the federal regime established under the *Modern Slavery Act 2018* (Cth) (**Cth Modern Slavery Act**). The vast majority of entities with due diligence and reporting obligations under the NSW Modern Slavery Act do not have obligations under the Cth Modern Slavery Act (or vice versa), with the exception of State owned corporations and a small group of universities. For more detail on NSW government agencies' modern slavery obligations, please refer to the Anti-slavery Commissioner's Guidance on Reasonable Steps.

The role of the Anti-slavery Commissioner

As well as imposing obligations on government agencies, the NSW Modern Slavery Act also established the NSW Anti-slavery Commissioner. The Commissioner's functions include:

- monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies¹
- monitoring the effectiveness of legislation and governmental policies and action in combating modern slavery,² and
- promoting public awareness of and providing advice on steps that can be taken by organisations to remediate or monitor risks of modern slavery taking place in their supply chains, including encouraging organisations to develop their capacity to avoid such risks.³

To assist NSW government agencies to effectively discharge their modern slavery due diligence and reporting obligations under NSW law, the Commissioner has worked over more than a year with relevant entities to develop a Shared Implementation Framework (the **Framework**). The following elements of the Framework were published in December 2023:

- the NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains (**Guidance** or **GRS**): aims to assist NSW government agencies and other covered entities to understand what is meant by an obligation to "*take reasonable steps*" to avoid procuring goods or services linked to modern slavery. It sets out the main issues and concepts that covered entities need to understand to meet reporting and due diligence expectations under NSW law.
- GRS Inherent Risk Identification Tool (IRIT): a simple-to-use risk mapping tool, aligned with the NSW procurement taxonomy as at December 2023. The IRIT allows covered entities to identify the modern slavery risk associated with different product categories from which they procure and is intended to provide a common baseline for understanding modern slavery risk across NSW public buyers at the category level.
- GRS Model Tender Clauses and GRS Model Contract Clauses.

¹ NSW Modern Slavery Act, s 9.

² *Ibid.*

³ NSW Modern Slavery Act, s 28.

These resources are available at: <https://dcj.nsw.gov.au/legal-and-justice/our-commissioners/anti-slavery-commissioner/due-diligence-and-reporting.html>

The development of the Framework was informed by substantial consultation with more than 100 NSW Government procurement professionals, local councils, suppliers, industry representatives and academics. The consultation process included the publication of a Discussion Paper; review of submissions responding to this discussion paper; consultation with the NSW Procurement Board; convening and meeting regularly with a Working Party to inform the development of the Framework; circulation of the draft Guidance to Working Party members; and revision of the Guidance in link with feedback from the Working Party and Commonwealth departments. This submission draws on feedback received throughout this consultation process.

The Commissioner is also developing a code of practice on managing modern slavery risks in renewable energy value chains in consultation with the Clean Energy Council.⁴ This code of practice will be developed in line with the Commissioner's powers under section 27 of the NSW Modern Slavery Act and in alignment with the Framework.

Modern slavery as a social procurement issue for NSW government agencies

Why is modern slavery a social procurement issue?

Well-implemented anti-slavery commitments in public procurement will have significant positive impacts on the social development of the people of NSW.

Firstly, they protect the rights of people in NSW who are at risk of modern slavery. Best available survey-based estimates indicate that around 16,400 people in NSW and 41,000 in Australia are in situations of modern slavery.⁵ Workers in high-risk industries (such as cleaning and agriculture) or those who face disadvantage as a result of their gender, race, physical ability, migrant status or language skills, may be more vulnerable to exploitation.

Secondly, social procurement measures to combat modern slavery protect the people of NSW from the economic and social costs, inefficiency and waste caused by market distortions related to labour exploitation. Modern slavery distorts markets, reduces productivity and competition, and undercuts responsible business. Organisations that rely on inputs made through modern slavery show reduced innovation, productivity and human capital investment. The impact of modern slavery in public supply chains can drive down wages, productivity and tax revenues, while increasing public expenses like law enforcement, criminal justice, health services and victim services. The Commissioner has estimated that modern slavery likely causes approximately \$956 million – and perhaps as much as \$9.6 billion – annually in direct costs to the NSW public purse.⁶

Thirdly, anti-slavery measures in procurement protect the interests of the government agencies that adopt them. Effective modern slavery risk management can create commercial value by minimising reputational, regulatory and legal risks; improving business continuity, improving workforce retention; and lowering capital costs through attracting sustainable finance.

Finally, measures to combat slavery through social procurement align with and fulfil Australia's international human rights commitments.

⁴ <https://dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/legal-and-justice/anti-slavery-commissioner/renewables-code-of-practice-discussion-paper.pdf>

⁵ Walk Free, Global Slavery Index 2022, <https://www.walkfree.org/global-slavery-index/country-studies/australia/>.

⁶ Figures calculated based on NSW case data and methodologies used in: S Reed, S Roe, J Grimshaw and R Oliver, *The economic and social costs of modern slavery: Research Report 100* (London: UK Home Office, 2018); S Lyneham, C Dowling and S Bricknell, *Estimating the dark figure of human trafficking and slavery victimisation in Australia: Statistical Bulletin no. 16* (Canberra: Australian Institute of Criminology, 2019).

What impact can NSW government procurement practices have on modern slavery?

NSW public procurement represents an estimated \$42 billion of spending annually. Social procurement practices which seek to mitigate risks of modern slavery in NSW government value chains can therefore have significant positive impacts on communities both within and outside NSW.

Improving our understanding of where modern slavery risk is concentrated in NSW public supply chains will allow agencies to target their social procurement efforts more effectively. Many NSW government agencies procure goods and services associated with heightened modern slavery risks, such as information and communications technology; security, janitorial and cleaning services; and food and agricultural products. Further, as NSW transforms its energy sector, it is important that agencies prioritise ethical sourcing as well as carbon output in their transition to renewables. There is growing evidence of forced labour in certain renewable energy supply chains, including in the manufacture of lithium-ion batteries, photovoltaic solar panels and wind turbines.⁷

Incorporating anti-slavery objectives clearly and consistently throughout NSW government procurement policies and practices will maximise agencies' leverage with suppliers, driving improvements in the wider market. There have been steps towards this already, in line with obligations under the NSW Modern Slavery Act: the NSW Government Procurement Policy Framework now refers to modern slavery considerations; standard form contracts for certain procurement schemes (such as construction and ICT) contain modern slavery clauses,⁸ and information is available on Buy.NSW to help procurement officers plan and implement modern slavery risk management strategies.⁹

The Shared Implementation Framework, in effect since 1 January 2024, aims to build upon and supplement the resources currently available to assist procurement officers to consider modern slavery risk in their purchasing activities. It provides detailed guidance on implementation of anti-slavery measures in practice, as well as resources that procurement officers can draw on to identify and manage risk.

However, NSW government agencies have provided feedback to the Commissioner indicating that significant gaps remain in the integration of anti-slavery measures into procurement practice. To maximise their impact on the social development of the people of NSW, anti-slavery measures must – as explained in the OASC-KPMG Report – be integrated within a strong normative framework, supported by sufficient resources and capability, and accompanied by adequate support and guidance.

Recommendation

The Commissioner recommends that the Standing Committee take note of the Shared Implementation Framework developed by the NSW Anti-slavery Commissioner in consultation with NSW government and other public entities, to assist them in managing modern slavery risks in their supply chains and operations, including the recently published *NSW Anti-slavery Commissioner's Guidance on Reasonable Steps to Manage Modern Slavery Risks in Operations and Supply-Chains*.

⁷ See Renewables discussion paper, p iv; Clean Energy Council, *Addressing Modern Slavery in the Clean Energy Sector* (November 2022); A McGregor et al., *Achieving a just transition: Human rights and renewables* (Norton Rose Fulbright, June 2022).

⁸ <https://info.buy.nsw.gov.au/resources/gc21>; <https://info.buy.nsw.gov.au/resources/micta-icta-user-guide>

⁹ https://info.buy.nsw.gov.au/_data/assets/word_doc/0009/1037349/Modern-Slavery-Checklist.docx; https://info.buy.nsw.gov.au/_data/assets/word_doc/0008/1037348/Modern-Slavery-Risk-Assessment-Template.docx; <https://info.buy.nsw.gov.au/training/modern-slavery-in-procurement>

3 Effectiveness of whole-of-government and agency procurement arrangements in managing modern slavery risk

Discussion

The OASC-KPMG Report finds that successful social procurement reforms were supported by a strong normative framework and clear policy objectives at a whole-of government level.¹⁰ A cohesive, coherent and collaborative approach to social procurement across government agencies and sectors ensures that information and knowledge is shared and that stakeholder engagement is properly coordinated. The report also notes that '[a] central coordinating hub can play a critical role in driving better practice by enabling collaboration, providing technical guidance, and providing...a level of accountability.'¹¹

The Report's findings are supported by feedback provided to the Commissioner's office during the consultation process on the Commissioner's Guidance and the Shared Implementation Framework. Government agencies asked to comment on the draft Guidance indicated a strong demand for whole-of-government arrangements to address modern slavery risk in public procurement. The Commissioner agrees that leveraging whole-of-government mechanisms avoids duplication, reduces administrative burdens, and builds the leverage of smaller agencies. Better integration of anti-slavery considerations within whole-of-government arrangements will therefore deliver greater value to the people of NSW and improve their social development.

Stakeholders proposed that whole-of government arrangements could be leveraged to integrate modern slavery risk management efficiently within existing due diligence, data collection and contract management mechanisms. This could include, for example:

- **Due diligence:** centrally-led or collaborative supplier engagement processes to perform due diligence and collate supplier risk data from questionnaires and audits, leveraging existing systems such as Buy.NSW, Supplier Hub and Spend Cube. This would reduce the burden on suppliers by ensuring they only have to 'tell us once', facilitate agencies' compliance with annual reporting obligations, and streamline contract management, monitoring and evaluation processes.
- **Supplier obligations:** incorporating modern slavery provisions into whole-of-government prequalification schemes, and contracts, tender processes, and the NSW Supplier Code of Conduct in a clear and consistent manner.
- **Grievance mechanisms:** creating central reporting and grievance mechanisms where concerns about modern slavery in NSW government supply chains can be raised, investigated and resolved.
- **Working Group:** the establishment of a cross-functional Working Group comprising key stakeholders, potentially stretching beyond NSW Government agencies to other public entities with anti-slavery obligations under the legislation.
- **Engagement with impacted communities:** centralised mechanisms for engaging with communities vulnerable to, likely to be impacted by, or with lived experience of modern slavery.

The Commissioner notes that his Office is naturally placed to act as a 'central coordinating hub' for NSW government agencies as they undertake their due diligence and reporting requirements under

¹⁰ OASC-KPMG Report, p 7.

¹¹ *Ibid*, p 17.

the NSW Modern Slavery Act. The Commissioner is committed to assisting covered entities with coordination, training and technical support, as well as to monitoring covered entities' annual reporting to ensure transparency and accountability. His Guidance and other resources that form part of the Framework are a key resource for agencies as they implement these obligations.

However, NSW government agencies have expressed a need for additional whole-of-government mechanisms, which are listed in the bullet points above. Provision of these additional capabilities is squarely a question of resourcing. Incorporating modern slavery considerations into centralised procurement infrastructure, such as due diligence platforms, schemes and contracts, and grievance mechanisms, will require collaboration and resourcing, not only for the Office of the NSW Anti-slavery Commissioner, but also across implementing agencies.

Recommendations

The Commissioner recommends that the Standing Committee report to Parliament on the need for adequate resourcing of the Office of the Anti-slavery Commissioner and of the more than 400 NSW government agencies and other NSW public entities with new modern slavery due diligence and reporting obligations. This resourcing should be adequate to allow for:

- a. centrally-led or collaborative supplier engagement and contract management processes to facilitate due diligence on supplier modern slavery risks
- b. leveraging existing systems such as Buy.NSW, Supplier Hub and Spend Cube to collate and analyse data relevant to supplier modern slavery risk
- c. incorporating modern slavery provisions into whole-of-government prequalification schemes, and contracts, tender processes, and the NSW Supplier Code of Conduct in a clear and consistent manner
- d. the creation of centrally-led or collaborative grievance mechanisms for reporting, investigating and resolving concerns related to modern slavery, and
- e. establishing centrally-led or collaborative mechanisms for engaging with persons and communities impacted by modern slavery in NSW public value chains.

