



Australian Government



Australian  
**Small Business** and  
**Family Enterprise**  
Ombudsman

# **Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules**

15 December 2023

14 December 2023

**Senator, the Hon Katy Gallagher**

Minister for Finance

Minister for Women

Minister for the Public Service

**The Hon Julie Collins MP**

Minister for Housing

Minister for Homelessness

Minister for Small Business

Dear Ministers

**ASBFEO Procurement Inquiry Report (2023)**

I am delighted to provide you with my Procurement Inquiry Final Report reviewing the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules, as well as the impact on small businesses that participate in Commonwealth Procurement. Your 16 February 2023 request also asked me to consider the impacts of the findings on the implementation of the Buy Australian Plan.

Eleven specific and practical recommendations are made. Together, these actions can achieve the profound change in incentives and behaviours required to address persistent problems and realise the full benefits of government spending through a genuine embrace of small businesses in the supplier community and procurement processes.

The level of collaboration and engagement with the inquiry by Commonwealth agencies and officials, your senior portfolio officers and the small business community was very positive and has helped to shape a path forward that I believe will attract considerable support.

I would be more than happy to personally brief you on the report at your early convenience and to play whatever role you feel would be helpful in supporting the implementation of the proposed reforms.

Yours sincerely



**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman

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The group members (in alphabetical order) were:

- Nicholas Ada, Director, Indigenous Procurement Policy and Targets, Business and Economic Branch, National Indigenous Australians Agency
- Carlie Beach, Director, Small and Family Business Division, Treasury
- Ryan Cassidy, Director, Technical and Operations Procurement and Insurance Division, Department of Finance
- Sarah Chapman, Manager, Sovereign Capability & Supply Chains Division, Department of Industry, Science and Resources
- Catherine Constable, Advisor, Indigenous Procurement Policy Business and Economic Policy Branch, National Indigenous Australians Agency
- Ryan Dawson, Assistant Manager, Industry Participation Policy (Buy Australian Plan), Department of Industry, Science and Resources
- Mary Jefferies, Assistant Secretary, Small and Family Business Division, Treasury
- Sabrena King, Assistant Secretary, Future Made in Australia Office, Department of Finance
- Tim Lawley, Director, Department of Finance
- Gareth Sebar, Assistant Secretary, Procurement & Discretionary Payments Branch, Department of Finance
- Sean Thomas, Manager, Industry Participation Policy (Buy Australian Plan), Department of Industry, Science and Resources
- David Welch, Small Business Advocate, Department of Defence.

The ASBFEO would also like to thank Beau Beckman, Chief Executive Officer of Gurugun, for his help in preparing this report.

The ASBFEO remains responsible for all views and recommendations contained in this report.

## 1. Ombudsman's introduction



Winning a government contract can be life-changing for a small business. As all businesses know, there is no substitute for good customers.

But many small businesses say they feel excluded from the chance to tender for government contracts because they are not part of the 'in-crowd', or find the process involved in bidding to be too complicated, not conducive to competition, opaque, inefficient, and incongruent with private-sector processes.

The Australian Government procured goods and services worth \$75 billion in 2022-23. Despite making up 97% of all businesses, procurement from small business suppliers accounts for only \$8 billion (11%) by value.

While the government is exceeding its 20% procurement target for small and medium-sized enterprises (SMEs), enabling, and encouraging more smaller business to compete for government contracts will help achieve better value for money for taxpayers and advance the Buy Australian Plan, including its ambition to grow First Nations businesses.

### The problem

During the course of our Inquiry, small business told us that the Commonwealth procurement framework is too hard to navigate and often not worth the investment of their time and resources.

Small businesses must first understand the complicated processes, compete on the paperwork with much larger businesses that have dedicated procurement teams, and then work with officials, many of whom themselves find the process confusing and burdensome because they infrequently engage in procurement.

Requests for tender sometimes occur within tight timeframes and in the context of 286 pages (100,000 words) of procedural and policy guidance, in addition to tender documentation and specific departmental requirements.

Government panels (fixed lists of suppliers) often impede small business involvement because they are generally static, can be hard to get onto and infrequently refreshed. Even when on a panel, small business suppliers are not always identifiable, while the very size of some panels discourages small business selection. And being on a panel is no guarantee of work.

Small business owners are also reluctant to use formal grievance processes since complaints are referred to the entity that managed the procurement, creating reputational risk and the potential loss of future opportunities. Even where a complaint is escalated to the Procurement Coordinator (the Coordinator) in the Department of Finance (Finance), the process is neither timely or consequential, with the Coordinator having no authority to compel an outcome.

### Survey of procuring officials

In-depth interviews with 22 senior officials (conducted by the Social Research Centre) revealed that the increasing complexity of procurement priorities and connected policies are adversely affecting officials in line areas who undertake procurements as needed.

As more resources are needed to navigate the procurement process, the less capacity officials have to write 'responsible' requests for tender, consider the policy objectives of procurement, and ultimately engage SMEs. Senior officials also noted that entities were unlikely to be monitoring the implementation of the Commonwealth Procurement Rules (CPRs) changes internally.

These observations were reflected in an online survey of 112 operational staff. Less than two-thirds (62%) had received information or advice that the CPRs specifically had changed. The main frustrations for operational staff were manoeuvring through policies when dealing with complex tender processes (71%) and additional administrative burden (69%). The majority also wanted information about whom to contact for assistance (74%) and further details about how to apply the CPRs (71%) and the exemptions (70%).

Further, both senior officials and operational staff highlighted the difficulty in identifying what qualifies a supplier as an SME, and thereby meeting the 20% target. 78% of operational staff cited difficulty of identification as the most common barrier to them approaching or using an SME. An even higher number reported lack of staffing to write tender responses (81%) as a barrier to SME participation in procurement, followed by lack of knowledge of Commonwealth procurement processes (80%).

Senior officials pointed to increasing professionalism and specialisation as the remedy to complexity, with more resources to support effective end-to-end stewardship of contracts.

To increase SME participation, operational staff recommended systemising the identification of SME suppliers (79%), providing information or education through peak bodies (78%) and panel invitations to SMEs (73%). Better technology to assist market discovery (81%) and match businesses to tenders (78%) was also cited as an important enabler.

These results are consistent with observations made in consultations, namely that procuring officials often have insufficient training, experience, or support to identify SMEs, thoughtfully evaluate alternatives or exercise important discretions with confidence. The ASBFEO also understands that the dread of adverse findings from parliamentary reviews and reports by the Australian National Audit Office (ANAO) reinforces 'safe', overcautious behaviour.

## Critical gaps

The ASBFEO identified three critical gaps between intent and outcomes in Commonwealth procurement requiring urgent attention to change behaviour:

1. Responsibility for interpreting CPRs falls on individual entities, creating different approaches between entities that tends to lead to risk-aversion and a bias towards use of familiar and large suppliers.
2. CPR exemptions for SMEs and First Nations businesses are not well understood and are not widely applied, while the exemptions inexplicably do not extend to mandatory Whole-of-Australian-Government (WoAG) panels.
3. CPR emphasis on not discriminating against potential suppliers by size, location or ownership blunts the policy ambitions and the effectiveness of the Buy Australian Plan, including for SMEs, First Nations businesses, and businesses in sovereign capability and priority industries.

## Recommendations

The policy ambitions of the CPRs, the procurement connected policies and the Buy Australian Plan are worthy and widely supported. The issue is they are not synchronised or enabled by an effective implementation framework.

Decisive action is required to support procurement officials, improve utilisation of exemptions, enhance transparency, and establish a timely and consequential complaints handling process. More active stewardship by Finance is needed to implement and improve the procurement framework.

The Australian Government should ensure procuring officials have access to relevant training, resources, and tools by creating professional procurement and contracting specialists across the Australian Public Service (APS) with a deep understanding of the Buy Australian Plan and active support for SMEs.

The Australian Government should direct and resource Finance to expand and expedite work to operate this 'Procurement Specialist Squad' to develop a procurement professional stream strategy similar to that of the

Data, Digital and Human Resources Professional Stream Strategies. This government-wide resource would work alongside procuring officials to provide direct assistance with complex and infrequent procurements.

To promote more transparent and accountable procurement, the Future Made in Australia Office should be strengthened and become an independent body reporting to the Minister for Finance.

The Coordinator function has proven to be ineffectual and inconsequential. The function should be abolished and replaced with a Procurement Commissioner or similar, to lead the Future Made in Australia Office. The Procurement Commissioner should have independent processes for resolving complaints and the ability to synchronise and support procurements across the Commonwealth. This Office and the Commissioner would be responsible for the active stewardship of the procurement framework and the Buy Australian Plan.

The CPRs, the Buy Australian Plan and associated processes should apply to ensure that the Australian Government operates as a model customer and entrench the Buy Australian Plan into Commonwealth procurement processes, accelerating its implementation, and tracking its progress.

Key supporting measures include:

- removing barriers to entry and participation by SMEs and First Nations businesses, including making available an enhanced small business identification tool
- examining the inclusion of women-owned/women-led and workplace equality considerations in procurement decision-making
- modernising AusTender to make it more accessible, effective, and useful to suppliers, and for performance reporting
- supplementing existing detailed guidance with decision support tools and clear and concise checklists for suppliers and officials
- obtaining, codifying, and reporting indicators of retained economic value and sovereign capability via procuring officials to the Future Made in Australia Office
- systematically reviewing and implementing (where appropriate) the recommendations of independent reviews and audits.

Taken together, these reforms can achieve the profound change in incentives and behaviour required to address persistent problems and realise the full benefits of government spending through a genuine embrace of small businesses in the supplier community and procurement processes.



**The Hon. Bruce Billson**

Australian Small Business and Family  
Enterprise Ombudsman



## 2. Overview

The ASBFEO urges the Australian Government to take action to remove complications in procurement, maximise opportunities for small businesses to compete, enable impartial, timely and consequential reviews of decisions, build the confidence of officials through increasing competence and improved support, and consistently measure outcomes to achieve policy objectives.

Commonwealth Procurement – the process by which the Australian Government acquires goods and services – is a powerful economic lever. As a large customer with contracts worth \$75 billion in 2022-23, the government is well-placed to drive the growth and transformation of Australian small businesses by increasing their participation in procurement.

The Australian Government made a welcome commitment (Ministers Gallagher and Collins, joint media release: A Better Deal for Australian Businesses Under Commonwealth Contracts, 1 July 2022) to be a bigger customer for small and family businesses from 1 July 2022, by modifying the CPRs to oblige officials to source 20% of procurements by value from SMEs, as well as to encourage more proportionate insurance requirements, unbundling of major projects, and greater allocation of tenders to SMEs for Defence contracts.

The Buy Australian Plan aims to complement these measures by maximising opportunities for First Nations businesses, local SMEs, and secure jobs; decoding and simplifying procurement processes; and strengthening both Defence capability and priority industries.

Currently, SMEs account for \$20.5 billion (27%) of procurement contracts by value and small business suppliers account for \$8 billion (11%). The CPRs define an SME as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees. A small business is defined as a business with fewer than 20 full-time equivalent employees.

While the government is exceeding its SME procurement target, more can be done to enable and encourage more small business to compete for government contracts. This will help achieve better value for money for taxpayers and advance the Buy Australian Plan, including its ambition to grow First Nations businesses. Most First Nations businesses are small businesses.

The extent of the challenge is revealed by analysis by the e61 Institute, which found that Commonwealth procurement has increasingly favoured large and existing suppliers since 2014.

It was therefore timely that in February 2023, the Minister for Finance, Senator the Hon Katy Gallagher, asked the ASBFEO to review the effects of the 1 July 2022 changes to CPRs on small businesses and to recommend improvements. We were also instructed to consider the implementation of the Buy Australian Plan.

The ASBFEO has been consulting widely, producing an issues paper, receiving 45 written submissions, and surveying more than 100 procuring officers. We have distilled the insights, frustrations and counsel of small business owners, officials, policymakers, and experts from both the public and private sectors. Many stakeholders have provided feedback on condition of confidentiality.

### **Complexity not complication**

The ASBFEO acknowledges that Commonwealth procurement necessarily entails a degree of complexity. To provide assurance, accountability, and transparency into the use of public resources, Finance maintains the CPRs supported by tools, guidance material and templates. While Finance is the steward of the Commonwealth Procurement framework, each procuring entity is responsible for its own procurement processes and decisions under a highly ‘devolved’ model.

The CPRs are supplemented by Procurement Connected Policies that seek to improve payment times to private suppliers, strengthen the integrity of Commonwealth procurement, support First Nations entrepreneurship, advance workplace gender equality and increase the participation of Australian industry in major projects. The entities that generate these Procurement Connected Policies are responsible for all aspects of implementation.

Whereas the ‘devolved’ nature of Commonwealth procurement is intended to provide flexibility, the lack of active stewardship, effective support tools and resources, professional infrastructure and common performance indicators for policy goals is generating inconsistency, uncertainty, and suboptimal results.

Small businesses without experience in selling to government struggle to understand what they need to do.

When combined, the CPRs, Procurement Connected Policies, and the Australian Government Contract Management Guide amount to 286 pages and approximately 100,000 words, not counting tender documentation or specific departmental requirements. Concise, accessible, and commercially relevant material is lacking.

## Small business experiences

Seasoned small-business suppliers report that officials often appear to fail to value their time or cash-flow constraints, or to provide timely or transparent responses. We have heard cases of officials giving suppliers less than 10 days to submit a tender (contrary to the CPRs), not responding to submissions until months have passed (or not at all) and not receiving any explanation, encouragement, or advice when unsuccessful.

The Department of Industry, Science and Resources (DISR) observed that some businesses have reported that: ‘[I]t sometimes seems to them as though they were invited to tender solely for government to be able to say they made procurement activities accessible to underrepresented groups.’<sup>1</sup>

While this sort of behaviour is infuriating and demoralising for small business owners, they are reluctant to use formal grievance processes. In the first instance, complaints must first be referred to the entity that managed the procurement. If the matter is not resolved, an aggrieved supplier can lodge a complaint with the Coordinator, provided the matter relates only to the specifications of a tender preventing a competitive response.

Yet since the Coordinator does not have authority to compel a procuring entity to reconsider the handling or outcome of its tender process, the complainant is effectively referred back to that entity. Unsurprisingly, the Coordinator has only received approximately 3 complaints a year on average since 2011. The results of these complaints are not transparent.

Similarly, the Commonwealth Ombudsman receives approximately 15 complaints a year. While businesses can take legal action under the Government Procurement (Judicial Review) Act 2018, this option only applies to approximately 11% of procurements.

The limited scope and effectiveness of independent review mechanisms reinforce the fear felt by small business suppliers (and conveyed privately to the ASBFEO in numerous consultations) that making a complaint risks reputational damage and the loss of future opportunities.

A heavy reliance on fixed lists of suppliers, or ‘panels’, further disadvantages small businesses, especially as approximately one quarter (24%) of panels contain only one supplier. Panels are generally static, can be hard to get onto and infrequently refreshed – meaning that some prospective suppliers are prevented from competing directly with established firms for years at a time.

In addition, small-business panel suppliers are not always identifiable by their characteristics, meaning that it is incumbent on officials to undertake additional research to find them. So small businesses invest significant time and resources to join a panel, only to find that they are seldom or never approached.

Further, the trend towards insourcing is heightening concerns about competition and grievance procedures, with some stakeholders emphasising that an extended drought in Commonwealth work will concentrate the market for larger suppliers, as smaller firms will be forced to cut back, sell up or shut down.

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<sup>1</sup> Department of Industry, Science and Resources (DISR), *DISR response to ASBFEO issues paper on CPR review*, DISR, Australian Government, 2023, p 3.

Just as small businesses face obstacles selling to government, so too do many officials encounter frustrations and impediments. Officials are expected to master the detail of CPRs and connected policies across multiple documents, in addition to their entity's requirements and procedures. The ability to identify SMEs and understand exemptions are also significant challenges.

## Survey of procuring officials confirms barriers to SME identification and participation

To assist this Inquiry, the ASBFEO commissioned the Social Research Centre to conduct in-depth interviews with senior officials and an online survey of operational staff. While the bulk of operational staff indicated that materials about CPR changes gave them confidence to procure services in compliance with changes to the CPRs (86%) and that materials met information needs (72%), less than two thirds (62%) stated their entity had provided information or advice to communicate that the *CPRs specifically* had changed.

In addition, senior officials observed that interlocking policies targeting procurement have become increasingly complex, with the competing priorities requiring additional resources to navigate the procurement process. While these changes were manageable for specialised procurement teams, it was the *ad hoc* procurers in line areas who were thought to have been adversely affected.

Consistent with the observations of senior officials, the main frustrations for operational staff were navigating policies when dealing with complex tender processes (71%) and additional administrative burden (69%). The majority also wanted information about whom to contact for assistance (74%) and further details about how to apply the CPRs (71%) and the exemptions (70%).

The most cited barriers preventing operational staff from approaching or using SMEs included:

- difficulty in identifying what qualifies a supplier as an SME (78%)
- capability and/or capacity of SMEs being unknown (77%).

Inversely, 81% of operational staff respondents reported lack of staffing to write tender responses as a barrier to SME participation in procurement, followed by lack of knowledge of Commonwealth procurement processes (80%).

Senior officials commented that:

- identifying SMEs was difficult as there were limited publicly available sources, and panels also didn't identify SMEs
- if the panels were lacking SMEs, it was hard to achieve the 20% quota
- there were also barriers for SMEs to get on the panels initially
- there was an increased burden for administration staff to find SMEs from sources outside of panels.

Senior officials suggested the following solutions to boost SME participation:

- procurement needs to be understood as professionalised and specialised, with more resources available to support effective end-to-end stewardship of contracts
- developing an automated way to identify SMEs, or further information to identify SMEs
- using artificial intelligence to match Requests for Quote (RFQs) to suppliers
- using artificial intelligence to help tender writing, especially for SMEs
- more education and guidance about selling to government, responding to RFQs, and participating in feedback processes



- opportunities for mentoring programs for SMEs
- use of case study examples
- working with peak bodies to educate, provide guidance and promote Government as a potential buyer.

These findings and proposed solutions are consistent with the ASBFEO's consultations. DISR eloquently summed up the impediments for SMEs:

'A key impediment for the department's procurement officials is identifying SMEs. There is not always a clear indication of the goods and services provided by SMEs, and whether a supplier is an SME. Short timeframes involved in supplying to government also present a barrier to procurement officials. SMEs may not have the resources to apply for tender or deliver work under the desired timeframe. This may lead to procuring officials to engaging in larger businesses with more capacity to deliver goods or services in short timeframes. Experience from the department also indicates procuring officials lack confidence to engage SMEs and start-ups. Large suppliers with a proven track record of success either in the private sector or from previous government contracts can seem like the 'safe' option. This leads to new, innovative, and potentially highly capable SMEs being passed over by risk averse procuring officials.'<sup>2</sup>

## Exemplars

At the same time, we have received examples of exemplary endeavours to leverage the expertise and experience of central procurement teams to engage and develop small business suppliers over time. This approach hinges on treating procurement as a relationship rather than a transaction, thereby allowing the entity to reduce risk and extract more value and service, while being a model customer.

Exemplar entities support small business suppliers (including First Nations businesses) by getting to know their capabilities, decoding processes, generating actionable information, addressing any barriers to participation, establishing boutique panels, and providing feedback to unsuccessful bidders.

Models of clear and effective engagement with small businesses can also be found in other areas, such as the Australian Financial Security Authority's (AFSA) Personal Properties Securities Register webpage, [business.gov.au](https://business.gov.au) (run by DISR) and the Australian Taxation Office's (ATO) Cash Flow Coaching Kit and dedicated small business newsroom.

Nonetheless, the evidence surfaced in this Inquiry (and previous ones) suggests that improvements in process, professionalism, reporting and complaints-handling are required to motivate, assist, and elevate procurement across the Commonwealth. Incentives must be properly aligned and more appropriately targeted to objectives.

## Discordances between intent and outcomes

The ASBFEO has identified three critical discordances between the intent and outcomes of Commonwealth procurement requiring urgent attention if behaviour is to change.

First, the flexibility afforded to procuring entities to develop and implement procurement processes that enact the CPRs, and other policy goals is resulting in rigid behaviour. Making individual entities (rather than Finance) responsible for interpreting CPRs is generating disparate internal advice that tends to be risk-averse, heavily qualified, and likely to induce the official to default to familiar and large suppliers. The dread of adverse findings from parliamentary reviews and reports by the ANAO reinforces 'safe', overcautious behaviour.

Second, while there are exemptions to the CPRs for SMEs and First Nations businesses, these do not extend to mandatory WoAG panels.

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<sup>2</sup> Department of Industry, Science and Resources (DISR), *DISR response to ASBFEO issues paper on CPR review*, DISR, Australian Government, 2023, p 3.

Third, the optimising policy ambitions of the Buy Australian Plan are neutralised by the conservative imperative of the CPRs. The emphasis in the rules on not discriminating against potential suppliers by size, location or ownership blunts the incentive for officials to maximise opportunities for SMEs and First Nations businesses. The CPRs unintentionally confound the Buy Australian Plan's objective to strengthen sovereign capability, advance priority industries and provide opportunities for local businesses to participate in global supply chains.

This problem is compounded by the ineffectiveness of the small business and Indigenous Business exemptions, the low ranking of 'broader domestic economic benefits' in value-for-money considerations, and the absence of clear and quantifiable criteria for evaluating these benefits. In addition, the domestic contribution of procurements is not sufficiently captured in a standard form, except for those large projects that require an Australian Industry Participation plan.

In our issues paper, we sought feedback on the merits of targeted procurement measures to support women-owned/women-led businesses and veteran-owned/veteran-led businesses. Our consultations highlighted that the size of the business was a common and more manifest barrier to procurement opportunities, than the characteristics of the owners. We are also aware of the additional complexity and administrative burden that selective procedures would entail, potentially at odds with our proposals to simplify Commonwealth procurement for suppliers and officials. Accordingly, we do not recommend any new targeted procurement measures at this time, noting that the government might wish to consider them at a future stage of system development and improve the mix, dependability, and granularity of data on business characteristics.

The ASBFEO proposes 11 actions to reform procurement mechanisms, which are outlined on the following pages.

### 3. Recommendations

#### 1. Enhance and elevate the Future Made in Australia Office

To ensure accountability, integrity and the successful realisation of procurement policy objectives while facilitating increased competition and innovation in the business sector, the Future Made in Australia Office should become an independent body reporting to the Minister for Finance.

#### 2. Establish an active and independant Procurement Commissioner

Commissioner to lead the Future Made in Australia Office and engage in active stewardship of the procurement framework by:

- driving the Commonwealth to be a model customer that is timely, respectful, and responsive in its dealings with suppliers
- supporting the implementation of the CPRs by enhancing the transparency, fairness, and efficiency of procurement processes
- instituting independent, responsive, and consequential complaint resolution mechanisms and remedies to raise issues (and potentially have issues addressed) during procurement processes
- embedding a small business champion within the Office, which directly reports to the Procurement Commissioner and has authority to:
  - o engage directly with the Commissioner on matters relating to small businesses (including women-owned/women-led, First Nations and culturally and linguistically diverse business participation), similar to the Small Business Advocacy Team in Defence
  - o report on the observations and experience of small business suppliers
  - o contribute a small-business commercial lens to the work of the Office and Commissioner in overseeing the enactment of the CPRs and implementing reforms
  - o assist small businesses in navigating the procurement framework, processes, and dispute-resolution channels
  - o act as the 'complainant' where an aggrieved small business seeks to remain anonymous
- continually engaging and encouraging SMEs, culturally and linguistically diverse businesses, First Nations businesses and women-owned/women-led businesses
- developing and providing effective decision-support tools for officials and guidance material on the CPRs
- providing appropriate information and guidance to businesses on Selling to Government, including fact sheets for responding to tenders and opportunities to engage with Commonwealth entities
- working closely with state and territory governments to deliver economic, social, and environmental benefits to regions, industry sectors and communities
- systematically measuring and assessing the achievement of policy objectives
- reviewing and implementing (where appropriate) the recommendations of independent reviews and audits.

### 3. Continue to improve Defence procurement

The ASBFEO encourages the Department of Defence, which is the largest and most complex procurer in the Commonwealth, to:

- progress initiatives of Capability Acquisition and Sustainment Group (CASG 2.0) to upskill its workforce, increase understanding of industry's capability and capacity, and minimise the burden of working with Defence, particularly for SMEs
- institute early and targeted engagement with prospective SME suppliers, as well as more responsive complaints processes, to reflect the recalibration of Defence procurement processes with the shift to 'speed to capability'.

### 4. Support procurement officials

Finance to:

- ensure procuring officials have access to relevant training, resources, and tools to develop professional procurement and contracting specialists across the APS with a deep understanding of the CPRs, the Buy Australian Plan and broader procurement policy objectives
- work with the Office and the Australian Public Service Commission (APSC) to develop a procurement professional stream strategy similar to that of the Data, Digital and Human Resources Professional Stream Strategies.

### 5. Make AusTender fit-for-purpose

Finance should modernise and improve the functionality and accessibility of information available through the AusTender and Selling to Government websites by providing:

- clear and actionable guidance for SMEs about the process for:
  - o searching AusTender for approaches to market
  - o evaluating tender responses
- oengaging relevant entities undertaking procurement through AusTender.
- an effective contemporary search capability that enables SMEs to discover opportunities relevant to their capabilities
- an effective notification capability that enables SMEs to monitor the progress of procurement processes
- notice of intention to conduct a limited tender under the prescribed conditions of Division 2 subsection 10.3
- clear communication and guidance material for officials to assist with preparing approach to market (ATM) documentation that will not impede small business from participating in procurement opportunities.

### 6. Make 'panels' more transparent, accountable, and conducive to competition

Finance should reform 'coordinated procurement arrangements', commonly known as panels, to increase opportunities and reduce costs for SMEs participation by:

- enabling procurement officials to apply Appendix A Exemptions for SMEs to procurements undertaken through coordinated procurement arrangements
- requiring coordinated procurement arrangements to be refreshed regularly to provide opportunities for new SMEs to participate in procurements

- including standard evaluation criteria that considers SMEs status during establishment and refresh of coordinated procurement arrangements
- limiting the creation and use of department specific panels and increasing use of coordinated procurement arrangements
- emulate the best practice of the Management Advisory Services panel by making provision for all panel suppliers to briefly describe their value proposition and area of expertise.

## 7. Ready and reliable identification of small businesses

The Australian Government should consider if the Small Business Identification Tool, as used by the Payment Times Reporting Scheme, can be adapted for use by officials to easily identify SMEs when using Exemption 17 of the CPRs or for a coordinated procurement.

## 8. Advance women's entrepreneurship

That the ASBFEO continues its work to identify credible policy actions to support women's entrepreneurship including via government procurement, by determining dependable methods to identify women-owned/women-led business for procurement purposes, possibly as an additional feature of the Small Business Identification Tool.

## 9. Institute clear and material reporting

Finance should develop quantifiable and public indicators to measure the performance and effectiveness of the procurement system including the broader procurement policy objectives, such as the Buy Australian Plan. This may include:

- expanding the reporting requirements of entities on AusTender for procurements using a panel arrangement to include the following:
  - o the number and details of the suppliers, including those eligible for Exemption 16 and 17 of the CPRs who were invited to respond to a RFQ, which will reveal the spread of panel suppliers approached over the reporting period
  - o the number of qualified responses
  - o the time suppliers were given to respond to an RFQ
- requesting suppliers to report the time taken to prepare a tender response
- amend subsection 9.13 of the CPRs to enable officials to report the current procurement method on AusTender, rather than the original method used to establish the standing offer
- requiring entities to report on AusTender:
  - o Division 2 subsection 10.3 of the CPRs Conditions for limited tender
  - o Division 1 subsection 7.17 of the CPRs: Providing information
- if a debriefing was made available to all suppliers who responded to the RFQ as required by subsection 7.17 of the CPRs
- the percentage who accepted the debrief
- standardising reporting fields for officials to record variations to contracts on AusTender
- using a measurement framework to assess how public procurement processes and outcomes contribute to achieving strategic policy goals including the Buy Australian Plan.

## 10. Decode rules and guidance

To accelerate the implementation of the Buy Australian Plan, which includes maximising procurement opportunities for small and First Nations businesses, the Australian Government should:

- clarify all requirements and process steps for suppliers under the CPRs – including the multiple dimensions of the ‘value for money’ consideration – with a concise and commercially relevant decision support tool
- introduce a new ‘sourcing strategy checklist’ and an ‘assessment outcomes checklist’ to supplement existing guidance to advance the Buy Australian Plan, for procurements valued up to \$20 million, which is the threshold for Australian Industry Participation Plans
- before a procurement is undertaken, ask officials via the sourcing strategy checklist to indicate whether they have considered:
  - o engaging a First Nations business before approaching the market
  - o engaging an SME
  - o engaging an Australian business
  - o disaggregating a large project into smaller packages to maximise competition
  - o any barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing, increasing scale, or advancing priority industries, national resilience, or sovereign capability
  - o environmental sustainability and use of recycled content
  - o broader domestic economic or social benefits
- require the sourcing strategy checklist to include an ‘if no, please indicate why’ response, which could include three closed answers of ‘price’, ‘capability’ and ‘capacity’, and one open answer of ‘other’ to detail any considerations
  - o the sourcing strategy checklist should be reviewed by a senior executive under the *Public Governance, Performance and Accountability Act 2013*
- require delegates for contracts (other than those requiring an Australian Industry Participation plan) to complete a corresponding ‘assessment outcomes checklist’ that is lodged with the Procurement Commissioner to:
  - o monitor compliance
  - o inform any complaints or investigations
  - o generate comparable data over time to inform the effectiveness of procurement policy objectives, including the Buy Australian Plan
- use a ‘retained economic benefit’ framework to capture, but not prescribe, the contributions of procurements, which can be quantified as:
  - o value of goods and services supplied by domestic enterprises, including SMEs, First Nations businesses, start-ups, or suppliers of innovative goods or services
  - o value of labour/services provided by Australian residents and First Nations Australians
  - o amount of expenditure on capital goods and social infrastructure in Australia.

## 11. Ensure prompt payment of subcontractors participating in procurement

To facilitate prompt payments from prime contractors (engaged by government) to their subcontractors, and to protect small business from unfair business practices, the Australian Government should:

- make clear its expectations of prime contractor conduct towards subcontractors involved in fulfilling the procurement
- provide a mechanism to enable subcontractors to inform the procurement commissioner of practices that are in breach of the government's expectations
- accept the recommendation of the Statutory Review of the *Payment Times Reporting Act 2020* to make publishing the worst and best payers the explicit responsibility of a government or non-government entity separate from the Regulator (where the Review nominated the ASBFEO as a possible option).



## 4. Key findings

### The 1 July 2022 changes to the CPRs

Many submissions to the Inquiry noted that there had been no noticeable change in procurement practices or the behaviour of officials when applying the new rules. Submissions observed no visible increase in the opportunities for SMEs to participate in Commonwealth procurement opportunities. That said, the 1 July 2022 changes to the CPRs had only been in effect for 13 months when the issues paper was released.

### Identifying an SME to apply Exemption 17 of the CPRs

Exemption 17 of the CPRs allows entities to engage directly with SMEs for procurements up to \$200,000 (or \$500,000 for Defence). However, some officials are discouraged from exercising the exemption as they are required to undertake desktop research and verify a supplier by contacting them to confirm their SME status.

Australian Government stakeholders noted greater ease in identifying First Nations businesses because of the access to Supply Nation's verified First Nations business database.

The ASBFEO is aware that some large suppliers are potentially 'gaming' the system by establishing legally distinct affiliates that can be classified as SMEs.

### Disaggregation of large projects

Small business stakeholders consistently observed that large work packages and bundled procurement contracts make it difficult to compete for tenders.

Large projects have continued to dominate procurement processes since 1 July 2022 and SMEs actively participating in procurement have not observed disaggregation of projects. A submission to this Inquiry noted that SMEs in the commercial tenancy advisory and leasing sector have not observed the 'unbundling of major projects'. Further, the ANAO in its 2023 report found that the *Property Services Coordinated Procurement to the Commonwealth of Australia* panel had awarded over 80% of the panels total value for the period 2012–13 to 2022–23 to just two suppliers.<sup>3</sup>

Other submissions acknowledged that disaggregating a large project can introduce a higher degree of integration risk and creates a greater workload for officials in managing additional contracts to deliver the same output. This is particularly apparent if the required resources or expertise is lacking. At the same time, SME participation may be precluded by the bundling of small projects, unless they can secure subcontracting opportunities from larger suppliers.

### Improving payment times for small business subcontractors

Small business stakeholders have highlighted that:

- subcontractors routinely experience extended payment times from prime contractors who themselves are paid promptly by government, despite the Payment Times Procurement Connected Policy (PT PCP) requiring large businesses that are awarded government contracts over \$4 million to pay their subcontractors (up to \$1 million) within 20 calendar days
- payment delays from prime contractors to subcontractors can include non-payment for variations to the contract, and these delays can be protracted if there are disputes over performance

<sup>3</sup> ANAO (Australian National Audit Office) Auditor-General Report No. 11 2022–23: *Australian Government Procurement Contract Reporting – 2022 Update*, ANAO, Australian Government, 2023, p 82.