Consultation with public buyers may be necessary to assess these resourcing needs, including through the creation or expansion of whole-of-government arrangements such as those discussed in Part 2 of this submission.

4 Current capacity of procurement officials in government agencies to assess and monitor supplier modern slavery risk

Discussion

Another key finding of the OASC-KPMG Report is that social procurement initiatives have the most impact on government practices, supplier practices and social outcomes where (a) they are financially well-resourced, and (b) agencies are invested in procurement practitioners' capability to implement social outcomes.¹²

¹² OASC-KPMG Report, p 11.

The OASC-KPMG Report indicates that social procurement measures may require dedicated resources, and that these resources should be allocated evenly across all levels of government.¹³ In addition to financial resources, the Report suggests the use of local / regional subject-matter experts to support procurement staff to monitor supplier compliance, assist in conducting tenders, and provide training and education.¹⁴ The Report also emphasises the importance of engagement with the broader market in developing and implementing procurement reforms.¹⁵

Feedback provided to the Commissioner strongly supports these findings. Many stakeholders emphasised that implementing due diligence and reporting obligations under the NSW Modern Slavery Act will require additional personnel, budget and informational resources. In particular, stakeholders indicated a need for additional contract management resources to facilitate effective engagement with suppliers and other stakeholders; data collection and reporting; and transactions involving heightened modern slavery risk.

In line with his statutory functions, the Commissioner is committed to strengthening the capacity of NSW procurement officials to assess and monitor modern slavery risks in their value chains. His Framework seeks to provide a standardised approach to social valuation in the area of modern slavery risk, through detailed implementation guidance and resources for government agencies. It includes risk management tools, the GRS Model Tender and Contract Clauses, and reporting guidance. In November 2023, the Commissioner delivered a training session to NSW Procurement professionals, a recording of which is available to NSW government buyers through the ComPrac Resource Hub. In the coming year, the Commissioner will work with NSW government agencies to deliver further targeted training on modern slavery in public procurement.

However, the Commissioner's resources and mandate are limited, with just 2.0 FTE dedicated staff positions available to develop and roll out training, assist reporting entities, and monitor over 400 annual reports. Further financial resources and personnel will be required to enable NSW government procurement officials to effectively assess and monitor modern slavery risk, in line with their obligations under the NSW Modern Slavery Act.

The Commissioner notes that certain resource requirements identified by stakeholders, such as those related to data collection / analysis and supplier engagement, could – as noted above – be addressed by establishing or strengthening the whole-of-government arrangements proposed in Part 2, above.

5 Opportunities for co-regulation and other incentives

Discussion

Social procurement initiatives are most effective when developed in consultation and collaboration with industry. The OASC-KPMG report highlights the role of industry engagement in ensuring that policy requirements are realistic and aligned to the capacity of suppliers, facilitating innovative service delivery, providing guidance relevant to market players, flagging implementation hurdles and facilitating continuous improvement.¹⁶

The incorporation of anti-slavery measures into NSW government procurement provides a good opportunity for collaboration, as government agencies' due diligence and reporting obligations

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid*, p 12.

¹⁶ KPMG-OASC Report, p 12.

under the NSW Modern Slavery Act can complement private sector modern slavery reporting obligations under federal modern slavery legislation. Aligning procurement practices with industry initiatives can create synergies and drive improvements across the public and private sector.

To this end, the Shared Implementation Framework developed through consultation between the Commissioner and NSW public buyers during the course of 2023 seeks to encourage public buyers to work with their suppliers to improve understandings of and mitigate modern slavery risk in supply chains. It encourages buyers, for example, to engage with supplier groups and industry bodies in order to generate leverage and take advantage of existing private sector anti-slavery initiatives like supplier questionnaires and audit procedures.¹⁷

The GRS Model Contract Clauses, prepared by OASC with support from the Responsible Contracting Project,¹⁸ also promote shared responsibility between buyers and suppliers. This approach emphasises remediation of human rights harms over resort to contractual remedies like monetary damages. Remediation is also not treated as the sole responsibility of the supplier, but a shared responsibility – with the buyer being obliged to participate if it has caused or contributed to the problem. Only in extreme cases do they contemplate immediate termination of a contract.

The Commissioner intends the Framework, which is publicly available, to be utilised by both procurement officials and suppliers to align modern slavery risk management efforts and facilitate continuous improvement.

The Commissioner’s power under section 27 of the NSW Modern Slavery Act to develop and publish codes of practice presents another opportunity for co-regulation of modern slavery risks in public procurement. In preparing his code of practice on managing modern slavery risks in renewable energy value chains, the Commissioner will consult widely with public buyers, industry representatives, researchers and other stakeholders. The code is being developed through a collaboration between the Commissioner’s Office and the Clean Energy Council, Australia’s peak renewables industry association. The code of practice will reflect and reinforce the principles set out in the Commissioner’s Framework. It will align with the broader NSW regulatory context, Australia’s existing international commitments and obligations, and – where appropriate – industry initiatives and international standards.

The code of practice on renewables will provide an open standard or benchmark, rather than a membership based or assurance initiative. Its uptake and impact are intended to be driven through both voluntary private sector uptake and implementation within NSW public procurement.

By fostering best practice in social procurement, the creation of a renewables code of practice presents an opportunity to attract sustainable finance to Australia’s renewable energy industry and lower its capital costs.

Finally, the Commissioner will convene a two-day Anti-slavery Forum in May 2024. The Forum will bring together government, civil society, unions, business, media, researchers, and affected communities, including people with lived experience, to reinforce a community of purpose and share information and best practice. One day of this Forum will be dedicated to fostering responsible commercial conduct through improving modern slavery risk management and accountability in Australian supply chains. This will be an important opportunity to foster knowledge-sharing and ongoing collaboration between public entities and private sector actors, many of whom have responded to Commonwealth modern slavery reporting requirements by developing robust risk management frameworks.

¹⁷ See Guidance, Part 2.2 (pp 52-3).

¹⁸ <https://www.responsiblecontracting.org/>

6 Tender evaluation criteria and social procurement

Discussion

Operationalising anti-slavery considerations within clear and consistent tender requirements is important in influencing supplier practices.¹⁹ Tender clauses designed to understand and mitigate modern slavery risks also reinforce other tender goals, such as value for money, fair and open competition, and innovation. This is discussed further below in Part 7 of this submission.

As discussed at Part 1 of this submission, some consideration of modern slavery risk is currently incorporated into NSW government tender processes as part of the evaluation of economic development, social outcomes and sustainability goals. However, because modern slavery is often buried deep within supply chains, its impact can be difficult to fully account for within tender evaluations that are primarily concerned with the direct impacts of a procurement within NSW. As noted above, estimates indicate that thousands of people in NSW live in situations of modern slavery. However, to discharge their statutory responsibility to take reasonable steps to ensure they are not procuring goods or services that are products of modern slavery, government agencies should also consider risks of modern slavery in segments of value chains outside NSW.

To assist covered agencies to satisfy their statutory obligations, the Shared Implementation Framework includes guidance on incorporating anti-slavery considerations within tender processes, as well as model tender clauses. These clauses communicate social procurement expectations to suppliers and allow buyers to conduct thorough due diligence. The GRS Model Clauses, including their evaluation guide, are intended to supplement existing clauses in the relevant tender documents and, where used, to be adjusted for consistency with the tender documents in which they are inserted.

Two versions of the GRS Model Tender Clauses have been developed: a Heightened version for procurements with heightened modern slavery risks, and therefore due diligence requirements; and a Streamlined version for other procurements. The Heightened version of the GRS Model Tender Clauses recommends the use of weighted modern slavery evaluation criteria to allow buyers to undertake more extensive due diligence on tenderers, and to factor tenderer responses into a weighted score. The Streamlined version, in contrast, recommends the use of a pass/fail tender schedule. This encourages tenderers to provide modern slavery information without overburdening them, and provides buyers with discretion in evaluating tenderer responses. The use of the GRS Model Tender Clauses will therefore ensure that modern slavery is appropriately evaluated as a social outcome within public tender processes.

The collection of supplier data for Heightened risk tender processes is also intended to facilitate compliance with transactional reporting requirements, set out in the Commissioner's Guidance, which apply from 1 July 2024. These requirements are discussed further in Part 6 of this submission, below. By collecting and reporting supplier information in the context of high-risk procurements (as well as on the use of the GRS Model Tender Clauses and GRS Model Contract Clauses in these procurements), public entities will contribute to the creation of a dataset that can be used to identify areas of risk in NSW government purchasing, and more effectively manage that risk.

¹⁹ KPMG-OASC Report, p 12.

7 Approaches to transparency and accountability of social procurement

Discussion

To ensure social procurement reforms are transparent, accountable, produce their desired results, and deliver value to the people of NSW, they must be accompanied by mechanisms to monitor and measure outcomes. In the context of NSW anti-slavery efforts, transparency and accountability are secured through oversight and supervisory mechanisms, action plans developed at the government or agency level, and monitoring of agencies' annual reporting data.

Function and requirements of supervisory authorities

The main bodies charged with ensuring transparency and accountability over anti-slavery measures in public procurement in NSW are the Commissioner, the NSW Procurement Board and the NSW Auditor-General.

The Commissioner's statutory functions include monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies, and monitoring the effectiveness of legislation and governmental policies and action in combating modern slavery.²⁰ His enforcement mechanisms are, however, limited to naming non-complying agencies on a public register, making recommendations to the Procurement Board, reporting to Parliament, and making public statements or reports.

The Commissioner must regularly consult with the Procurement Board and Auditor-General to monitor the effectiveness of due diligence procedures in place to ensure that goods and services procured by government agencies are not the product of modern slavery.²¹ He may make recommendations to the NSW Procurement Board.

The Procurement Board is itself charged with ensuring 'that goods and services procured by and for government agencies are not the product of modern slavery'.²² It also has the capacity to issue directions or policies to government agencies regarding 'reasonable steps' to achieve modern slavery objectives,²³ and must regularly consult with the Commissioner about the form and content of these directions.²⁴ Government agencies must comply with Procurement Board directions or policies related to modern slavery.²⁵

In addition, the NSW Auditor-General has the ability to conduct risk-based modern slavery audits where it considers appropriate and give advice to the Commissioner as to the result of any such modern slavery audit.²⁶ These audits may consider whether the agency has exercised due diligence in relation to procurement of goods and services, and whether it has complied with Procurement Board directions. In advising the Commissioner concerning a modern slavery audit, the Auditor-General may recommend that the Commissioner exercise his power under section 26 of the NSW Modern Slavery Act to identify a non-compliant agency on the public register he maintains. In practice, however, such audits are likely to be relatively rare.

²⁰ NSW Modern Slavery Act, ss 9(e) and (f).

²¹ NSW Modern Slavery Act, s 25.

²² *Public Works and Procurement Act 1912* (NSW), s 171(b1).

²³ *Public Works and Procurement Act 1912* (NSW), s 175(3)(a1).

²⁴ *Public Works and Procurement Act 1912* (NSW), s 175(4).

²⁵ *Public Works and Procurement Act 1912* (NSW), ss 175(3)(a1) and 176(1).

²⁶ *Government Sector Audit Act 1983* (NSW) ss 38G-38H.

This governance framework gives affected NSW government agencies significant discretion regarding the speed and manner through which they implement obligations under the NSW Modern Slavery Act and related legislation. There are important advantages to this approach: given the diversity of procurement activities across NSW government agencies, it allows each agency (and other covered entities) to implement requirements in a way that works best for them in the devolved procurement environment; and it may foster continuous improvement without penalising agencies that have more limited resources and capability.