- many subcontracting agreements are complicated and can include clauses that are ambiguous or disadvantageous to small subcontractors
- the Australian Government needs to do more to address unfair business practices along the procurement supply chain, in addition to late payments.

## **Improving SME awareness of opportunities to sell to the Australian Government**

Submissions noted that SMEs have a low awareness of how to identify opportunities to sell to the Australian Government. Many expressed limited knowledge and understanding of AusTender as the centralised system for publishing Australian Government business opportunities and annual procurement plans. Additionally, the SMEs that are aware of AusTender reported difficulties using the system (particularly when searching for information) and that not all tender opportunities are reported on AusTender.

Low awareness of procurement opportunities is exacerbated through a real or perceived absence of transparency in tender evaluation, combined with complex documentation and processes.

## **Responding to government tender documentation is resource intensive for SMEs**

Small businesses that are new to selling to government find processes difficult to navigate. More generally, tender documentation and 'conditions of participation' can require SMEs to verify information that is not applicable to their business models or is complex and difficult to understand. Excessive requirements in tender documentation disadvantage SMEs and create an unintended benefit for larger firms, with both the human and financial resources to address the criteria.

Submissions noted that some specifications in tender documentation can too closely resemble proprietary offerings. They stressed the importance of approaching the market with a well-articulated problem and inviting prospective suppliers to propose solutions.

## **SMEs want to engage with entities**

Some submissions noted that when feedback was provided to a supplier (regarding a response to an ATM), it assisted with their understanding of the procurement process and how they could improve future responses. However, in most circumstances SMEs do not receive feedback from entities regarding their response to an ATM, despite the CPRs requiring officials to make debriefing opportunities available to SMEs.

Government entity submissions noted that engaging with SMEs improves their understanding of those SMEs' capabilities and instils the official's confidence to approach SMEs for future procurement opportunities. These insights are consistent with the ANAO findings in their 2022 update, where 9 out of the top 10 suppliers by associated standing offer notice, were larger well-known organisations for the period 2012-13 to 2021-22. Often larger organisations are assessed to be 'less risky' than engaging a lower profile, less familiar SME.

## **Panels unintentionally create barriers to competition**

Submissions noted that established lists of suppliers – known as panels – are often numerous and extensive, making it difficult for small businesses to join and then stand out against larger competitors. Some submissions noted that after successfully joining a panel (and after investing significant time and resources into the tender process), they have never received an RFQ. Consequently, this has resulted in concerns being raised by suppliers on the use of panels by officials and the lack in transparency regarding requests for quotes, and how many suppliers were approached.

Additionally, panels do not have standard requirements to be reviewed and refreshed at regular intervals, further restricting opportunities for SMEs to join and compete, while stifling innovation.

## **Government and SMEs need more transparency in procurement and greater accountability for decisions**

Despite the CPRs outlining expectations of entities for monitoring and reporting their procurement activities, submissions consistently pointed to a lack of transparency in procurement processes and a lack of accountability for decisions.

Submissions have also expressed uncertainty about how the Australian Government monitors entities' compliance with the CPRs and the SME whole of government procurement target. Further, some submission made recommendations for the government to implement a monitoring and reporting framework that would support a consistent and systemic understanding of the implementation of the CPRs.

## **'Speed to capability' in Defence risks limiting opportunities for SMEs**

Constraints of time, resourcing and budgets are reinforcing the Department of Defence's reliance on major service providers to arrange, integrate and oversee multiple subcontractors to deliver enhanced capability. Feedback to the Inquiry suggests the need for:

- stronger incentives for senior officials to build and measure sovereign capability
- more transparent tender processes and more frequent refreshing of panels
- independent and early inspection of contract scope, specifications, and processes
- greater monitoring and enforcement along supply chains to prevent unfair business practices
- more effective procurement review and complaints mechanisms.

At the same time, the Inquiry has heard the view that Defence procurement processes are more orderly and predictable than those of other entities, and that successful SME suppliers are those who treat major service providers as their primary client. The ASBFEO encourages Defence to support small suppliers (who previously sold directly to government) to adjust to collaborating with major service providers.

## **Greater effort is necessary to improve technical expertise of APS officials**

Both Australian Government and SME stakeholders observed the need for greater investment in officials' procurement capabilities. Specifically, submissions recommended investing in officials' procurement and contract management capabilities. This will improve their understanding of the CPRs, associated compliance, and develop commercial purchasing acumen to minimise instances of poorly designed procurement processes that disproportionately disadvantage SMEs.

## **Simplify procurement processes and enhance guidance material**

Australian Government stakeholders have consistently suggested that simplifying procurement processes, including documentation and guidance material, will help officials deliver better outcomes for SMEs and the Australian Government.

## Enhance the capability of the Future Made in Australia Office to improve transparency and accountability

Officials and SMEs remain challenged by ambiguity as to how the Office will deliver the Buy Australian Plan. The limited information available makes it evident that the Office's functions could be strengthened to support both SMEs in selling to the Australian Government, and officials in navigating procurement processes and eliminating their negative perception of SME suppliers.

## Strengthen procurement complaints functions for independence and remediation

Options to resolve a procurement dispute and to have the process reviewed independently of the procuring entity are limited under the existing complaints mechanism. Previous Australian Government audits of the existing Coordinator have found issues with accessibility and with responsiveness to and timeliness of handling supplier complaints.

## Survey of Australian Government officials

In-depth interviews with 22 senior officials (conducted by the Social Research Centre) revealed that the increasing complexity of procurement priorities and connected policies are adversely affecting officials in line areas who undertake procurements as needed.

As more resources are needed to navigate the procurement process, officials have less capacity to write 'responsible' requests for tender, consider the policy objectives of procurement, and ultimately engage SMEs. Senior officials also noted that entities were unlikely to be monitoring the implementation of the CPR changes internally.

These observations were reflected in an online survey of 112 operational staff. Less than two-thirds (62%) had received information or advice that the CPRs specifically had changed. The main frustrations for operational staff were manoeuvring through policies when dealing with complex tender processes (71%) and additional administrative burden (69%). The majority also wanted information about whom to contact for assistance (74%) and further details about how to apply the CPRs (71%) and the exemptions (70%).

Further, both senior officials and operational staff highlighted the difficulty in identifying what qualifies a supplier as an SME, and thereby meeting the 20% target. 78% of operational staff cited difficulty of identification as the most common barrier to them approaching or using an SME. An even higher number reported lack of staffing to write tender responses (81%) as a barrier to SME participation in procurement, followed by lack of knowledge of Commonwealth procurement processes (80%).

Senior officials pointed to increasing professionalism and specialisation as the remedy to complexity, with more resources to support effective end-to-end stewardship of contracts.

To increase SME participation, operational staff recommended systemising the identification of SME suppliers (79%), providing information or education through peak bodies (78%) and panel invitations to SMEs (73%). Better technology to assist market discovery (81%) and match businesses to tenders (78%) was also cited as an important enabler.

These results are consistent with observations made in consultations, namely that procuring officials often have insufficient training, experience, or support to identify SMEs, thoughtfully evaluate alternatives or confidently exercise important discretions. The ASBFEO also understands that the dread of adverse findings from parliamentary reviews and reports by ANAO reinforces 'safe', overcautious behaviour.

## 5. Issues, evidence and recommendations

### Future Made in Australia Office and Defence procurement

#### **Recommendation 1: Enhance and elevate the Future Made in Australia Office**

To ensure accountability, integrity and the successful realisation of procurement policy objectives while facilitating increased competition and innovation in the business sector, the Future Made in Australia Office should become an independent body reporting to the Minister for Finance.

#### **Recommendation 2: Establish an active and independent Procurement Commissioner**

Abolish the Procurement Coordinator function and establish an independent Procurement Commissioner to lead the Future Made in Australia Office and engage in active stewardship of the procurement framework by:

- driving the Commonwealth to be a model customer that is timely, respectful, and responsive in its dealings with suppliers
- supporting the implementation of the CPRs by enhancing the transparency, fairness, and efficiency of procurement processes
- instituting independent, responsive, and consequential complaint resolution mechanisms and remedies to raise issues (and potentially have issues addressed) during procurement processes
- embedding a small business champion within the Office, which directly reports to the Procurement Commissioner and has authority to:
  - o engage directly with the Commissioner on matters relating to small businesses (including women-owned/women-led, First Nations and culturally and linguistically diverse business participation), similar to the Small Business Advocacy Team in Defence
  - o report on the observations and experience of small business suppliers
  - o contribute a small-business commercial lens to the work of the Office and Commissioner in overseeing the enactment of the CPRs and implementing reforms
  - o assist small businesses in navigating the procurement framework, processes, and dispute-resolution channels
  - o act as the 'complainant' where an aggrieved small business seeks to remain anonymous
- continually engaging and encouraging SMEs, culturally and linguistically diverse businesses, First Nations businesses and women-owned/women-led businesses
- developing and providing effective decision-support tools for officials and guidance material on the CPRs
- providing appropriate information and guidance to businesses on Selling to Government, including fact sheets for responding to tenders and opportunities to engage with Commonwealth entities
- working closely with state and territory governments to deliver economic, social, and environmental benefits to regions, industry sectors and communities

- systematically measuring and assessing the achievement of policy objectives
- reviewing and implementing (where appropriate) the recommendations of independent reviews and audits.

### **Recommendation 3: Continue to improve Defence procurement**

The ASBFEO encourages the Department of Defence, which is the largest and most complex procurer in the Commonwealth, to:

- progress initiatives of Capability Acquisition and Sustainment Group (CASG 2.0) to upskill its workforce, increase understanding of industry's capability and capacity, and minimise the burden of working with Defence, particularly for SMEs
- institute early and targeted engagement with prospective SME suppliers, as well as more responsive complaints processes, to reflect the recalibration of Defence procurement processes with the shift to 'speed to capability'.

### **Issue to be addressed**

Small businesses and other minority businesses are often at a disadvantage compared to larger businesses when competing for Australian Government procurement opportunities. These businesses have less opportunities to engage with government entities and face resourcing constraints to understand the procurement framework.

When SMEs can participate in procurement opportunities and where the CPRs may not have been followed, SMEs have limited options to have the process reviewed independent of the procuring entity. Further, small businesses have raised concerns throughout this Inquiry that if they do question the evaluation of a procurement there is a risk of reputational damage and any future opportunities to bid for Commonwealth work are forgone.

For example, many submissions to this Inquiry requested confidentiality. The individual businesses expressed reasonable concerns that they may be identified through the specific case examples they provided, which may impede their ability to be considered for future procurement opportunities.

### **The Future Made in Australia Office**

The Office has been established in Finance to support the Buy Australian Plan and actively support local industry to take advantage of Australian Government purchasing opportunities. The Office will undertake the following activities:

- coordinate implementation of the Buy Australian Plan across the APS
- strengthen engagement with states and territories to deliver economic, social, and environmental benefits to regions, industry sectors and communities
- build the procurement and contracting capabilities of the APS
- engaging directly with businesses and industry sectors to help lift their competitive capabilities.<sup>4</sup>

The Office has been given distinct functions to build procurement capability in both officials and the business sector and to ensure the strategic policy objectives are delivered. To support the delivery of the functions of the

<sup>4</sup> Department of Finance, *Buy Australian Plan*, Department of Finance Website, Australian Government, 2023, accessed 25 October 2023.



Office, the government has provided \$18.1 million over 4 years from 2023–24 and \$1.5 million per year ongoing to Finance under the Buy Australian Plan budget measure.

In addition to these functions and to enhance transparency, fairness, and the efficiency of the procurement framework, the government should abolish the Coordinator role and its associated responsibilities and establish the Procurement Commissioner within the Office.

This will reduce duplication of the requirement to increase stakeholders understanding of the procurement framework, for which the Coordinator and the Office have been given responsibility. By removing this duplication, the complaints handling function will be strengthened by providing government with an accountability mechanism for measuring the success of strategic procurement objectives.

Enabling the Office to be independent of Finance, while still reporting to the Minister for Finance, will support the department's commitment to the Office working independently of whole-of-government domestic procurement and international trade policy functions.<sup>5</sup>

Moreover, the independence of the Office should support the monitoring of the performance of procurement strategic objectives, the reliable reporting of compliance with the CPRs and identify opportunities for improvement. In addition, the Office would provide an independent complaint mechanism for reporting credible suspicions of breaches of the CPRs or related probity concerns without fear of adverse consequences.

Further, a more effective complaints mechanism would include timely remedies, such as an actual change in approach to properly reflect the recent adjustment to CPRs, and/or an opportunity for a small business to be able to contest a procurement opportunity.

Various procurement inquiries and Auditor-General reports have concluded that government procurement governance frameworks need to be responsive and adaptive to changes in the economy and business models. The Office should be resourced to deliver an enduring function that supports capacity-building for both officials and small businesses.

## Engagement opportunities for small business and Commonwealth entities

A priority of the Office is to engage directly with businesses and industry sectors to help lift their competitive capabilities to access government procurement opportunities. Throughout this Inquiry, businesses, industry associations and officials all raised that many small businesses struggle to identify pathways to engage with Commonwealth entities on procurement opportunities, and the ability to access clear information to assist with building capability in understanding the procurement framework.

Larger organisations can engage with Commonwealth entities through forums such as the Secretaries Procurement Consultative Roundtable, which is chaired by the Secretary of Finance to discuss issues relating to procurement and to test potential policy impacts with stakeholders.<sup>6</sup> SMEs do not have access to an equivalent engagement model that enables an opportunity to discuss challenges in relation to government procurement and build capability.

Many submissions identified that the complexity of the procurement framework can make it difficult for small businesses to be proficient in all areas. While successful SMEs possess the appropriate skills for their business, they do not necessarily have experience and knowledge on how to effectively bid for Commonwealth procurement opportunities. The availability of accessible information to help understand procurement processes and design responses to tender opportunities is also limited.

<sup>5</sup> Department of Finance, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–2022) and 5 (2022–23) Submission 11 Supplementary Submission: Question on Notice 4 (Mr Hill)*, Department of Finance, Australian Government, 2023, p 2.

<sup>6</sup> Department of Finance, *Submission to the Joint Committee of Public Accounts and Audit: Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)*, Joint Committee of Public Accounts and Audit, Department of Finance, Australian Government, November 2022, p 9.

The current framework consists of the CPRs, 5 Procurement Connected Policies, guidance material relating to procurement practice, the Australian Government Contract Management Guide and AusTender which amount to over 286 pages of information without accounting for tender documentation or specific departmental requirements.

Some submissions made suggestions that the government should develop SME-specific channels for training on procurement processes, such as *‘training for SMEs on how to bid for procurement contracts’* or investing in a community of practice where SMEs and officials can share best practice information to build capability. Positive and practical actions are needed to build SME procurement skills to enable the Commonwealth to consider a broader range of capabilities and contest familiar or immediate supply options.

Several Commonwealth entities such as the ATO, DISR, and AFSA have small business facing engagement strategies.

AFSA’s Personal Properties Securities Register (the Register) webpage and DISR’s [business.gov.au](https://business.gov.au) provide exemplar models for industry engagement with variety of resources to assist businesses on understanding their obligations and build their capability to be successful businesses.

AFSA is responsible for the administration of the Register and has successfully developed a range of guidance material that is clear and actionable for small business on a complex and technical topic. AFSA provides factsheets, guides, brochures, and information videos on a range of topics relating to the Register. This type of guidance material could guide the provision of clear and actionable resources on Commonwealth procurement, to support small businesses and lift their capability.

The ATO provides another example of a Commonwealth entity that provides guidance material to assist small business with their compliance obligations and help them succeed. These resources include the Cash Flow Coaching Kit and a dedicated small business newsroom that provides relevant information for small businesses to help them meet their tax and superannuation obligations. The ATO also provides an engagement channel for small business, their representatives and peak industry bodies to identify challenges that small businesses may be facing, share information and identify opportunities to improve the tax and superannuation system.

DISR has responsibility for the [business.gov.au](https://business.gov.au) website which provides free guidance material, tools, and templates on a wide variety of topics that affect businesses. For example, financial management tools, planning a new business, protection of intellectual property, operating a business, government assistance and events, and a grants finder tool. These examples could be adapted for guidance and education resources for small business to understand Commonwealth procurement and lift their capability to compete for government contracts.

Each of these agency models provide a framework for the Office to engage with SMEs, including examples of clear and actionable resources that can be adapted for conveying procurement processes. The Department of Education, in their submission to the Inquiry, also recommended increasing promotion and visibility of Finance’s *Selling to Government* website.

## Commonwealth procurement complaints process

The Coordinator is a function within Finance. This function assists the business community with matters relating to Australian Government procurement activities and is responsible for the following activities:

- provide external parties with an understanding of the procurement framework including the CPRs
- handling of certain complaints
- monitor issues related to Australian Government procurement
- report to the Minister for Finance on procurement matters where necessary.<sup>8</sup>

<sup>7</sup> Department of Education, Final - ASBFEO Inquiry into Commonwealth Procurement Rules (CPRs) - Submission, 2023, p 5.

<sup>8</sup> Department of Finance ‘*Procurement Coordinator Complaints Handling Charter*’, Department of Finance website, Australian Government, 2022, accessed 1 November 2023.

The Coordinator can consider complaints under the Complaints Handling Charter where:

- specifications of the tender were of such a nature that the tenderer was prevented from preparing a competitive tender response, or
- the appointment of a particular successful tenderer was inconsistent with Australian Government policy (such as the Fair Work Principles).<sup>9</sup>

Currently businesses who have a complaint regarding a tender process, probity concerns or a breach of the CPRs must first lodge a complaint with the entity that conducted the tender process. If the entity is subject to the CPRs the entity must apply timely, equitable and non-discriminatory complaint-handling procedures.

If the business is dissatisfied with how an entity addressed their complaint, they may seek resolution through three alternative pathways.

The first mechanism the business has for escalating their complaint is through the Coordinator. The business must include a statement to the Coordinator regarding the prior action to resolve the issue with the procuring entity, and the entity's response. The Coordinator does not have authority to compel an entity to reconsider the conduct or outcome of tender processes for which that entity is accountable.<sup>10</sup>

The second mechanism for escalating procurement related complaints is for businesses to make an application to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) under section 18 of the *Government Procurement (Judicial Review) Act 2018* (GPJR Act), which may grant an injunction and/or order the payment of compensation by the relevant entity to the business. The accountable authority must also investigate the complaint, prepare a report of the investigation and, if no public interest certificate is in force, suspend the procurement.

A third mechanism is to initiate a complaint with the Commonwealth Ombudsman regarding the administrative actions of Commonwealth entities. The Ombudsman can suggest or recommend a particular course of action but cannot override a decision by a department. The Ombudsman will report its findings to the supplier and to the department (including a recommendation that a decision be reversed, if appropriate) and may report to Parliament.<sup>11</sup>

## Better practice complaint handling

To enhance the transparency and accountability of the procurement framework complaints should be handled in a fair, timely and transparent way. This can be achieved by establishing effective courses of action for challenging procurement decisions to correct defects, prevent wrongdoing and build confidence of bidders in the integrity and fairness of the public procurement system. An effective complaints system provides a dedicated and independent review of decisions and provides adequate mechanism for redress.<sup>12</sup>

The Commonwealth Ombudsman provides guidance on best practice complaint handling procedures in its Better Practice Complaint Handling Guide. The guide provides information on the principles of an effective complaints handling process but also the benefits including providing rich data that can be interrogated to identify weaknesses, systemic administration issues and opportunities to improve business practice.

The current procurement complaints process does not enable a complete understanding of challenges and opportunities that are present in the Commonwealth procurement framework. The ANAO conducts performance

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<sup>9</sup> Department of Finance, *Procurement Coordinator Complaints Form*, Department of Finance website, Australian Government, no date, accessed 1 November 2023.

<sup>10</sup> Australian National Audit Office (ANAO), *Auditor-General Report No.19 2022-23 Performance Audit: Procurement Complaints Handling*, ANAO, Australian Government, 2023, accessed 1 November 2023.

<sup>11</sup> Department of Finance, *Procurement complaints*, Department of Finance website, 2022, accessed 1 November 2023.

<sup>12</sup> Organisation for Economic Cooperation and Development (OECD), *Checklist for supporting the implementation of OECD Recommendation of the Council on Public Procurement: Accountability*, OECD, 2016, p 4.



audits and audits of the performance measures of Commonwealth entities and Commonwealth companies and their subsidiaries. In addition, independent reviews of individual entities can be undertaken to assess compliance with the procurement framework. However, there is no central function that enables the consolidation of recommendations from all sources that may indicate systemic issues. Additionally, there is no central framework for recording or reporting all procurement complaints. This whole-of-system review can be realised by establishing the independent Procurement Commissioner as the head of the Office.

The current procurement complaint mechanisms are insufficiently transparent, independent, and effective. The ANAO found in its complaints handling review that the Coordinator had poor responsiveness to supplier complaints – including protracted handling processes – and had only received 40 complaints from its commencement in 2011.<sup>13</sup>

Similarly, the GPJR Act, which commenced in 2019, does not provide an effective complaint-handling mechanism, with an estimated 89% of Commonwealth procurement contracts for the period July 2019 to June 2022 not being covered.

Further, the Office of the Commonwealth Ombudsman advised the ANAO in December 2021 that ‘the numbers of complaints we receive about a tender or procurement process are low, at approximately 15 complaints each year’.<sup>14</sup> Additionally the Ombudsman is unable to act on complaints as the supplier has not either complained to the relevant entity or it is more appropriate for the Coordinator to handle the complaint.<sup>15</sup>

An example of an independent body which has authority to review whole-of-government procurement practices and make recommendations to government is the Office of the Procurement Ombudsman Canada (the OPO).<sup>16</sup> The objective of the OPO is to promote fairness, openness, and transparency by regularly reviewing procurement practices, handling procurement complaints, and providing alternative dispute resolution.

The OPO plays a crucial role in maintaining the credibility and fairness of the procurement process in the government. Not only can the OPO conduct independent investigations and order restitution in matters arising from procurement; it also enables SMEs to provide feedback on the procurement practices of departments to inform improvements.

Establishing a Procurement Commissioner will enable an effective, independent, and transparent mechanism that will be able to impartially review procurement decisions and provide adequate and timely redress. Redress for an aggrieved small business is vital, as a ‘long after the event’ confirmation of a complaint being validated provides no meaningful outcome for the complainant. Some stakeholders emphasised that a timely opportunity to bid or participate in a procurement process – after being unreasonably excluded – is preferable to a belated finding that their complaint was legitimate.

The ASBFEO sees merit in the government investigating processes that could allow prospective suppliers to alert the Procurement Commissioner of prima facie breaches of the CPRs (such as using specifications to create a barrier to trade) in the period between the ATM and the closing date for lodging submissions. The Commissioner could have discretion to review the case, contact the procuring entity, offer advice and assistance, recommend a course of action (which might be for the entity to proceed as planned) and document and report findings.

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<sup>13</sup> Australian National Audit Office (ANAO), *Auditor-General Report No.19 2022-23 Performance Audit: Procurement Complaints Handling*, ANAO, Australian Government, 2023, p 10.

<sup>14</sup> Australian National Audit Office (ANAO), *Auditor-General Report No.19 2022-23 Performance Audit: Procurement Complaints Handling*, ANAO, Australian Government, 2023, pp 36-37.

<sup>15</sup> Australian National Audit Office (ANAO), *Auditor-General Report No.19 2022-23 Performance Audit: Procurement Complaints Handling*, ANAO, Australian Government, 2023, p 37.

<sup>16</sup> Organisation for Economic Cooperation and Development (OECD), *Public Procurement Toolbox, Country case: Procurement Ombudsman in Canada*, OECD, 2016.

At the same time, the procuring official would remain fully responsible for the procurement. They would not be obliged to pause or cease the procurement, liaise with the Commissioner, or to accept or respond to the Commissioner's view or recommendation. However, the CPRs could be amended to provide support for procuring officials in such circumstances, to amend and rectify any processes in fair ways while the processes continue. For example, this could be by providing for appropriate notifications to be made to affected parties and amending processes to deal with any issues raised by the Commissioner, without the need to terminate a potentially faulty process.

Further, an aggrieved potential supplier would still have to initiate a formal complaints process to seek redress for a procurement decision they disputed if an early review by the Commissioner did not address their concern.

Given the large number of Commonwealth contracts (83,625 in 2022-23) and the intensity of competition between potential suppliers, a process to allow an early review by the Commissioner would need to be carefully calibrated to avoid imposing administrative burdens, slowing procurements, and generating moral hazard. Design features could include:

- a contract-value threshold, below which procurements could be not referred for early review by the Commissioner
- a precise delineation of the matters that could and could not be referred
- an ability for the Commissioner to reject irrelevant or unmeritorious claims 'on the papers'.

The Procurement Commissioner will also become a source of qualitative data for the Future Made in Australia Office that can provide insights into emerging systemic issues and trends. The Office will be able to both collect information and compare it with relevant findings of independent reviews and ANAO reports, to make evidence-based recommendations to the Minister for Finance.

Further, to help synchronise and support procurements across the Commonwealth, and exercise active stewardship of the procurement framework and the Buy Australian Plan, the Procurement Commissioner could develop and deploy a 'Procurement Specialist Squad' to assist with large, complex, or high-risk procurements.

The Independent Review of Services Australia and National Disability Insurance Agency Procurement and Contracting noted that access to external probity and legal process advisers, as well as experts with relevant industry expertise, can significantly strengthen procurement outcomes.<sup>17</sup> The Procurement Commissioner could perform a similar function, with the final decision on whether to use the advice being made and declared by the procuring official.

As the largest and most complex procuring entity in the Commonwealth, Defence is both a significant customer for many SMEs, as well as a niche market that can be difficult to enter. While the ASBFEO acknowledges the work of the Small Business Advocacy Team and the utility of the Collaborative Contracting Better Practice Guide, consultations have suggested that there is limited scope to challenge and reassess decisions regarding project scope, specifications, and the potential for SME participation.

According to the Australian Industry & Defence Network and Sovereign Australian Prime Alliance:

'CASG has an elaborate set of internal policies and rules that are built on the top of the CPRs. CASG's approaches include structuring itself so that it almost exclusively contracts with large defence primes. It conducts separate tendering for individual projects instead of building longer term relationships through less frequent program approaches and longer multi-year contracts that are renewable based on performance. And CASG conducts extraordinarily lengthy tendering, evaluation and contract negotiation processes that create high barriers to entry, excluding all but the largest companies.'

<sup>17</sup> *Independent Review of Services Australia and NDIA Procurement and Contracting: Independent Reviewer's Report*, 6 March 2023, p 12.

Defence's extensive and intrusive requirements that companies must meet before gaining any work are the enemies of rapid delivery and also discourage new entrants to the defence sector. Other areas of our economy with high safety requirements and the need to operate in very difficult environmental conditions – such as our mining sector – are able to onboard new firms rapidly and utilise their goods and services.

[Defence] must ensure that security and accreditation processes are implemented by working to help the companies involved, instead of the current slow and compliance-based approach. It is also not essential for high-security practices to be put in place where the risks of compromise are manageable. Civilian systems already in wide use are examples of what could be done.

DroneShield is an example of a high-tech capability developed here in Australia by a motivated Australian company. It's being used in Ukraine to save lives and protect infrastructure—but the barriers in Defence policy and procurement have meant that it is not in service with our own military.<sup>18</sup>

## Stakeholder case study

A decision by the Department of Defence required an established SME supplier to provide its services through one of four major private service providers – a 'one prime model' – rather than directly to the department. These providers, who had internal capability in direct competition to the SMEs offering, each made exclusivity and non-disclosure preconditions of engaging with the SME. Engaging on these terms would have placed the SME in a precarious and vulnerable commercial position.

The SME raised concerns with Defence about its procurement approach, but found the internal complaints process to be opaque, perfunctory, and focused on reaffirming the original decision.

Early and more responsive processes would have clarified the SMEs understanding of the procurement imperatives that drove the decision, and better conveyed that SMEs remain genuinely valued and sought after during a time of recalibration in Defence procurement processes with the shift to 'speed to capability.'

The Defence Strategic Review found that Defence's current approach to capability acquisition is not fit for purpose and that Defence must base its processes on minimum viable capability in the shortest possible time.<sup>19</sup> The ASBFEO is encouraged by the procurement reforms underway through the CASG 2.0 strategy, which include minimising the burden for SMEs of working with Defence.

<sup>17</sup> Australian Industry & Defence Network and Sovereign Australian Prime Alliance, *Developing Australia's defence industrial base: A time for urgency, optimism and action*, 2023, pp 47- 49, accessed 30 October 2023.

<sup>19</sup> Australian Government, *National Defence: Defence Strategic Review*, Australian Government, 2023, p 20.

## Pertinent recommendations from previous reviews

*Australian National Audit Office, The Auditor-General Report No. 19 2022-23  
Performance Audit: Procurement Complaints Handling, April 2023*

### Recommendation 4

Finance review how the coordinator complaint mechanism is promoted and operated, and implement arrangements that improve:

- its accessibility to suppliers with concerns regarding Australian Government procurement policy and its implementation by entities
- customer service and the timeliness of complaints handling.

*Department of Defence, Australian Standard for Defence Contracting (ASDEFCON) and Defence Procurement Review 2021, December 2021*

### Recommendation 5A

Defence will continue to increase, broaden, and deepen individual and collective commercial skills.

### Recommendation 5B

Informed by the underway review, Defence will also strengthen management of external service providers supporting Defence procurement and contracting activities.

### Recommendation 6

Defence will improve guidance, training, and consistency in Defence Capability acquisition across Defence and partner in training with industry. This training will:

- enhance commercial competence
- improve Defence and Defence Industry's shared understanding of both Defence's requirements, obligations and expectations, and Defence Industry's considerations and obligations
- address matters including probity application, template selection and pricing models, and assessing when they each might apply.

*Joint Select Committee on Government Procurement, Buying into our Future Review of amendments to the Commonwealth Procurement Rules, June 2017*

### Recommendation 14

The Committee recommends that the Australian Government legislate as a statutory authority under the responsibility of the Minister for Industry, Innovation and Science an Australian Industry Advocate to:

- aid Commonwealth entities to design procurement processes which maximise benefits to the Australian economy and increase opportunities for SME participation
- support Australian businesses to access Commonwealth Procurement by promoting opportunities and assisting businesses to promote the economic benefits they can offer
- provide independent, transparent, and consistent evaluation of the unique economic benefits offered by different suppliers
- guide Commonwealth entities' application of weighted criteria and assessment rubrics to overall procurement evaluations
- monitor suppliers' delivery of contracted economic benefit.

## Support procurement officials

### Recommendation 4: Support procurement officials

Finance to:

- ensure procuring officials have access to relevant training, resources, and tools to develop professional procurement and contracting specialists across the APS with a deep understanding of the CPRs, the Buy Australian Plan and broader procurement policy objectives
- work with the Office and the APSC to develop a procurement professional stream strategy similar to that of the Data, Digital and Human Resources Professional Stream Strategies.

### Issue to be addressed

Increasingly, procurement is required to meet economic, environmental, and social objectives while achieving value for money. In addition to delivering procurement requirements, officials must:

- undertake competitive procurement processes
- ensure that the procurement activity is undertaken in an efficient, effective, economical, and ethical manner
- know when to apply exemptions
- evaluate risks, consider additional rules and legislative requirements
- comply with connected procurement policies
- keep appropriate records.

As a result, the procurement policy framework is complex and challenging for officials who have minimal knowledge and expertise or limited commercial procurement experience. Further, officials infrequently partake in procurement as it is not the primary function of their role.

Unintentional consequences of an officials lack in procurement experience can include:

- non-compliance with the CPRs, leading to non-competitive outcomes
- contract variations to price and delivery dates
- procurement policy objectives are not met or measured
- suboptimal supplier care
- poorly designed procurement processes that are complex and difficult for both officials and businesses to understand.

While unintentional, these consequences disproportionately disadvantage SMEs by creating barriers to their participation, including:

- rendering them ineligible to compete for whole-of-government coordinated procurements
- having to provide unnecessary verification documentation
- officials being unable to confidently apply limited tender exemptions and identify SMEs



- a low risk- tolerance, creating overreliance on larger and well-known organisations
- misunderstanding of procurement requirements, resulting in scope-creep and contract variations.

## Complexity of the procurement framework

The combination of CPRs (with implementation devolved to entities) combined with procurement connected policies and associated environmental, economic, and social policy objectives, has led to a complicated procurement framework. It is difficult for officials who conduct infrequent procurement activities to:

- design tender documents and processes that are commercially relevant
- confidently evaluate supplier proposals
- manage contracts effectively.