However, this approach may pose challenges for transparency and accountability if not accompanied by clear and binding requirements about data collection, record-keeping and reporting. The NSW Modern Slavery Act seeks to address this issue by requiring government agencies to report annually on the reasonable steps they have taken in the reporting period, as well as actions taken in relation to any significant operational issue raised by the Commissioner in the reporting period.

Record-keeping arrangements and agency annual self-reports

In order to provide agencies with clear guidance on reporting and record-keeping, the Commissioner's Framework includes a detailed GRS Annual Reporting Template at Appendix K to the Guidance. The template specifies particular information and data points – some mandatory, and others optional – that agencies should collect and report on in connection with obligations to take reasonable steps.

The Guidance also makes it clear that, for reporting from 1 January 2024, entities should report in two places:

1. By including relevant information in their entity's formal annual report.
2. Using the online GRS Annual Reporting Form on the OASC website.

The online form allows covered entities to share data directly with the Commissioner's office. This provides the Commissioner with direct access to a dataset for analysis, and thus ensures that his office can process annual reporting data within their limited resources.

Additionally, from 1 July 2024, agencies will have to report data on procurements with heightened risks of modern slavery to the Commissioner (**HMSDD Reporting**). From that date, covered entities will be expected to file an online report about each contract the entity is a party to that:

- commenced on or after 1 July 2024;
- has a value of AUD \$150,000.00 (including GST) or more, and
- requires Heightened modern slavery due diligence on the GRS Due Diligence Level scale.

An online report must be submitted within 45 working days after the contract becomes effective.

The online reporting mechanism for HMSDD Reporting will be rolled out in the second quarter of 2024, to allow covered entities time to prepare. The mechanism will capture data allowing the Commissioner to discharge the statutory obligation to monitor the effectiveness of these due diligence efforts.

The exact data fields to be captured and published will be finalised in 2024, through consultation with relevant stakeholders, but are likely to include data relating to:

- who is reporting and when
- identifying details for the procurement and resulting contract
- identifying details for the supplier
- the procurement category
- how and what modern slavery risks were identified in relation to this procurement

- the steps taken by the supplier(s) to prevent, identify, mitigate and remedy modern slavery in line with the Guidance on Reasonable Steps.

Resourcing implications of transparency and accountability measures

Under section 9(1)(e) of the NSW Modern Slavery Act, a central function of the Commissioner is monitoring reporting concerning risks of modern slavery occurring in supply chains of government agencies. The Commissioner's monitoring function is an important statutory mechanism for ensuring transparency and accountability.

The OASC-KPMG report notes the importance of data collection in monitoring the impact of anti-slavery measures in procurement and promoting good practice. It emphasises that this is not a resource-neutral undertaking: it will require technical expertise and resources, standardised frameworks, accountability mechanisms, enhancing suppliers' social procurement capacity, and – importantly – engaging with impacted communities and people with lived experience of modern slavery.²⁷ In order to achieve this, covered entities and supervisory bodies must be provided with sufficient budget and personnel to establish reporting systems, engage personnel with technical expertise, and undertake data collection and analysis.

Agencies' annual and transactional modern slavery reporting will advance the transparency and accountability of NSW public entities' anti-slavery efforts through their publication on the Commissioner's public register. They will also form a dataset which can be analysed by the Commissioner's office. Reporting data will provide an evidentiary basis from which conclusions can be drawn about the impact of the NSW Modern Slavery Act on the social development of the people of NSW. However, as discussed above, collecting, collating and reporting this data will have significant resource implications for covered entities, as well as the Commissioner's office.

The Commissioner is currently seeking funding from the Digital Restart Fund (DRF) to deliver a shared portal for all NSW government agencies and local councils (>400 entities) to manage modern slavery risks in procurement. This portal would provide access to guidance and training resources and materials; contain centralised risk information at the supplier level (integrated with Buy.NSW); provide an automated reporting system; and offer centralised business and risk analytics. This funding could therefore have a transformative impact on modern slavery accountability measures as well as certain whole-of-government arrangements discussed at Part 3, above.

A centralised reporting pool and resulting dataset will also allow NSW Government to demonstrate best in class sustainability efforts, and thereby make NSW sovereign paper (e.g. bonds) more attractive to capital markets, potentially attracting capital cost discounts for future government financing.

Recommendations

The Commissioner recommends that the Standing Committee report to Parliament on the need to fully finance the Commissioner's monitoring function under section 9(1)(e) of the *Modern Slavery Act 2018* (NSW).

²⁷ KPMG-OASC Report, pp 11-12.

8 Modern slavery in the context of NSW government procurement practices

Discussion

Anti-slavery measures should be aligned with other social procurement objectives, and with procurement goals generally, to maximise value for the people of NSW and avoid wasted expense. Notably, there is considerable natural alignment between anti-slavery measures and other economic development, social outcomes and sustainability goals.

Procurement policies that address modern slavery risk will often prioritise local content, local manufacturing, and good local jobs, as anti-slavery measures will protect against exploitation of local labour. These measures will also correct for the economic distortion caused by exploitation of workers in offshore value chains to some extent.

Similarly, anti-slavery measures are likely to improve opportunities for quality training and workforce participation, by ensuring that workers in local value chains are engaged in accordance with labour protections.

Opportunities for diversity, inclusion and the participation of disadvantaged groups, including women and minorities are also likely to be promoted by anti-slavery objectives. Certain disadvantaged groups – notably, temporary migrant workers – face higher risks of modern slavery and labour exploitation in Australia. The generational and historical impact of indigenous labour practices which are now understood as modern slavery should also not be overlooked. Further, considering the impact of modern slavery along value chains may also foster a more comprehensive analysis of this objective.

As discussed in Part 1, modern slavery also has deleterious effects on fair and open competition and innovation. Businesses that rely on labour exploitation distort markets by driving down wages, and fail to invest in human capital.

The Commissioner acknowledges, however, that extensive anti-slavery requirements in procurement processes may create barriers to the participation of small and medium enterprises in NSW procurements. He wishes to emphasise that measures to mitigate modern slavery risk must not impose unreasonable burdens on SMEs or Aboriginal and Torres Strait Islander-owned businesses, as this would have the effect of deterring bidders, weakening competition and reducing value for money.

The Commissioner's Guidance emphasises that agencies should be cautious not to over-burden suppliers, especially SMEs and Aboriginal and Torres Strait Islander entities, with complex or lengthy due diligence requirements.²⁸ The Guidance also recommends certain resources that might be of assistance to SMEs and smaller agencies seeking to combat modern slavery in their supply chains, such as the SME Playbook published by the UN Global Compact Network Australia,²⁹ or the NSW Small Business Commissioner's factsheet, 'Modern Slavery: Information for small business'.³⁰

²⁸ Guidance, p 61.

²⁹ <https://unglobalcompact.org.au/publication-modern-slavery-risk-management-a-playbook-for-australian-smes/>

³⁰ <https://www.smallbusiness.nsw.gov.au/resources/factsheets/modern-slavery-information-small-business>

9 Appendix A: OASC-KPMG Report

PUBLIC SOCIAL PROCUREMENT

Social returns on global public social
procurement initiatives and lessons for
NSW's anti-slavery efforts



April 2023



Office of the
Anti-slavery
Commissioner



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Inherent Limitations

This report has been prepared as outlined with the NSW Office of the Anti-slavery Commissioner in the Scope Section of the engagement letter 9 November 2022. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

KPMG have indicated within this report the sources of the information provided. We have not sought to independently verify those sources unless otherwise noted within the report.

KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form.

Notice to Third Parties

This report is solely for the purpose set out in the Scope Section and for the NSW Office of the Anti-slavery Commissioner's information, and is not to be used for any purpose not contemplated in the engagement letter or to be distributed to any third party without KPMG's prior written consent.

This report has been prepared at the request of the NSW Office of the Anti-slavery Commissioner in accordance with the terms of KPMG's engagement letter dated 9 November 2022. Other than our responsibility to the NSW Office of the Anti-slavery Commissioner, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.



**Office of the
Anti-slavery
Commissioner**

Foreword

In 2018, New South Wales (NSW) adopted some of the most advanced anti-slavery legislation in the world. At the heart of the *Modern Slavery Act 2018* (NSW) and the subsequent *Modern Slavery Amendment Act 2021* (NSW) is a commitment to anti-slavery in public procurement.

Since 1 July 2022, over 300 state government, local council and related public bodies have been obliged to take reasonable steps to remove products of modern slavery from their supply-chains. This commitment places NSW at the forefront of a growing trend around the world to think about how public procurement can both protect human rights and, in other ways, deliver social value returns.

As the state's inaugural Anti-slavery Commissioner, I am tasked with helping the more than 15,000 procurement personnel in NSW figure out how to deliver on Parliament's commitment to anti-slavery. I am also charged, together with the NSW Procurement Board and Auditor-General, to consider the effectiveness of these due diligence efforts - how we ensure a social return on the investment of time, energy and resources that this reform process will require.

This is no small task. Traditionally, risk management in the procurement context has sought to reduce risks to business (or, in the public procurement context, risks to government). But a commitment to anti-slavery in public procurement is a commitment to reduce risks to people. Adjusting complex procurement practices and systems to ensure they effectively identify, manage and remediate risks to people will be a complex, multi-year process.

While NSW is in some respects at the forefront of these efforts, it is by no means alone. Australia is one of five countries - together with the United Kingdom, United States of America, Canada and New Zealand - that have formally committed to use public procurement capabilities to address modern slavery. The G-20 has endorsed such efforts, and other jurisdictions in Europe, including France, Germany, the Netherlands and the European Union, have been developing mandatory human rights due diligence frameworks that will make consideration of modern slavery risks in supply-chains an increasingly routine part of business activity around the world.

Importantly, while each of these initiatives responds to local conditions, they share a common approach, drawn from the UN Guiding Principles on Business and Human Rights, and also reflected in the OECD Guidelines for Multinational Enterprises relating to responsible business conduct. Australia has committed to both frameworks, and the

Commonwealth has sought to make good on this commitment in its own implementation of the federal *Modern Slavery Act 2018* (Cth). Anti-slavery reforms in NSW public procurement reflect the same commitment.

This study, which I commissioned from KPMG as part of a larger package of support intended to accelerate efforts to tackle modern slavery risks in NSW public procurement, identifies six lessons from global practice that will inform our local efforts. Taken together, the lessons point to the need to understand modern slavery risk management efforts in the larger context of social procurement activity.

The study makes clear that in order for NSW's public procurement efforts to be effective in achieving social impact, a sustained and highly collaborative approach will be needed. NSW government buyers and local councils will need guidance, materials, tools, training and support to effectively and efficiently adjust their existing systems and engage suppliers in ways that meaningfully reduce risks to people. The lessons also emphasise the need for close involvement of suppliers and industry associations to ensure these reforms achieve real outcomes for people, at a system or societal level. I look forward to playing my part in fostering this social return, and to close cooperation with other public policy actors to ensure these reforms are adequately resourced, sustainable and effective.

This is an important and significant set of reforms. The lessons in this study will place us in a stronger position to deliver social returns from investment in anti-slavery efforts in a cost-effective and sustainable way. And they point to important insights for other jurisdictions looking to use the leverage offered by public procurement to promote human rights and deliver social value.

Dr James Cockayne
NSW Anti-slavery Commissioner

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Executive Summary

The *Modern Slavery Act 2018* (NSW) (the Act) is part of a growing global regulatory trend mandating social and sustainable disclosure and due diligence within the public and private sector. It also reflects increasing societal expectations that governments and businesses play a role in creating social value through the goods and services they procure. The Act also aligns with Australia's commitment to the United Nations Guiding Principles on Business and Human Rights.

The Act requires government entities and local councils to take 'reasonable steps' to ensure that goods and services procured are not the product of modern slavery. It also creates new reporting obligations for government entities, local councils and state-owned corporations, and empowers the NSW Anti-slavery Commissioner, NSW Procurement Board and Auditor-General to oversee efforts to remove products of modern slavery from NSW public procurement, including considering the 'effectiveness' of the steps taken.