Officials are required to use public resources in a manner that is efficient, effective, economical, and ethical, with value for money being the core principle of the CPRs. Nonetheless, many suppliers have the perception that officials default to the cheapest proposal. This perception is reinforced by the characterisation of procurement as a risk-based administrative decision to complete a transaction. That is, exchange of payment for goods or services received, rather than an ongoing relationship between customers and suppliers.

Finance defines procurement as the process of acquiring goods and services and begins when a need has been identified through to the awarding and reporting of a contract.<sup>20</sup> This narrow definition overlooks the complexity of procurement, which increasingly includes social, environmental, and economic objectives and the commercial relationship that is formed between the supplier and buyer.

Procurement should be considered as a commercial process that includes scoping a project, drafting tender documents, evaluation of proposals, managing the delivery of projects, compliance checks, contract management and engagement with industry. The Chartered Institute of Procurement and Supply provides the following definition of procurement capturing the entire activity:

‘The activity of overseeing the steps of the procurement cycle, such as market analysis, sourcing, negotiation, contracting and supplier relationship management for goods, works and services, covering both acquisitions from third parties and in-house providers. The process spans the whole procurement cycle from the identification of needs, through to the end of a services contract or the end of the useful life of an asset. It involves options appraisal and the critical ‘make or buy’ decision.’<sup>21</sup>

Adopting a more comprehensive, commercially relevant definition of procurement will prompt and facilitate a better understanding of all the activities involved, as well as identify the necessary skills and competencies required to undertake them. This is a necessary step to building competency and professionalism across all procuring officials.

<sup>20</sup> Department of Finance, *Procurement Framework*, Department of Finance, 2022, accessed 3 October 2023

<sup>21</sup> Chartered Institute of Procurement and Supply, *What is procurement*, CIPS Website, 2023, accessed 30 October 2023.

## Professionalisation

The limited depth of commercial expertise of some officials to undertake procurement has had the unintended consequence of reducing competition, increasing barriers to participation, generating poor value-for-money outcomes, inappropriate risk allocation and selecting the lowest-cost bid instead of the best-value one.

Several ANAO reports and parliamentary and independent reviews have found a recurring theme in procurement practices that requires a whole-of-government approach to lifting capability and attracting personnel with suitable commercial procurement and contract management expertise.

In August 2023, the Joint Parliamentary Committee on Public Accounts released its report into Commonwealth Procurement. The report identified that in all five Auditor-General reports that were reviewed, there were significant shortcomings in procurement practices and policies of all audited entities.

The committee identified the following issues:

- limited competition at the National Capital Authority
- weaknesses in approaches to market, tender evaluation, and contract management at the Digital Transformation Agency (DTA)
- problems with tender evaluation at the DISR
- problems with contract management at the Department of Home Affairs
- probity management and record keeping issues for all audited entities reviewed by the committee.

The findings of the committee are consistent with the experiences of the small businesses who made submissions to this Inquiry. Further, other parliamentary and independent reviews have also found the following factors contribute to poor procurement practices:

- officials have limited experience in procurement
- officials lack understanding on how to secure value for money
- an inconsistent interpretation and implementation of the CPRs across Commonwealth entities
- a loss of technical expertise.

The Australian Government should continue to resource the Office and work with the APSC, to deliver mandatory and optional training materials for the ongoing development and professionalisation of procuring officials. An ongoing program could include a free mandatory introductory procurement course designed for officials to understand the Commonwealth procurement framework who conduct simple and infrequent procurement activities. While an optional training program may include advanced topics for those officials who conduct complex procurement activities. This may include courses that support officials, client-relationship management, designing an ATM, assessing value for money, and understanding procurement connected policies. Mentorships could also play an important role in lifting capability.

## Small business experience: Barriers to participation

Both small business and government stakeholders have commented on the procurement capabilities of officials. Specifically, submissions have recommended the government invest in developing the capabilities of officials in procurement and contract management to improve the procurement process. These capabilities include how to write documents required for participation, specifications, and project scope, understanding of the CPRs, and improving officials' knowledge of the resources and capabilities of small businesses.

Submissions reported an overreliance on larger and well-known organisations when using panels. The Auditor-General Report No.11 2022–23 reported that 7 of the top 10 panel arrangements (by total committed valued over

the last 10 years) had at least 80% of the total value committed to 20% or less of the suppliers represented on the panel.<sup>22</sup>

Several submissions by small businesses and industry associations noted that officials demonstrate a limited understanding of the reduced administrative resources available to SMEs, which inadvertently disadvantages small businesses from the beginning.

The time and cost required to prepare and respond to a request for tender is not widely understood or appreciated by officials. Some submissions noted that a response to a tender can cost close to \$100,000, without any guarantee of being awarded a contract. Further, delays to decisions exacerbate costs for SMEs, who must retain capability to support a successful bid. Unnecessary delays to decisions increase holding costs for SMEs and ultimately benefit larger firms.

Similar themes emerged from the telephone survey of senior officials including improving guidance and resources to assist officials with procurement activities. Some suggested developing a decision-making tree to provide officials with the workflow of the CPRs and connected policies.

Further, officials acknowledged the eligibility for panels is difficult and costly for SMEs, as processes are complex and identifying SMEs from panels is increasingly becoming a barrier due to the high administrative burden placed on officials to verify a business's status.

The problems that small business stakeholders and senior officials have identified are systemic in government procurement processes, with previous procurement related inquiries and reports identifying similar problems. These issues are symptoms of a complex procurement framework, which is rendered complicated by the lack of active stewardship of rule implementation, the overlay of several strategic policy objectives (which involve trade-offs and exercises of discretion) and limited commercial procurement expertise across the APS. The resultant unintended consequences include barriers to entry and selection (for all stakeholders involved in procurement activities at each stage of an activity), reduced competition between sellers, and the stifling of innovation.

By the government committing to investing in the professionalisation of officials through professional procurement qualification pathways, secondments to industry or in partnership with best practice organisations such as the Australasian Procurement and Construction Council, outcomes would improve for both government and industry.

## Best practice examples

Public procurement is increasingly recognised as a strategic instrument for achieving Australian Government policy objectives to stimulate innovation, support competition for SMEs, and promote ethical behaviour and responsible business conduct. These policy objectives – combined with comprehensive procurement rules – has resulted in a complex procurement framework requiring governments to implement best practice procurement frameworks. This includes professionalising the workforce through qualifications and commercial experience.

In January 2023, the Organisation for Economic Co-operation and Development (OECD) released its public governance policy paper, *Professionalising the public procurement workforce: A review of current initiatives and challenges*. The paper promotes the professionalisation of the public procurement workforce and support procurement policy makers, with the necessary steps to implement a professionalisation strategy.<sup>23</sup>

<sup>22</sup> Australian National Audit Office (ANAO), Auditor-General Report No.11 2022–23, *Information Report: Australian Government Procurement Contract Reporting: 2022 Update*, ANAO, Australian Government, 2023, p 81, accessed 10 November 2023

<sup>23</sup> Organisation for Economic Cooperation and Development (OECD), *Public Governance Policy Papers N 26, Professionalising the public procurement workforce: A review of current initiatives and challenges*, 2023, p 26, accessed 1 November 2023.



The policy paper identifies three stages to professionalise the public procurement workforce:

- assessing the current level of professionalisation
  - o assess the current professionalisation system
  - o assess the current level of capability of the public procurement workforce
- developing a professionalisation strategy
- implementing a professionalisation strategy.

We are encouraged by the Centre of Procurement Excellence in Finance, and the Government response to recommendation two of the 2022 House of Representatives Standing Committee on Infrastructure, Transport and Cities report on *Government Procurement: A sovereign security imperative*.

‘That the effective training for government officials to undertake value for money assessments is a priority for the Australian Government and is part of the reforms committed to in the Buy Australian Plan. The Office core priority is the development and delivery of procurement and contract management training and capability building for entities, and to be delivered in collaboration with the APSC’s APS Academy’.<sup>24</sup>

We also recognise that Finance is a member of the Australasian Procurement and Construction Council. Council membership consists of federal, state, territory, and New Zealand government representatives, and is collaborating on improving public sector procurement practices. For example, developing best practice guidance on approaches to secure and develop entry-level procurement contract management talent pipelines.

Further, to enhance the capabilities of officials, Finance should adopt an evaluation framework similar to the OECD assessment of core competencies. This framework will identify skill gaps, while providing targeted strategies to lift capabilities. For example, the OECD framework evaluates system gaps, pathways to certification, incentives and collaboration and professional networking opportunities.

The OECD also suggests targeted capability building activities should include advanced topics such as contract award criteria, programs for senior executives and decision makers, to increase awareness of the strategic role of public procurement, and the importance of developing professional networks.

For example, in 2015 New Zealand Government Procurement launched its mentoring program for public sector officials, to increase individual procurement capability across the public sector. The program requires both mentors and ‘students’ to be volunteers, and students are matched with mentors according to the students’ needs. Mentors can be either from the private or public sector, whereas students must be from the public service. Topics cover transactional and strategic procurement activities that span all stages of the procurement lifecycle.<sup>25</sup>

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<sup>24</sup> Australian Government, Government Response to the Standing Committee on Infrastructure, *Transport and Cities report; Government Procurement: A sovereign security imperative*, 2023, p 4, accessed 1 November 2023.

<sup>25</sup> Organisation for Economic Cooperation and Development (OECD), Public Governance Policy Papers N 26, *Professionalising the public procurement workforce: A review of current initiatives and challenges*, 2023, p 47, accessed 1 November 2023.

## Pertinent recommendations from previous reviews

*Parliamentary Joint Committee of Public Accounts and Audit, Report 498: 'Commitment issues' an Inquiry into Commonwealth procurement Report, August 2023*

### Recommendation 1

The Committee recommends that Finance work to advance public sector procurement capability and professionalisation by:

- prioritising the development and rollout of a procurement professional stream within the APS, to facilitate the creation of procurement and contracting specialists.
- expanding the current definition of procurement in the CPRs, to empower and better reflect modern, professionalised procurement practices, including more active management of supply markets and supply chains to maximise value for money.

*Independent Review of Services Australia and National Disability Insurance Agency (NDIA) Procurement and Contracting: Independent Reviewer's Report, March 2023*

### Recommendation 9

The NDIA and Services Australia should review the adequacy of their procurement training programs, and their officials' procurement experience, and enhance them as necessary. They should also require specified levels of training and experience for procurement team members and procurement team chairs.

### Recommendation 11

That the chief executive officers of the NDIA and SA support the professionalisation of procurement along the lines recommended in the Thodey Review, and this be included in the Public Sector Reform Agenda.

*House of Representatives Standing Committee on Infrastructure, Transport and Cities, Government Procurement: A sovereign security imperative Report, March 2022*

### Recommendation 2

Given the crucial role that procurement plays in planning, the tendering process and delivery of infrastructure projects, the committee recommends that the Australian Government review the practical application of the CPRs, with a particular focus on the extent to which factors other than price are assessed in practice.

As part of this work, the Australian Government should explore ways to support the training of government procurement officials in procurement best practice approaches to support sophisticated assessments of value for money, and ways to maximise Australian local industry engagement.

### Recommendation 6

.... Education and training for government officials to support these objectives.

*Independent Review of the Australian Public Service, Our Public Service Our Future Report, September 2019*

### Recommendation 35

Deliver value for money and better outcomes through a new strategic, service-wide approach to using external providers.

- Finance to develop, for Secretaries Board endorsement and Government agreement, a framework for APS use of external providers. Framework to focus on better decision-making, value for money and outcomes.

- Finance Centre of Procurement Excellence to drive innovation and better outcomes in APS procurement, including aggregating and applying procurement information to deliver efficiencies.

#### Implementation guidance

- the framework to guide APS-wide contracting and commissioning to:
  - o include when to develop in-house capability and when to procure goods and services externally
  - o reinforce collaborative and transparent approaches to procurement design and sourcing
  - o promote robust approaches to shape supplier markets to drive innovation and evaluate procurement activities against intended outcomes
  - o include arrangements to support agile project delivery, reducing barriers to enable procurement from smaller, more innovative organisations
  - o embed integrity in procurement and commissioning
  - o include advice on the use of contractors or consultants, to ensure lasting knowledge transfer and capability building for the APS
- under the framework, focus on outcomes and value for money, as opposed to lowest price, in delivering outcomes
- use the professions model and APS learning and development strategy to build service-wide capability in procurement, contracting and commissioning
- aggregate procurement information from across the APS to provide transparency on costs and benefits, enable use of data analytics to identify potential whole-of-service efficiencies, and ensure major procurement decisions consider whole-of-government value.

*Joint Select Committee on Government Procurement, Buying into our Future: Review of amendments to the Commonwealth Procurement Rules Report, June 2017*

#### **Recommendation 12**

The Committee recommends that Finance design and deliver a public service wide training program to support the effective implementation of the new CPRs in line with new guidance material.

#### **Recommendation 13**

The Committee recommends that the Australian government ensures that all departments and agencies must ensure that an individual has successfully undergone procurement training before that individual can be delegated a procurement authority.

## Make AusTender fit-for-purpose

### Recommendation 5: Make AusTender fit-for-purpose

Finance should modernise and improve the functionality and accessibility of information available through the AusTender and Selling to Government websites by providing:

- clear and actionable guidance for SMEs about the process for:
  - o searching AusTender for approaches to market
  - o evaluating tender responses
  - o engaging relevant entities undertaking procurement through AusTender
- an effective contemporary search capability that enables SMEs to discover opportunities relevant to their capabilities
- an effective notification capability that enables SMEs to monitor the progress of procurement processes
- notice of intention to conduct a limited tender under the prescribed conditions of Division 2 subsection 10.3
- clear communication and guidance material for officials to assist with preparing an ATM documentation that will not impede small business from participating in procurement opportunities.

### Issue to be addressed

AusTender was introduced in 2007 and is the Australian Government's platform for the publication of procurement information. AusTender has a built-in help centre with simple guidance material about becoming a registered user, lodging a tender response and a frequently asked questions section.

The guidance available for businesses on AusTender is simple and clear yet limited. When information and guidance documents relating to public procurement are limited, it constrains competition and innovation by creating a barrier for small businesses to participate in procurement opportunities.

Additionally, AusTenders search function and notification system could be improved to enable small businesses to better tailor their ability to search government procurement opportunities that suit their business capabilities. Currently AusTender suggested best practice guidance to small businesses registering for notifications and to avoid missed opportunities *is not being too prescriptive in the settings*.

AusTender does not issue alerts on all approaches to market. Limited tenders including RFQs issued under a Standing Offer of Notice are not published on AusTender. This constrains competition and only allows a few preselected suppliers to respond. A broader notification system that includes all suppliers listed on the panel would increase competition and participation.

Inaccurate presumptions about an absence of competition should be able to be tested with an intent notice enabling the process of competing procuring times.

## AusTender and Selling to Government websites

AusTender is the central web-based platform for the publication of Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.<sup>26</sup> The *Selling to Government* website provides information for potential suppliers on how to identify business opportunities and sell to government.

Both AusTender and *Selling to Government* provide potential suppliers with some guidance to identify procurement opportunities and related information on the procurement framework. AusTender provides minimal guidance on identifying business opportunities and is limited to a search of current opportunities or registering for notifications that require broad criteria to ensure no opportunity is missed. Whereas the *Selling to Government* website provides extensive information that may be overwhelming for small business suppliers who are unfamiliar with public procurement frameworks.

Neither platform makes available educational resources that are variety of formats. Both platforms redirect suppliers to each other's websites and to Finance procurement webpages. Finance's procurement webpages contain large volumes of necessary guidance material including but not limited to:

- the CPRs
- Commonwealth Contracting Suite (CCS)
- coordinated procurement
- procurement policy framework
- AusTender
- accountability and transparency
- complaints handling procedures.

This information has been primarily designed to provide government officials with guidance on the procurement framework. The secondary audience of potential suppliers to government has been overlooked, leaving an SME who is unfamiliar with Commonwealth procurement processes confused and overwhelmed.

To increase SME awareness of the procurement framework, the Australian Government should resource Finance to modernise and improve the functionality of AusTender and develop an appropriate communications strategy to increase SME engagement and awareness of the resources available. A modernisation strategy may include:

- developing appropriately targeted information for SMEs in a range of formats to explain the procurement process and how to use AusTender on both the *Selling to Government* and AusTender websites
- refining the search and notification functions to enable SMEs to identify business opportunities that are suited to their capabilities.

## Small business experience: Barriers to participation

Submissions to this Inquiry noted that there is an absence of clear guidance to assist SMEs to understand the Commonwealth procurement framework and how to sell to government, including the opportunities to market their capabilities. The absence of clear guidance material creates a barrier for small businesses to participate in government procurement, resulting in reduced competition among suppliers.

While there is some awareness of AusTender, many submissions noted that they found AusTender difficult to navigate and only the Department of Education's submission mentioned the *Selling to Government* website.

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<sup>26</sup> Department of Finance, *Commonwealth Procurement Rules*, Department of Finance, Australian Government, 2023, p 30.

Submissions noted the following issues and experiences with AusTender:

- it is difficult for businesses who are unfamiliar with procurement processes to navigate and understand the procurement framework
- the ATM search and notification functions are restrictive
- ATM notifications do not provide enough detail or clarity
- there is limited transparency of the tender process and business opportunities
- many small businesses still have little awareness
- when small businesses know about AusTender, many do not know how to best navigate it.

### *Tender processes*

In addition to small businesses experiencing challenges using AusTender, issues were raised with the tender response documentation and associated processes. The CPRs provide clear guidance for officials to ensure that SMEs *can engage in fair competition for Australian Government business*. This includes placing an expectation that officials consider whether tender requirements may create a barrier to entry that could prevent SMEs from competing, such as a requiring the preparation of a costly submission.<sup>27</sup> Further, submissions noted that processes were not transparent including evaluation of tender responses or value for money outcomes. Additionally, the cost to prepare a tender response including the time required to complete it was raised as a significant barrier for small businesses.

The following are excerpts from submissions outlining the time and financial costs required to lodge a tender response:

- Prepared a 190-page tender response, taking over 500 hours to complete and cost \$98,000 to prepare. Average indicative costs for this small business to respond to a tender is usually over \$30,000 and often close to \$100,000.
- It can typically take approximately one full working week to prepare a tender response, which often requires supplying and verifying information that is irrelevant to the business. RFQ response templates are inconsistent between entities, even when issued under the same panel arrangements.
- On average, one week working full-time is required to complete an RFQ response, even for a project valued at \$30,000.

Submissions also noted that certain questions in the tender documents, such as those relating to the Indigenous Procurement Policy (IPP) and modern slavery statements, were not always relevant to small businesses and added unnecessary complication to the tender process.

Barriers to participation for SMEs are created when procurement processes are complex, not transparent, and minimal guidance material is provided. SMEs are deterred from responding because of the cost and the uncertainty of the return on their investment of time and resources.

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<sup>27</sup> Department of Finance, *Commonwealth Procurement Rules*, Department of Finance, Australian Government, 2023, p 14.

<sup>28</sup> Mainline Solutions, *Submission to the Australian Small Business and Family Enterprise Ombudsman's Inquiry into Commonwealth Procurement*, 2023, p 7 -11.



To address these barriers, Finance should develop clear guidance for officials to improve their:

- understanding of preparing ATM documentation
- communication of procurement processes to suppliers such as clearly outlining:
  - o evaluation procedures
  - o assessment of value for money outcomes
  - o approximate timeframes for awarding a supplier a contract.

By improving guidance material relating to the SME section of the CPRs, officials will have a clearer understanding of how to prepare ATM documentation. Further it will improve the transparency of the procurement process, helping reduce the SMEs barriers to participation.

## APS insights

Further, officials made suggestions for improving the CCS to increase SME participation in Commonwealth procurement and improving the availability of procurement and tender information.<sup>29</sup>

The Department of Agriculture, Fisheries and Forestry made several suggestions to improve SME access to procurement opportunities and overcome some of the barriers to participation. These included:

- offering a 'lite CCS' version to make it less onerous for under threshold procurements
- developing a separate online tool with a workflow approach for responding to tenders
- consideration by the Australian Government of the reintroduction of a 'purchase order' for small routing procurement under \$80,000 inclusive of goods and services tax (GST). Contract terms could be streamlined using the CCS.

The DTA shared insights from its user research, showing a preference for short-form contract templates in plain English that define the expectations on the contracting parties in a clear and simple manner.<sup>30</sup>

The Department of Education in its submission made the following suggestions to improving SME access to procurement opportunities:

- provide useful procurement and tender information for SMEs on departmental websites
- structure procurement requirements in a format that is relevant and familiar to SMEs
- incorporate into procurement processes stronger support for government initiatives such as, the *eTender* box, to reduce to the cost of preparing a submission for SMEs
- AusTender could have a dedicated section on SMEs such as the Procurement Toolbox and dedicated helpdesk.

The National Indigenous Australian Agency (NIAA) in its submission made the following suggestions to improve SME access to procurement opportunities:

- The implementation of user-friendly, online procurement platforms that make it easier for businesses to search for opportunities, submit bids, and track progress would be of benefit.

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<sup>29</sup> The CCS is the document creation website for officials for procurement under \$1 million and mandatory for procurements under \$200,000. The CCS is designed to be consistent with the Treasury Legislation Amendment (Small Business and Unfair Contract Terms) Act 2015, creating uniformity across Commonwealth contracts

<sup>30</sup> Digital Transformation Agency (DTA), *DTA submission - Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, 2023, p 5.

- The Commonwealth could utilise AusTender and expand the service to include an SME only platform that entities such as NIAA could approach with already certified suppliers before approaching larger suppliers. There would be strict guidelines for an SME to qualify and minimum standards would need to be met. This would be similar to Supply Nation.
- The Commonwealth could provide comprehensive documentation and guidelines to assist businesses to understand procurement processes.
- Increasing small business' opportunities to engage with government procurement requires a combination of outreach, capacity building, simplification of processes, and ongoing monitoring and evaluation to ensure inclusivity and fairness. Continual adaption to changing business landscapes and technologies are also crucial.<sup>31</sup>

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<sup>31</sup> NIAA (National Indigenous Australians Agency), *NIAA Submission to the ASBFEO Inquiry into Commonwealth Procurement Rules Submission*, 2023.

## Pertinent recommendations from previous reviews

*Parliamentary Joint Committee of Public Accounts and Audit Report 498: 'Commitment issues' an Inquiry into Commonwealth procurement Report, August 2023:*

### **Recommendation 10**

To facilitate a greater level of transparency in procurement, the Committee recommends that Finance exercise greater curatorial supervision over the information on AusTender, by, among other things, ensuring data is consistent, properly structured, and easily accessible, and by making standard format reports available to prospective tenderers.

## Panels, easy identification of small businesses and women's entrepreneurship

### Recommendation 6: Making 'panels' more transparent, accountable, and conducive to competition

Finance should reform 'coordinated procurement arrangements', commonly known as panels, to increase opportunities and reduce costs for SMEs participation by:

- enabling procurement officials to apply Appendix A Exemptions for SMEs to procurements undertaken through coordinated procurement arrangements
- requiring coordinated procurement arrangements to be refreshed regularly to provide opportunities for new SMEs to participate in procurements
- including standard evaluation criteria that considers SMEs status during establishment and refresh of coordinated procurement arrangements
- limiting the creation and use of department specific panels and increasing use of coordinated procurement arrangements
- emulate the best practice of the Management Advisory Services panel by making provision for all panel suppliers to briefly describe their value proposition and area of expertise.

### Recommendation 7: Ready and reliable identification of small businesses

The Australian Government should consider if the Small Business Identification Tool, as used by the Payment Times Reporting Scheme, can be adapted for use by officials to easily identify SMEs when using Exemption 17 of the CPRs or for a coordinated procurement.

### Recommendation 8: Advance women's entrepreneurship

That the ASBFEO continues its work to identify credible policy actions to support women's entrepreneurship including via government procurement, by determining dependable methods to identify women-owned/women-led business for procurement purposes, possibly as an additional feature of the Small Business Identification Tool.

### Issue to be addressed

The coordinated procurement arrangements are established to create value for money by identifying goods and services that are commonly used by the Commonwealth. These arrangements are intended to deliver better prices, service and quality increasing transparency, standardising terms and conditions that benefit both government and suppliers.

However, these arrangements have created unintentional consequences that have resulted in barriers to participations for SME's. These arrangements are often a static list of suppliers that are not refreshed for several years, creating a barrier for new suppliers to the market. It also is a missed opportunity for government to identify innovative solutions from suppliers who are not part of the existing pool of suppliers.

SMEs who are successful on becoming an approved supplier through a coordinated procurement arrangement, are rarely issued an RFQ. In 2022, the proportion of contracts associated with a panel represent 50% of contract volume, increasing from 28% in 2012-13. Additionally, 7 out of the top 10 panels by total value,

at least 80% of the panels total value was awarded to 20% or less of suppliers represented on panels. For example, the Digital Marketplace Panel just 12% of the suppliers were awarded over 80% of the panel's total value.

Coordinated procurements are not subject to Division 2 of the CPRs, which includes exemptions 16 and 17 which aim to increase participation in government procurement of First Nations businesses and SMEs.

The Australian Government has committed to sourcing at least 20% of procurement, by value, from SMEs. Without a verifiable SME identification tool, officials must manually verify a business's status, which can involve desktop research and contacting the business for verification.

## Standing offer arrangements

A 'standing offer' is an arrangement with an Australian Government entity (or group of entities) that sets out the terms and conditions under which a supplier agrees to provide a range of goods services for a specified period. Where there are multiple suppliers appointed under a standing offer arrangement, it is commonly called a 'panel'.<sup>32</sup>

A panel is the mechanism for the Australian Government to establish lists of qualified suppliers for specific goods or services, with the intent of:

- supporting the achievement of value for money through economies of scale and aggregation of government demand
- reducing duplication between entities
- improving the efficiency of procurement processes.

There are two types of panel arrangements:

- mandatory WoAG arrangements for Non-corporate Commonwealth entities (NCEs), which coordinate procurement of commonly used goods or services across the Commonwealth
- cooperative procurement is where more than one entity approaches the market together (i.e., clustering) or where an entity gains access to another entity's established contract or standing offer arrangement (piggybacking).<sup>33</sup>

A panel is usually established for at least 3 years and may provide an opportunity for existing suppliers to update their offer, and new suppliers to join the arrangement through a 'refresh' option.<sup>34</sup>

There is no compulsory schedule for refreshing a panel. Rather, the timeframe can vary according to the nature of goods or services to be provided, the size of the panel, and consultation with industry. While this appears to be an efficient approach to managing panel arrangements, it is having an unintended consequence of creating a barrier to competition and stifling innovation.

Further, procurements from existing panel arrangements are not subject to the rules in Division 2 of the CPRs, which includes Exemptions 16 and 17 designed to assist First Nations owned businesses and SMEs.

<sup>32</sup> Department of Finance, *Understanding Panel Arrangements*, Department of Finance website, Australian Government, 2023, accessed 8 November 2023.

<sup>33</sup> Department of Finance, *Cooperative Agency Procurement*, Department of Finance website, Australian Government, 2020, accessed 23 October 2023.

<sup>34</sup> Department of Finance, *Understanding Panel Arrangements*, Selling to Government website, Australian Government, 2023, accessed 23 October 2023.

### *Becoming a panel supplier*

Opportunities for small businesses to become a panel supplier are openly advertised on AusTender as an open ATM.

Potential suppliers must submit their qualifications, capabilities, and proposed pricing for a specific category of goods or services, which are evaluated against predetermined criteria and a methodology that address capability, capacity, and price.

Once panel suppliers have been selected and entered a 'deed of standing offer' or 'head agreement' (that determines where and how entities can approach a panel's suppliers), an associated Standing Offer Notice (SON), listing the eligible panel suppliers is reported on AusTender.<sup>35</sup>

### *Standing Offer Notices, Panels and coordinated procurement*

The government's interchangeable reference to 'panels' and 'standing offers' adds to SMEs confusion and the general complexity in procurement processes for officials.

The confusion is strongly evidenced by ANAO analysis of parent contracts that had a start date that occurred after the associated SON's end date. It was found that 3,017 parent contracts, with a committed value of \$1 billion, had a start date occurring after the end date of the associated SON.<sup>36</sup> These outcomes demonstrate that information regarding expired SONs is overly accessible to officials, and that in the context of broader systemic complexity in procurement, inexperienced officials may find panels challenging to navigate and further limit SME opportunities to participate.

### *Panels limit competition and opportunities for SMEs*

While officials are encouraged to approach multiple suppliers from a panel to ascertain value for money, they may purchase directly from one panel supplier because all panel suppliers have been through a selection process.

The 2023 ANAO Contract Reporting Information report further found:

- there were 1,666 SONs (53 %) that only had one associated supplier; the median number of suppliers associated with a SON was one
- the average number of suppliers associated with a SON was 10
- for the top 10 SONs by number of suppliers, the Digital Marketplace Panel has the largest number of associated suppliers, with 3,273, followed by the Defence Support Services Panel
- for seven out of the top 10 panels by total value, at least 80% of the panel's total value was awarded to 20% or less of the suppliers represented on the panel.

Unsurprisingly, the top suppliers by number of associated SONs and the number and value of contracts from 2012-23 to 2021-22 were the big four, or KPMG, Ernst and Young, PricewaterhouseCoopers and Deloitte Touche Tohmatsu.<sup>37</sup>

<sup>35</sup> AusTender, *Standing Offer Notices*, AusTender website, Australian Government, 2023, accessed 8 November 2023.

<sup>36</sup> Australian National Audit Office (ANAO), Auditor-General Report No.11 2022–23, *Information Report, Australian Government Procurement Contract Reporting: 2022 Update*, ANAO, Australian Government, 2023, p 87.

<sup>37</sup> Australian National Audit Office (ANAO), Auditor-General Report No.11 2022–23, *Information Report, Australian Government Procurement Contract Reporting: 2022 Update*, ANAO, Australian Government, 2023, p 75 – 79.



## Small business experience: Barriers to participation

Submissions reported the following challenges:

- limited opportunities to be appointed to a panel once it is established inconsistent or unclear scheduling of the panel 'refresh' process, which is essential to allowing previously unsuccessful suppliers, or new ones, to join a panel
- the high number of suppliers that can be found on a panel makes it difficult for small businesses to stand out to officials – particularly if they are new to the panel and the officials have not engaged them before
- larger firms are directly engaged from panels more frequently than SMEs, often because of brand recognition rather than meeting a value-for-money test for the required goods or services
- the complex and time-consuming nature of RFQ processes impose a high opportunity cost on small businesses
- when an RFQ is issued with a tight deadline, resource-constrained businesses must wrestle with the dilemma of either not responding, or else providing a hurried proposal and risking not being approached by the procuring entity in the future
- maintaining a panel listing involves onerous reporting obligations to the panel manager, which is an especially high opportunity cost to those businesses not receiving any contracts.

We are of the view that all panel work should be published to all relevant Australian SME panel members and those panel members can apply to be invited to tender. This would open the opportunity for competition to SMEs. SMEs will self-select those opportunities that they can reasonably compete – they do not have the resources to compete for everything. If they are not considered competitive, the buyer can decline their application.

Panels should not be used as a mechanism for avoiding competition, but as a mechanism for speeding up a competitive process by pre-qualification.

## APS insights

Officials can access panel suppliers and associated tender documents through various channels such as Dynamic Sourcing for Panels or directly on the Finance webpage for WoAG arrangements. Officials can find the following information when using a panel arrangement:

- a list of approved suppliers to provide services under the panel
- for some arrangements the categories of services that firms are approved to provide under the panel
- various documents and templates associated with the panel such as an RFQ and head agreement.

Officials reported that one of the challenges is identifying SMEs for general procurement but also when using panels. Officials are required to undertake desktop research and contacting the business to verify its SME status. Currently there is no small business identification tool available to officials, that would support an efficient method to verify the status of a small business.

The Department of Education and others noted both the WoAG People Panel and the Management Advisory Services Panel provided a supplier matrix that clearly identifies whether a business is small or medium and if they are a First Nations business.

Direct engagement with officials and the Inquiry survey has found:

- A real or perceived ‘increased burden for APS staff to source from SMEs’ awareness that panels, especially mega panels, can be costly and hard to get onto for SMEs.<sup>38</sup>

## DTA’s Digital Marketplace

The DTA’s [BuyICT.gov.au](https://buyict.gov.au) website acts as a marketplace for digital and information and communication technology (ICT) procurements. It aims to make it ‘easier for government buyers to do business with digital sellers.

With its platform, DTA possesses the ability to insert behavioural prompts and guidance for officials seeking to procure digital and ICT goods and services. For reporting capability, it may also design data collection to capture insights through analytics, importantly including SME participation.

The DTA’s submission to the Inquiry stated:

‘We have focused on establishing user-centred procurement pathways that support inclusion for start-ups, SMEs, and First Nations businesses and meet the needs of government buyers. Further, we open our panels regularly to attract new and innovative market entrants to support greater access to government business opportunities.

We uncover buyer and industry needs through considerable investment in user research activities and implement iterative improvements during the life of our panels. This has helped minimise barriers to participation for typically underrepresented seller groups throughout the procurement process.’<sup>40</sup>

However, while there have been commendable efforts in systems and process design, outcomes appear to have been mixed for SMEs engaging with DTA’s panels.

Using the data on self-identified SMEs and First Nations businesses, the DTA informed the Inquiry that in 2022-23, the DTA’s various panels have supported:

- tagging seller profiles with self-identified markers, including for start-ups, SMEs, and First Nations businesses, to help buyers easily find these sellers in a filterable manner
- facilitating the support of ‘buy local’ policies by using geographic identifiers
- producing guided workflows to allow buyers and sellers to complete a compliant procurement process online. This includes prompts to encourage better practices for competitive procurements, such as for buyers to invite SMEs and First Nations businesses to respond to opportunities
- over 4,000 suppliers, of which over 3,200 were SMEs and 79 were First Nations businesses
- 66% of opportunities being provided to SMEs as part of the invited sellers, and 9% to First Nations businesses
- \$2.1 billion in contracts, of which \$952 million (or 44%) went to SME’s and \$60 million (or 2.83%) to First Nations business.<sup>41</sup>

<sup>38</sup> Social Research Centre (SRC), *The Inquiry: Telephone Interviews with senior Australian Public Servants*, SRC, unpublished, accessed 10 November 2023.

<sup>39</sup> Buy ICT, *About Us*, Buy ICT website, 2023, accessed 1 November 2023.

<sup>40</sup> Digital Transformation Agency (DTA), *DTA submission - Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, 2023, p 2.

<sup>41</sup> Digital Transformation Agency (DTA), *DTA submission - Review of the 1 July changes to the Commonwealth Procurement Rules (2023)*, 2023, p 3.

While these appear to be promising signs for increasing engagement with SMEs, an external analysis of DTA procurements by the ANAO highlights room to identify opportunities to contract with SMEs. The ANAO found that between 2012-13 and 2021-22, a minority of 12% of suppliers were awarded at or over 80% of the Digital Marketplace Panel's total awarded value of \$8.6 billion.<sup>42</sup>

Further, concerns have been raised and shortcomings identified with the DTA Digital Marketplace relating to compliance with the CPRs and the facilitation of sub-standard procurement practices by officials who would benefit from improved understandings of the CPRs.

In September 2022, the ANAO made eight recommendations to the DTA aimed at improving compliance with the CPRs and ensuring officials have sufficient understanding of procurement requirements. It also recommended that the Australian Government look at improving the transparency of panel procurements. All nine recommendations were agreed by DTA and Finance, respectively.

Looking forward, the DTA has committed to implementing structures to bolster governance, and procurement and contract management practices. The Inquiry also notes that the DTA is designing a replacement panel for commencement in mid-2024.

The refreshed panel will aim to further improve how government buys digital and ICT services and labour. The Inquiry understands that attempts will be made to:

- strengthen practices to support SME and First Nations business engagement
- improve data capture to inform future decision making
- use approaches to market to test what solutions sellers may be able to propose to solve the challenges faced by agencies seeking to procure goods and services, including demonstrating unique value propositions and tailored approaches.

## Existing Australian Government commitments to improving panel arrangements

In the Budget 2023-24, the government committed \$18.1 million over 4 years from 2023-24 (and \$1.5 million per year ongoing) to Finance to improve the procurement process for business, including:

- establishing a supplier portal for panels on AusTender
- improving procurement and contract management capability across the APS.

Until these commitments are realised, the challenges for small business participation will remain.

## Women-owned/women-led businesses

The ASBFEO's work to determine dependable methods to identify women-owned/women-led businesses for procurement purposes should continue. The Australian Government's response (December 2023) to the Payment Times Reporting Act 2020 Review supported exploring further the use of Commonwealth data to support the Small Business Identification Tool used for payment times reporting and should also include examining how women-owned/women-led business types could be identified.

Throughout the consultations, veterans-owned/veteran-led business rightly spoke proudly of the service history of founders and key personnel, and how this was an advantage when seeking Defence procurement opportunities.

<sup>42</sup> Australian National Audit Office (ANAO), *Auditor-General Report No.11 2022-23 Information Report: Australian Government Procurement Contract Reporting – 2022 Update*, ANAO, 2023, p 82, accessed 1 November 2023.

<sup>43</sup> Parliament of Australia, *Budget 2023-24 Budget Paper No. 2: Budget Measures*, Parliament of Australia, Australian Government, 2023, p 111.

This advantage was characterised in terms of established Defence networks and Defence procuring officials being comforted by a cultural alignment. Service reports provide a ready and key input to verifying claims that a business is veteran-owned/veteran-led.

Only 0.7% of female small business owners have ever served in the ADF compared to 3.0% of males (based on Australian Bureau of Statistics (ABS) Census of Population and Housing, 2021). In the ASBFEO's earlier women's entrepreneurship survey (2021), a respondent reported that she highlights her veteran experience, and she doesn't believe it's a barrier. In her own words:

'I believe I am consistently discriminated against due to my gender. I am a war veteran of two armed conflicts and also advertise my law firm as being an Australian Owned Veteran Business but honestly, they see 'woman' before they see veteran.'

The government might wish to consider including scope for self-nomination of women-owned/women-led businesses and/or veteran-owned/veteran-led enterprise types to be self-identified for reporting purposes to inform policy.

The priority action needs to be identification of women-owned/women-led business types within the improved automated Small Business Identification Tool.

## Pertinent recommendations from previous reviews

*Women's Economic Equality Taskforce, A 10-year-plan to unleash the full capacity and contribution of women to the Australian economy 2023 – 2033, October 2023*

### Recommendation 5

The Australian Government must undertake a long-term, targeted, and deliberate investment program to ensure women are leading and building the economy in equal measure to men.

- Leverage the government's purchasing power to incentivise and support businesses committed to – and demonstrating positive action to achieve – inclusive and equitable employment practices.
- Develop an inclusive procurement policy that prioritises awarding contracts to businesses that demonstrate positive action in gender equality, pay equity, and diversity, equity, and inclusion.
- Establish a supplier diversity program to actively seek out and support businesses owned by women, minority groups and other under-represented groups, to build their capability and capacity to bid competitively for government procurement and contracts.

*Parliamentary Joint Committee of Public Accounts and Audit, Report 498: 'Commitment issues' an Inquiry into Commonwealth procurement Report, August 2023*

### Recommendation 7

The Committee recommends that the Department of Finance amend its guidance on the use of panels to make it explicit that:

- a separate value for money assessment must still be undertaken when conducting a procurement from a panel, even though value for money has been considered when forming the panel, and
- panel procurement should involve multiple competing tenders from panel members, with sole sourcing from a panel generally considered inadequate to demonstrate value for money.

### Recommendation 8

The Committee recommends that the Department of Finance require panel procurements to facilitate ongoing competition and foster new entries to markets, by requiring:

- panels to be refreshed at regular intervals, for example, at least once every two years and at least before a panel is extended
- an ability for new entrants to seek to be listed on the panel, at any time where possible or at least periodically during the life of the panel.

*Independent Review, Statutory Review of The Payment Times Reporting Act 2020, June 2023*

### Recommendation 3

Improve the operation of the Small Business Identification Tool.

- Explore further the use of Commonwealth data to support the Small Business Identification Tool, while upholding privacy protections.

*Independent Review of Services Australia and National Disability Insurance Agency (NDIA) Procurement and Contracting: Independent Reviewer's Report, March 2023*

**Recommendation 2**

The entities should require the use of limited tender or single supplier procurements to be justified and fully documented. They should also require a particularly compelling justification when limited tenders or a single supplier approach are used for procurements that may trigger a subsequent chain of procurements.



## Institute clear and material reporting

### Recommendation 9: Institute clear and material reporting

Finance should develop quantifiable and public indicators to measure the performance and effectiveness of the procurement system including the broader procurement policy objectives, such as the Buy Australian Plan. This may include:

- expanding the reporting requirements of entities on AusTender for procurements using a panel arrangement to include the following:
  - o the number and details of the suppliers, including those eligible for Exemption 16 and 17 of the CPRs who were invited to respond to a RFQ, which will reveal the spread of panel suppliers approached over the reporting period
  - o the number of qualified responses
  - o the time suppliers were given to respond to an RFQ
- requesting suppliers to report the time taken to prepare a tender response
- amend subsection 9.13 of the CPRs to enable officials to report the current procurement method on AusTender, rather than the original method used to establish the standing offer
- requiring entities to report on AusTender:
  - o Division 2 subsection 10.3 of the CPRs Conditions for limited tender
  - o Division 1 subsection 7.17 of the CPRs: Providing information
    - if a debriefing was made available to all suppliers who responded to the RFQ as required by subsection 7.17 of the CPRs
    - the percentage who accepted the debrief
- standardising reporting fields for officials to record variations to contracts on AusTender
- using a measurement framework to assess how public procurement processes and outcomes contribute to achieving strategic policy goals including the Buy Australian Plan.

### Issue to be addressed

An important integrity and accountability mechanism in a public procurement framework is having indicators to measure the performance, effectiveness, and savings of the public procurement system.<sup>44</sup>

The current Commonwealth procurement framework includes several accountability and transparency mechanisms in section 7 of the CPR such as:

- requiring officials to keep accurate records of project scope, method of procurement approvals and relevant decisions
- annual procurement plans

<sup>44</sup> Organisation for Economic Cooperation and Development (OECD), *Checklist for supporting the implementation of OECD Recommendation of the Council on Public Procurement: Evaluation*, OECD, 2016, p 3.

- notifications to the market
- providing information to potential suppliers
- reporting requirements.

These accountability and integrity measures are intended to support the efficient, effective, economical, and ethical use of public resources by ensuring officials accountable for their decisions.

However, the publication of reporting requirements on AusTender are minimal and limited to the details of a contract awarded, approaches to market and standing offers. There are several areas for improved collection and reporting of information on AusTender, that would enhance the transparency and accountability of:

- decisions for awarding contracts
- understanding entities compliance with the CPRs
- measuring the effectiveness of policy outcomes including:
  - o competition
  - o value for money
  - o environmental
  - o gender equality
  - o increasing business opportunities for SMEs and First Nations businesses.

## Record-keeping requirements – Section 7: Accountability and transparency of the CPRs

The ‘Accountability and transparency’ section of the CPRs (subsections 7.1 to 7.27) outlines the responsibilities of officials to document and record information relating to the procurement process, decisions, and approvals. This section also provides the reporting arrangement for entities to report the following on AusTender:

- contracts and amendments within 42 days of entering into (or amending) if they are valued at or above the following thresholds:
  - o \$10,000 for NCEs
  - o for prescribed Corporate Commonwealth Entities
    - \$400,000 for procurements other than procurement of construction services or
    - \$7.5 million for procurement of construction services
    - regardless of value, standing offers must be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements
  - o a current procurement plan containing a short strategic procurement outlook.<sup>45</sup>

An additional reporting mechanism that entities must comply with is the Senate Procedural Order of Continuing Effect: Departmental and Agency Contracts. Which is an additional transparency measure that is produced at the conclusion of two reporting periods each year, the Financial Year and Calendar Year.<sup>46</sup>

<sup>45</sup> Department of Finance, *Commonwealth Procurement Rules*, Department of Finance, Australian Government, 13 June 2023, pp 17–18.

<sup>46</sup> AusTender, *Senate Order*, AusTender website, Australian Government, accessed 31 October 2023.

Finance uses the information entities report on AusTender to publish procurement statistics. These statistics provide an analysis of procurement outcomes by:

- value threshold; below and above \$80,000
- goods and services purchased
- commonly procured categories under the United Nations Standard Products and Services Code
- contracts and value by entity
- estimates of SME participation.<sup>47</sup>

## Improving reporting and measurement frameworks

Current procurement reporting requirements do not enable Finance to adequately measure and evaluate the performance of the procurement system including:

- entities compliance with the CPRs:
  - o the commitment to non-corporate Commonwealth entities sourcing:
    - at least 20% of procurement by value from SMEs
    - 35% of contracts, by value, with a value of up to \$20 million from SMEs
    - Non-corporate Commonwealth entities making all payments to suppliers with the maximum payment times
    - Division 1 subsection 7.17 of the CPRs: Providing information
    - Division 2 subsection 10.3 of the CPRs: Conditions for limited tender
  - o primary policy objectives:
    - Section 4 of the CPRs: Value for money
    - Section 5 of the CPRs: Competition
  - o secondary policy objectives:
    - Buy Australian Plan
    - IPP annual targets for the volume and value of contracts to be awarded to First Nations businesses by the Commonwealth and each Portfolio
    - Gender equality
    - Australian Industry Participation
    - Shadow Economy increasing the integrity of government.

To support the integrity, accountability, and transparency of the Commonwealth procurement system, it is necessary to collect relevant and consistent information that measures the performance of the procurement system including compliance with the CPRs.

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<sup>47</sup> Department of Finance, *Statistics on Australian Government Procurement Contracts*, Department of Finance website, Australian Government, 2023, accessed 10 October 2023.

Finance should implement changes to the data reported on AusTender to include information that supports transparency for procurements using standing offers such as reporting on:

- the details of the suppliers who were invited to respond to an RFQ
- the number of qualified responses
- the time suppliers were given to respond to an RFQ
- requesting suppliers to report the time taken to prepare a tender response
- amending the CPRs to enable officials when using a panel to approach suppliers to report on AusTender the current procurement method used, rather than the original method used to establish the standing offer (subsection 9.13 of the CPRs).

By improving the collection and reporting of information on tender processes will not only support the development of increased competition between suppliers, but it will also provide an understanding for officials of where there maybe burdensome processes and give the opportunity to streamline processes.

Further, Finance should develop reporting mechanisms that support the measurement of policy objectives, including:

- requiring entities to report on AusTender:
  - o Division 2 Appendix A of the CPRs: the use of Exemption 16 or Exemption 17 where applicable
  - o Division 2 subsection 10.3 of the CPRs Conditions for limited tender
  - o Division 1 subsection 7.17 of the CPRs: Providing information:
    - whether unsuccessful suppliers were provided the opportunity to request a debrief outlining how their submission was assessed against the criteria of the procurement offer as required by subsection 7.17 of the CPRs
    - details of suppliers who received a debriefing
  - o standardise reporting fields for officials to record variations and amendments to contracts on AusTender
  - o assessing how public procurement processes and outcomes contribute to achieving strategic policy goals including the Buy AustralianPlan through a measurement framework.

This improved collection and reporting of entity information will provide Finance with a rich source of data that can be used to evaluate the effectiveness of primary and secondary policy objectives. Further, Finance will be able to identify systemic issues and make recommendations to the Minister for Finance to enhance the procurement framework.

The Inquiry acknowledges that Finance is investigating ways to further increase the transparency of panel procurements, as part of their ongoing work to improve access to information for procuring entities and the public. This includes collecting the number of suppliers invited to submit quotes for a procurement.<sup>48</sup>

<sup>48</sup> Department of Finance, *Submission to the Joint Committee of Public Accounts and Audit, Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021-22) and 5 (2022-23)*, Department of Finance, Australian Government, p 11, accessed 1 November 2023.

## Small business experience: Barriers to participation

Many submissions have brought to attention that the Commonwealth procurement system does not have transparent evaluation processes for awarding contracts and how officials select suppliers to issue an RFQ to when using panels. While these processes are documented by officials for internal records, there is no clear external mechanism that reports on how entities measure value for money considerations, or the number of suppliers selected to respond to an RFQ. This absence of external reporting mechanism reduces transparency of the procurement system and results in the unintended consequence of reducing competition between suppliers and suppressing innovation in the market.

Other submissions reported that when a contract is awarded from a supplier panel, it is reported on AusTender as an open tender not as a limited tender. For small businesses this is particularly discouraging because they make a significant investment of their time and resources to respond to an ATM for the establishment of a panel, only to find out that contracts have been awarded under a standing offer without ever receiving an opportunity to provide a quote.

Other submissions reported issues regarding the transparency of decisions:

- to evaluate value for money considerations
- procurement outcomes such as reporting on Division 2 exemptions 16 and 17 of the CPRs.

Additionally, submissions reported that despite being a requirement of the CPRs entities did not provide debriefings to unsuccessful suppliers.

## APS insights

Findings from the Social Research Centre's telephone interviews with senior officials found that:

- while entities were aware of the July 2022 CPR changes and were largely implementing the new rules in their procurement practices, overall, entities were unlikely to monitor the implementation of CPRs changes internally
- some officials noted challenges with understanding expectations around managing conflicts between the July 2022 changes and other rules
- owing to the difficulties in identifying SMEs in procurement, as discussed in relation to panel arrangements, and lack of visibility, entities noted the difficulty of measuring impact of July 2022 changes.<sup>49</sup>

## Best practice example

The OECD provides best practice guidance for countries to measure the effectiveness of procurement systems including implementing key performance indicators that increase transparency, accountability, and integrity. The OECD recommends for countries to accelerate performance improvements in procurement systems and to enhance accountability and transparency it is necessary to evaluate the effectiveness of public procurement systems. The following elements contribute to an effective procurement evaluation framework:

- periodic and consistent assessment of the results of the procurement process:
  - o evaluate the effectiveness of the procurement system
  - o establish an effective performance management framework

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<sup>49</sup> Social Research Centre (SRC), *The Inquiry: Telephone Interviews with senior Australian Public Servants*, SRC, unpublished, accessed 10 November 2023.

- o collect consistent up to date and reliable information including:
  - information linked to the level of competition in the tendering process (e.g., number of suppliers contacted, number of responses, number of qualified responses)
  - information linked to contract and supplier performance (e.g., achievement of agreed milestones, delays, failures)
  - information linked to market consultation (e.g., size of market, market evolution, trends)
  - information linked to the timeframe of procurement operations (e.g., duration of the process of each phase)
- o management of procurement data:
  - e-procurement
  - information systems to capture data of the entire process and allows analysis of trends, levels of participation, efficiency and economy of procurement and compliance requirements
  - verify information
- o develop indicators to measure performance, effectiveness and savings of the public procurement system including:
  - level of competition
  - time required preparing or participating in biddings
  - secondary policy objectives
  - measuring performance over time.

The Commonwealth procurement reporting framework has several of the key attributes of the OECD recommended evaluation framework. However, there is an opportunity for Finance to improve and enhance the current evaluation framework to improve performance of the procurement system and enhance accountability and transparency of government spending. Further, by reporting on key accountability and transparency mechanisms barriers to participation for SMEs are reduced and increases competition and innovation in the market.



## Pertinent recommendations from previous reviews

*Parliamentary Joint Committee of Public Accounts and Audit, Report 498: 'Commitment issues' an Inquiry into Commonwealth procurement Report, August 2023*

### Recommendation 4

Noting that CPRs compliance reporting is currently limited to the inclusion of significant non-compliance in annual reports, the Committee recommends that Finance:

- introduce requirements for entities subject to the CPRs to report, at least annually and certified by the accountable authority, on their compliance with the CPRs
- publish a report annually, commencing in the 2023-24 year, aggregating this information across the sector to help assess the effectiveness of the procurement framework, identify areas of risk, and inform changes to the procurement framework to ensure it remains fit-for-purpose
- require Commonwealth entities subject to the CPRs or the PGPA Act 2013, by 31 December 2023, to provide Finance with a report on their internal procurement and delegation policies that outlines how value for money will be ensured when procuring from panels
- how many suppliers were invited to submit quotes for a procurement, including when procuring from panels and standing offers as recommended by the ANAO in its audit of the DTA
- reasons for any amendments or variations to a contract, by standardising the relevant field to produce more structured data.

### Recommendation 9

The Committee recommends that Finance amend the reporting requirements on AusTender to ensure it is clear for every procurement:

- how many suppliers were invited to submit quotes for a procurement, including when procuring from panels and standing offers as recommended by the ANAO in its audit of the DTA
- reasons for any amendments or variations to a contract, by standardising the field to produce more structured data.

### Recommendation 10

To facilitate a greater level of transparency in procurement, the Committee recommends that Finance exercise greater curatorial oversight over the information on AusTender, by, among other things ensuring data is consistent, properly structured, and easily accessible, and by making standard format reports available to prospective tenderers.

*Independent Review of Services Australia and National Disability Insurance Agency (NDIA) Procurement and Contracting: Independent Reviewer's Report, March 2023*

### Recommendation 2

The entities should require the use of limited tender or single supplier procurements to be justified and fully documented. They should also require a particularly compelling justification when limited tenders or a single supplier approach are used for procurements that may trigger a subsequent chain of procurements.

*Joint Select Committee on Government Procurement, Buying into our Future: Review of amendments to the Commonwealth Procurement Rules Report, June 2017*

**Recommendation 7**

The Committee recommends that Finance and the Department of Industry, Innovation and Science (DIIS) jointly develop and implement a framework to collect relevant data on the degree of Commonwealth Procurement that is supplied by Australian-owned businesses, contains Australian-manufactured goods, or uses Australian-based services.

## Decode rules and guidance

### Recommendation 10: Decode rules and guidance

To accelerate the implementation of the Buy Australian Plan, which includes maximising procurement opportunities for small and First Nations businesses, the Australian Government should:

- clarify all requirements and process steps for suppliers under the CPRs – including the multiple dimensions of the ‘value for money’ consideration – with a concise and commercially relevant decision support tool
- introduce a new ‘sourcing strategy checklist’ and an ‘assessment outcomes checklist’ to supplement existing guidance to advance the Buy Australian Plan, for procurements valued up to \$20 million, which is the threshold for Australian Industry Participation Plans
- before a procurement is undertaken, ask officials via the sourcing strategy checklist to indicate whether they have considered:
  - o engaging a First Nations business before approaching the market
  - o engaging an SME
  - o engaging an Australian business
  - o disaggregating a large project into smaller packages to maximise competition
  - o any barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing, increasing scale, or advancing priority industries, national resilience, or sovereign capability
  - o environmental sustainability and use of recycled content
  - o broader domestic economic or social benefits
- require the sourcing strategy checklist to include an ‘if no, please indicate why’ response, which could include three closed answers of ‘price’, ‘capability’ and ‘capacity’, and one open answer of ‘other’ to detail any considerations
  - o the sourcing strategy checklist should be reviewed by a senior executive under the *Public Governance, Performance and Accountability Act 2013*
- require delegates for contracts (other than those requiring an Australian Industry Participation plan) to complete a corresponding ‘assessment outcomes checklist’ that is lodged with the Procurement Commissioner to:
  - o monitor compliance
  - o inform any complaints or investigations
  - o generate comparable data over time to inform the effectiveness of procurement policy objectives, including the Buy Australian Plan
- use a ‘retained economic benefit’ framework to capture, but not prescribe, the contributions of procurements, which can be quantified as:
  - o value of goods and services supplied by domestic enterprises, including SMEs, First Nations businesses, start-ups, or suppliers of innovative goods or services

- o value of labour/services provided by Australian residents and First Nations Australians
- o amount of expenditure on capital goods and social infrastructure in Australia.

## Issue to be addressed

A recurring theme of submissions and consultations was that procurement processes are complicated, not conducive to competition, opaque, and incongruent with private-sector practices and the efficient allocation of resources. Smaller businesses without experience in engaging with government struggle to understand what they need to do and what will persuade officials, especially regarding broader economic and social contributions.

The DISR observed that businesses are not confident that the broader components of value for money are informing procurement decisions:

‘A common pinch point reported by businesses across sectors is the perceived lack of effective value for money assessments undertaken as part of government tender evaluations. Although the CPRs require value for money assessments that go beyond seeking the lowest cost option, industry feedback indicates a strong view that, in practice, tender assessments do not sufficiently address the broader economic, environmental, and social benefits of proposals.’

While businesses undertaking major public or private projects must prepare and report against Australian Industry Participation plans, there is not an equivalent framework for other suppliers to indicate whether Australian entities have had full, fair, and reasonable opportunities to bid for the supply of key goods and services.

As the ANAO has observed, there is no centralised or quantitative reporting of outcomes against procurement-connected policies. The Inquiry observes that the same is true of the Buy Australian Plan. The absence of clear, objective indicators hinders the evaluation and management of these policies over time and focuses suppliers and officials on the immediate and measurable aspects of value for money.

## Value for money

Achieving value for money is the central imperative of CPRs. However, price is not the sole determinant. Officials must also consider other costs and benefits, including quality, the fitness and flexibility of the proposal, the supplier’s experience and performance history, environmental sustainability, and whole-of-life costs.

In addition, under CPR subsection 4.7, officials must consider the direct benefits to the Australian economy for procurements above \$4 million (or \$7.5 million for construction services). Domestic economic benefits include:

- more efficient use of resources, for example by employing people who would otherwise be under or unemployed
- higher productivity, whether through skills acquisition or development and adoption of technology
- supporting the development and maintenance of priority industries
- higher participation in the labour market by Australians, including First Nations workers and traineeships or apprenticeships in areas of skills shortage

- increased engagement of businesses that provide opportunities for people with a disability
- enhancing the international competitiveness of domestic suppliers.<sup>50</sup>

## Determining broader economic benefits of procurement

Finance notes that while entities ‘have flexibility in the way in which they assess value for money, including the economic benefit to Australia’, they ‘should be careful to ensure the requirement to demonstrate economic benefit does not inadvertently disadvantage SMEs’.<sup>51</sup> Further, while an official may decide to apply a heavier weighting to the broader economic benefit criterion over other value for money criteria, ‘Weightings may not be used in a manner that discriminates against suppliers on the basis of their size, location or ownership’.<sup>52</sup> This principle of non-discrimination is also present in CPR subsection 5.4.

At the same time, the Buy Australian Plan is expressly aimed at growing the local economy and strengthening domestic industry and manufacturing capability. Among other things, the intent of the Buy Australian Plan is to:

- maximise opportunities for Australian businesses in major infrastructure projects
- open the door to more government work for more SMEs by decoding and simplifying procurement processes
- provide more opportunities for First Nations businesses with a view to maximise skills transfer so that we can get more First Nations workers into long-term skilled work
- support industry sectors through the government’s purchasing power
- strengthen Defence industries and capability
- make National Partnerships work to maximise the use of local workers and businesses.

The Buy Australian Plan builds on the longstanding Australian Industry Participation National Framework, which encourages project proponents to ‘to maximise Australian industry participation in investment projects by providing industry full, fair and reasonable opportunity to participate and Australian Industry Participation Plans’.<sup>53</sup>

Under the framework, proponents must prepare an Australian Industry Participation Plan if they are awarded Australian Government contracts, grants, payments, or investments of \$20 million or more, or undertake a public or private project of \$500 million or more. Proponents must also report on the progress of their participation plans from the time of approval until completion.

The Inquiry considers that there is scope to supplement the guidance for prospective suppliers and officials with accessible checklists that can be easily codified and reported for procurements beneath the thresholds for Australian Industry Participation Plans.

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<sup>50</sup> Department of Finance, *Consideration of broader economic benefits in procurement*, Department of Finance, Australian Government, 2021, p 1, accessed 10 November 2023.

<sup>51</sup> Department of Finance, *Consideration of broader economic benefits in procurement*, Department of Finance, Australian Government, 2021, p 1-3.

<sup>52</sup> Department of Finance, *Consideration of broader economic benefits in procurement*, Department of Finance, Australian Government, 2021, p 6.

<sup>53</sup> Commonwealth, State and Territory Governments of Australia, *Australian Industry Participation National Framework*, Commonwealth, State and Territory Governments of Australia, Australian Government, 2021, p 3, accessed 1 November 2023.

## Small business experiences: Unclear value-for-money assessments

Several submissions to the Inquiry expressed the view that SMEs are disadvantaged by inconsistent and non-transparent applications of value-for-money assessments by entities. The submissions argued that price is often given an undue weighting compared to other criteria, such as SME participation or broader socio-economic benefits. Submissions noted a need for clear and consistent evaluations of risk, effectiveness, and value – including the SMEs capability and contribution.

One small business stakeholder maintained that the way criteria are presented on Finance's 'Value for Money' webpage discourages suppliers from elaborating on their offer's contribution to the domestic economy. While the guidance for 'environmental sustainability of the proposed goods and services' refers to the government's *Sustainable Procurement Guide*, subsequent guidance for 'Broader benefits to the Australian economy' fails to mention the document: *Consideration of broader domestic economic benefits in procurement* (which is not readily locatable on another webpage).

The view has been put to the Inquiry that because of this disparity in prominence and detail, prospective suppliers can be motivated to spend more time detailing their minimal use of paper, rather than specifying how they will be contributing to the growth and development of the domestic economy, including First Nations businesses and communities.

### APS insights

The DISR observed that businesses are not confident that the broader components of value for money are informing procurement decisions:

'A common pinch point reported by businesses across sectors is the perceived lack of effective value for money assessments undertaken as part of government tender evaluations. Although the CPRs require value for money assessments that go beyond seeking the lowest cost option, industry feedback indicates a strong view that, in practice, tender assessments do not sufficiently address the broader economic, environmental, and social benefits of proposals.'<sup>54</sup>

### Best practice example

The Inquiry considers the South Australian Industry Advocate's presentation of procurement information to be accessible, pertinent, and useful. The Advocate's Industry Participation Plan template could be modified to clarify all requirements under the CPRs – including the multiple dimensions of the 'value for money' consideration – in a concise and commercially relevant form (see Figure X below).

Similarly, highlighting broader value-for-money considerations in a 'sourcing strategy checklist' and a corresponding 'assessment outcomes checklist' (like that of the South Australian Industry Advocate) would encourage more consistency in procurement deliberations across entities and more transparent and comparable reporting within government (see Figures Y and Z below).

We also see merit in the government using a 'retained economic benefit' framework. This would capture, but not prescribe, the contributions of procurements to domestic employment, labour market participation, productivity, innovation, small and First Nations businesses, national resilience, and sovereign capability.

These contributions can be quantified as:

- value of goods and services supplied by domestic enterprises, including SMEs, First Nations businesses, start-ups, or suppliers of innovative goods and services

<sup>54</sup> Department of Industry, Science and Resources (DISR), *DISR response to ASBFEO issues paper on CPR review*, DISR, Australian Government, 2023, p 4.



- value of labour/services provided by Australian residents and First Nations Australians
- amount of expenditure on capital goods and social infrastructure in Australia.<sup>55</sup>

The advantages of this approach include:

- conveying in efficient, commercial terms what prospective suppliers need to offer and what requirements they need to satisfy to be eligible and competitive
- prompting officials to consider all the components of value for money and to seek further guidance as required
- enabling key procurement information to be codified and compared across entities, including the rationale for engaging or not engaging SMEs and First Nations businesses
- going beyond an Australian Business Number as an indicator of domestic enterprise
- identifying weaknesses in domestic economic capability or social performance over time
- assessing the effectiveness of the Buy Australian Plan, including with regard to strengthening Defence industries and capability to advance sovereign capability.

The Inquiry is not recommending that officials give precedence or a heavier weighting to businesses that are Australian-owned or based. This would be contrary to Australia's international trade obligations and the CPRs that embed and implement them at the Commonwealth level.

Rather, the intent of the retained economic benefit approach is to further the aims of the Buy Australian Plan to maximise opportunities for small and First Nations businesses, strengthen sovereign capability and national resilience, and develop priority industries in a manner consistent with Australia's international trade commitments. All of Australia's relevant international trade agreements include procurement exemptions for preferencing SMEs and advancing the health, welfare, and socio-economic position of First Nations people (upon which the Indigenous business and small business exemptions in the CPRs depend).

As a small open economy and net capital importer, Australia's growth and development depends on attracting and realising the benefits of international investment, technology, and expertise. Greater participation by Australian industries, small businesses and First Nations businesses can be facilitated by foreign or domestic firms undertaking work for the Australian Government – where there is an ability to demonstrate commitment to pursuing these objectives.

The key is ensuring that the procurement incentives of officials are aligned with this objective and that there are means of assessing progress across government.

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<sup>55</sup> South Australian Government Industry Advocate, *South Australian Industry Participation Policy (SAIPP): Measuring Economic Benefit through Jobs, Investment and Supply Chain Opportunities*, South Australian Government Industry Advocate, 2023, accessed 10 November 2023.