These new public procurement requirements raise questions of policy and practice and provide an important opportunity to holistically consider how NSW government entities can effectively implement social procurement reforms at a whole of government and agency level to deliver positive social outcomes. Given the value of NSW's procurement spend, which at [\\$34 billion annually](#) is the largest in the southern hemisphere, these reforms have the potential to have significant impact on the broader market and business ecosystem.

It is in this context that the NSW Anti-slavery Commissioner engaged KPMG, following an open tender process, to provide specific support as the Commissioner works with NSW government entities and local councils to meet their new due diligence and reporting obligations. This report provides a summary of a short study of public sector social and sustainable procurement initiatives in several jurisdictions around the world. An assessment of public procurement reforms, initiatives and guidance in the Netherlands, the United Kingdom (UK), Sweden, European Union (EU) and the United States of America (US) reveals the following key insights. While these insights and recommendations speak specifically to the NSW context, the broader lessons provide useful guidance for all those seeking to strengthen implementation of social procurement reforms.



Summary of key insights



Normative frameworks

Normative frameworks support government agencies and suppliers to implement procurement reforms. Implementation guidelines, which use consistent terminology, definitions and a standardised approach towards social valuation, underpin more effective social procurement initiatives. Additionally, reforms are implemented more successfully when frameworks provide flexibility for local and regional councils to tailor criteria.



Financial resources and capability

Social procurement reforms require additional financial and technical resources, over and above those required for usual procurement reforms. This includes additional personnel and budget to meaningfully integrate specific social criteria into tenders and to assess social value as part of tender evaluations.



Impact measurement

Impact measurement of procurement reforms requires monitoring and evaluation of societal outcomes by agencies and suppliers. Where monitoring is limited, the requirements of developing action plans and mandatory reporting on specified measurement indicators are useful. This should be accompanied by investment into capability and financial resources required to conduct regular monitoring and reporting of procurement outcomes.



Clear policy objectives

Clear policy objectives, including in relation to the role that each market actor (government, suppliers, and industry associations) and broader civil society can play to achieve these objectives, enhances implementation of social procurement reforms. This is particularly important at the local and regional levels to ensure alignment of all stakeholders on local priorities. Engagement with suppliers and civil society in the development of procurement goals and policy objectives can support the setting of realistic and relevant goals.



Engagement with the broader market

Enhanced engagement with the broader market in the development of procurement goals, tender requirements, and implementation guidance can support implementation. Stakeholders indicated that they valued greater engagement in the development of reforms as it enables market actors to prepare for implementation. Deeper engagement with stakeholders throughout the procurement lifecycle can also lead to greater capability for suppliers and better outcomes for directly affected workers.



Technical implementation support

Procurement teams require pragmatic implementation support and advice on how to integrate and assess social objectives including social value within tenders, and evaluate and monitor outcomes. Suppliers also require support to develop and implement targeted responses to meet social value/risk criteria, and to report on these outcomes. Central support hubs can be effective in coordinating and providing this guidance. Civil society can support suppliers to improve social outcomes.

Introduction

Under the *Modern Slavery Act 2018 (NSW)* (the Act), the NSW Anti-slavery Commissioner has an important role to play in assisting NSW government buyers to remove products of modern slavery from their supply chains. This is an important step towards stronger social and sustainable procurement practices.

Mandatory social and environmental public procurement requirements are increasing globally alongside mandatory human rights and environmental disclosures. These legal obligations reflect growing investor, community and employee expectations that businesses leverage their influence, including in supplier relationships, to minimise the risk of harm to people and the environment to create greater social and environmental value.

In order to understand leading global practices, this report assessed a selection of public procurement initiatives and their impacts on public procurement practices and outcomes. The insights will inform the design and implementation of better practice in NSW and may be relevant for similar discussions elsewhere in Australia and beyond.

This report outlines key insights on the factors influencing the impact of social and sustainable public procurement initiatives in five jurisdictions across three key areas:



Government
Practices



Supplier
Practices



Societal
Outcomes

1. What is in this report

This study assessed five jurisdictions' selected social and sustainable public procurement initiatives, including the Netherlands, UK, Sweden, EU and US. This report summarises insights and lessons from the implementation of these initiatives and identifies opportunities for effective implementation of the Act.

2. Who should read this report

While the recommendations within this report are specific to the role and context of the NSW Anti-slavery Commissioner, the lessons may be applicable more broadly to those designing and implementing broad-based social procurement reforms. In particular, the report considers what tools, resources and capabilities have been the most effective in delivering desired changes in government and supplier practices, in order to deliver the societal and/or environmental impact intended by the respective initiatives. It provides insights for legislators, procurement teams and suppliers.

3. How to read this report

The report is structured as follows:

- The **approach** taken to assess the impact of the selected public procurement initiatives.
- **Key insights** from the research and what this means in the context of the implementation of the Act.
- **Detailed case studies** of the five jurisdictions' public procurement initiatives and lessons learnt for NSW. For each initiative, this report outlines:
 - an overview of the initiative
 - key implementation features
 - impacts of the initiative on government procurement practices, supplier practices and societal outcomes, and
 - factors influencing the impact of the initiative.

Approach

The NSW Anti-slavery Commissioner and KPMG collaboratively agreed on the procurement initiatives from five jurisdictions to be assessed in this report.

These are:

1. The Netherlands: [Manifesto for Socially Responsible Commissioning and Procurement 2022-2025](#) (Dutch Manifesto)
2. UK: [Public Services \(Social Value\) Act 2012](#) (UK Social Value Act) and [Procurement Policy Note 06/20](#) (PPN 06/20)
3. Sweden: [National Public Procurement Strategy](#) (Swedish National Strategy) and the County Council Network on Sustainable Public Procurement (Swedish County Council Network)
4. EU: [Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement](#) (EU Buying Social Guide)
5. US: [Executive Order 13126 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor](#) and [Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts](#) (US Federal Acquisition Regulation (FAR) Reforms).

In determining which initiatives to include in the research, the following factors were considered:

- diversity (geography, legislative vs policy guidance, mandatory vs voluntary, social and/or environmentally focused)
- availability of research and data on the impact of the procurement initiatives contemplated
- likelihood of transferable lessons for the NSW context.

KPMG's research approach involved a combination of desktop research and interviews with KPMG practitioners in relevant jurisdictions, leveraging KPMG's global network of procurement experts.

Framing impact

The following criteria were used to frame our research on the impact of the social procurement initiatives considered in this report:



Government practices

The extent to which the procurement initiatives have:

- enhanced capability within procurement functions
- enhanced cross government / sector collaboration
- strengthened supplier relationship management practices
- increased integration of social value consideration in procurement decision making.



Supplier practices

The extent to which the procurement initiatives have:

- enhanced supplier capability to integrate social/environmental practices into their services
- strengthened targeted social or environmental due diligence conducted
- increased diversity of suppliers within supply chain
- led to supplier innovation in products and services or organisational practice.



Societal outcomes

The extent to which the procurement initiatives have:

- led to an increase in reporting of social and environmental issues or impact within supply chains
- led to identified social or environmental issues being addressed by suppliers
- strengthened socioeconomic outcomes targeted by procurement initiatives.

Key Insights

This section outlines key insights from the assessment of social procurement initiatives and implications for the implementation of the *Modern Slavery Act 2018* (NSW). It summarises the common factors across the initiatives that influence impact on government practices, supplier practices, and societal outcomes. High-level opportunities for the NSW Anti-slavery Commissioner are identified.



01 Government practices



What are the common factors that influence impact of public social procurement initiatives on government practices?

1.1 Sufficient financial resources and capability

- The procurement initiatives that had the greatest impact on government practices, supplier practices and societal outcomes were financially well-resourced and had government agencies had invested in capability of practitioners to implement social procurement processes.
- Interviews with practitioners and lessons from the Dutch Manifesto initiative suggest that social and sustainable procurement reforms require greater financial resources, time and effort compared to other procurement reforms.
- The allocation of adequate financial resources across all levels of government enables government departments to build capability, including by engaging external support, to implement reforms. Examples of effective resource allocation include:
 - **Regional/local experts:** The Swedish County Council Network appointed eight experts from different procurement regions in Sweden to monitor contract compliance and provide training and education to support implementation the Network's initiatives.
 - **Specialist social value procurement staff:** Practitioners suggest that the UK Social Value Act would be more broadly implemented if there were experts to support procurement teams to integrate social value criteria within tenders and the assessment of social criteria as part of overall procurement decision-making.
- Lack of social procurement capability also has flow-on impacts on a government's ability to measure and report on the societal outcomes of reforms.

1.2 Support and technical guidance

- The need for adequate support and guidance for implementing social criteria in procurement processes, was commonly found across the procurement initiatives considered:
 - **Implementation guidance and tools:** Standardised guidance and tools for implementation of requirements, such as the Swedish national model on contract employment terms and the County Council Network's shared supplier code of conduct, facilitate more consistent implementation across government agencies.
 - **Central support hubs:** The Netherlands and Sweden have central hubs which are tasked with providing technical advice, developing procurement tools, and facilitating shared learning across government procurers.

- **Collaboration between agencies:** There is evidence of local councils in the UK and county councils in Sweden effectively collaborating to share knowledge and jointly develop resources.

1.3 A strong normative framework

- The lack of a strong normative framework can impact the extent to which social procurement criteria were embedded into agencies' policies, processes, and activities:
 - **Clear requirements:** In the UK, broad legislative requirements have been a significant limiting factor to implementation of the Social Value Act. Procurement Policy Note 06/20, which provides more specific requirements and guidance for implementation, has recently accelerated implementation of social value in procurement.
 - **Objectives which can be tailored at the regional level:** Procurement reforms which allowed local authorities to set their own goals and procurement criteria which connected to the local community were more successfully implemented at the local level. In the Netherlands, Sweden, and UK, social procurement policies are directed by national government agencies, however local and regional authorities have successfully implemented national policies by tailoring procurement criteria to local objectives.

What does this mean for the NSW Anti-slavery Commissioner?

Consider establishing and resourcing a central modern slavery hub to support implementation of the Act. This hub could, among other things, be resourced to:

- provide pragmatic guidance on how to assess modern slavery risks and conduct supplier due diligence;
- develop and provide specific tools to support modern slavery risk assessments and due diligence;
- develop standardised modern slavery clauses for supplier contracts;
- provide ad hoc advice on the implementation of the Act; and
- support learning through convening of buyer forums, advice and support to procurement teams, and delivery of training.

02 Supplier practices



What are the common factors influence impact of public social procurement initiatives on supplier practices?

2.1 Well-formulated policy objectives and clear tender requirements

- Most reforms pointed to the need for governments to articulate clear policy objectives, as well as the need for government agencies to include specific criteria in tender requirements which will practically achieve these policy objectives:
 - **Clear tender requirements:** In the UK, the lack of specification in tenders of specific social outcomes sought through procurement and the use of generic guidelines made it challenging for suppliers to contribute to social value goals.
 - **Consistent tender requirements:** In the US, unclear and inconsistent requirements for lodging tenders led to confusion among suppliers.
 - **Aligned policy objectives:** In Sweden, policy objectives that were not aligned to the needs of the local area were more difficult for suppliers to respond to.
- While not documented in the case studies, it is KPMG's experience that clearer policy objectives lead to industry collaboration, which enables innovation and alignment on managing similar issues.
- Defining policy objectives should also be informed by good practice stakeholder engagement principles. Major businesses, industry associations, affected stakeholder groups, and civil society should all be part of a broader stakeholder engagement approach. The important role of civil society was demonstrated in Sweden where NGOs brought issues to the fore which have subsequently informed government practices.

2.2 Engagement with market actors in the development of tender requirements and general guidance

- Engaging with suppliers and/or others impacted by procurement changes in the development of specific tender requirements and general guidance can support the effective implementation of public procurement initiatives.
 - **Engagement with suppliers in development of tender requirements:** The Dutch Manifesto initiative showed, for instance, that greater interaction with bidding parties on social procurement requirements was key to setting realistic requirements. Additionally, engagement with suppliers also facilitated innovative service delivery and provided buyers with realistic expectations of what can be delivered.