**Figure X: Indicative Commonwealth procurement checklist for potential suppliers**

Tender details			
Title		Purchasing entity reference number:	
Issuing entity:		Purchasing entity contact name:	
		Purchasing entity contact email:	
Business profile			
Title		Your name:	
Title		Your position:	
Title		Your email:	
Are you a First Nations business registered with Supply Nation?	Yes/No	Your telephone number:	
Are you a foreign person as defined in section 4 of the <a href="#">Foreign Acquisitions and Takeovers Act 1975</a> ?	Yes/No	Total Australian employees (full-time equivalent):	
Office location from where you will be primary servicing this contract:		Total First Nations employees (full-time equivalent):	
Australian metropolitan	Australian regional	International	
Is your business women-owned and women-led?	Yes/No	Is your enterprise veteran-owned AND veteran-led?	Yes/No

### Supply inputs (all values are to included GST)

Total tender value for the full term including all extension options: \$	Total value of labour/professional services: \$ Include all costs related to time spent by an employee or (sub)contractor
Total value of products: \$ Include the value of products purchased from all businesses	Number of new training contracts for Australian apprentices/trainees: Formal apprenticeship or traineeship contracts to be undertaken during the contract period

### First Nations supply inputs (all values are to include GST)

Sum of value of products purchased from any First Nations business: \$	Total value of labour/professional services by First Nations citizens: \$
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### Value-for-money considerations

Have you consulted Finance's <a href="#">guidance</a> on what constitutes value for money for the Australian Government?	Yes/No
Have you consulted the Australian Government's <a href="#">Sustainable Procurement Guide</a> ?  Recognising the Australian Government's commitment to sustainable procurement practices, the Commonwealth Procurement Rules require entities to consider the Sustainable Procurement Guide where there is opportunity for sustainability or use of recycled content.	Yes/No
Have you consulted <a href="#">Consideration of broader domestic economic benefits in procurement</a> ?  Under subsection 4.7 of the <a href="#">Commonwealth Procurement Rules</a> , officials must consider the direct benefits to the Australian economy for procurements above \$4 million (or \$7.5 million for construction services).	Yes/No

## Procurement Connected Policies

### 1. Are you bound by the [Payment Times Procurement Connected Policy](#)?

This policy requires, from 1 October 2021, large businesses (Reporting Entities under the Payment Times Reporting Act 2020) that are awarded Australian Government procurement contracts valued over \$4 million (GST inclusive) to pay their subcontracts valued up to \$1 million within 20 calendar days.

Yes/No

### 2. Are you bound by the [Shadow Economy – increasing the integrity of government procurement policy](#)?

The policy requires, from 1 July 2019, businesses seeking to tender for Australian Government procurement contracts over \$4 million (including GST) to provide a statement from the Australian Taxation Office showing they have a satisfactory tax record.

All non-corporate Commonwealth entities must comply with the policy.

Yes/No

### 3. Have you consulted the [Indigenous Procurement Policy](#)?

The Indigenous Procurement Policy, intended to stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy, has three key components:

- a target for purchasing from Indigenous enterprises
- a mandatory set-aside to direct some Commonwealth contracts to Indigenous enterprises
- minimum Indigenous participation requirements for certain Commonwealth contracts.

Yes/No

### 4. Are you bound by the [Workplace Gender Equality Procurement Principles and User Guide](#)?

To be considered for Australian Government procurement contracts valued at or above the relevant procurement thresholds, certain tenderers (employers with 100 or more employees in Australia) must be able to demonstrate they are compliant with the Workplace Gender Equality Act 2012 by supplying a letter of compliance either with their submission to an ATM or before entering into a contract.

Yes/No

### 5. Are you required to prepare an [Australian Industry Participation Plan](#)?

The Australian Industry Participation (AIP) National Framework applies to major Commonwealth Government procurements (\$20 million or more). Successful tenderers for certain Commonwealth procurements are required to prepare and implement an AIP Plan.

Yes/No

## Figure Y: Indicative sourcing strategy checklist for Commonwealth procurements up to \$20m

Project title:

Project manager:

Delegate:

Contracting entity:

1. Does the sourcing strategy include engaging First Nations businesses?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

2. Does the sourcing strategy include engaging small or medium-sized businesses?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

3. Does the sourcing strategy include engaging Australian businesses?

That is, not a foreign person as defined in s4 of the *Foreign Acquisitions and Takeovers Act 1975*.

Please refer to the [Buy Australia Plan](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

4. Has the sourcing strategy considered disaggregating the project into smaller packages to maximise competition?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

5. Has the sourcing strategy considered barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing?

☐ Yes ☐ No

If **YES**, please specify how these barriers are to be addressed: \_\_\_\_\_

\_\_\_\_\_

If **NO**, please explain why not: \_\_\_\_\_

\_\_\_\_\_

6. Does the sourcing strategy consider environmental sustainability and use of recycled content?

Please refer to the Australian Government's [Sustainable Procurement Guide](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

7. Does the sourcing strategy consider broader domestic economic or social benefits?

Please refer to Finance's [Consideration of broader domestic economic benefits in procurement](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_



## Figure Z: Indicative outcomes checklist for Commonwealth procurements up to \$20m

Project title:

Project manager:

Delegate:

Contracting entity:

1. Did the evaluation of offers consider opportunities for First Nations business?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

2. Did the evaluation of offers consider opportunities for small or medium-sized business?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

3. Did the evaluation of offers consider opportunities for Australian businesses?

That is, not a foreign person as defined in s4 of the *Foreign Acquisitions and Takeovers Act 1975*.

Please refer to the [Buy Australia Plan](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

4. Did the evaluation of offers consider opportunities for disaggregating the project into smaller packages to maximise competition?

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

5. Did the evaluation of offers consider barriers to entry, such as costly preparation of submissions, that may prevent small or First Nations businesses from competing?

☐ Yes ☐ No

If **YES**, please specify how these barriers are to be addressed: \_\_\_\_\_

\_\_\_\_\_

If **NO**, please explain why not: \_\_\_\_\_

\_\_\_\_\_

6. Did the evaluation of offers consider environmental sustainability and use of recycled content?

Please refer to the Australian Government's [\*Sustainable Procurement Guide\*](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

7. Did the evaluation of offers consider broader domestic economic or social benefits?

Please refer to Finance's [\*Consideration of broader domestic economic benefits in procurement\*](#).

☐ Yes ☐ No

If **NO**, then indicate why:

- ☐ Price
- ☐ Capability
- ☐ Capacity
- ☐ Other \_\_\_\_\_

8. Has a framework been put in place for communicating and receiving feedback?

☐ Yes

☐ No

## Pertinent recommendations from previous reviews

*Parliamentary Joint Committee of Public Accounts and Audit, Report 498: 'Commitment issues' an Inquiry into Commonwealth procurement Report, August 2023*

### Recommendation 3

The Committee recommends that Finance amend paragraph 2.6 of the CPR to emphasise that the core principles of achieving value for money and conducting procurements in a fair, transparent, and accountable manner continue to apply to the procurement even when an exemption to the rules was obtained under the paragraph. Finance should develop and issue guidance on paragraph 2.6 to reflect this amendment.

*Independent Review of Services Australia and National Disability Insurance Agency (NDIA) Procurement and Contracting: Independent Reviewer's Report, March 2023*

### Recommendation 5

The NDIA and Services Australia review and, as necessary, modify their procurement approval templates to ensure they provide clarity as to the factors that are considered in determining value for money, and are clear about the obligations of the signatories.

*Joint Select Committee on Government Procurement, Buying into our Future: Review of amendments to the Commonwealth Procurement Rules Report, June 2017*

### Recommendation 7

The Committee recommends that Finance and the DIIS jointly develop and implement a framework to collect relevant data on the degree of Commonwealth Procurement that is supplied by Australia-owned businesses, contains Australian-manufactured goods, or uses Australian-based services.

### Recommendation 8

The Committee recommends that, in negotiating future trade or World Trade Organisation agreements, Australia not enter into any commitments that undermine the Australian Government's ability to support Australian businesses.

### Recommendation 9

The Committee recommends that Finance, or the proposed Australian Industry Advocate, publish comprehensive implementation guidelines for the new CPRs as a matter of priority. The guidelines should:

- explicitly define what constitutes economic benefit
- prescribe a minimum 15% weighting across a tender in
- accordance with the economic benefit criteria
- procuring agency or Minister to retain discretion to increase weighting to leverage economic benefit
- encourage maximisation of economic opportunities and benefits when assessing a tender for the degree of local content and participation
- outline how rubrics or weighted criteria may be used to compare the unique economic benefits offered by different suppliers and in assessing economic benefit as part of the overall tender evaluation
- describe techniques for assessing the veracity of suppliers' claims of economic benefit and for ensuring these benefits are delivered
- encourage the consideration of innovative solutions during the scoping and design stage of procurement projects.

## Ensure prompt payment of subcontractors participating in procurement

### Recommendation 11: Ensure prompt payment of subcontractors participating in procurement

To facilitate prompt payments from prime contractors (engaged by government) to their subcontractors, and to protect small business from unfair business practices, the Australian Government should:

- make clear its expectations of prime contractor conduct towards subcontractors involved in fulfilling the procurement
- provide a mechanism to enable subcontractors to inform the procurement commissioner of practices that are in breach of the government's expectations
- accept the recommendation of the Statutory Review of the Payment Times Reporting Act 2020 to make publishing the worst and best payers the explicit responsibility of a government or non-government entity separate from the Regulator (where the Review nominated the ASBFEO as a possible option).

### Issue to be addressed

Cashflow is the oxygen of enterprise. Late payments, processes delays and the absence of milestone payments place pressure on the operation and growth of small businesses.

The Supplier Pay On-Time or Pay Interest Policy ensures that non-corporate Commonwealth entities make all payments to suppliers within the maximum payment terms following delivery of goods or services and the receipt of a correctly rendered invoice. The policy applies to all procurement regardless of contract value.<sup>56</sup> The maximum payment terms are:

- 5 calendar days for eInvoicing
- 20 calendar days for all other invoices unless shorter maximum payment terms are agreed between the procuring entity and a supplier.<sup>57</sup>

If a non-corporate Commonwealth entity is late in paying, it must calculate interest and pay that interest to the supplier if the amount accrued is more than \$100.

In parallel, the Payment Times Procurement Connected Policy applies to large businesses that are:

- reporting entities within the meaning of the *Payment Times Reporting Act 2020*; that is, large businesses with annual income of over \$100 million
- awarded government contracts worth more than \$4 million.

These businesses must complement the government's payment times by paying their subcontracts (up to \$1 million) within 20 calendar days, following the acknowledgement of the satisfactory delivery of goods or services and the receipt of a correctly rendered invoice. Late payments of invoices in scope incur interest penalties. The Payment Times Procurement Connected Policy also extends to the subcontractors of eligible large businesses.<sup>58</sup>

<sup>56</sup> The Treasury, *Australian Government Pay On-Time Survey: 2021-22 Performance Report*, The Treasury, Australian Government, 2023.

<sup>57</sup> Department of Finance, *Supplier Pay on Time or Pay Interest Policy (RMG 417): Part 1 – Policy and Practice*, Department of Finance, Australian Government, 2022.

<sup>58</sup> The Treasury, *Payment Times Procurement Connected Policy Guidelines*, The Treasury, Australian Government, 2023.

Stakeholders have highlighted that:

- payment delays from prime contractors to subcontractors can include non-payment for variations to the contract, and these delays can be protracted if there are disputes over performance
- many subcontracting agreements are complicated and can include clauses that are ambiguous or disadvantageous to small subcontractors.

## Payment times from large to small businesses are generally dismal

The problem of big businesses not paying small business suppliers in a timely way is longstanding and arises from the significant power imbalance between the two parties. The Statutory Review of the Payment Times Reporting Act 2020 found that:

‘[T]here is no empirical evidence of a significant improvement in the payment terms and times of large businesses in respect of their small business suppliers.’<sup>59</sup>

The Payment Times Reporting Regulator’s July 2023 update released data on the payment performance of more than 7,000 big businesses – many with a turnover of more than \$100 million – up to 31 December 2022. Average payment terms did not materially change over the last reporting cycle:

- 36.0 days between 1 January and 30 June 2022<sup>59</sup>
- 35.7 days between 1 July 2022 and 31 December 2022
- the median was 30 days in both periods.

Only 9.4% of big businesses paid all their invoices within 30 days between 1 July 2022 and 31 December 2022.<sup>60</sup>

The Statutory Review of the Payment Times Reporting Act proposed that:

‘[T]he review recommends that the Government make publishing the worst and best payers the explicit responsibility of a government or non-government entity, separate from the Regulator.’<sup>61</sup>

The Review considered the ASBFEO ‘a possible option’ and pointed to the ASBFEO’s leadership in driving better payment performance. The Review also recognised that an effective advocate avoids the inherent conflict that would arise if the regulator played such a role.

The ASBFEO also supports the Review’s recommendations to:

- explore the feasibility of enshrining the Commonwealth payment times standard into the proposed Supplier Code of Conduct, to facilitate prompt payments from all principal contractors to their suppliers
- incorporate examples of unfair terms relating to payment of small-business suppliers in Australian consumer Law, and prohibit unfair payment practices by large businesses
- enable an advocacy body to escalate systemic complaints relating to the payment of small-business suppliers to the Australian Competition and Consumer Commission
- increase the uptake of eInvoicing in Australia, including across Australian Government agencies.

<sup>59</sup> The Treasury, *Statutory Review of the Payment Times Reporting Act 2020*, The Treasury, Australian Government, 2023.

<sup>60</sup> Payment Times Reporting Regulator, *Regulator’s Update, Payment Times Reporting Regulator*, Australian Government, 2023, p 15.

<sup>61</sup> The Treasury, *Statutory Review of the Payment Times Reporting Act 2020*, The Treasury, Australian Government, 2023, p 70.



In Australia, awareness, and adoption of eInvoicing is low, with only 1.2% of Australian businesses registered for Pan-European Public Procurement Online (Peppol) invoicing.<sup>62</sup> Peppol is an international eProcurement framework developed and maintained by OpenPeppol, an international non-profit association. OpenPeppol standardises the way information is structured and exchanged.

OpenPeppol gives authority to various countries to manage the Peppol framework for its members. In Australia, the ATO is the Peppol Authority. However, the ATO neither receives a copy of the eInvoice nor can view the contents of any eInvoices transmitted between businesses.<sup>63</sup>

## Best practice APS example

We are encouraged that the ATO, Australian Charities and Not-for-profits Commission, and Tax Practitioners Board comply with the Supplier Pay On-Time or Pay Interest Policy (Resource Management Guides 417, RMG417). This policy sets out maximum payment terms for payments to suppliers and actively pays invoices under \$10,000 by corporate credit card, resulting in immediate payment to suppliers. Reflecting the commitment to supporting suppliers, particularly SMEs through timely payments, the ATO implemented 1-day payment terms in responses to COVID-19.<sup>64</sup>

## Small business experiences

In addition to late payments, some small business stakeholders argued that the government needs to do more to address unfair business practices along the procurement supply chain. The ASBFEO notes that the Fair Work Legislation Amendment (Closing Loopholes) Bill 2023 proposes a dedicated and accessible mechanism for the Fair Work Commission to deal with disputes over unfair contract terms for independent contractors earning below the new contractor high-income threshold; while retaining the application of the *Independent Contractors Act 2006* for independent contractors performing work that is remunerated at an amount that exceeds the threshold.

However, the Commission may only make orders where it is satisfied that a services contract includes one or more unfair contract terms which, in an employment relationship, would relate to workplace relations matters (broadly replicating section 8 of the *Independent Contractors Act 2006*). This means that other matters pertaining to contractual performance between businesses will not be covered, irrespective of the income level of the independent contractor.

These other matters may include unfair business practices. An unfair business practice typically arises where there is an imbalance of power. It refers to conduct by one business (or a related party) that disadvantages another business and is not reasonably necessary to protect its legitimate commercial interests. Commonly, such practices do not follow the intent of the agreement; and they could constitute an unfair contract term if written.

Some specific case examples that the ASBFEO Assistance function has dealt with include:

- payment disputes with third parties supplied by a small business where platforms reverse payments on a complaint made by the third party, without small businesses having the opportunity to appeal to have their matter reviewed, or through using a bank chargeback so the dispute gets 'lifted' off the platform and becomes one between the small business, bank and that third party
- being on multiple platforms that can result in exclusion from a particular platform depending on how a small business arranges its affairs (also allegations of sharing accounts with family members or others)

<sup>62</sup> The Treasury, *Statutory Review of the Payment Times Reporting Act 2020*, The Treasury, Australian Government, p 101.

<sup>63</sup> Australian Taxation Office (ATO), *eInvoicing*, ATO Website, Australian Government, 2023, accessed 25 October 2023.

<sup>64</sup> Australia Taxation Office (ATO), Australian Charities and Not-for-profits Commission (ACNC), and Tax Practitioners Board (TPB), *Joint Submission to the ASBFEO Inquiry: Review of the 1 July changes to the Commonwealth Procurement Rules*, ATO, ACNC, and TPB, Australian Government, 2023, p 8.

- insurance/accident issues where equipment (e.g., trucks) are damaged and there is a question who should pay for damage/excess
- faulty/fraudulent reviews/complaints that can also result in exclusion from platform
- exclusion from a platform based on the perceived type of business (e.g., may be viewed as dubious or may compete with other activities of the platform owner).

The ASBFEO is cognisant that when small businesses do not obtain satisfactory mediation outcomes, the option of pursuing the matter through the Federal Court is likely to be expensive, lengthy, and impractical. Accordingly, the ASBFEO proposes that the Australian Government introduce a Federal Small Business and Codes List into the Federal Circuit and Family Court of Australia, to provide small businesses with a feasible and timely means of enforcing legal rights, that facilitates enforcement action by regulators.

This jurisdiction would also cover matters falling outside the Fair Work Commission's jurisdiction, while providing a holistic, timely and cost-effective resolution mechanism.

Disputes appearing on the list could be capped at \$1 million (award or fine) and delivered via online hearings, including pre-hearing mediation that would significantly reduce the time and cost burden on a small business. The list could also operate on an 'own costs' basis and allow application for 'no adverse costs' orders, like that of Part IV of the *Competition and Consumer Act 2010*.

The ASBFEO's reform proposal would strengthen the enforcement of competition law and help address unfair business practices not addressed by the *Fair Work Legislation Amendment (Closing Loopholes) Bill 2023*.

## Pertinent recommendations from previous reviews

*Joint Select Committee on Government Procurement, Buying into our Future: Review of amendments to the Commonwealth Procurement Rules Report, June 2017*

### Recommendation 4

The Committee recommends that the DIIS enhance the procurement connected policy for Australian Industry Participation Plans, requiring that good procurement practices are implemented down through the supply chain so that both prime and subcontractors:

- implement best practice terms and conditions
- are contractually obligated to report on those terms and conditions.

### Recommendation 5

The Committee recommends that all Commonwealth contracts contain a similar clause to Commonwealth Contracting Suite (CCS) clause 10, ensuring that the obligations of prime contractors apply to all sub-contractors.

## 6. Appendix

### Attachment A: List of Terms

<b>ABN</b>	Australian Business Number
<b>ABS</b>	Australian Bureau of Statistics
<b>AFSA</b>	Australian Financial Security Authority
<b>AIP</b>	Australian Industry Participation
<b>ANAO</b>	Australian National Audit Office
<b>APS</b>	Australian Public Service
<b>APSC</b>	Australian Public Service Commission
<b>ASBFEO</b>	Australian Small Business and Family Enterprise Ombudsman
<b>ATM</b>	Approach to Market
<b>ATO</b>	Australian Taxation Office
<b>CCS</b>	Commonwealth Contracting Suite
<b>Coordinator, the</b>	The Procurement Coordinator Complaints Handling Charter
<b>CPRs</b>	Commonwealth Procurement Rules
<b>DIIS</b>	Department of Industry, Innovation and Science
<b>DISR</b>	Department of Industry, Science and Research
<b>DTA</b>	Digital Transformation Agency
<b>Entity or entities</b>	Australian Government departments and agencies
<b>Exemption 16</b>	Exemption to the CPRs that allows officials to directly engage an Indigenous SME for procurements to be delivered in remote Australia and for all other procurements wholly delivered in Australia valued between \$80,000 and \$200,000 (GST inclusive)

<b>Exemption 17</b>	Exemption to the CPRs that allows officials to directly engage an SME for procurements valued up to \$200,000 (including GST) or up to \$500,000 (including GST) for procurements by or on behalf of the Department of Defence
<b>Finance</b>	Department of Finance
<b>GPJR Act</b>	Government Procurement Judicial Review Act
<b>GST</b>	Goods and Services Tax
<b>ICT</b>	Information and Communication Technology
<b>Industry priorities</b>	Sectors of competitive strength and strategic priority supported by industry growth centres, namely advanced manufacturing, cyber security, food and agribusiness, medical technologies and pharmaceuticals, mining equipment, technology and services, and oil, gas, and energy resources
<b>Inquiry, the</b>	The ASBFEO review of the 1 July 2022 changes to the Commonwealth Procurement Rules (2023)
<b>IPP</b>	Indigenous Procurement Policy
<b>Large business</b>	A business with annual income of over \$100 million
<b>National resilience</b>	Australia's ability to withstand shocks to the health and safety of residents, economic growth and stability, supply chains, the physical environment, and national security
<b>NDIA</b>	National Disability Insurance Agency
<b>NCEs</b>	Non-corporate Commonwealth entities; subject to the Public Governance, Performance and Accountability Act 2013
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>Office, the</b>	Future Made in Australia Office
<b>Official</b>	Australian Public Servant who manages procurement
<b>OPO</b>	Office of the Procurement Ombudsman Canada
<b>Panel</b>	An arrangement whereby specific suppliers, usually selected through a single procurement process, may supply goods or services through a standing offer arrangement
<b>PT PCP</b>	Payment Times Procurement Connected Policy

<b>RFQ</b>	Request for quote
<b>SA</b>	Services Australia
<b>Small business</b>	A business with up to 100 full-time equivalent employees or up to \$5 million annual turnover, unless otherwise indicated
<b>SME</b>	Small and medium-sized enterprise – a business with up to 200 full-time equivalent employees
<b>SON</b>	Standing Offer Notice
<b>Sovereign capability</b>	A state attained when Australia has access to, or controls, the skills, technology, intellectual RFQ property, financial resources, and infrastructure that underpin those industrial capabilities that are critical to Defence
<b>WoAG</b>	Whole of Australian Government



## Attachment B: Terms of Reference - Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules

### Context of review

For many small businesses, the processes involved in identifying and securing Commonwealth Procurement contracts can be complex, costly, and time-consuming. Improving Commonwealth Procurement processes has the potential to expand growth opportunities for small businesses, encourage entrepreneurship, increase competition, strengthen sovereign capability, and maximise value for money for taxpayers.

### Issues to address include:

- complex processes that are challenging to navigate without prior expertise
- increasing transparency and communication regarding upcoming work and the use of limited tenders
- bundled procurement contracts or large work packages that make it difficult for small businesses to compete for tenders
- unnecessarily prescriptive contract requirements that impede small business access to procurement opportunities
- numerous panels and standing offer arrangements across the Commonwealth; all with different application requirements (to get onto these panels), and different ‘piggybacking’ arrangements between entities.

The Minister for Finance, Senator the Hon Katy Gallagher with the Minister for Small business, the Hon Julie Collins MP, announced the introduction of changes to the Commonwealth Procurement Rules (CPRs) on 1 July 2022. These changes were designed to increase the participation of Small and Medium Enterprises (SMEs) in Commonwealth procurement.

The Minister for Finance wrote to the Ombudsman, requesting the Ombudsman to undertake a review on the implementation of the changes to the CPRs, as well as the impact on small businesses that participate in Commonwealth Procurement on 16 February 2023. Additionally, the Minister for Finance requested the Ombudsman consider the impacts of the findings on the implementation of the Buy Australian Plan.

### Objective

To review both the implementation of the 1 July 2022 changes to the CPRs, and the impact of these changes on small businesses that participate in Commonwealth Procurement activities. This review will recommend changes to the CPRs or associated framework for consideration by the Australian Government.

### Scope of review

In undertaking the review, the Australian Small Business and Family Enterprise Ombudsman (Ombudsman) will:

1. Assess how effectively the reforms are being adopted by procuring entities, identifying:
  - i. how many small businesses are securing and retaining procurement opportunities, noting current reporting groups SMEs together. That is, employers of less than 200 full-time-equivalent staff
  - ii. the extent to which:
    - a. large projects have been disaggregated
    - b. insurance arrangements are right sized to facilitate small business participation
    - c. tenders for Defence contracts worth up to \$500,000 have been limited to SMEs

- iii. exemplary practices and entity performance, including implementation of revised/updated CPRs and contracting approaches
  - iv. opportunities to improve whole-of-government guidance products and internal procedures (for entities and their officials) to support/enhance implementation of the revised/updated CPRs.
2. Examine the utility and effectiveness of AusTender, the Commonwealth Contracting Suite, methods for identifying small businesses, and other measures to enable small businesses to join together to bid for larger and multi-faceted contracts and how accessible rolling short-listed provider ‘panels’ are for smaller businesses.
  3. Consider to what extent changes to the CPRs are:
    - i. helping SMEs participate in Commonwealth procurements
    - ii. increasing opportunities for businesses who currently do not participate, including consulting on their awareness of the rules and experiences during the tendering and contracting processes.
  4. Provide input to the Future Made in Australia Office on review findings, to support the implementation of point three of the Buy Australian Plan.
  5. Consider how the implementation of revised/updated CPRs might be enhanced to expand opportunities for small businesses owned by women, First Nations peoples and culturally and linguistically diverse communities.
  6. Consider any other relevant matters surfaced by the review.
  7. Recommend further potential changes to improve the operation of CPRs and procurement practices for small businesses, while delivering value for money for taxpayers and strengthening sovereign capability.

### **Consultation process**

As part of the review, the Ombudsman will engage with interested individuals and organisations, including small businesses, their advisers, and representatives, as well as government and other relevant third parties.

### **Timeframe**

The Ombudsman will commence the review as soon as practicable and provide a report to the Minister for Finance no later than 15 December 2023.

## Attachment C: Consultation meetings and written submissions

Consultation meetings	Number
Inquiry reference group	10
Government entity	5
Industry association	2
Small and family business	9
<b>TOTAL</b>	<b>29</b>

**Note:** multiple meetings were held with government entities.

Written submissions	Number
Government entity	8
Industry association	10
Small and family business	17
Anonymous	11
<b>TOTAL</b>	<b>45</b>

**Note:** 22 submissions are confidential.

## Attachment D: Government inquiries, reviews and reports related to procurement

Joint Committee of Public Accounts and Audit

Report 500: *Inquiry into procurement at Services Australia and the NDIA - Interim Report*  
September 2023

ANAO Auditor-General

Report No.19 of 2022-23, *Procurement Complaints Handling*  
April 2023

Joint Committee of Public Accounts and Audit

Report 498: *'Commitment issues' – An Inquiry into Commonwealth procurement*  
August 2023

The Australian Government

*Australian Government Response to the Standing Committee on Infrastructure, Transport and Cities Report: Government Procurement: A Sovereign Security Imperative*  
22 June 2023

The Australian National Audit Office

*Procurement Complaints Handling Performance Audit Report*  
April 2023

Services Australia

*Independent Review of Services Australia and NDIA Procurement and Contracting*  
6 March 2023

House of Representatives Standing Committee on Infrastructure, Transport and Cities,  
*Inquiry into procurement practices for government-funded infrastructure*  
March 2022

House of Representatives Standing Committee on Infrastructure, Transport and Cities'  
*Government Procurement: A sovereign security imperative*  
March 2022

Department of Defence

*ASDEFCON and Defence Procurement Review*  
2021

Joint Select Committee on Government Procurement

*Buying into our Future: Review of amendments to the CPR*  
June 2017

Finance and Public Administration References Committee

*Commonwealth Procurement procedures*  
July 2014

ANAO Auditor-General

*Report No.31 of 2011-12, Establishment and Use of Procurement Panel*  
May 2012.

## Attachment E: Data on Commonwealth Procurement from SMEs

The 1 July 2022 changes to Commonwealth Procurement Rules commit the Australian Government to sourcing at least 20% of all procurement by value from SMEs (a doubling of the previous target). This target was achieved in 2022-23, with Finance estimating that 27.3% of contracts were awarded to SMEs.<sup>65</sup>

In the first year of implementing the higher target (2022-23), 86% of Australian Government suppliers were estimated to be SMEs.<sup>66</sup> However, these same businesses won just 52.8% of total contracts (by number), equating to \$20.46 billion compared to \$54.36 billion awarded to their larger business counterparts.

Finance publishes statistics regarding Australian Government contracts, using information reported by entities on AusTender. Figures 1 and 2 demonstrate the estimated participation of small businesses and SMEs in comparison to larger business counterparts from 2016-17 to 2022-23.<sup>67</sup>

**Table 1: Estimated SME and Small Business Participation Trends**

Financial year	SME		Small business		Total	
	Value \$ million	Number of contracts	Value \$ million	Number of contracts	Value \$ million	Number of contracts
2022-23	20,461.9	44,146	9,976.8	23,309	74,824.4	83,625
2021-22	24,914.8	50,921	8,536.7	26,352	80,793.4	92,303
2020-21	18,657.1	45,773	5,437.0	23,020	69,794.5	84,054
2019-20	13,601.0	41,880	5,362.8	21,256	53,975.5	81,174
2018-19	16,668.1	41,341	6,316.5	20,842	64,454.6	78,150
2017-18	12,911.6	38,739	4,017.0	31,135	71,127.3	73,458
2016-17	9,955.0	34,621	3,349.0	18,073	47,354.7	64,092

**Source:** Statistics on Australian Government Procurement Contracts, Department of Finance.

<sup>66</sup> Department of Finance, *Statistics on Australian Government Procurement Contracts*, Department of Finance, Australian Government, 2023, accessed 10 October 2023.

<sup>67</sup> Note: 86% is based on 10,605 SMEs and 1,738 large business suppliers. For the purpose of this reporting, an SME is defined by the CPRs as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees (FTE). A small business has fewer than 20 employees. Classification by business size only occurs for businesses with an ABN. 'Other' business size includes businesses that do not have an ABN.

<sup>68</sup> Department of Finance, *Statistics on Australian Government Procurement Contracts*, Department of Finance, Australian Government, 2023, accessed 10 October 2023.

These figures should be considered in the context of:

- a decline in total procurement in 2022-23
- contract values reported on AusTender reflecting the total maximum value of each contract over its life, including where contracts span multiple years (rather than annual expenditure)
- these statistics are estimate levels of SME participation in procurement. The estimate is provided by ABS based on AusTender data and the ABS Business Register.

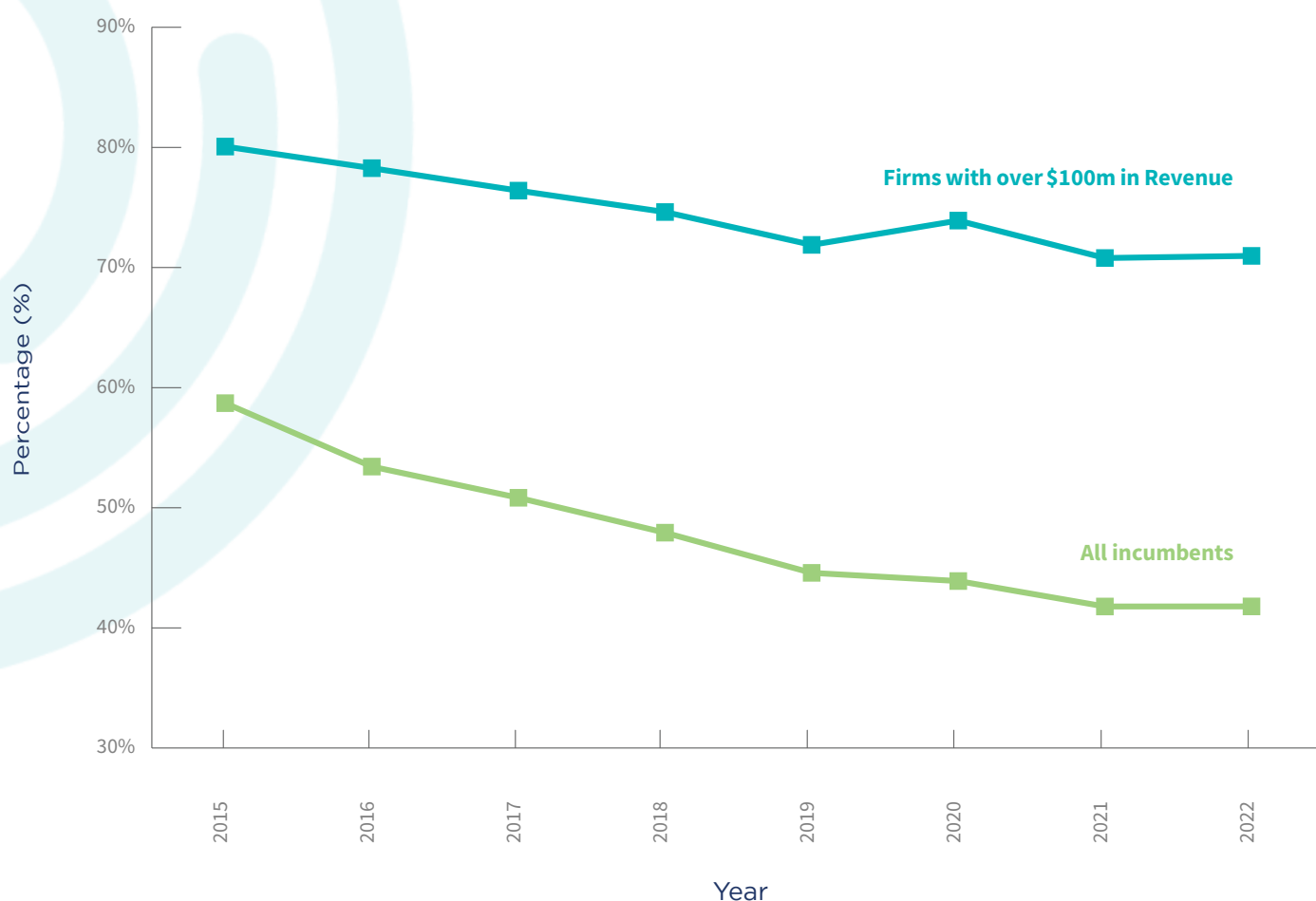
Further to the above, e61 Institute has found:

- government contracting disproportionately favours older firms, and this preference is increasing over time
- there may be barriers in the procurement process preventing newcomers from challenging incumbents
- larger firms are claiming an increasing proportion of government contracts.<sup>68</sup>

The trend of entrenched incumbents and larger firm biases are demonstrated by Figure 3 and Figure 4.

### Figure 3: Incumbents are entrenched.

Firms from the 2014 receiving cohort still receiving contracts



Source: e61 Institute

<sup>68</sup> D Andrews, E Dwyer, T Gibbons, M Maltman, and A Triggs, *Research Note No. 8, Political Economy: the market for government contracts and influence*, e61 Institute, 2023, accessed 10 October 2023.



**Figure 4: Large firm bias is increasing.**

Figure 4: Large firm bias is increasing.



Source: e61 Institute

## Attachment F: Survey research findings



**Report prepared for:**

The Australian Small Business and Family Enterprise  
Ombudsman

**Report prepared by:**

The Social Research Centre  
Level 5, 350 Queen Street  
MELBOURNE VIC. 3000  
Tel: (613) 9236 8500  
Fax: (613) 9602 5422  
[srcentre.com.au](http://srcentre.com.au)  
Version: 1.0, 11 December 2023



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## Overview and methodology

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## List of abbreviations and terms

Abbreviations used in the report

Abbreviation	Full description
ASBFEO	The Australian Small Business and Family Enterprise Ombudsman
B2B	Bottom Two Box score – sum of the results for the bottom two options in a response frame with a scale (e.g. 'Disagree' and 'Strongly disagree')
CPR	Commonwealth Procurement Rules
SME	Small or medium enterprise
T2B	Top Two Box score – sum of the results for the top two options in a response frame with a scale (e.g. 'Strongly agree' and 'Agree')

Definitions of terms

Term	Definition
Respondents	People who responded to the quantitative survey
Participants	People who took part in the telephone interviews (Stakeholder or Operational)
the Ombudsman	The Australian Small Business and Family Enterprise Ombudsman
Net	Sum of results for two or more categories



## About the research

Commonwealth Procurement Rules (CPRs) underpin government purchasing in the Australian Public Service. In 2022 the Australian Government advised of changes to the CPRs to increase engagement with Small and Medium Enterprises (SMEs). The Procurement Inquiry Survey (the Survey) will support the Australian Small Business and Family Enterprise Ombudsman's (ASBFEO) inquiry into Commonwealth procurement.

The ASBFEO commissioned the Social Research Centre to conduct research to explore implementation of the CPRs as part of better understanding experiences with engaging SMEs in Commonwealth procurement, and best practice and lessons learned in changes to the CPRs. This is a critical piece of research to provide ASBFEO with an integrated analysis of senior government officials' awareness and understanding of changes to the CPRs; and Operational staffs' experiences with the implementation of the CPR changes including perceptions of the impact on SMEs.

The research included three phases:

- Phase 1: In-depth interviews with Senior officials as part of questionnaire design
- Phase 2: Online survey with Operational staff
- Phase 3: In-depth interviews with Operational staff to further explore survey findings

**The purpose of surveying broader Operational staff involved in procurement was to:**

- Collate experiences with the implementation of the CPR changes, including changes made to procurement practices to actually implement the changes and barriers encountered
- Understand perceptions of the impact on small businesses resulting from the CPR changes.

## Methodology

### Phase 1: Qualitative Overview



- 45 – 60-minute in-depth interviews via Microsoft Teams
- n = 22 staff
- 18 – 27 October 2023
- Sample: Commonwealth Senior officials

### Research methodology

- A list of 58 Australian Government contacts was provided by ABSFEO to assist with recruitment
- Qualitative in-depth interviews with Senior officials (via direct replies and referrals to ASBFEO recruitment list)
- Informing survey development

### Phase 2: Quantitative Survey Overview



- 10-minute survey
- n = 112 staff
- 16 – 28 November 2023
- Sample: Commonwealth Operational staff involved in procurement

### Research methodology

- Quantitative online survey conducted via email invitations sent by the Department of Finance to other departments and agencies involved in Commonwealth procurement
- Weighted to increase accuracy and representativeness

### Phase 3: Qualitative Overview



- 45 – 60-minute in-depth interviews via Microsoft Teams
- n = 10 staff
- 13 November – 4 December 2023
- Sample: Operational staff involved in procurement

### Research methodology

- Qualitative in-depth interviews with Operational staff (via direct replies and referrals to ASBFEO recruitment list and opt-ins from the quantitative survey)
- Explore experiences at the operational level

## Reading this report

### Quantitative findings

Throughout the report findings and commentary refer to the quantitative (survey) results, unless otherwise specified. In reading quantitative findings reference is made to those who completed the survey throughout the report as 'staff'. When reading and interpreting the quantitative results of this report, where agreement scales (e.g. do you agree...?) have been used in the questionnaire, top two boxes (i.e. strongly agree and agree) and bottom two boxes (i.e. strongly disagree and disagree) have been used for analysis with reporting on netted agreement scales also included. These are indicated by 'Net' scores.

### Rounding of numbers

Percentages are shown rounded to 0 decimal places. As rounding has been used in producing data tables and nets in analysis, some scales may not add to exactly 100%.

### Chart labelling

For readability on certain charts, labels for values smaller than a certain percentage (specified on chart) have been suppressed due to space and readability. Further information on any figures not shown on charts are indicated in the 'Notes' footnotes below charts.

### Qualitative findings

Where qualitative findings are noted, these are indicated by the text 'qualitative findings' – these findings comprise data collected in Round One of qualitative fieldwork, with senior Government officials ('Senior officials'). It must be noted that qualitative research findings are not designed to be representative, in any statistical sense, of the wider population from which participants are drawn, but purposive sampling of the cohort ensured a wide variety of people and entities were consulted. The approach to qualitative sampling means that caution should always be exercised expanding the findings of qualitative research to a wider population.

## Significance testing and confidence intervals



Data was analysed using Q Research Software (Q), including significance testing. Statistical testing was undertaken to establish whether the responses from one subgroup were statistically significantly different to other subgroups.

Where differences across subgroups are mentioned in the report commentary (for example, 'higher than', or 'lower than'), unless otherwise noted, it implies that a statistically significant difference at a 95% confidence level has been established. This means that when a difference is described, one can be 95% confident that the difference is real and not due to random sampling variation.

For brevity and ease of reading, significance testing has been noted in this report for the following subgroups, and generally on the leading figure per chart.

### Subgroups where appropriate:

- State
- Role in procurement
- Number of staff employed at entity
- Number of staff at entity location
- Goods or services generally procured
- Total annual value of goods or services being procured
- Value of goods or services procured by entity's individual procurement activities
- Entity has provided internal information/advice about changes
- Complexity of goods or services generally procured

Significance between subgroup data points is indicated by  or  symbols.

## Sample profile

The sample profile of the survey is provided in the table shown.

		n	%
<b>Total</b>		<b>112</b>	<b>100</b>
Region	Metropolitan	106	91
	Regional	3	4
	Prefer not to say / don't know / outside Australia	3	5
Role in procurement	Planning and scoping	67	48
	Managing the approach to market and tender evaluation	76	59
	Contract management	67	44
	Contract evaluation	53	44
	Procedural compliance	82	78
Number of staff employed at entity	Less than 20 employees (Micro Agency)	1	4
	20 -100 employees (Extra Small Agency)	8	18
	101-250 employees (Small Agency)	16	20
	251-1000 employees (Medium Agency)	27	27
	1001-10,000 employees (Large Agency)	54	26
	More than 10,000 employees (Extra Large Agency)	6	6
Number of staff at entity location	Less than 20 employees	5	11
	20 -100 employees	16	19
	101-250 employees	22	23
	251-1000 employees	39	31
	1001-10,000 employees	29	16
	More than 10,000 employees	0	0
Goods or services generally procured	Military	2	3
	Services	111	100
	Technology	96	84
	Buildings	53	77
	Personnel	86	72
	Pharmaceutical	11	10
	Transport	40	32
	Other	38	44
Value of goods or services being procured	Less than \$200,000	32	23
	\$200,000 to less than \$500,000	25	20
	\$500,000 to less than \$1 million	21	28
	\$1 million to less than \$7.5 million	13	8
	\$7.5 million or more	18	15
	Not sure / prefer not to say	3	5





## Executive summary

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## Executive summary: Introduction

### Introduction

- The Australian Small Business and Family Enterprise Ombudsman (the ASBFEO) commissioned research as part of the Australian Government Procurement and Small Business Supply Survey (the 'Survey') to input to the 'Review of the implementation of the 1 July 2022 changes to the Commonwealth Procurement Rules (CPR)' (the Review). This research provides the ASBFEO with an integrated analysis of awareness and understanding of changes to the CPRs and experiences with the implementation of the CPR changes including Senior officials' and Operational staffs' perceptions of the impact on Small and Medium Enterprises (SMEs).
- The research consisted of in-depth interviews with 22 Senior officials, 10 in-depth interviews with Operational staff and 112 completed online surveys with Operational staff via a 10-minute online survey. Quantitative data is weighted to available Australian Public Service data for entity location (State / Territory in Australia), size (number of staff) and total annual procurement spend (dollars).
- The Procurement Inquiry survey 2023 (the Survey) collected information on:
  - Experiences with the implementation of the CPR changes, including changes made to procurement practices to implement the changes and barriers encountered
  - Perceptions of the impact on small businesses resulting from the changes to the CPRs.
- The following summary slides provide key points from areas of interest that were covered in the Survey. The report is also supplemented throughout with findings for the qualitative phases where appropriate. A series of case studies are also provided, based on all elements of the research.

## Executive summary

### Overview of procurement

**The survey collected feedback from a wide range of Commonwealth procurement staff including diversity by role type, entity size, the types of goods and services procured, and the value of good and services procured. The value of goods and services procured from the individual location where staff were located ranged from lower value (e.g. less than \$200,000) to high value (\$7.5 million or more). At the overall entity level, procurement was generally over \$7.5 million in value.**

- Staff were most commonly employed in roles related to procedural compliance (78%). This was followed by roles in management of the approach to market and tender evaluation, and planning and scoping (59% and 48% respectively).
- Around a quarter of staff (27%) were employed by a medium sized entity, with a further quarter being employed by a large entity (26%). Overall, 31% of staff worked at a location with between 251-1000 employees.
- One quarter of staff (28%) stated the individual value of goods / services procured by individual entity activities was generally between \$500,000 to less than \$1 million for the value of individual procurements, followed by a further 23% who stated this value was less than \$200,000.
- Four in five staff (81%) stated that the total annual value of goods / services procured by their entity is \$7.5 million or more.

*Complexity of procurement by entities varied but was more often referred to as complex (rather than simple).*

- Two in three staff (64%) believed the goods / services their entity generally procures were either complex or very complex. The remaining 36% described the goods / services procured by their entity as simple.



## Executive summary

### Awareness of CPR changes

**Awareness of the CPRs and the 1 July 2022 changes was high. There was however some disparity regarding the individual elements of the CPR changes.**

- Awareness of the CPRs among staff was universal, with 100% being aware (unprompted) of the CPRs.
- The vast majority of staff were also aware of the 1 July 2022 changes made to the CPRs (94%).
- From the qualitative research, it was found that Senior officials were generally aware of the changes to the CPRs. However, varying experiences of their implementation and their perceived need for compliance were described.
- Awareness of elements of Commonwealth procurement was generally high, particularly awareness of the Supplier Pay on Time Policy (96%) and the requirement that officials consider a procurement's broader impact on climate change (92%).

## Executive summary

### Information and advice about CPR changes

**Most staff reported that they had received information since 1 July this year about changes to Commonwealth procurement, but fewer claimed their entity had provided information or advice to communicate that the CPRs specifically had changed.**

- 73% stated that since 1 July 2023, their entity had provided internal information or advice about changes to Commonwealth procurement arrangements and / or requirements.
- 62% stated their entity had provided internal information or advice to communicate that the CPRs changed. This was higher among staff from larger entities.
- Three in four staff (76%) stated that the internal information/advice they received related to the broader impact on climate change, and a slightly lower proportion (70%) indicated the information/advice was regarding the 20% quota for sourcing from SMEs.

**Staff commonly reported receiving this information via the procurement bulletin, Department of Finance website or internal procurement team**

- The most common sources of advice / information included procurement bulletin (86%), the Department of Finance website (83%), internal entity procurement team (80%), and email from the Department of Finance (74%).
- Perceptions of the effectiveness of guidance materials were generally positive.

**Additional information or advice was sought in terms of information on who to contact for more information or assistance, how to comply with the rules and details around exemptions.**

- 74% stated that advice on who to contact for information or assistance would be helpful in their role.
- From the qualitative research, it was noted that entities with a more specialised approach to procurement typically allocated more significant resources to the communication of changes, including publishing materials on their Intranet, developing training resources and profiling them in Communities of Practice. There was also a suggestion that information and advice about the changes could have included training packages regarding their implementation and more information about specific changes and utilising exemptions.

[www.srcentre.com.au](http://www.srcentre.com.au)

## Executive summary

### Implementation of CPR changes

**Feedback on the implementation of the CPR changes within entities showed that common strategies to help implement changes made to procurement practices included further reading / researching of the rules, and updates to procurement policies within the Department itself.**

- The most common action taken to implement the changes to CPRs was reading / researching the new CPRs (79%). A further 71% indicated their entity updated agency or Department procurement policies to allow for the changes to be implemented.

**Changes were seen to be moderately effective at enhancing opportunities for SMEs in Commonwealth procurement. However, qualitative findings indicated that monitoring the effectiveness was not widespread within entities.**

- Overall, three in five staff (63%) perceived the changes to CPRs to have been either effective or very effective at enhancing opportunities for SMEs.
- From the qualitative research, Senior officials noted the critical nature of internal guidance and communications to support effective procurement, as well as ongoing capacity building activities. Further, it was highlighted that when procurement was approached as a specialised, end-to-end, holistic activity, staff were able to navigate intersecting policy priorities more effectively.
- It was also felt that entities were generally unlikely to be monitoring the implementation of the CPR changes internally.

## Executive summary

### Perceived impact of CPR changes

**Implementation of the CPRs is credited with improving procurement in select areas. Additional changes to better support SMEs in underrepresented groups were identified including greater use of panels, affirmative action and in some cases less procurement through panels. There was doubt about the extent to which the quality of services provided by suppliers has improved due to the CPR changes.**

- 60% believed the changes to CPRs provide more opportunities for SMEs, with a further 57% who believed the changes improved inclusivity in suppliers.
  - 26% indicated they believed it would improve the quality of services procured.
- 49% of staff felt that procurement policies could be made more inclusive to better support SMEs in underrepresented groups via more procurement through panels, and 46% through affirmative action. However, one-third of staff (35%) felt that less procurement through panels would have the effect of supporting SMEs.

**Frustration was experienced by navigating interlocking procurement policies and additional administrative burden created because of the CPRs. SMEs were not easy to identify on panels and progressively complex and intersecting procurement policies were thought by many to have made the process more difficult for the 'ad hoc procurer'.**

- Navigating interlocking policies when dealing with complex tender processes was the main frustration or pain point experienced by Operational staff in the implementation of the CPR changes (71%)
- 79% believed systemising the identification of SME suppliers would be beneficial. Endorsement was similarly high for other possible improvements to support participation in procurement from SMEs - most notably for information / education being made available through SME peak bodies (78%), and panel invitations being sent to SMEs (73%).



## Executive summary

### Barriers to SME participation in Commonwealth procurement

**There were several perceived barriers to SME participation in Commonwealth procurement - in particular, a lack of staffing resources to write tender responses and a lack of knowledge of Commonwealth procurement processes.**

- Lack of staffing resources to write tender responses (81%) and lack of knowledge of Commonwealth procurement processes (80%) were the most common barriers faced by SMEs participating in Commonwealth procurement

**From an entity perspective, Senior officials and Operational staff explained that challenges in identifying what qualifies a supplier as an SME and not knowing the capabilities and capacities of SMEs made compliance with the 20% quota difficult to achieve.**

- The main barriers not related to regulation or policies that prevent entities from approaching or using SMEs were that it is hard to identify or know what qualifies a supplier as a SME (78%), and that capability and/or capacity of SMEs was unknown (77%).
- From the qualitative research, Senior officials commented that it was difficult for SMEs to compete with larger providers, particularly in areas that involve high risk, high value tenders such as Information and Communication Technology.
- Reporting was noted as the biggest difficulty in the implementation of the CPR changes, as most entities did not have the data to identify SMEs, as AusTender does not currently have this capability.



## Executive summary

### Future opportunities

**Systemising the identification of SME suppliers and distributing more information through peak bodies were most cited as necessary to ensure opportunities are available to SMEs to participate in Commonwealth procurement. High levels of support also exist for technological assistance – especially in terms of market discovery and matching businesses with tenders. That said, procurement frameworks could be streamlined or simplified, and a recognition of the specialised nature of procurement should happen as part of raising the profile of the profession.**

- The types of technological assistance that would be most helpful in simplifying procurement processes for SMEs were identified as search technology to assist with market discovery (82%), and technology to help match businesses with tenders (77%)
- AI assistance in writing tender responses was endorsed by far fewer Operational staff (37%)
- From the qualitative research, the following suggestions for how technology could aid procurement were made:
  - An automated way to identify SMEs, or further information to identify SMEs
  - Artificial Intelligence to match RFQs to suppliers
  - Artificial Intelligence to assist in tender writing, especially for SMEs



## Procurement inquiry survey results

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## Overview of procurement



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## Summary: Overview of procurement

The survey collected feedback from a broad sample of Commonwealth procurement staff including diversity by role type, entity size, the types of goods and services procured, and the value of good and services procured. The value of goods and services procured from the individual location where staff were located ranged from lower value (e.g. less than \$200,000) to high value (\$7.5 million or more). However, at the overall entity level, most total procurement was over \$7.5 million in value.

- Staff were most commonly employed in roles related to procedural compliance (78%). This was followed by roles in management of the approach to market and tender evaluation, and planning and scoping (59% and 48% respectively).
- Around a quarter of staff (27%) were employed by a medium sized entity, with a further quarter being employed by a large entity (26%). Overall, 31% of staff worked at a location with between 251-1000 employees from their entity.
- One quarter of staff (28%) stated the individual value of goods / services procured by individual entity activities was generally between \$500,000 to less than \$1 million for the value of individual procurements, followed by a further 23% who stated this value was less than \$200,000.
- Four in five staff (81%) stated that the total annual value of goods / services procured by their entity is \$7.5 million or more.

**Complexity of procurement by entities varied but was more often referred to as complex (rather than simple).**

- Two in three staff (64%) believed the goods / services their entity generally procures were either complex or very complex. The remaining 36% described the goods / services procured by their entity as simple.

## Overview of entities

Staff were most commonly employed in roles related to procedural compliance (78%). This was followed by roles in management of the approach to market and tender evaluation, and planning and scoping (59% and 48% respectively).

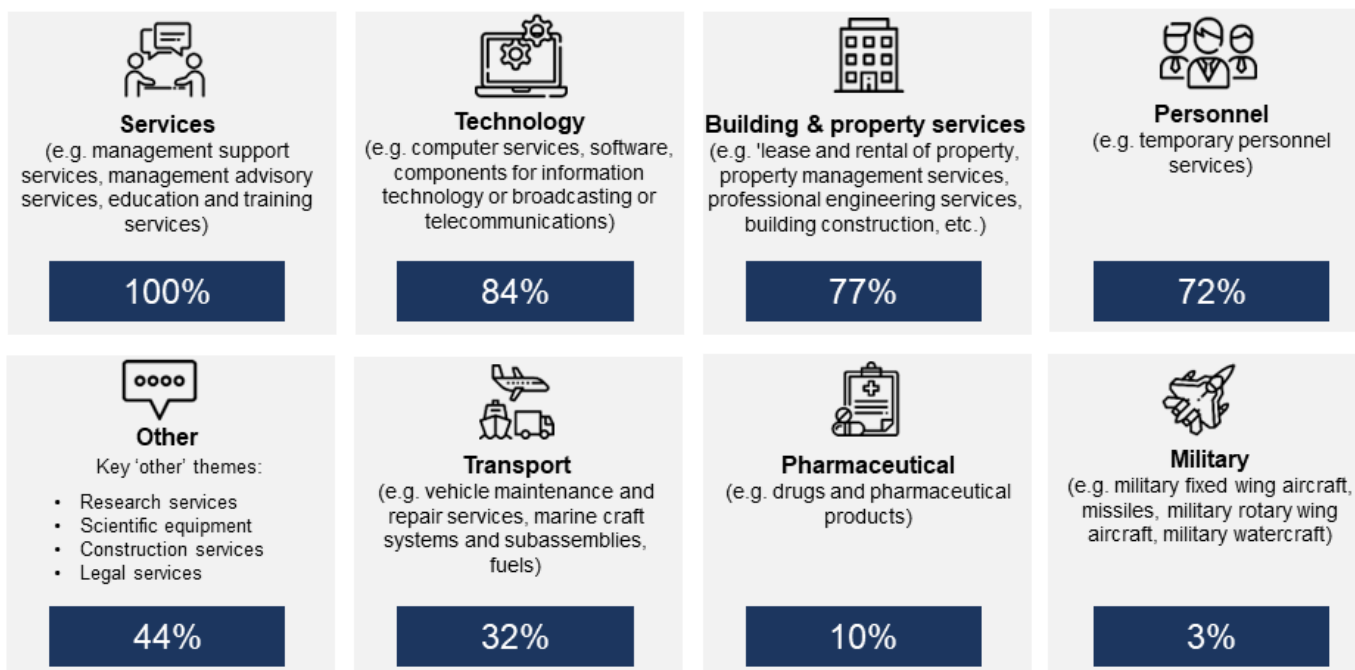
Around a quarter of staff (27%) were employed by a medium sized entity, with a further quarter being employed by a large entity (26%). Overall, 31% of staff worked at a location with between 251-1000 employees from their entity.





## Goods or services generally procured

Services was most procured (100%). This was followed by technology (84%), buildings & property services (77%) and personnel (72%).



Source: S5. Which of the following types of goods or services does your entity generally procure?  
Base: All respondents: n=112.  
Notes: % Yes shown. See notes for 'prefer not to say' and 'not sure' responses

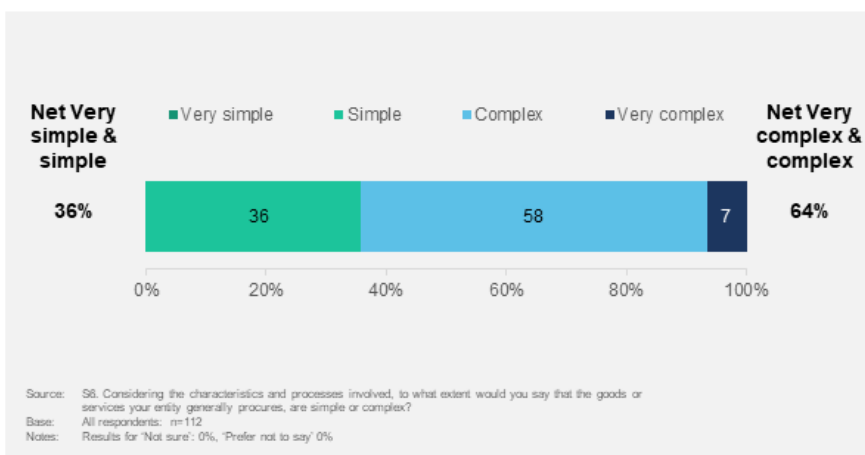


Services, technology, building & property services and personnel were most procured.

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## Extent to which goods / services procured are simple or complex

Two in three staff (64%) perceived the goods / services their entity generally procures are either complex or very complex. The remaining 36% described the goods / services procured by their entity as simple.



### Subgroups

↑ **Net Very complex & complex:** entities with goods or services from individual procurement activities was \$500,000 or more (90%) vs those from entities with lower-value individual procurement activities (36%)



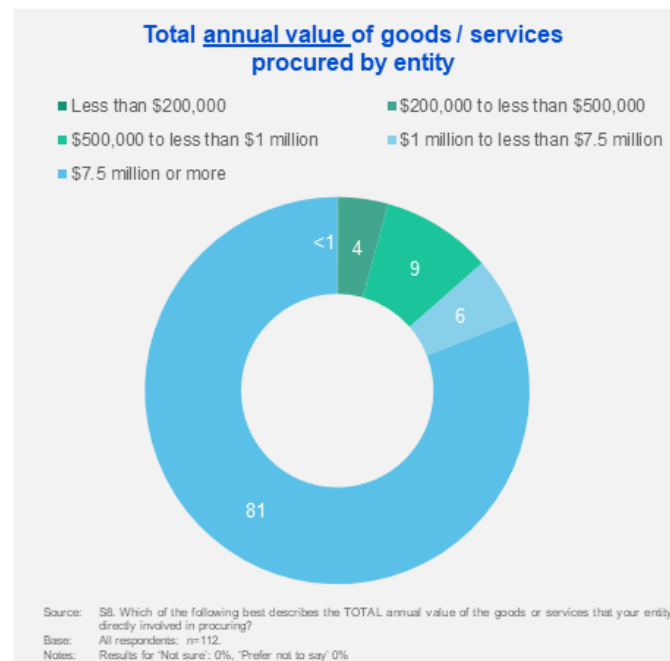
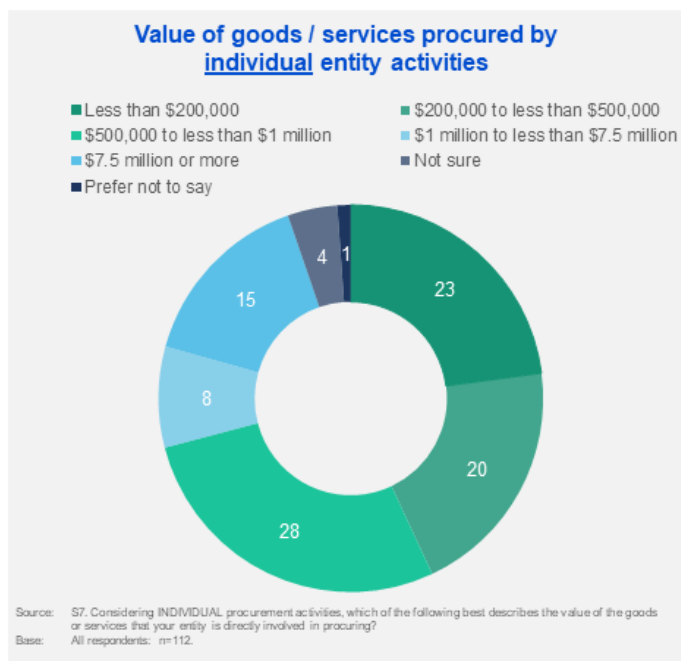
Overall, almost two-thirds of Operational staff perceived their entities' procurement as being complex or very complex.

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## Value of goods / services procured by entity

One third of staff (28%) stated that the value of their entities' individual procurement activities was \$500,000 to less than \$1 million, followed by a further 23% who indicated each activity was best described as less than \$200,000.

Four in five staff (81%) stated that the total annual value of goods / services procured by their entity was \$7.5 million or more.



**While the value of goods or services varied greatly by individual procurement activity, total annual value was generally over \$7.5 million for most entities.**

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# Awareness of Commonwealth Procurement Rules and changes



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## Summary: Awareness of CPR changes

**Awareness of the CPRs and the 1 July 2022 CPR changes was high. There was however some variation in terms of the individual elements of the changes to CPRs.**

- Awareness of the CPRs among staff was universal, with 100% being aware of the CPRs unprompted.
- The vast majority of staff were also aware of the recent 1 July 2022 changes made to the CPRs (94%).
- From the qualitative research, it was found that Senior officials were generally aware of the changes to the CPRs. However, varying experiences of their implementation and their perceived need for compliance were described.
- Awareness of elements of Commonwealth procurement was generally high, particularly awareness of the Supplier Pay on Time Policy (96%) and the requirement that procuring officials consider a procurement's broader impact on climate change (92%).

## Awareness of CPRs

At the beginning of the survey staff were asked whether they were aware of the CPRs prior to the research or not, with 100% of staff confirming their awareness (unprompted).

“Before participating in this research, were you aware of the Commonwealth Procurement Rules?”



“Aware”  
(Unprompted)  
100%

Source: A1. Before participating in this research, were you aware of the Commonwealth Procurement Rules?  
Base: All respondents: n=112.  
Notes: Results for 'Not sure': 0%, 'Prefer not to say' 0%



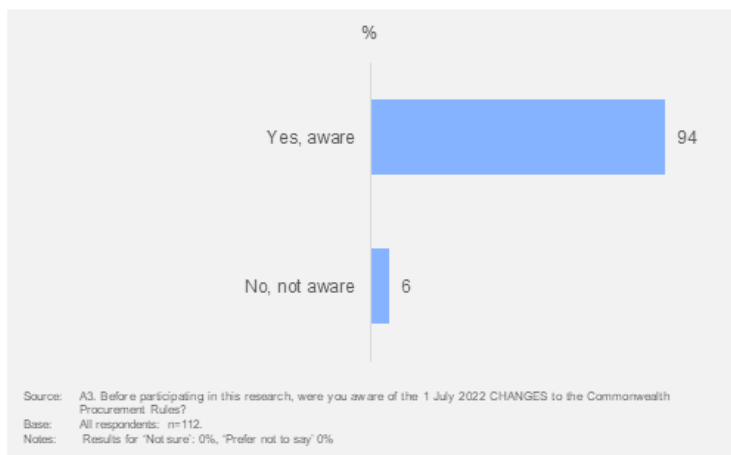
There was universal awareness of the CPRs.

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## Awareness of changes to CPRs

Staff were asked whether they were aware of the 1 July 2022 changes to the CPRs, with the vast majority (94%) confirming they were.



### Subgroups

Awareness of recent changes to CPRs was higher for:

- o ACT (99%) vs other states (80%)
- o Staff from entities with more than 1,000 employees (99%) vs staff from smaller entities (92%)
- o Staff working in locations with more than 250 employees (99%) vs staff working in locations with fewer employees (89%)
- o Staff in entities that procure simple goods or services (100%) vs staff in entities procuring complex goods or services (91%)



### Qualitative findings

- Consistent with the quantitative results, Senior officials were generally aware of the changes to the CPRs, however, varying experiences of their implementation and their perceived need for compliance were described.

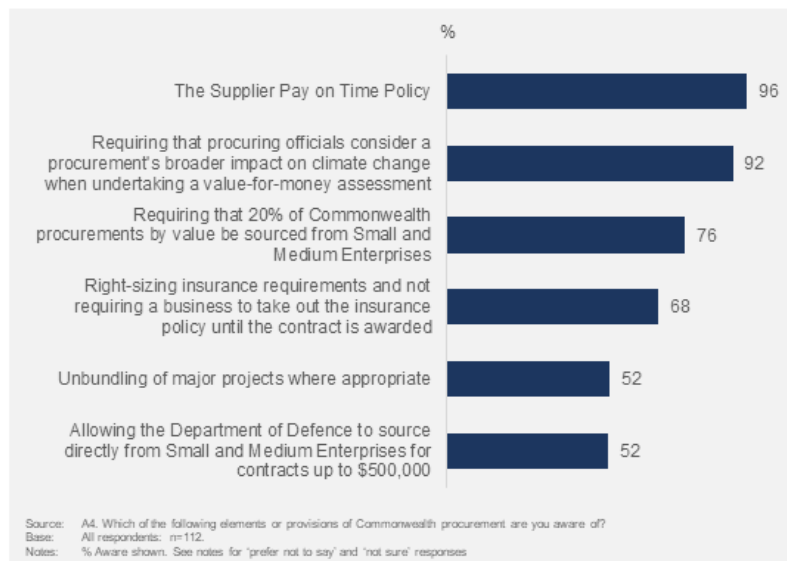


The vast majority of Operational staff were aware of the 1 July 2022 changes to the CPRs, in particular those working in larger entities and those at a location with more employees, those in the ACT, and those which procure simpler goods or services.

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## Awareness of elements or provisions of CPRs

Awareness of elements / provisions of Commonwealth procurement was generally high. Over nine in ten staff were aware of the Supplier Pay on Time Policy (96%) and the requirement that procuring officials consider a procurement's broader impact on climate change (92%).