- **Consultation with industry in development of general guidance:** European businesses also advocated for greater consultation with industry in the development of the updated EU Buying Social Guide to ensure relevant guidance to industry.

2.3 Supplier capability building and deeper engagement along the value chain

- While more mature actors often have social and environmental plans in place, these actors, alongside less mature businesses, generally need partnership, cooperation and support with government and non-government actors to develop capability over time.
 - **Specific support for suppliers:** Market actors, including suppliers, require specific support to meet sustainable and social procurement criteria. This was a key challenge in the implementation of the UK Social Value Act and US FAR Reforms.
- Meaningful and regular engagement with suppliers can provide governments with additional insights on specific risks or implementation challenges and enable continuous improvement. A case study from the electronics industry in Sweden, for example, demonstrated that engagement with multiple market parties on the implementation of contract conditions related to forced labour can yield improvements in the implementation of due diligence several tiers down the supply chain, due in part to enhanced disclosure and transparency.

What does this mean for the NSW Anti-slavery Commissioner?

- Identify and engage key stakeholders in the development of the Anti-slavery Commissioner's implementation roadmap and any modern slavery guidelines and tools. These stakeholders include strategic suppliers, industry representatives and victim-survivors of modern slavery (or their representatives), affected communities, and civil society. This engagement will support the development of a pragmatic implementation approach that speaks to the needs and processes of market actors.
- Encourage government agencies to:
 - articulate modern slavery policy objectives and specific requirements in tender processes; and
 - work in partnership with suppliers to build capability along the value chain.

03 Societal outcomes



What are the factors that influence societal outcomes of public social procurement initiatives?

3.1 Measurement, monitoring, and reporting on societal outcomes

- Measurement and reporting on the outcomes of social and sustainable public procurement reforms is critical to understanding and enhancing the impact of the reforms against their stated policy and agency objectives. Ongoing monitoring also supports the review and strengthening of implementation processes and approaches over time.
 - **National frameworks:** A jurisdiction which has been more successful in measuring impact of procurement initiatives is the UK, where the National TOMs (Themes, Outcomes, Measurements) framework has enabled consistent measurement of social value across the country.
- However, most of the social procurement initiatives considered in this report had limited publicly available empirical evidence on their associated societal outcomes. The common challenges associated with measurement of the impacts of the social procurement reforms are:
 - a lack of technical expertise and resources to support monitoring and enforcement of contract requirements
 - a lack of standardised frameworks for measuring social value;
 - limited accountability mechanisms (e.g., reporting requirements) to support outcomes monitoring
 - a lack of social procurement capability in suppliers which has a flow-on effect for a government's ability to measure and report on the societal outcomes of reforms.

3.2 Engagement with those directly affected and those with other forms of expertise

- Leveraging the experience of directly affected workers, communities, and survivors as well as the knowledge of civil society and external social impact experts provides critical insight into on the ground impact and helps to ensure that reforms are achieving their intended impact.
 - **Local experts:** In Sweden, local experts were appointed to support regional teams to work with both procurement teams and suppliers to understand how best to use procurement to achieve social outcomes.
- Engagement with directly affected stakeholders can also help identify social risks and opportunities and can provide helpful benchmarks to meaningfully measure the impact of procurement reforms. As well as provide recommendations to iterate procurement policies, processes, and support, to achieve the intended impact.

- **Joint factory audits:** Additionally, in Sweden, the County Council Network conducts joint audits to factories of suppliers and engages directly with affected individuals.

3.3 Action plans and reporting mechanisms

- Action plans and reporting requirements are key to ensuring procurement reforms are having the intended impact across government practices, supplier practices, and societal outcomes.
 - **Action plans:** In the Netherlands, the act of developing an action plan was found to have kickstarted the social procurement journey for a number of government agencies.
 - **Reporting requirements:** The measurement and reporting requirements associated with Dutch action plans helped the central hub aggregate data and understand the actual impact of the reforms. Additionally in the US, the reporting requirement associated with supplier compliance plans helped government agencies more easily identify non-compliance.

What does this mean for the NSW Anti-slavery Commissioner?

The NSW Anti-slavery Commissioner has a formal responsibility under the Act to consult on effectiveness of the Act and a mandate to promote effective supply-chain management. The NSW Anti-slavery Commissioner should:

- Articulate clear reporting expectations for affected entities, setting out how they should report against specific societal outcome indicators.
- Establish guidance on how NSW Government entities are expected to measure the impact of modern slavery risk management and due diligence over time. This could include through:
 - a. providing public commentary on the adequacy of modern slavery risk management and due diligence measures based on aggregated reporting data, and
 - b. recommendations on tools and frameworks for measurement, evaluation and reporting of positive societal outcomes against a defensible framework of measurement indicators.
- Publish lessons on the effectiveness of modern slavery risk management and due diligence measures implemented by NSW Government entities to support shared learning and strengthen modern slavery risk management approaches.

Summary of Initiatives

This section outlines in detail the assessment findings of selected public procurement initiatives:

- a) The Netherlands: *Manifesto for Socially Responsible Commissioning and Procurement 2022-2025*
- b) UK: *Public Services (Social Value) Act 2012 and Procurement Policy Note 06/20*
- c) Sweden: *National Public Procurement Strategy and the County Council Network on Sustainable Public Procurement*
- d) EU: *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*
- e) US: *Executive Order 13126 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor and Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts*

Each jurisdiction includes an overview of the initiative, implementation features, and the impact of the initiative against the three domains (impact on government practices, impact on supplier practices, and impact on societal outcomes). Specific findings on factors influencing impact are set out.



The Netherlands



- *Manifesto for Socially Responsible Commissioning and Procurement 2022-2025*

Overview of initiative

The *Manifesto for Socially Responsible Commissioning and Procurement 2022-2025* (the Manifesto) is a voluntary agreement open to government agencies across all levels of government (municipalities, provinces, water authorities and national government). The first Manifesto opened for signature in 2016 and expired in 2021; it was renewed and updated in 2022 and will expire in 2025. To date, the Manifesto has been signed by 170 agencies.

In 2021, the Dutch government released its *National Plan on Sustainable Procurement 2021-2025* (National Plan) which outlines the government's national policy on sustainable public procurement (SPP). The National Plan replaces the previous *Action Plan on Sustainable Procurement 2015-2020* and highlights the positive trends that have occurred since 2015 and the government's vision for continuation.

The National Plan outlines six social goals for SPP (aligned with the United Nations Sustainable Development Goals) in the following areas: environment and biodiversity, climate, circular economy, supply chain responsibility (due diligence), diversity and inclusion, and social return. As the National Plan is not binding on government agencies, implementation is largely achieved by administrative agreements and shared goals. As a result, the Manifesto was developed to:

- provide practical guidance on the social goals and how governments and other parties can meet these goals through public procurement, and
- connect government agencies and other parties to further stimulate ambitious socially responsible commissioning and procurement.

Agencies that sign the Manifesto commit to implementing social procurement processes within their organisation which work towards the six social goals. As part of this commitment, each agency must develop and publish an action plan within one year of signing that outlines their ambition, goals, budget and how they will monitor effectiveness. In the action plan, an agency must lay down which ambition level is pursued for each of the six social goals, what concrete actions will lead to achieving the

Summary

The *Manifesto for Socially Responsible Commissioning and Procurement 2022-2025* is a national government initiative intended to enhance sustainable procurement and contribute to the realisation of policy objectives. Agencies that sign the Manifesto seek to increase the effectiveness and impact of sustainable procurement.

goals, and how much time and budget will be made available for this. Agencies can select from five different ambition levels for each thematic area, ranging from 'Considering' to 'Leadership', to reflect the agency's objectives and maturity. Agencies also commit to annually reporting on progress made against goals set out in their action plan. If a goal is not met, the agency must explain why and outline actions it will take in the following year to meet the goal.

Implementation features

The Dutch Public Procurement Expertise Centre of the Ministry of Economic Affairs and Climate Policy (PIANOo) is the Dutch public procurement expertise centre, which supports agencies to implement SPP through: convening stakeholders, providing training, and acting as a helpdesk for legal information and technical support. PIANOo also plays an important role in monitoring compliance with the Manifesto's reporting requirements.

The Dutch government also provides tools to support implementation of SPP, including:

- convening buyer groups
- implementation guidance for the International Organization for Standardization Sustainable Procurement Standard (ISO 20400)
 - PIANOo outlines that ISO 20400 is identified as the key standard to be used in the context of sustainable procurement
- self-evaluation tools, and
- action plan templates.

Manifesto agencies are also able to receive additional support through PIANOo including, a sustainable procurement network and meetings with other manifesto agencies. There are also opportunities for agencies to achieve greater social and financial returns by working with other Manifesto agencies to procure as a group.

Impact of the initiative

Government practices

- In 2020, the Dutch government commissioned an independent review of the previous Action Plan and Manifesto which surveyed 92 government agencies. The review found that:
 - A higher number of government agencies are now equipped to apply SPP compared to 2015 (from 28% to 54%).
 - Government agencies have stepped up their efforts on SPP across the board. For example, the use of sustainable and social procurement award criteria has increased (from 39% to 49%) and has a larger weight in buying decisions. Sustainable and social procurement criteria are more often included in market consultations (from 18% to 46%). 80% of the agencies also have social return in their social procurement policy. However, cost most often still beats sustainability as the main driver for procurement decisions.
 - Signing the Manifesto kickstarted sustainable and social procurement journeys for many government agencies: 45% of the respondents had signed the Manifesto and drawn up an action plan. A further 12% had signed up but not drawn up an action plan. Interestingly, 10% of the respondents, despite not having signed the Manifesto, had drawn up a plan and begun to implement sustainable and social procurement.
 - For a majority of agencies, the Manifesto had yielded greater awareness across the agency (including amongst board members, management, and budget holders) and integration of SPP. Additionally, almost half of the agencies surveyed indicated that the process of arriving at an Action Plan contributed to achieving results in integrating SPP practices.
 - Although signing the Manifesto is not mandatory, it has had considerably more success compared to previous mandatory measures such as the '100% sustainable procurement in 2010' requirement, as the focus is not on the result, but the impact.
 - Purchasing organisations found that the criteria tool, the PIANOo online platform, meetings (such as regional meeting and a sustainable and social procurement congress) and cooperation and support via networks and academia were the most useful tools in supporting them implement sustainable and procurement goals. In addition to these instruments, government agencies felt that support on specific themes of social procurement led to knowledge

building in the agency.

- Local and regional agencies identified the following additional factors needed to improve implementation of SPP:
 - Additional guidance from the national government, and prioritising SPP on the national political agenda.
 - Additional budget to hire social procurement specialists.
 - Clearer and simpler SPP criteria articulated through the National Plan. The existing criteria were developed for national government's application, but local agencies have also sought to make use of the criteria.
 - Collaboration and partnerships between government agencies with limited SPP capacity and knowledge as well as cooperation between government agencies and market parties.
- Although the Manifesto has been embraced by a significant number of agencies, it is not solely responsible for improving SPP practices across the Dutch government. The 2021 National Plan stated that 'front runner' agencies who are committed to purchasing in a sustainable manner are likely to be involved in the Manifesto, the Circular Procurement Green Deal or one of the learning networks.
- Interviews with practitioners suggest that social and sustainable procurement reforms require greater financial resources, time and effort to embed into government agencies, compared to other procurement reforms.

Supplier practices

- The 2020 review indicated that the procurement initiatives have led to strengthened awareness and sustainability ambitions of some government suppliers.
 - Suppliers feel supported when government agencies systematically include sustainable procurement criteria in tenders and will adjust their policies accordingly.
 - There is evidence that social and sustainable procurement criteria contributed to the development of new sustainable products.
 - There is also more dialogue with the market on social and sustainable procurement. While engagement with suppliers on effective social and sustainable criteria requires an investment of time from the government, they provide new insights and help public buyers formulate and set realistic ambitions.

Societal outcomes

- The 2021 National Plan stated that the Netherlands is one of few countries worldwide that monitors the impacts of SPP. Initial results of the monitoring methods developed show that projects involving sustainable and social procurement have contributed to reducing CO₂ emissions and other kinds of environmental impacts, and to improving the employment outcomes for people with disabilities.
- The first report by the National Institute for Public Health and the Environment on public procurement of sixteen product groups in 2015-16 found that there had been significant impact. The investigated purchases together are estimated to have led to at least 4.9 M tonnes of greenhouse gas emissions avoided during the terms of the contracts (mainly through the purchase of sustainable electricity and solar panels). Bio-based purchasing has avoided the use of 13,000 tonnes of oil equivalents.

Key lessons – factors influencing impact

Input from market actors in tailoring procurement criteria

Improved supplier practices as a result of increased consultation highlights the benefits of involving suppliers and the broader business community in the development of social and sustainable procurement criteria. The involvement of broader market players in the development and ongoing implementation of social procurement criteria can support setting realistic goals and provide suppliers with the opportunity to make organisational changes and tailor their services and products to meet those criteria. This is particularly important at local and regional levels where government agencies can tailor and adapt the SPP criteria to their local area.

Sufficient time and budget to support implementation of social procurement criteria in tender processes

Public agencies need sufficient budget and time to integrate social and sustainable procurement processes into their organisation. It is essential that social procurement criteria is embedded in standard procurement procedures, documents and policies to assist procurers integrate social and environmental considerations into day-to-day decision making.

Budget should also be allocated for hiring specialist staff to consider social and sustainable procurement criteria in decision-making. In addition, agencies should allocate adequate financial resources to monitor the effectiveness of social and sustainable procurement measures, including through engaging technical experts.

Action plans and reporting requirements

Action plans and reporting requirements are effective tools to encourage agencies to plan, resource and set goals to implement social procurement processes. The compliance requirements of the Manifesto have accelerated and improved sustainability practices of government agencies. Government agencies recognise that enhancing the enforceability of SPP could help to improve the rate of roll-out and implementation of goals within action plans. However, it is important that mandatory requirements do not focus on achieving a certain result, and instead focus on taking steps to increase impact.

A central coordinating hub

A central coordinating hub can play a critical role in driving better practice by enabling collaboration, providing technical guidance, and providing and a level of accountability. In the Netherlands, the central coordinating hub facilitated implementation of SPP as:

- a convening body, by coordinating stakeholder engagement and buyer groups
- a technical hub, by providing a platform for information sharing as well as specific tools and advice to support the integration of social and environmental considerations into government procurement decision-making, and
- a monitoring body, by ensuring that Manifesto agencies are held accountable to the commitments articulated in their action plans.

Sweden



- *National Public Procurement Strategy*
- *County Council Network on Sustainable Public Procurement*

Overview of initiatives

National Public Procurement Strategy

The National Strategy, adopted in 2016, outlines the Swedish government's national policy objectives related to public procurement. It also contains tips and advice on how contracting authorities can develop their strategic work on public purchasing. The National Strategy is primarily aimed at central government authorities. However, the government also intends that the 21 county councils, (which account for the bulk of public purchasing in Sweden) and the 290 municipalities also implement the policy in their procurement activities.

The National Strategy contains seven goals, including the goal of 'public procurement which contributes to a socially sustainable society' (SRPP).

In order to achieve this goal, the National Strategy states that:

- Criteria for social considerations should be included in public procurement whenever possible and appropriate.
- Public procurement should promote respect on the part of businesses for human rights in their operations (in alignment with United Nations Guiding Principles on Business and Human Rights).
- Sweden shall not contribute to 'social dumping' through public procurement (the practice where workers are given pay and/or working and living conditions which are sub-standard compared to those specified by law or collective agreements in the relevant labour market, or otherwise prevalent in any country).
- Contracting authorities should stipulate criteria for reasonable conditions of employment in procurement contracts.
- Contracting authorities are encouraged to develop an initial code of conduct or a sustainability policy to clearly demonstrate the responsibility they assume for ensuring a socially sustainable society. The National Strategy sets out the importance of including the principle of universal design at an early stage of the public procurement process, to ensure that contracting authorities think strategically about the social impact (positive or negative) of a product or service.
- Contracting authorities should play a part in increasing

Summary

At a National level, Sweden's *National Public Procurement Strategy* aims to facilitate public procurement that contributes to a 'socially sustainable society'. At a regional level, the County Council Network on Sustainable Public Procurement works together to ensure procurement does not involve human trafficking or violations of workers rights.

employment via public procurement.

- Contracting authorities should enable participation in public procurement for voluntary organisations, social enterprises, and non-profit organisations.

County Council Network on Sustainable Public Procurement

Independent of the National Strategy, in 2010, the Swedish county councils joined forces to establish the County Council Network on Sustainable Public Procurement (County Council Network). The County Council Network aims to ensure products and services they procure do not involve human trafficking or violations of workers' rights.

Implementation features

National Public Procurement Strategy

Implementation of the recommendations contained in the National Strategy is not mandatory. The Swedish National Agency for Public Procurement (National Agency), created in 2015, has an important role in supporting implementation of the Strategy. The National Agency is an independent authority that provides assistance to contracting authorities to procure goods that are more sustainable from an environmental, social and economic perspective. The National Agency also developing tools and guidance for using SRPP, including model sustainability criteria and guidelines.

In 2017-2019, the National Agency commissioned a project aimed at increasing the use of employment clauses in public procurement, one of the recommendations of the National Strategy. The project involved collaboration between Swedish and Finnish government authorities and resulted in the creation of a national model and knowledge bank on employment clauses in public procurement.

The national model includes many interesting aspects, including promoting gender equality and encouraging social enterprise participation in procurement through reserved contracts. As part of the model, the National Agency also developed a tool that helps calculate the socio-economic benefits for the actors involved: the employee, the public sector, the private sector/ company and the total socio-economic benefit for the country.

In 2021, the National Agency publicly consulted on the use of contract terms for sustainable supply chains. This work has led to the creation of draft contract terms for sustainable due diligence, as well as tools and guidance for both procuring agencies and suppliers. Support materials include a self-assessment template, assessment matrix, office audit template, deviation management template and factory audit template.

County Council Network on Sustainable Public Procurement

Since 2012, the County Council Network has had a formal national structure with a national coordinator who is accountable to a five-member national steering committee, representing the chief procurement officers and environmental managers of the 21 county councils. The network also has a group of experts and a dedicated contact point in each procurement region.

The County Council Network provides training and education to members of the expert group to ensure they can properly evaluate suppliers compliance with the code of labour standards, conduct risk assessments, understand social audits and corrective action plans, and procure third-party audits to help the county councils determine whether or not there is breach of contract.

The county councils employ a common supply code of conduct, common supplier questionnaires, and conduct joint factory audits.

Impact of the initiatives

Government practices

The National Strategy and County Council Network have had very different impacts across the three levels of government in Sweden.

National Government

- The two initiatives considered have had limited impact at the national level.
- A 2018 monitoring report by the Swedish Competition Authority found that, although SRPP is a political priority in Sweden, there is limited quantitative data that can be used to analyse implementation of the National Strategy on a national level. The report outlined the below challenges faced by contracting authorities in implementing SRPP:
 - Lack of capability and experience among contracting authorities, suppliers, and decision-makers.
 - Lack of guidance and support, for example guidance materials and criteria.
 - In relation to employment-opportunities: lack of a common national model, lack of e-tools, platforms for planning and follow-up, and lack of acceptance in the private sector and among suppliers.

- Lack of methods for measuring results and effects.

County Councils

- Case studies provide some evidence that the County Council Network has strengthened social procurement practices at a county level. For example:
 - In 2015, an NGO reported on human rights and labour rights violations in Thai factories which supplied at least half of all poultry consumed in Sweden. The report noted that none of the county councils regularly conducted audits and had limited capability for enforcing social criteria in the procurement of food products. In response to the report, the county councils audited two poultry factories, added food items as a risk category, conducted a risk analysis of food items, provided risk assessment training to staff, and created an action plan.

Municipalities

- A 2022 study noted that the 290 independent municipalities have integrated social criteria to different degrees within their procurement processes. One of the implications is that there have been different levels of collaboration among public organisations. Some small and neighbouring municipalities have acted together to develop criteria, while other municipalities have acted individually.
- The creation of the national model on employment clauses has been successful in increasing the use of employment clauses across many government agencies.
 - For example, the Municipality of Helsingborg, which has been working with employment clauses since 2015, has embraced the model. In 2019, the City of Helsingborg had included employment clauses in 105 individual agreements from 33 procurement processes.

Supplier practices

- The impacts of the National Strategy and County Council Network at the supplier level have been documented to some extent.
- A 2016 case study of the electronics industry demonstrates the positive impacts on supplier capability, resulting from the collaborative practices of the County Council Network:
 - In response to an NGO report on labour rights violations in electronics factories in China, the County Council Network initiated a two-year engagement process to ensure its supplier, Dell, used its full leverage to remedy the violations and prevent recurrence. This included the development of new compliance conditions to enhance supplier due diligence, such as improved risk assessment and audit methodology, making corrective action plans more accessible and addressing the root causes of violations over time.
- A 2020 study on employment clauses in public procurement contracts, found that suppliers faced new challenges as a result of the initiatives. This included managing the tension between old and new procurement practices, striking a balance between fulfilling formal responsibilities and performing new practices on an ad hoc basis, and having adequate time and resources to do so.
- A 2021 study of implementation of social procurement policies in the construction sector found the following:
 - Vague or misaligned policies and goals: A major issue for policy implementation is that, although the procurement policies were aligned with the ethos of many organisations in the sector, practical implementation was difficult due to the ambiguity of goals and how they are to be achieved. Additionally, policies are sometimes misaligned with the local needs or suppliers find it difficult to prioritise between policies at the national level and local needs.
 - Need for collaboration and stakeholder engagement: The implementation of social procurement policies requires collaboration between a range of organisations, such as the agency, contractor, and other third parties (e.g., Swedish Employment Agency). However, there are no formalised cohesive practices for implementing policies throughout the sector. Processes related to policy implementation are more effective when they are developed collaboratively with key stakeholders.
 - General lack of capacity and guidance: A lack of capacity and resources is a barrier to implementation of policies as local actors may not have the right

expertise, competencies, finance or staffing. As a result, outcomes are rarely evaluated. Additionally, there was a perceived lack of formalised guidance and support from the national government to practically implement policies at the local level. For example, there were uncertainties about who should be responsible for the evaluation, i.e., either the client initiating the policy implementation or the contractor performing it.

Societal outcomes

- A 2015 case study from the surgical equipment industry demonstrates positive societal outcomes resulting from the collaborative practices of the County Council Network:
 - Following an NGO report on labour rights violations in Pakistan, the county councils embarked on a joint initiative to implement social criteria in their procurement process which set a precedent for Sweden's more systematic approach to social criteria setting. A follow up report found positive developments in factories supplying Sweden and that conditions at sub-suppliers had also improved.
- The 2018 Swedish Competition Authority report noted that more emphasis is needed on measuring and monitoring at the national level to enable effective monitoring of societal outcomes associated with the National Strategy.
- In 2019, the City of Stockholm estimated that the use of employment clauses in hundreds of completed procurements have generated thousands of jobs. However, it is not possible to give more precise figures due to the lack of a unified system to collect and aggregate statistics on social requirements and employment requirements in procurement in Sweden.

Key lessons – factors influencing impact

Clear guidance and tools for implementing social procurement criteria and engagement of market actors in this process

Clear guidance and tools, such as the national model for employment contract clauses, has been effective in increasing implementation of SRPP with respect to employment contracting. However, where guidance or processes related to implementation have not been developed in collaboration with suppliers and stakeholders, they are likely to be much less effective such as in the case of the construction industry.

Clear policy goals which are aligned to the needs of the local area

Setting clear policy goals is key to success in implementation of social procurement policies. Clear goals laid out in tender documentation helps to enable practical implementation of national policies. Additionally, policies are more effectively implemented when local or regional agencies are allowed to set social procurement policy goals that are aligned to their local area. This should be achieved through consultation with stakeholders including market actors and civil society.