### Subgroups

- ↑ Awareness of the **Supplier Pay on Time Policy** was higher for:
  - Staff from entities with fewer than 1,000 employees (100%) vs staff from larger entities (88%)
  - Staff working in locations with 250 employees or less (100%) vs staff working in locations with more employees (92%)
  - Staff from entities with individual procurement activities of \$500,000 or more in value (100%) vs staff from entities procuring lower-value goods or services (91%)
- ↑ Awareness of **consideration to a procurement's broader impact on climate change** was higher for:
  - Staff working in locations with 250 employees or less (98%) vs staff working in locations with more employees (86%)
- ↑ Awareness of the **provision allowing the Department of Defence to source directly from SMEs for contracts up to \$500,000** was higher for staff working at entities outside of the ACT (77%) vs within the ACT (38%)
- ↑ Awareness of **right-sizing insurance requirements** was higher for staff from entities that procure simple goods or services (89%) vs staff from entities procuring complex goods or services (56%).

### Qualitative findings

- In several cases, Senior officials noted that some of the CPR changes held less relevance to the goods and services they typically procured in the entity in which they worked (e.g., the low likelihood of IT services falling under the \$80,000 threshold).



Awareness of the provisions of CPRs varied: the 'Supplier Pay on Time' and consideration of climate change impact in a value-for-money assessment had the highest awareness, whilst unbundling of major projects and Department of Defence aspects recorded lowest awareness.

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## Information and advice about the Commonwealth Procurement Rules



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## Summary: Information and advice about CPR changes

**Most staff reported that they had received information since 1 July this year about changes to Commonwealth procurement, but fewer claimed their entity had provided information or advice to communicate that the CPRs specifically had changed.**

- 73% stated that since 1 July 2023, their entity had provided internal information or advice about changes to Commonwealth procurement arrangements and/or requirements.
- 62% stated their entity had provided internal information or advice to communicate that the Commonwealth Procurement Rules have changed. This was higher among staff from larger entities.
- Three in four staff (76%) stated that the internal information / advice they received related to the broader impact on climate change, and a slightly lower proportion (70%) indicated the information/advice was regarding the 20% quota for sourcing from SMEs.

**Staff commonly reported receiving this information via the procurement bulletin, Department of Finance website or internal procurement team.**

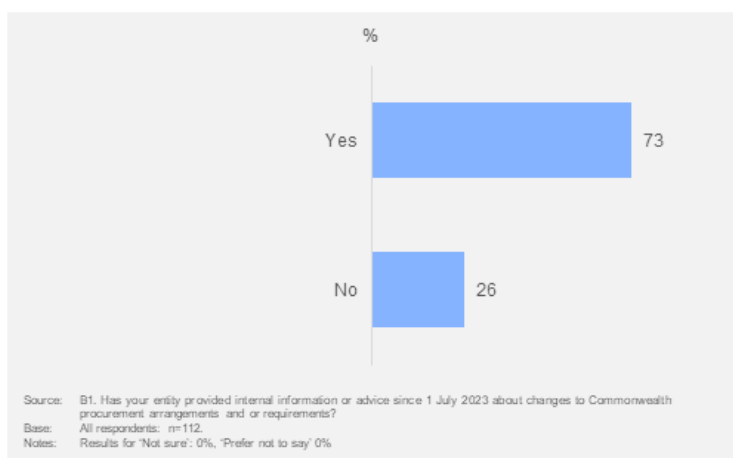
- The most common sources of advice/information included procurement bulletin (86%), the Department of Finance website (83%), internal entity procurement team (80%), and email from the Department of Finance (74%).
- Perceptions of the effectiveness of guidance materials were generally positive.

**Additional information or advice was sought in terms of information on who to contact for more information or assistance, how to comply with the rules and details around exemptions.**

- 74% stated that advice on who to contact for information or assistance would be helpful in their role.
- From the qualitative research, it was noted that entities with a more specialised approach to procurement typically allocated more significant resources to the communication of changes, including publishing materials on their Intranet, developing training resources and profiling them in Communities of Practice. There was also a suggestion that information and advice about the changes could have included training packages regarding their implementation and more information about specific changes and utilising exemptions.

## Whether entity had provided internal information or advice about changes to Commonwealth procurement arrangements or requirements

Almost three quarters of staff (73%) stated that since 1 July 2023, their entity had provided internal information or advice about changes to Commonwealth procurement arrangements and / or requirements.



### Subgroups

↑ **Yes:** There were no differences between subgroups for this measure.



### Qualitative findings

- Entities with a more specialised approach to procurement typically allocated significant resources to the communication of changes, including publishing materials on their Intranet, developing training resources and profiling them in Communities of Practice.
- Senior officials noted that procurement teams were well practiced at rolling out changes internally due to the fluidity of procurement policy generally – for some entities, this just involved the alignment of internal policies and processes, while others expanded on this alignment with targeted communications, capacity building activities and skills development.



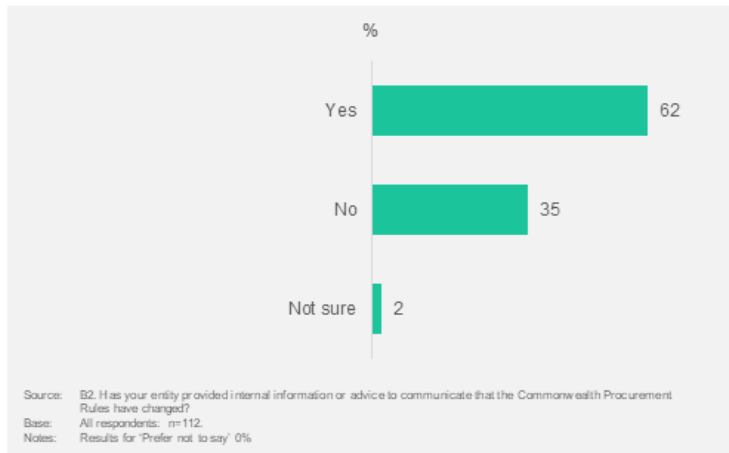
**Almost three quarters of Operational staff had received internal information or advice since 1 July 2023 about changes to Commonwealth procurement arrangements or requirements.**

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## Whether entity had provided internal information or advice communicating CPRs had changed

Three in five staff (62%) stated their entity had provided internal information or advice to communicate that the CPRs HAD changed.

It is implicit, however, that those who confirmed on the previous slide that they received advice since 1 July 2023 (73%) were in practice receiving advice consistent with the changes to the CPRs (even if they were not specifically aware the CPRs HAD changed).



### Subgroups

↑ **Yes:** Higher for staff from entities with more than 1,000 employees (83%) vs staff from entities employing fewer workers (53%).



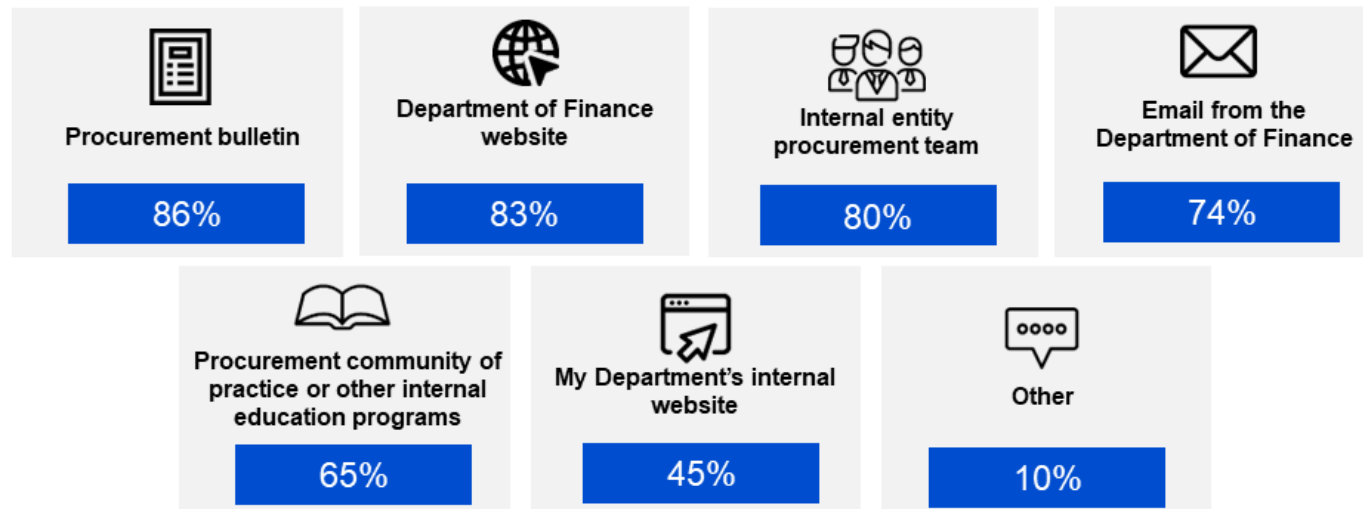
While 73% indicated that their entity had provided internal information or advice that Commonwealth procurement arrangements or requirements had changed (previous slide), a smaller proportion noted the advice was about the CPRs (specifically).

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## Sources of awareness or advice about CPRs

Of those staff who reported receiving information or advice about the changes to CPRs, just under nine in ten (86%) received information or advice about the changes through a procurement bulletin. Other common sources of advice / information included the Department of Finance website (83%), internal entity procurement team (80%), and an email from the Department of Finance (74%).



### Qualitative findings

- Most Senior officials were able to speak to receiving communications relating to changes to the CPRs from the Department of Finance, with the procurement Bulletin named as a primary source.
- That said, not all Senior officials had access to this bulletin or were on key departmental procurement email lists, therefore they were not necessarily included on early communications about the changes.

Source: B4. In which of the following ways have you received information or advice about the Commonwealth Procurement Rule changes?  
Base: Respondents who received communications from their entity; n=72.  
Notes: % Yes shown. See notes for 'prefer not to say' and 'not sure' responses

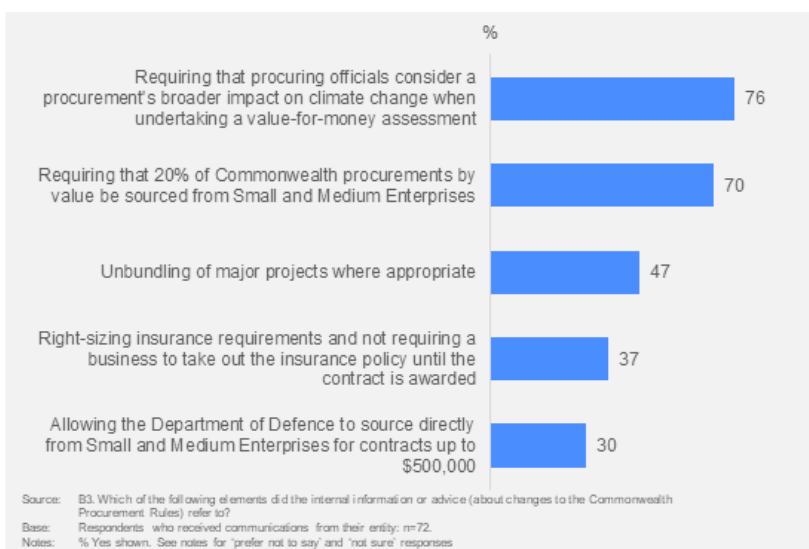


**Critical sources of information in communicating the CPR changes were the procurement bulletin, the Department of Finance website, the internal entity procurement team, and emails directly from the Department of Finance.**

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## Elements of CPRs the internal information or advice related to

Just more than three in four staff (76%) stated that the internal information / advice they received about the changes to CPRs related to requiring procuring officials to consider a procurement's broader impact on climate change. A slightly smaller proportion (70%) indicated the guidance related to requiring that 20% of Commonwealth procurements by value be sourced from SMEs.



### Subgroups

↑ There were no differences between subgroups for this measure.

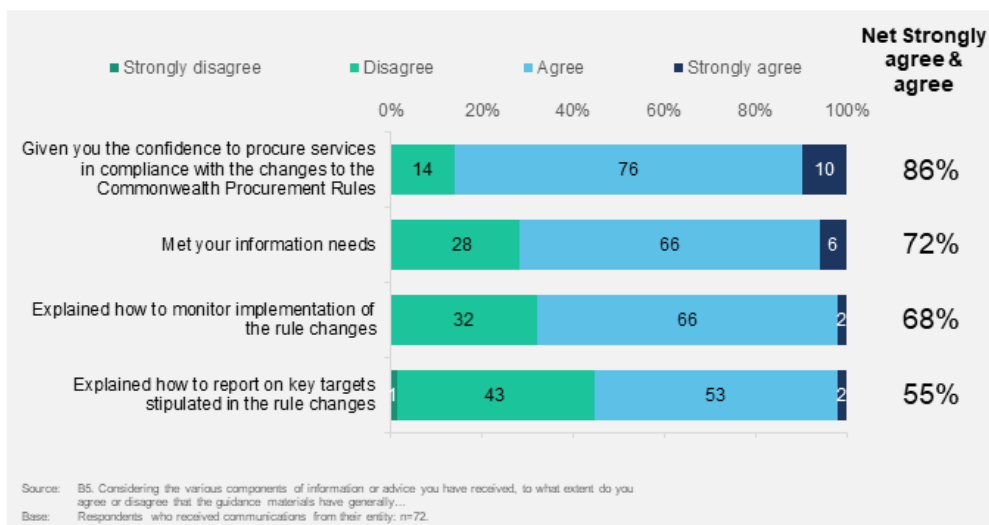


Internal guidance generally related to consideration of impact on climate change and the 20% quota for procurement to be sourced from SMEs.

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## Effectiveness of information or advice received

Perceptions of the effectiveness of guidance materials received were generally positive, with 86% of staff agreeing / strongly agreeing the materials gave them the **confidence to procure services in compliance with the changes to the CPRs**, and 72% agreeing / strongly agreeing that the materials **met their information needs**.



### Subgroups

↑ **Net Strongly agree & agree:** the guidance materials have given you the confidence to procure services in compliance with the changes to the CPRs: higher for staff from entities with individual procurement activities of less than \$500,000 in value (98%) vs staff from entities procuring higher-value goods or services (71%)



### Qualitative findings

- Some Senior officials suggested that information and advice about the changes could have included training packages regarding their implementation, as well as additional guidance for interpreting specific changes and utilising exemptions.
- It was thought that case studies or procurement scenarios relating to the changes would be extremely helpful in training staff to align their processes to the policy objectives.

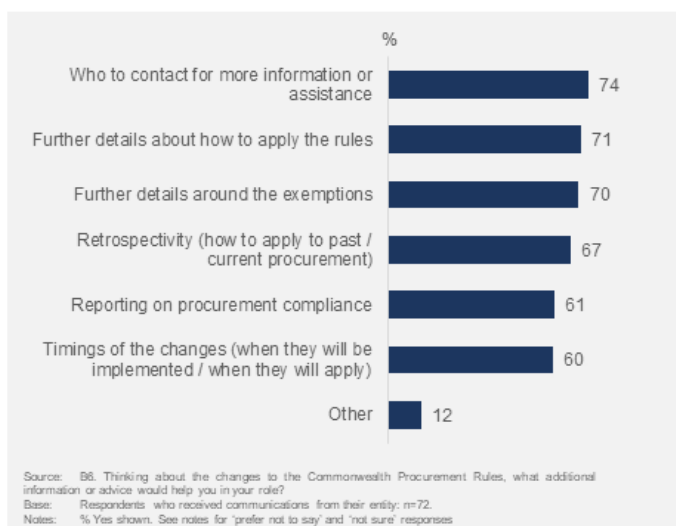


**Operational staff rated the guidance materials positively in terms of giving them confidence that they were procuring in line with the CPRs and meeting their general information needs.**

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## Types of information about the changes which would assist procurement staff

When asked what additional information or advice relating to changes in the CPRs would help them in their role, almost three-quarters of staff (74%) stated that advice on who to contact for information or assistance would be helpful. A slightly lower proportion indicated they would like further details about how to apply the rules (71%) and further details around the exemptions (70%).



### Subgroups

↑ **Who to contact for more information or assistance** was higher for staff from entities with individual procurement activities of \$500,000 or more in value (91%) vs staff from entities procuring lower-value goods or services (62%).



That said, moderate to high levels of need still exist for additional information or advice regarding the CPR changes.

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# Implementation



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## Summary: Implementation of CPR changes

**Feedback on the implementation of the CPR changes within entities showed that common strategies to help implement changes made to procurement practices included further reading / researching of the rules, and updates to procurement policies within the Department itself.**

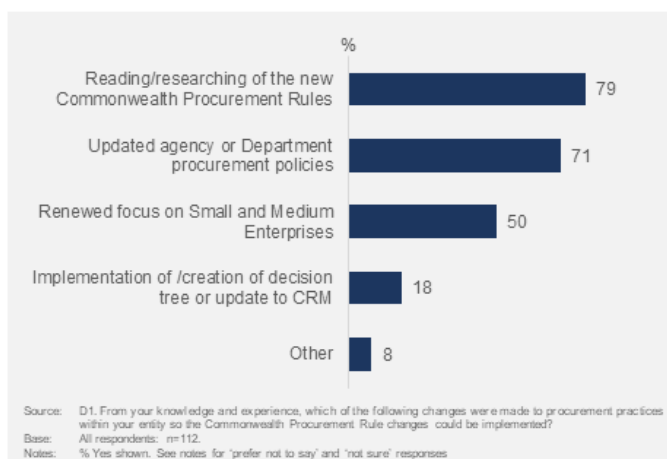
- The most common action taken to implement the changes to CPRs was reading / researching the new CPRs (79%). A further 71% indicated their entity updated agency or Department procurement policies to allow for the changes to be implemented.

**Changes were seen to be moderately effective at enhancing opportunities for SMEs in Commonwealth procurement. However, qualitative findings indicated that the monitoring of the effectiveness was not widespread within entities.**

- Overall, three in five staff (63%) perceived the changes to CPRs to have been either effective or very effective at enhancing opportunities for SMEs.
- From the qualitative research, Senior officials noted the critical nature of internal guidance and communications to support effective procurement, as well as ongoing capacity building activities.
- It was also felt that entities were generally unlikely to be monitoring the implementation of the CPR changes internally.
- Further, it was highlighted that when procurement was approached as a specialised, end-to-end, holistic activity, staff were able to navigate intersecting policy priorities more effectively.

## Changes to procurement practices within entity to allow for CPR changes

Four in five staff (79%) indicated that reading / researching the new CPRs was undertaken so the changes could be implemented. A slightly smaller proportion (71%) indicated their entity updated agency or Department procurement policies.



### Subgroups

- ↑ **Reading / researching the new CPRs** was higher for staff at entities that provided information or advice about the changes (89%) vs staff from entities that didn't (52%)
- ↑ **Updated agency or Department procurement policies** was higher for:
  - Staff at entities that provided internal information or advice about changes (81%) vs staff from entities that didn't (43%)
  - Staff from entities with individual procurement activities of \$500,000 or more (89%) vs staff from entities procuring lower valued goods and services (45%)
- ↑ **Implementation of / creation of decision tree or update to CRM** was higher for staff from entities with more than 1,000 employees (33%) vs those from entities employing fewer workers (11%)



### Qualitative findings

- When reflecting on the factors considered important for implementing and complying with the CPRs more broadly, Senior officials who were procurement specialists noted the critical nature of internal guidance and communications to support effective procurement, as well as ongoing capacity building activities for all staff in contact with the end-to-end procurement process.
- When thinking about the changes to the CPRs, most Senior officials said they had already been implemented internally or were measures they had been working within prior to the policy change.
- Procurement staff noted that they already had inbuilt mechanisms to implement policy change – variation appeared in the degree to which changes were being complied with.
- Entities were unlikely to be monitoring or reporting on the implementation of the CPR changes internally – many cited a lack of data to do so.



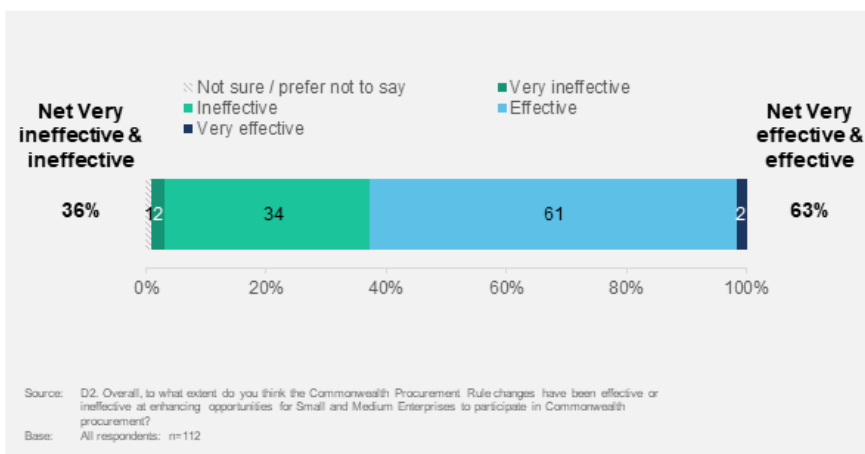
**Within entities, changes made to procurement practices included reading / researching the new CPRs, and updates to internal entity procurement policies. Internal guidance and capacity building was highlighted by procurement specialists as being critical.**

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## Perceived extent to which changes to CPRs have been effective at enhancing opportunities for SMEs

Overall, three in five staff (63%) considered the CPR changes to be either effective or very effective at enhancing opportunities for SMEs. Of the remainder, 36% perceived the changes to be either ineffective or very ineffective, and 1% were unsure or preferred not to say.



### Subgroups

↑ There were no differences between subgroups for this measure.



### Qualitative findings

- Most Senior officials could not identify increased engagement with SMEs since the changes came into place, due to preexisting barriers outside of entity procurement processes or lack of access to data related to changes.
- Some Senior officials felt that the changes were useful in terms of flagging the Government's priorities – however these priorities are increasingly competing with one another, e.g. SME and Indigenous suppliers.



A moderate proportion of staff rated the CPRs as effective at enhancing opportunities for SMEs to participate in Commonwealth procurement.

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# Impact



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## Summary: Impact of CPR changes

**Implementation of the CPRs is credited with improving procurement in select areas. Additional changes to better support SMEs in underrepresented groups were identified including greater use of panels, affirmative action and in some cases less procurement through panels. There was doubt about the extent to which the quality of services provided by suppliers has improved due to the CPR changes.**

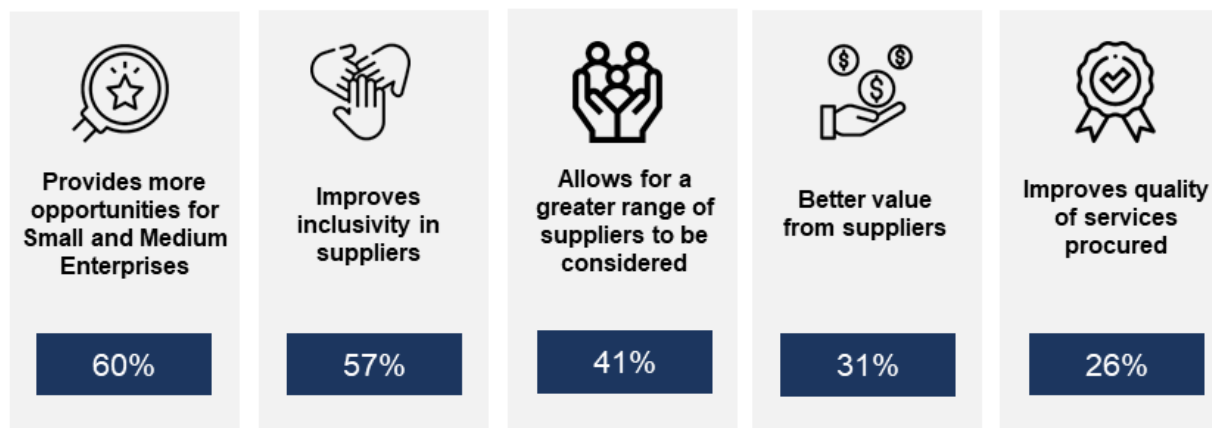
- 60% believed the changes to CPRs provide more opportunities for SMEs, with a further 57% who believed the changes improved inclusivity in suppliers.
  - 26% indicated they believed it would improve the quality of services procured.
- 49% of staff felt that procurement policies could be made more inclusive to better support SMEs in underrepresented groups via more procurement through panels, and 46% through affirmative action. However, one-third of staff (35%) felt that less procurement through panels would have the effect of supporting SMEs.
- From the qualitative research, suggestions to better support SME engagement included:
  - More education and guidance about selling to government, responding to RFQs and participating in feedback processes.
  - Opportunities for mentoring programs for SMEs.
  - Use of case study examples.
  - Working with peak bodies to educate, provide guidance and promote Government as a potential buyer.

**Frustration was caused by navigating interlocking procurement policies and additional administrative burden created as a result of the CPRs. SMEs were not easy to identify on panels and progressively complex and intersecting procurement policies were thought by many to have made the process more difficult for the 'ad hoc procurer'.**

- Navigating interlocking policies when dealing with complex tender processes was the main frustration or pain point experienced by Operational staff in the implementation of the CPR changes (71%)
- 79% believed systemising the identification of SME suppliers would be beneficial. Endorsement was similarly high for other possible improvements allowing for increased participation in procurement from SMEs - most notably for information/education being made available through SME peak bodies (78%), and panel invitations being sent to SMEs (73%).

## Ways in which CPR changes have improved procurement activities

Overall, three in five staff (60%) believed the changes to CPRs provide more opportunities for SMEs. A slightly lower proportion believed the changes improve inclusivity in suppliers (57%), and two in five felt they allow for a greater range of suppliers to be considered (41%).



*There were no significant differences between subgroups for all statements.*

Source: E1. From your perspective, how have the Commonwealth Procurement Rule changes improved procurement activities in your entity?  
 Base: All respondents: n=112.  
 Notes: % Yes shown. See notes for 'prefer not to say' and 'not sure' responses

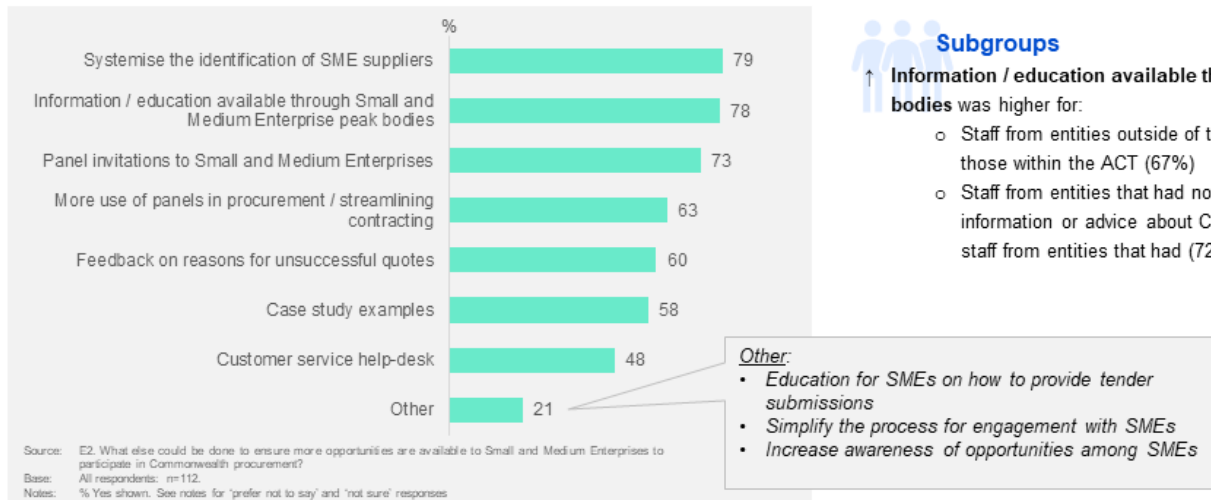


The CPR changes were seen to some extent, to provide more opportunities for SMEs as well as improving inclusivity of suppliers. There was however fewer mentions for improved quality of services. As flagged earlier, only a moderate proportion of staff rated the CPRs as effective at enhancing opportunities for SMEs to participate in Commonwealth procurement.

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## Improvements to ensure opportunities are available to SMEs to participate in Commonwealth procurement

When asked what else could be done to ensure more opportunities are available to SMEs to participate in Commonwealth procurement, four in five participants (79%) believed systemising the identification of SME suppliers would be beneficial. Similar proportions believed that information / education available through SME peak bodies would be helpful (78%), and that panel invitations to SMEs would be of benefit (73%).



### Qualitative findings

- Suggestions were given to better support SME engagement, including:
  - More education and guidance about selling to government, responding to RFQs and participating in feedback processes
  - Opportunities for mentoring programs for SMEs
  - Use of case study examples
  - Working with peak bodies to educate, provide guidance and promote Government as a potential buyer.



Operational staff experienced challenges in identifying SME suppliers, as demonstrated by the primary improvement item being systemising the identification of SMEs.

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## Policies and regulations affecting SMEs' ability to compete for Australian Government contracts

Policies and regulations (other than procurement) affecting SMEs' ability to compete for Australian Government contracts included:

- Difficulty in competing on large volume pricing benefits
- Potential issues in the future due to cyber security and liability insurance implications
- Threshold for Open Tender in Australian Government procurement was too low
- SMEs could have difficulties during panel establishment and refresh activities.

"SMEs are often **unable to attract the same volume pricing benefits** as larger re-sellers and organisations and lose out based on price where technical suitability is identical to competitors, also they often have less robust quality management systems and less resourcing to provide layers of redundancy and tailored support to buyers in contract management processes."

"**Cyber security** and its intersection with liability insurance will likely be a barrier in the near future for any contracts involving information handling or security."

"The **threshold for Open Tender in Australian Government procurement is too low** (i.e. it has not been adjusted regularly due to inflation etc.). The thresholds for SME exemptions are also too low. The limits for Exemptions 16 and 17 should also be increased as \$200k these days is lower in real terms than when these limits were first introduced."

"**Shadow Economy**. Horrible policy to apply especially for WoAG **Panel establishment or refresh activities**. Big business have no issues but it is the SMEs and indigenous companies that struggle the most to get it right."

Source: E4. What policies and regulations (other than procurement) do you believe are affecting Small and Medium Enterprises' ability to compete for Australian Government contracts?  
Base: All respondents: n=112.

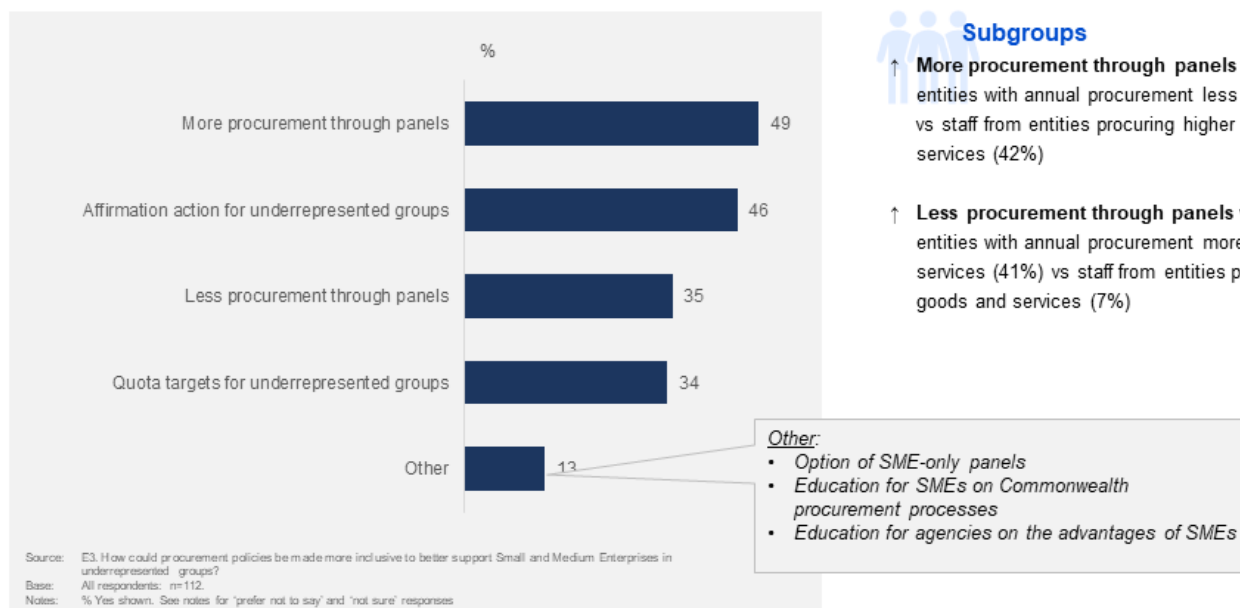


The most significant impact on SMEs' ability to compete for contracts was believed to be their inability to compete on price due to not having the benefits of volume pricing (and therefore not being as price competitive as larger companies).