Deeper engagement and collaboration along the value chain

Implementing social procurement can require cooperation between multiple parties, including the government agency, supplier, and any sub-contractors at all stages of the procurement process. The outcomes of the electronics contract case study, where both manufacturer and reseller improved their due diligence practices, demonstrates the benefits of long-term engagement with suppliers in order to obtain positive outcomes.

Sufficient resources and capability

Sufficient resources, including the right expertise, competencies, finance and staffing are important to the successful implementation of social procurement. A lack of resources is particularly detrimental to measurement and evaluation of social procurement outcomes, as the construction industry study shows.

Coordinated action by local and regional authorities

Although the formation of the County Council Network preceded the National Strategy, the Network's activities have been highly effective in supporting implementation of SRPP. This example shows that coordinated action at the local level can be achieved through the appointment of a national coordinator and a network of empowered regional representatives and experts, even in the absence of national guidance. The benefits of collaboration at the regional level include greater alignment on procurement activities. The shared pool of resources and use of joint audits by county councils result in more efficient use of resources and minimises capability demands.

United Kingdom



- *Public Services (Social Value) Act 2012*
- *Procurement Policy Note 06/20*

Summary

These reforms require commissioners of public services to consider how they can also secure wide economic, social, and environmental benefits.

Overview of initiatives

Public Services (Social Value) Act 2012

The stated goal of the *Public Services (Social Value) Act 2012* (the Social Value Act) is to help procurers get 'more value for money out of procurement'. The Social Value Act requires public entities at the preparation and planning stage of services procurement to consider a) how social value can be improved by what is being procured and b) how, in conducting the procurement, the entity may act with a view to securing that improvement.

The Social Value Act applies to state, regional and local authorities, bodies governed by public law, associations formed by one or more such authorities or bodies governed by public law, and central government authorities.

Although there are no accountability mechanisms under the Social Value Act, as a matter of good practice, public authorities may keep formal records to demonstrate they have complied.

Procurement Policy Note 06/20

The *Procurement Policy Note 06/20* (PPN 06/20) delivers on a commitment of the central government to 'go further' than the Social Value Act. It creates an additional obligation for central government authorities to explicitly take into account social value, applying a minimum weighting of 10% when awarding goods, works, and services contracts. Central government authorities include all ministerial departments, some other bodies, and the Crown.

Although there are no penalties or reporting requirements under PPN 06/20, evidence of government agency's consideration of social value should be clear from procurement documentation and record keeping.

Implementation features

In 2016, the National Social Value Taskforce developed the National TOMs (Themes, Outcomes, Measurements) framework to support implementation of the Social Value Act. The National TOMs has since evolved the national social value measurement standard used by local authorities, businesses and other organisations across the UK.

In 2020, the PPN 06/20 established the 'Social Value Model' and framework for evaluating social value in the procurement process. Although use of the TOMs framework is encouraged for all suppliers and procurers, only the Social Value Model is required to be used for central government contracts.

At the time that the PPN 06/20 was issued, the central government stated it would be training 4,000 government procurement staff in using the new model.

Impact of the initiatives

Government practices

- Interviews with practitioners in this jurisdiction noted that implementation of the Social Value Act was limited in the first 10 years following its introduction. However, the introduction of the PPN 06/20 has created a renewed interest in the social value agenda, particularly by central government entities. Prior to this, various studies showed that integrating social value into procurement practices was mainly driven by innovative pioneers rather than being consistently applied across the public sector.
- In 2017, a review into the use of social value in the National Health Service found that only 13% of Clinical Commissioning Groups could demonstrate 'highly committed, evidenced and active use' of the Social Value Act.
- A 2019 study found that the Social Value Act has had more impact on local authority practices compared to central government authorities. Central government entities were observed to have made 'very limited use' of social value in procurement. Whereas, at the local council level, the reforms appears to have led to changes in policy and processes and strengthened capability and collaboration. For example:
 - Nearly 45% of local councils now have a social value policy, an increase from the 24% in 2016.
 - There is evidence of some local councils collaborating on ways to incorporate social value into procurement practices, a key factor for success.
 - 63% of local council employees reported that they have a good understanding of social value and the Social Value Act. The closer an employee's role is to the specific and technical provisions of the Social Value Act (e.g., those in procurement and service delivery), the higher their understanding and knowledge appears to be.
 - Some survey respondents felt that the Social Value Act was much easier for local authorities to embrace and apply as 'there's a more direct link to what is commissioned and outcomes for residents'.
- A recent 2022 study of local government organisations found that overall engagement with social value is patchy and inconsistent. While some local government authorities have embraced the Social Value Act, others do not engage at all in social value in public procurement - viewing it as secondary to financial factors.
- Overall, the impact of the Social Value Act and PPN 06/20 has been limited by the weak understanding of social value amongst procurement practitioners.

- A 2022 white paper studied some of the challenges public entities had faced in implementing the Social Value Act and PPN 06/20:
 - Defining which social value activities are required for the tenders, particularly when the entity has no clear social value policy or other data driven social value goal setting. This is made more difficult by lack of guidance and useful tools.
 - Although the TOMs model and the Social Value Model provide a framework for evaluating social value outcomes and measurement, many local councils, particularly in rural areas, feel that these tools provide high-level headlines for broad social issues which do not suit the needs of their local area. As a result, councils are increasingly choosing to take their own approach to social value and create their own localised priorities.
 - Lack of trained staff who can understand and measure social value. This creates challenges for assessing what kind of social value each tender could deliver and for monitoring social value delivery over the life of a contract. Furthermore, there are challenges in collecting and validating social impact data, a requirement of PPN 06/20.

Supplier practices

- There appears to have been a limited increase in supplier capability resulting from these reforms. Challenges faced by suppliers include:
 - The lack of prescriptive tenders outlining specific social outcomes sought through procurement and the use of generic guidelines make it challenging for suppliers to contribute to social value goals.
 - Those suppliers who do not already have social value strategies or plans often include generalised social outcomes within tenders that do not meet the specific needs of the local authorities.
 - Small and medium enterprises are at a particular disadvantage because they are less likely to have social value experts.
- A 2022 study found that the number of contracts awarded to voluntary, community and social enterprises since the introduction of the Social Value Act is low and has remained static, despite supplier diversity being a key goal of the reforms. Charities and social enterprises account for 5% and 10% respectively of all central government and local government contracts. However, this may change as central government authorities are now explicitly looking for more diverse providers, charities, and social enterprises.

Societal outcomes

- Although the TOMs framework provides a measurement framework for social value, there is limited data on the socio-economic impact of the reforms because outcomes are not routinely monitored.
- In a 2019 survey, 55% of local council respondents felt that the Social Value Act had led to better outcomes for residents, although this impact was not quantified.
- A 2022 study observed that 'due to the permissive nature of social value legislation... the potential impact of social value has not been fully realised'.

Key lessons – factors influencing impact

Normative guidance and requirements

Normative frameworks improve uptake of public procurement requirements. The Social Value Act on its own did not result in effective implementation of social value considerations in public procurement because the requirements of the Act were too vague to implement practically. The development of the TOMs framework provided much needed guidance on how to practically implement social value requirements in tenders. Furthermore, the increased requirements of PPN 06/20 have anecdotally coincided with an increase in explicit social criteria within central government tenders.

Local and regional council development of their own priorities for social procurement

Social procurement reforms attract greater buy-in from local councils when they are given the chance to connect impact to local constituencies and priorities. This is because local and regional councils are able to more easily implement social value in public procurement when there is a clearer link to the impact for local areas. Additionally, local and regional councils can create more flexible requirements which do not create unfair challenges or bias against voluntary, community and social enterprises.

Monitoring to show impacts of social value

For the first ten years of the Social Value Act, buy-in across all levels of government was limited. More recent take up of the reforms is, in part, because government agencies have been able to see the return on social value procurement initiatives. This demonstrates the critical nature of monitoring outcomes to be able to measure the impact of social value reforms.

Sufficient resources and capability

Effective implementation of social value in public procurement requires sufficient resources and capability. This includes hiring of specialists and provision of training to employees. In particular, expertise is required to support buyers to integrate specific social criteria into tender documentation and assessment criteria. Public buyers also need to advise suppliers on how they could enhance their organisational approach or innovate services contemplated as part of a tender to create additional social value.

European Union



- *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement*

Overview of initiative

First published by the European Commission in 2011, *Buying Social: A Guide to Taking Account of Social Considerations in Public Procurement* (the Guide) seeks to provide guidelines for public buyers, including governmental and non-governmental stakeholders, on using public procurement to achieve socially responsible public procurement (SRPP).

The Guide contains case studies covering all stages of the procurement process across various EU countries, including good practice examples and lessons learnt.

The Guide has two aims:

1. To raise contracting authorities' awareness of the potential benefits of SRPP, and
2. To explain in a practical way the opportunities offered by the existing EU legal framework for public authorities to take into account social considerations in their public procurement, thus paying attention not only to price but also to the best value for money.

In the European Union, SRPP must be carried out in accordance with the 2014 Public Procurement Directives (the Directives).¹ The Directives do not prescribe a 'one size fits all' approach for public procurement contracts. However, they do make it clear that social aspects may be taken into account throughout the entire procurement cycle, from preliminary market consultation to contract performance conditions. The Guide is credited by many EU countries as a catalyst for notable shift in favour of SRPP between 2011-2014, prior to the passing of the directives that require and provide a broader scope for EU member countries to consider social and environmental outcomes in procurement decisions. It was updated in 2021 to reflect more recent changes in EU legislation, however the core guidance for achieving improved social outcomes in public procurement remains consistent.

Summary

The Guide provides practical advice to members of the European Union on how to achieve socially responsible public procurement.

Implementation features

The Guide is a soft law instrument and does not impose any requirements on member states. Rather, it provides interpretation of the binding Directives and best practice guidance for implementation:

The Directives provide the following:

- Reservations: procurement agencies may reserve the right to participate in award procedures for public contracts for suppliers whose main aim is the social and professional inclusion of persons with disabilities or disadvantaged persons.
- Technical Specifications: procurement agencies can develop 'technical specifications' for tenders and those which do not comply must be rejected.
- Exclusion and selection criteria: Government agencies
 - may exclude a bidder or choose not to award a contract due to non-compliance with environmental, social or labour law obligations
 - must exclude an abnormally low tender where it is due to such non-compliance
 - must exclude bidders where they have been convicted of an offence relating to child labour or other forms of human trafficking.
- Award criteria: contracts covered by the Directives must be awarded on the basis of the 'most economically advantageous tender', with public buyers able to apply a wide range of qualitative and cost-related criteria, including social criteria.

The Directives also include an overarching 'social clause' which requires member states to take 'appropriate measures' to ensure compliance with applicable environmental, social and labour law obligations by bidders. This should be performed at the relevant stage of the procurement process – when applying the exclusion criteria and provisions concerning abnormally low tenders, and when awarding the contract.

¹ Directive 2014/23/EU of the European Parliament and the Council of 26 February 2014 on the award of concession contracts; Directive 2014/24/EU of the European Parliament and the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC; Directive 2014/25/EU of the European Parliament and the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services and repealing Directive 2004/17/EC.

The Guide places significant focus on both mitigating human rights risks and promoting social outcomes. For example, the Guide recommends that procurers:

- Include social conditions in draft contract terms and publish this at the beginning of the tender procedure, with bidders' attention drawn to these conditions.
- Include contract performance conditions which target social and employment-related considerations, and which are linked to the subject-matter of the contract.
- Use mandatory and optional exclusion criteria to ensure that bidders have not committed any violations of applicable social or labour law, or collective agreements.

Although the guide recommends best practice approaches for SRPP, in practice procurers must only exclude suppliers that have been convicted of child labour or human trafficking but are not required to exclude those implicated in other exploitative practices and can continue to select tenders based solely on cost.

Impact of the initiative

Government practices

- Publication of the Guide has influenced the development of EU legislation, which now explicitly includes SRPP considerations (e.g. The 2014 Directives).
- A 2020 report of the Soft Law Research Network (SoLaR) found that, publication of the Guide has also had a clear impact on EU member states' national policies:
 - The 2020 SoLaR highlighted that the Guide caused a notable shift in the public procurement policies of some EU countries towards more deliberate integration of human rights into practices, policies and national legislation. The Guide is referenced by a range of EU jurisdictions including Belgium, Sweden, Denmark and many Baltic States, as being useful.
 - However, a 2020 European Commission study found that member states are not yet fully exploiting the possibilities of public procurement as a strategic tool to support social policy objectives. Analysis by the Institute for Business and Human Rights suggested that the discretionary nature of SRPP considerations under the Directive invites inconsistency in EU-wide implementation and risks a lowest common denominator approach.
- In terms of the impact on government agency procurement practices:

- There is limited publicly available data on the use of reservations, technical specifications, exclusion criteria, and award criteria.
- The Guide is referred to by many social and sustainable procurement professionals as a useful tool to support government entities to integrate social procurement practices across all stages of the procurement process.
- The 2020 European Commission study found that public buyers across Europe are starting to take advantage of these opportunities and demonstrate real social impact in their purchasing.
- However, the European Business Services Alliance (EBSA), which represents up to 40% of businesses in some sectors, noted that price is still the most important criteria in public procurement.

Supplier practices

- The EBSA has called for greater engagement with their members (e.g. businesses) and social partners as part of the process for updating the Guide. The EBSA noted that this engagement would enable drafters to take into account the experience of all impacted stakeholders.
- Supplier and broader market engagement was highlighted in many of the case studies within the Guide as playing a critical role in catalysing market innovation to meet social procurement objectives. Encouraging dialogue as part of procurement practices provides opportunity for suppliers to develop and test new ideas to respond to the goals of social procurement.

Societal outcomes

- The Guide outlines a range of outputs and outcomes from public sector social procurement case studies. For example, procurement impacts include: increases in employment of diverse workforces and people with disabilities, improvement in the quality of adult day care services, and accessibility of water fountains.
- There is some evidence that public sector buyers across Europe are starting to take advantage of these opportunities and demonstrate real societal outcomes in their purchasing. A European Commission report looked at 71 good practice case studies showing how public buyers have implemented socially responsible public procurement to promote employment opportunities, provide opportunities for social economy enterprises, encourage decent work, support compliance with social and labour rights, accessibility for all, respect human rights, and deliver high quality social, health, education, and cultural services.

Key lessons – factors influencing impact

Specific social procurement guidance including case studies

Including specific social procurement case studies in guidance can be a helpful catalyst for change. The Guide's use of case studies facilitated implementation of SRPP by outline how other government entities have integrated social criteria or risk management within each stage of the procurement process. The inclusion of case studies demonstrated an uptake of good practice across a range of sectors which provided guidance and inspired agencies to take action.

Supplier engagement

Supplier engagement is key to the successful implementation of social procurement initiatives. The process of updating The Guide demonstrated the need to engage with suppliers in this process. Greater engagement with suppliers as part of the development of general social procurement guidelines and more specific tender guidance can also support supplier to prepare for social and environmental procurement criteria. Engagement with market actors more generally supports suppliers to innovate their approaches and organisational practices to meet social procurement objectives.

United States of America



- *Executive Order 13126 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor*
- *Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts*

Overview of initiatives

The rules for procurement by US federal agencies are contained in the *Federal Acquisition Regulation (FAR)*. The FAR consolidates public laws adopted by Congress, Executive Orders issued by the President, and treaties that have the force of law in the US.

The FAR applies to federal government agencies including executive departments, military departments, government corporations, and other independent establishments within the executive branch (e.g. the State Department, Army, US Postal Service) in relation to contracts sourced abroad. All Federal agencies must comply with the FAR and are able to issue additional 'supplements' to the regulation which may create further requirements for suppliers for the relevant agency.

Executive Order 13126 Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor

In 1999, *Executive Order 13126 'Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor'* was signed. The reform prohibits use of child forced labour in contracts sourced abroad, by requiring contractors to certify that they do not sell a product on the Department of Labor '*List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor*' or that they have made good faith efforts to determine whether forced child labour was used. Importantly, the regulation includes a carve-out for contractors from countries with whom the US has a free-trade agreement or are a party to the WTO Agreement on Government Procurement (GPA).

The FAR requires an agency to notify potential contractors if a good procured is on the *List of Products Requiring Contractor Certification* as to Forced or Indentured Child Labor that is annually updated by the Department of Labor. In 2022 the list comprised 24 products from 26 countries. If the goods are on the list, the contractor must certify that it (a) will not source from countries listed as high-risk, or (b) has made a good faith effort to determine whether the good was produced with forced or child labour. This certification is only applicable to the 'end product' and not to its components, and unless there is contrary information, the FAR requires the procurement officer to rely on this certification. Contractors are required to notify their contracting officer and the agency inspector general upon

Summary

The FAR essentially establishes a certification scheme whereby suppliers certify that they have made reasonable efforts to avoid certain human rights violations in their supply chain.

receiving 'any credible information' that a human trafficking violation has occurred. A 2022 reform requires agencies to refer contractor reports of potential human trafficking directly to an agency suspension and debarment official.

Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts

In 2012, after two reports highlighted the opportunities for human trafficking created by US procurement, *Executive Order 13627 'Strengthening Protections Against Trafficking in Persons in Federal Contracts'* was signed. The US has long had a policy prohibiting Government employees and contractor personnel from engaging in trafficking in persons. This reform was incorporated into the FAR in 2015, building on existing provisions by creating trafficking-related prohibitions and contract administration requirements for federal contractors and sub-contractors. At the time of signing, President Obama noted that the US Government was the largest single purchaser of goods and services in the world and thus bears a responsibility to ensure that taxpayer dollars do not contribute to trafficking in persons.

The FAR requires that agencies must insert a clause in all contracts that imposes obligations on suppliers to prevent human trafficking and adhere to US law. For contracts that are performed outside the US and exceed \$500,000 USD in value (excluding contracts for commercially available off-the-shelf items), a contractor must prepare a compliance plan containing particular due diligence tasks including reporting any incidents of human trafficking, terminating subcontractors or other parties that engage in human trafficking, and protecting employees exposed to human trafficking. A contractor must annually certify implementation of the compliance plan and must include the substance of the plan in any sub-contracts and contracts with all of its agents. The reform allows for authorities to terminate a contract if an entity or subcontractor is engaged in forced labour or human trafficking and can also suspend them from bidding on future contracts. Authorities can also remove an employee of a contractor or a subcontractor from a job site for suspected non-compliance with the human trafficking provisions of the FAR.

Implementation features

The Department of Labor publishes an online Toolkit for Reducing Child Labour and Forced Labour. While not specific to procurement, this toolkit includes a step by-step guide to create a social compliance system that is broadly relevant to procurement and supply chain management. In addition, the Department of State has issued guidance on prevention of human trafficking and compliance with the law of a country in which services are performed. The Department of Defense and US Agency for International Development have issued similar guidance while the Department of State has funded the creation of an Online Responsible Sourcing Tool that includes resources to help federal contractors, acquisition officers and businesses identify, prevent and address human trafficking risks in supply chains.

Impact of the initiatives

Government practices

- A 2014 study of human rights and government purchasing found that most government entities had limited capacity to monitor and enforce procurement contracts, with some exceptions.
 - The implementation of FAR requirements at some agencies was so weak that 10 years after the enactment of the FAR, agencies continued to award contracts after another agency excluded a contractor from future procurement on statutory grounds of fraud, tax evasion, and national security.
 - Those agencies that have strong practices, such as the General Services Administration, tended to have invested in developing internal capacity for enforcement. Generally, however, the study found that it is difficult to persuade an agency that has generally weak enforcement to step up its capacity solely in response to possible human trafficking or child labour violations, and a more efficient approach may be for two or more agencies to develop and share resources for enforcement of shared human rights standards.
- A 2013 Government Accountability Office report noted that organisations that had the strongest FAR enforcement record had dedicated staff, detailed policies, and referred cases for debarment-based investigations for violation of domestic law outside procurement. Since this report, federal agencies have made progress in implementing these practices, which are particularly well suited to policing violators within global supply chains.

Supplier practices

- Historically, the FAR has a limited impact on supplier practices. Although contractors are required to demonstrate that they have a 'satisfactory record of integrity and business ethics' at the pre-award stage, a 2013 US Senate report showed that 30 of the top 100 violators of federal wage and safety laws were large federal contractors for services such as cleaning, security and construction.

- Interviews with practitioners reveal that a lack of clarity of requirements and a lack of guidance is a barrier for suppliers to meet requirements under the FAR. Practitioners noted that there has been an increase in suppliers seeking professional services advice on how to follow certification requirements. This is partly because of inconsistencies in the legislation (e.g. 'forced labor' is defined in varying ways in the FAR, US trade policy, and ILO Conventions). The lack of clear guidance for interpreting and complying with the 2000-page law contributes to the confusion.
- Practitioners also noted that suppliers have made clear that they want to be consulted on the development of guidance documents and tools.

Societal outcomes

- Overall, the certification requirements have not increased reporting of human trafficking or child labour in supply chains, or helped to address violations when they are discovered.
- The following have been identified as key barriers preventing the FAR from achieving intended societal outcomes:
 - Compliance obligations are limited mainly to certification and do not require general human rights due diligence. Although the requirement to develop a compliance plan for human trafficking does require some due diligence measures, these requirements are not comprehensive and do not require a risk-based approach.
 - Compliance obligations do not apply to contracts sourced from trade partners countries (i.e. certification is not required). This undermines the effectiveness of the scheme and reduces its potential for positive impact on supplier practices.
 - Non-compliance with the FAR is usually discovered in a post-award audit. However, there are challenges in proving non-compliance because the opaque nature of supply chains makes it difficult to prove that a contractor was aware of a violation. This lack of visibility over supply chains was demonstrated in 2013 by suppliers of apparel to stores on US military bases, known as "exchanges", which offer to beat or price match any price from rivals. The New York Times reported that suppliers were surprised to learn that their goods were sourced in factories where fires killed hundreds of workers in Bangladesh.
 - There is a scant record of invoking the FAR's more robust remedies for non-compliance including debarment, suspension, and termination of a contract, suggesting that they are not feasible.
 - Most of the conventional remedies in the FAR (e.g., withholding payments to contractors or seeking liquidated damages) are focused on enforcement of contractor obligations and not designed to address violation of human rights standards when identified in supply chains.
 - Weak understanding and inconsistent implementation of the FAR has also limited impact

Key lessons – factors influencing impact

Implementation guidance and tools developed with industry input

Implementation guidance and support for government agencies and suppliers improve effective implementation of reforms. This is particularly important when reforms are inserted within broader procurement regulations. Guidance should cover definitions of terminology, how the reforms interact with other procurement guidelines, how to comply with requirements, what processes need to be followed to appeal, and provide standard templates for these processes if applicable. It is important that the guidance is created with stakeholder input and covers areas where clarification has been suggested/requested.

Capacity for monitoring and enforcement

Where capacity is limited, even the strongest enforcement measures, such as termination/debarment, are ineffective. Capacity for monitoring and enforcement can be improved through initiatives which focus on capability-building of government procurement officials, such as providing training, hiring dedicated staff and having detailed policies. Furthermore, less severe enforcement measures which focus on capability-building of suppliers, rather than punishment, will be more practical and feasible for government entities to implement.

Remedies that not only focus on compliance, but also address identified human rights violations

The FAR has had limited direct impact on improving outcomes for affected persons. This is predominantly because the remedies for non-compliance are focused only on enforcing compliance rather than addressing human rights violations when they are identified (except for the option to remove an employee). Remedies for non-compliance should not be limited to enforcement mechanisms, but also providing access to remediation for victims of procurement-related human rights abuses.

Selected Resources



Selected Resources

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