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## Possible improvements to procurement policies to better support SMEs in underrepresented groups

49% of staff felt that procurement policies could be made more inclusive to better support SMEs in underrepresented groups via more procurement through panels. In contrast, one-third of staff (35%) felt that less procurement through panels would actually make procurement policies more inclusive.



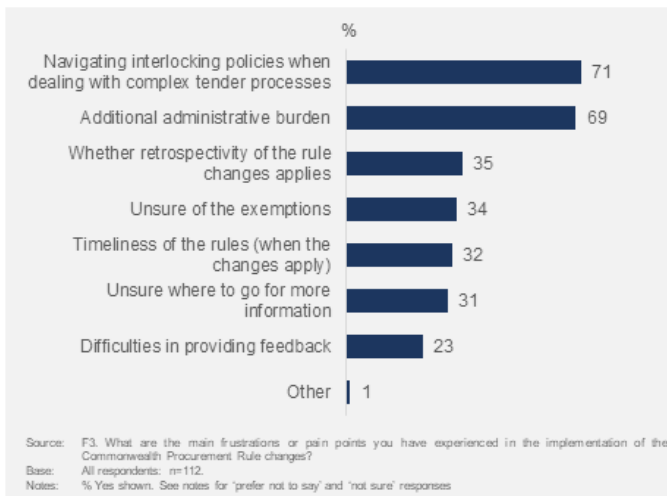
Use of panels and affirmative action were considered the primary ways to support SME inclusivity. That said, staff from larger entities felt less reliance on panels would better support SMEs in underrepresented groups.

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## Main frustrations or pain points with implementation of CPR changes

The main frustration or pain point experienced by staff in the implementation of the CPR changes was navigating interlocking policies when dealing with complex tender processes (71%). This was followed by additional administrative burden (69%) and being unsure whether retrospectivity of the rule changes applies (35%).



### Subgroups

- ↑ **Navigating interlocking policies when dealing with complex tender processes** was higher for staff from entities with annual procurement of \$7.5 million or more (79%) vs staff from entities procuring lower valued goods or services (37%)
- ↑ **Additional administrative burden** was higher for staff from entities with annual procurement of \$7.5 million or more (81%) vs staff from entities procuring lower valued goods or services (19%)
- ↑ **Unsure where to go for more information** was higher for:
  - Staff from entities with 1,000 employees or less (41%) vs staff from entities employing more workers (8%)
  - Staff from entities with annual procurement less than \$7.5 million (64%) vs staff from entities procuring higher valued goods and services (23%)



### Qualitative findings

- Reporting was noted as the biggest difficulty in the implementation of the changes, as most entities did not have the data to identify SMEs – it was noted that AusTender does not currently have this capability – one entity was able to report through a combination of public and private data sources.
- Progressively complex and intersecting procurement policies were thought by many to have made the process more difficult for the 'ad hoc procurer', increasing the resources needed to navigate the procurement process and thus reducing the capacity for thought about responsible RFQ writing, the importance of the policy goals targeted by these changes and ultimately the engagement of SMEs.



**Primary frustrations due to the CPR changes were the complexity of interlocking procurement policies, as well as the increased administrative burden due to the changes.**

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# Barriers for SMEs in Commonwealth procurement



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## Summary: Barriers for SMEs in Commonwealth procurement

**There were several perceived barriers to SME participation in Commonwealth procurement - in particular a lack of staffing resources to write tender responses and a lack of knowledge of Commonwealth procurement processes.**

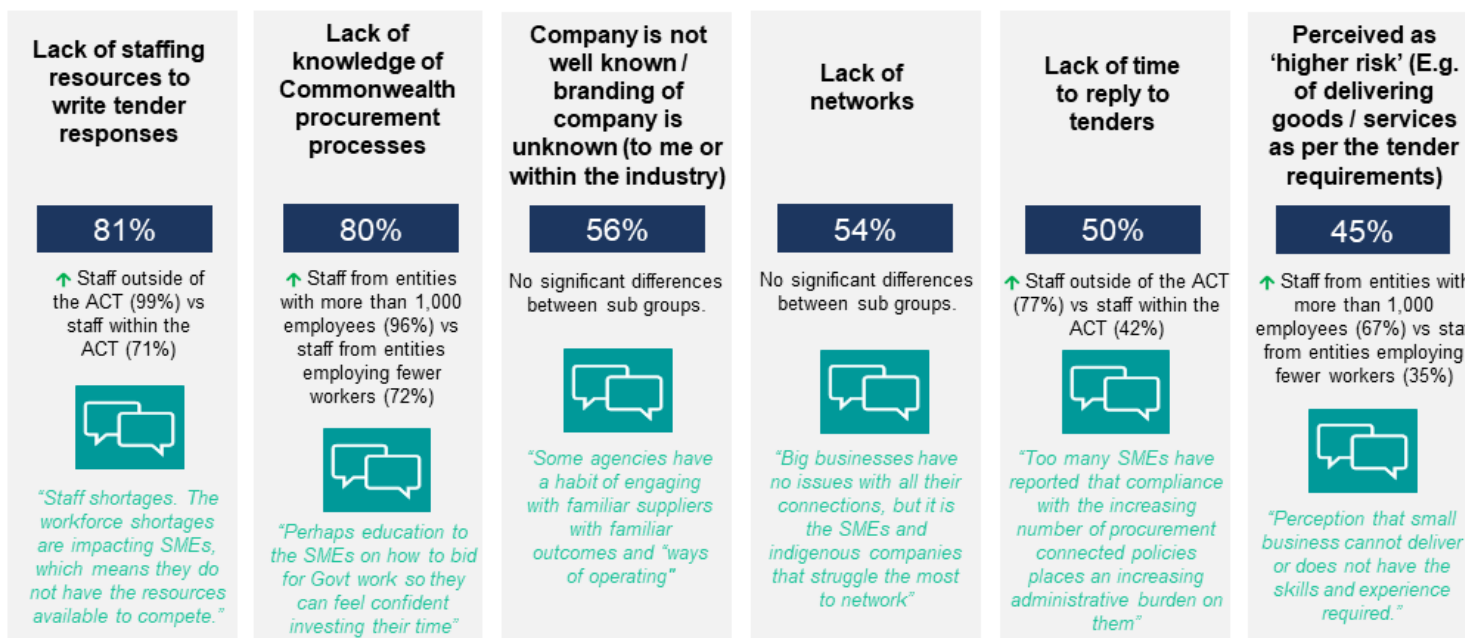
- Lack of staffing resources to write tender responses (81%) and lack of knowledge of Commonwealth procurement processes (80%) were the most common barriers faced by SMEs participating in Commonwealth procurement.

**From an entity perspective, Senior officials and Operational staff explained that challenges in identifying what qualifies a supplier as an SME and not knowing the capabilities and capacities of SMEs made compliance with the 20% quota difficult to achieve.**

- The main barriers not related to regulation or policies that prevent entities from approaching or using SMEs were that it is hard to identify or know what qualifies a supplier as a SME (78%), and that capability and/or capacity of SMEs was unknown (77%).
- From the qualitative research, Senior officials commented that it was difficult for SMEs to compete with larger providers, particularly in areas that involve high risk, high value tenders such as Information and Communication Technology.
- Reporting was noted as the biggest difficulty in the implementation of the CPR changes, as most entities did not have the data to identify SMEs, as AusTender does not currently have this capability.

## Main barriers faced by SMEs participating in Commonwealth procurement

Four in five staff (81%) cited 'lack of staffing resources to write tender responses' as a main barrier faced by SMEs participating in Commonwealth procurement. This was followed by 'lack of knowledge of Commonwealth procurement processes' (80%).



Source: F1. What are the main barriers faced by Small and Medium Enterprises participating in Commonwealth procurement?

Base: All respondents: n=112.

Notes: % Yes shown. See notes for 'prefer not to say' and 'not sure' responses

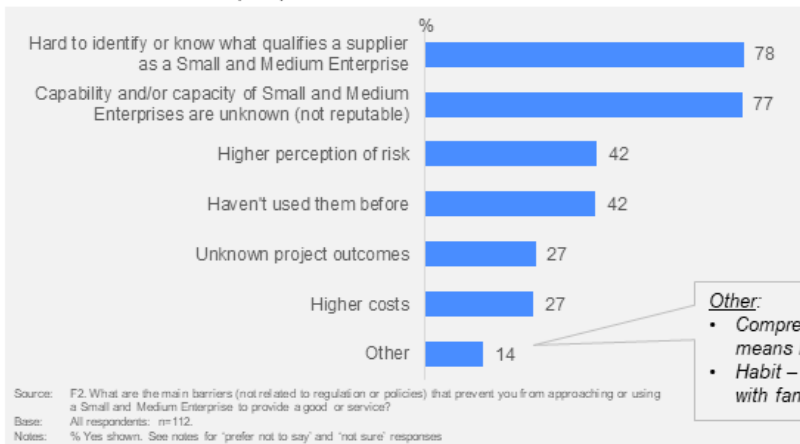


Several barriers were identified for SMEs in Commonwealth procurement, in particular, lack of staffing resources and lack of knowledge of Commonwealth procurement processes.

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## Main barriers preventing entities from approaching or using an SME to provide a good or service

Four in five staff (78%) indicated the main barrier (not related to regulation or policies) that prevents them from approaching or using an SME to provide a good or service is that it is 'hard to identify or know what qualifies a supplier as a SME'. A similar proportion indicated that 'capability and / or capacity of SMEs being unknown' is a main barrier (77%).



### Subgroups

↑ **Difficulty in identifying what qualifies a supplier as an SME** was higher for staff from entities that generally procure simple goods or services (91%) vs staff from entities that procure more complex goods or services (70%).

#### Other:

- Compressed timeframes for procurements means less time to approach unknown entities
- Habit – agencies sometimes prefer to engage with familiar suppliers with familiar outcomes



### Qualitative findings

- Senior officials commented that it was difficult for SMEs to compete with larger providers, particularly in areas that involve high risk, high value tenders such as Information and Communication Technology (ICT).
- Consistent with the quantitative findings, identifying SMEs was difficult as there were limited publicly available sources, and panels also didn't identify SMEs
- If the panels were lacking SMEs, it was hard to achieve the 20% quota, there were also barriers for SMEs to get on the panels initially.
- There was an increased burden for administration staff to find SMEs from sources outside of panels.



**Primary barriers which prevented entities from approaching or using SMEs were the difficulty in identifying SMEs and the risk of their unknown capabilities / capacities.**

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## Future Opportunities



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## Summary: Future opportunities

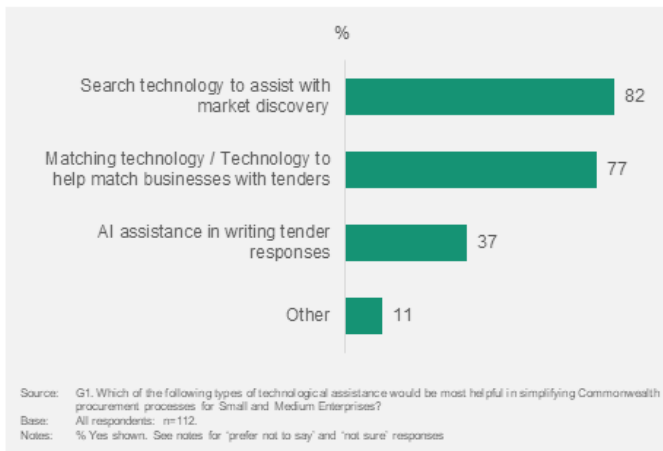
**Systemising the identification of SME suppliers and distributing more information through peak bodies were most cited as necessary to ensure opportunities are available to SMEs to participate in Commonwealth procurement. High levels of support also exist for technological assistance – especially in terms of market discovery and matching businesses with tenders. That said, procurement frameworks could be streamlined or simplified, and a recognition of the specialised nature of procurement should happen as part of raising the profile of the profession.**

- The types of technological assistance that would be most helpful in simplifying procurement processes for SMEs were identified as search technology to assist with market discovery (82%), and technology to help match businesses with tenders (77%)
- AI assistance in writing tender responses was endorsed by far fewer Operational staff (37%)
- From the qualitative research, the following suggestions for how technology could aid procurement were made:
  - An automated way to identify SMEs, or further information to identify SMEs
  - Artificial Intelligence to match RFQs to suppliers
  - Artificial Intelligence to assist in tender writing, especially for SMEs



## Types of technological assistance that would be most helpful in simplifying procurement processes for SMEs

When asked what types of technological assistance would be most helpful in simplifying procurement processes for SMEs, 82% of staff indicated search technology to assist with market discovery would be helpful. This was followed by technology to help match businesses with tenders (77%), and AI assistance in writing tender responses (37%).



### Subgroups

↑ **Technology to help match businesses with tenders** was higher for staff from entities outside of the ACT (94%) vs entities within the ACT (74%)

↑ **AI assistance in writing tender responses** was higher for:

- Staff from entities that generally procure complex goods or services (50%) vs staff from entities procuring simple goods or services (14%)
- Staff from entities with annual procurement \$7.5 million or more (44%) vs staff from entities procuring lower valued goods and services (7%)



### Qualitative findings

- Also consistent with the quantitative findings, there were several opportunities and suggestions for how technology could aid procurement, such as:
  - An automated way to identify SMEs, or further information to identify SMEs
  - AI to match RFQs to suppliers
  - AI help in tender writing, especially for SMEs



**Technological opportunities identified by staff to help simplify procurement for SMEs included search function technology to assist with discovery, and matching technology to assist in matching businesses with tenders.**

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## Suggestions to improve opportunities for SMEs to engage with Commonwealth procurement

Other suggestions to increase or enhance SMEs opportunities to engage with Commonwealth procurement included:

- removal of mandatory panel requirements
- training or accreditation for SMEs on tender response
- potential of reduction of information requirements for SMEs.

**"Remove the mandatory panel requirements** that hinder the engagement of SMEs that are not on these panels and are contradictory to the purpose of the Indigenous Procurement Policy."

**"Remove requirements of Mandatory Panels** for Agencies based in **regional centres** (i.e. GBRMPA)."

**"When a panel or contract is expected to exceed \$4M the ask on SMEs for information like modern slavery, shadow economy, Statement of Tax Record, IPP etc. is a lot to request from them** and offers no value. I believe this removes potential for SMEs to provide responses as it becomes too hard."

**"Dedicated training to build capability of SME tender response.** A platform similar to Supply Nation with the accreditation of SMEs that have met minimum mandatory requirements for participation and have had induction/support on how to respond to be competitive."

Source: G2. Is there anything else that you'd like to mention that could increase or enhance Small and Medium Enterprises' opportunities to engage with Commonwealth procurement?  
Base: All respondents: n=112.



A variety of other suggestions to assist SMEs in engaging with Commonwealth procurement included removal of mandatory panel requirements, capability building for SMEs in tender response, and reduction in information requirements from SMEs.

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## Composite Case Studies



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## Analysis and reading qualitative findings

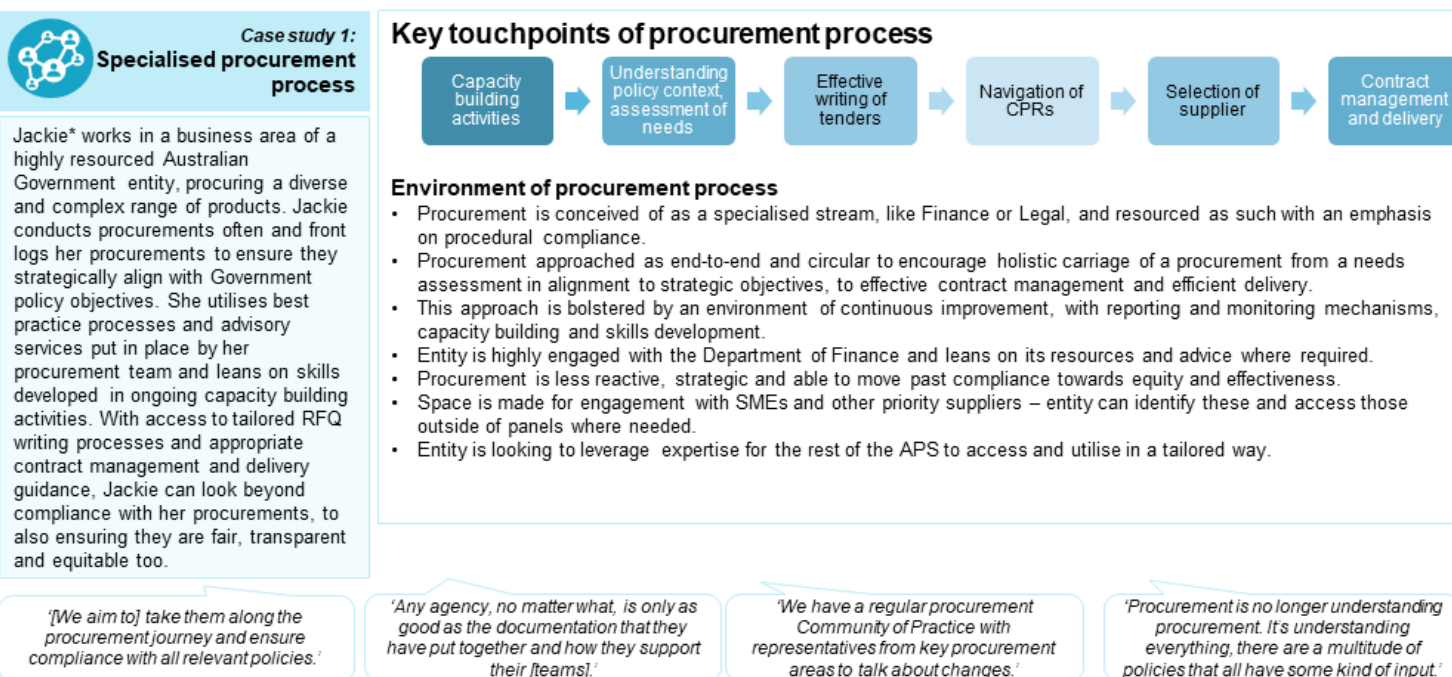
Following the completion of the Phase 1 qualitative research to inform the questionnaire, the Phase 2 online survey and Phase 3 qualitative research to further explore the survey findings, two key categories of procurement experience were identified to be illustrated in the format of qualitative 'composite case studies'.

These composite case studies were designed to ensure the anonymity of participants by combining findings across multiple participants and research phases to highlight salient issues, experiences and outcomes. The case studies are accompanied by verbatim comments from participants to provide extra depth and colour to the analysis.

It must be noted that qualitative research findings are not designed to be representative, in any statistical sense, of the wider population from which participants are drawn, but purposive sampling of the cohort ensured a wide variety of people and entities were consulted. The approach to qualitative sampling means that caution should always be exercised expanding the findings of qualitative research to a wider population.

## Composite case studies

The following pages look to aggregate the diverse range of experiences with the CPRs and their recent changes by creating two distinct composite case studies. The 'specialised procurement process' demonstrates a **best practice scenario**, while the 'non-specialised procurement process' represents **entities without a holistic conception of procurement or the resources** necessary to scaffold this within their internal processes.



\*Not a specific person – this case study is a composite of data collected across n=24 depth interviews. Details have been changed to protect the privacy of participants.

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## Composite case studies

### Case study 2: Non-specialised procurement process

Edward\* works in a business area of a smaller Australian Government entity. Edward procures a range of products, but on an ad hoc, reactive basis. Edward often faces significant time constraints when running procurements and stresses about complying with the CPRs. While there is some advice offered by his entity's procurement team, resources to guide decision making are not sufficient – sometimes Edward has contacted procurement staff from other Departments to answer his questions. Edward has developed his own case studies to increase his understanding of how to navigate the CPRs in different procurement scenarios.

### Key touchpoints of procurement process



### Environment of procurement process

- Procurement is not seen as specialised by entity, but rather as something that is generally 'too hard' for the ad hoc procurer.
- Central procurement team looks to provide advisory support but is not sufficiently resourced to do so.
- Lack of processes in place to guide decision making when navigating a crowded and fluid policy environment as well as the increasingly complex CPRs – additional administrative burden experienced as a result.
- Tight timelines around tendering process ensures that officials are focused on compliance with little capacity for much else.
- Procurement is siloed from contract management.
- Less or no engagement with Department of Finance and the APS procurement community with limited access to support and advice.
- Little to no resourcing afforded to ongoing capacity building and skills development.
- Limited access to vital metrics – e.g. identifying SME's – so reporting and monitoring mechanisms are limited as a result.

*'There are so many discrete policies that work together but aren't described together... you have to go and research for weeks what is going to apply, and you're still not 100% sure that it's going to hit the mark because you might have just googled the wrong thing at some point, or you might not have hit a particular policy that you needed to include.'*

*'There are many ways to interpret [the CPRs], but they never provide what that looks like when implementing.'*

*'Nervous [about] doing the wrong thing... it's difficult to know what an SME is.'*

*'There are a lot of people that get confused with procurement processes particularly. The difference between mandatory arrangements and non mandatory arrangements and the ever-evolving landscape of what documents are required.'*



\*Not a specific person – this case study is a composite of data collected across n=24 depth interviews. Details have been changed to protect the privacy of participants.

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## Composite case studies

The graphic below outlines points of divergence and convergence relating to the changes to the CPRs between the two case studies.

	Information about changes to CPRs	Implementation of changes to CPRs	Perceived impact of changes to CPRs
 <p><b>Case study 1: Specialised procurement process</b></p>	<ul style="list-style-type: none"> <li>• Looped in with Department of Finance, SPORG and other procurement-related bulletins and notifications.</li> <li>• All policy changes rolled out on Intranet, in Communities of Practice and through other resources e.g., podcasts, webinars, town halls, case studies.</li> <li>• Training resources also adapted to align with the changes – case studies of entity-relevant procurement scenarios found especially helpful.</li> <li>• Able to lean on Department of Finance expertise when needed.</li> </ul>	<ul style="list-style-type: none"> <li>• Implementation of changes a simple process as entity already meeting many of the requirements.</li> <li>• Emphasis on researching the new CPRs, as well as alignment of internal policies.</li> <li>• Existing requirement to monitor processes ensures reporting mechanisms already established – entity has access to SME identifiers and numbers so can report on targets stipulated by the changes.</li> <li>• Processes enable strategic alignment with policy priorities – active engagement of SMEs, adaptation of other processes (e.g., RFQ writing), resourcing of outreach.</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on SMEs difficult to assess due to existing work in this space.</li> <li>• Changes themselves thought to benefit SMEs however they are perceived as subject to the unique context of each procurement and do not address external barriers to SME engagement.</li> <li>• For entity, changes found useful in flagging Government's priorities; however, these priorities are increasingly competing with one another, e.g. SME and Indigenous suppliers.</li> <li>• Entity processes not impacted by changes as procurement understood as highly fluid.</li> </ul>
 <p><b>Case study 2: Non-specialised procurement process</b></p>	<ul style="list-style-type: none"> <li>• Does not receive Department of Finance procurement bulletin, is not a member of SPORG and does not receive all procurement-related bulletins and notifications.</li> <li>• While changes were communicated, suggested that information and advice could have included training packages regarding their implementation and more operational guidance.</li> <li>• Uncertainty about avenues for assistance or supporting expertise, either within entity or the APS more broadly.</li> </ul>	<ul style="list-style-type: none"> <li>• Changes implemented to best of ability and where relevant.</li> <li>• Unable to identify SMEs and so unable to report on targets.</li> <li>• No set requirement to monitor or evaluate implementation, no mechanisms in place to do so.</li> <li>• Focus is on being compliant – no resourcing or capacity to be strategic or look to increase SME engagement in other ways.</li> </ul>	<ul style="list-style-type: none"> <li>• Impact on SMEs difficult to assess – had not engaged with more SMEs since changes were implemented.</li> <li>• Perception changes not 'prioritised' as much as other changes to CPRs have been.</li> <li>• Changes also not relevant for many business areas, and not designed with this in mind.</li> <li>• For entity, progressively complex and intersecting procurement policies have made process too difficult, with more resources required to navigate.</li> <li>• Entity has limited access to data related to changes so has no way of assessing impact.</li> </ul>

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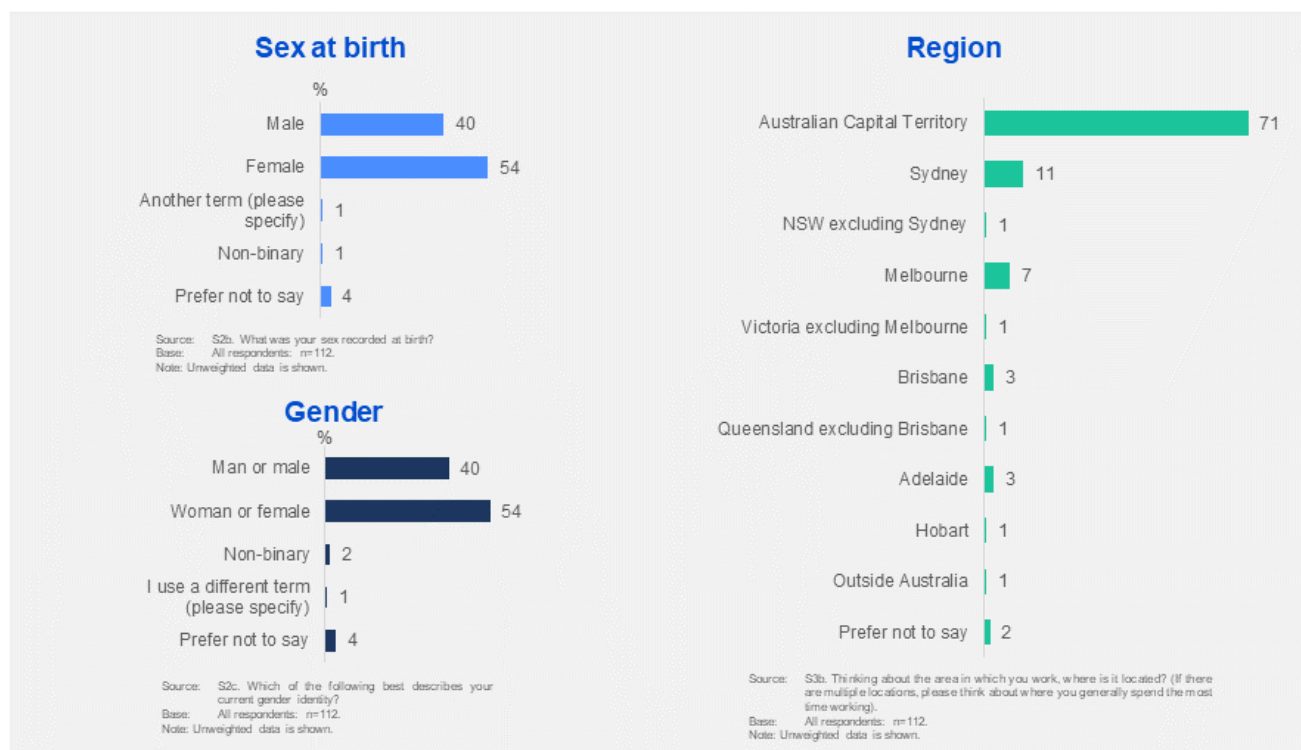


## Demographics



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## Demographics



# Appendix

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## Methodology Summary

### Quantitative methodology

- The questionnaire structure and individual items were developed in collaboration with ASBFEO.
- A total of 112 Operational staff completed a 10-minute online survey
- An open survey link was made available to the Department of Finance for distribution to Operational staff involved in procurement via a number of internal email distribution lists (for Chief Procurement Officers and Chief Financial Officers).

### Qualitative methodology

- The SRC conducted two rounds of qualitative research with **Senior officials** and **Operational staff involved in procurement** to inform the ASBFEO's input to the Review.
  - The first round consisted of a combination of one-on-one, paired and group interviews, lasting between 45 and 60 minutes, with 22 senior government officials across twelve Australian Government Departments and Agencies (entities).
  - The second round consisted of one-on-one interviews, lasting between 45 and 60 minutes with ten operational procurement staff across nine Australian Government entities. Final interviews will be completed on 4 December 2023.
- A list of 58 Australian Government contacts was provided by ASBFEO to assist with recruitment. Communications regarding both rounds of fieldwork were distributed via this list. A combination of direct replies and referrals contributed to the recruitment for the first round of qualitative research, while a combination of direct replies, referrals and opt-ins from the quantitative survey contributed to recruitment for the second round.
- Identifying and engaging Government officials to participate in this work was challenging, predominantly due to the low number of contacts provided as well as some contacts not being up to date. The nature of the topic also appeared to make some staff reticent to participate. A combination of direct replies and referrals contributed to the recruitment for Round One, while a combination of direct replies, referrals and opt-ins from the quantitative survey contributed to the recruitment for Round Two.

## Weighting

Surveys are a commonly used method for making inferences about a population based on responses from just a subset of it. As a result, the subset of persons who complete the survey may not exactly reflect the underlying population, despite the best possible survey design and data collection practices.

In such situations, it is common to assign a “weight” to each responding case in an effort to align the respondents with the population on available characteristics. These weights are then used in any calculations involving the survey responses so that results from the survey may be generalised to the population. Persons with characteristics that are under-represented among respondents compared to the population get a higher weight in the calculations, whereas persons that are over-represented get a lower weight. For example, entities with more than 1,000 employees make up 31% of the population but 54% of respondents. Therefore, to align respondents better with the population on agency size, respondents from such agencies should be assigned a lower weight on average compared to respondents from other agencies.

A weight was calculated for each respondent so that the distributions of respondents aligned with the population distributions on the range of characteristics shown in Table 1. The data was obtained from two separate sources, and the totals in the table represents the entities that were present in both sources. Note that there were more respondents to the survey (112) than entities represented in the table (83). This may be due to responses being received from entities not included in the table (if they were present in only one of the sources), to responses being received from multiple persons from the same agency, or (less likely) to the same person completing the survey multiple times. There was no means of identifying such occurrences, however, due to the anonymity of the survey. As a result, entities with multiple respondents will contribute more to the survey estimates than those with just a single respondent.

## Weighting cont.

Table 1. Characteristics used for adjustment, with population values and sources.

Characteristic	Population (#)	Population (%)	Source
<b>Total staff across Australia</b>			(A)
Less than 100 employees (Micro / Extra Small Agency)	18	21.7	
101-250 employees (Small Agency)	17	20.5	
251-1000 employees (Medium Agency)	22	26.5	
More than 1000 employees (Large / Extra Large Agency)	26	31.3	
<b>Goods or services procured - Buildings</b>			(B)
Yes	67	80.7	
No	16	19.3	
<b>Goods or services procured - Personnel</b>			(B)
Yes	60	72.3	
No	23	27.7	
<b>Goods or services procured - Technology</b>			(B)
Yes	71	85.5	
No	12	14.5	
<b>Total procurement value</b>			(B)
Less than \$7.5 million	16	19.3	
\$7.5 million or more	67	80.7	

(A) Location by size: [APS Employment Release Tables – 30 June 2023.XLSX \(live.com\)](#)

(B) Procurement values: <https://help.tenders.gov.au/getting-started-with-austender/information-made-easy/what-the-government-buys/>

## Standards and accreditations

All aspects of this research were undertaken in accordance with the National Health and Medical Research Council's (NHMRC) National Statement on Ethical Conduct in Human Research (the National Statement), the Australian Privacy Principles, the Privacy (Market and Social Research) Code 2021, Research Society Code of Professional Behaviour, and ISO 20252:2019 standards.

The Social Research Centre is an accredited Company Partner of The Research Society with all senior staff as full members and several senior staff QPR accredited. The Social Research Centre is also a member of the Australian Data and Insights Association (ADIA formerly known as AMSRO) and bound by the Market and Social Research Privacy Principles / Code.

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## Questionnaire instrument

The survey instrument was delivered to ASBFEO (named 'Attachment A - ASBFEO Commonwealth Procurement Rules Inquiry - Stage 2 - Online Questionnaire - 2023 11 14').

# Attachment A: Questionnaire

Attachment A - ASBFEO Commonwealth Procurement Rules Inquiry - Stage 2 - Online Questionnaire - 2023 11 14

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## Attachment B: Discussion Guide - Stakeholders

Attachment B - ASBFEO Commonwealth Procurement Rules Inquiry - Senior govt stakeholder discussion guide - 2023

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# Attachment C: Discussion Guide – Operations

Attachment C - ASBFEO Commonwealth Procurement Rules Inquiry - Operational staff discussion guide - 2023

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GPO Box 1791  
Canberra City, ACT 2601

or email [media@asbfeo.gov.au](mailto:media@asbfeo.gov.au)

## Canberra

Level 2  
15 Moore Street  
Canberra ACT

GPO Box 1791  
Canberra City ACT 2601

T 1300 650 460  
E [info@asbfeo.gov.au](mailto:info@asbfeo.gov.au)

X: @ASBFEO

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