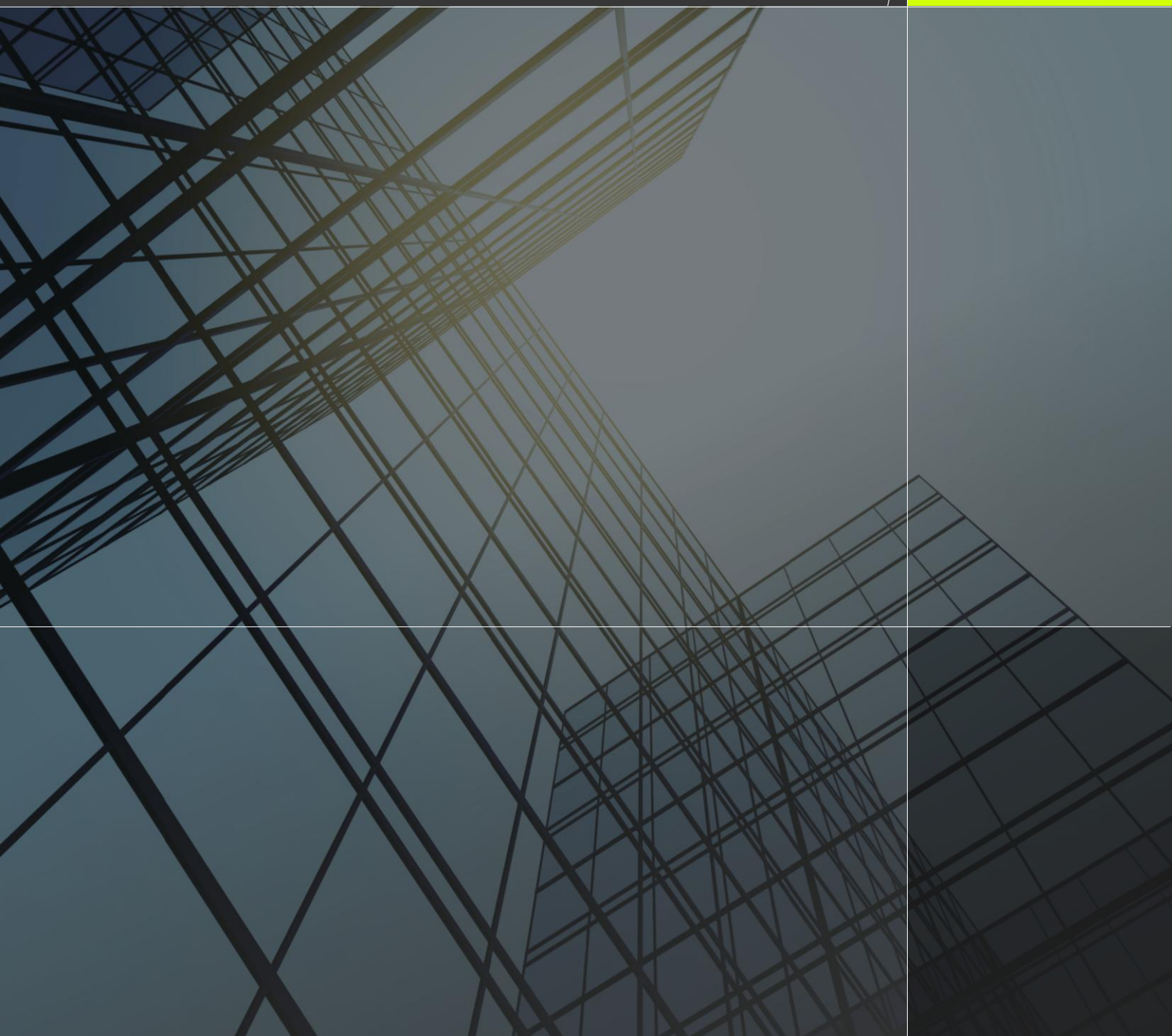
BCA

Business Council of Australia

Secure Australian Jobs Framework

Business Council of Australia submission

October 2026



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This report addresses key issues highlighted by the BCA, including:



1. Executive summary

The Business Council of Australia (**BCA**) welcomes the opportunity to make a submission on the draft Secure Australian Jobs Framework (**Framework**) and proposed amendments to the Commonwealth Supplier Code of Conduct (**Supplier Code**). The BCA is a member-led organisation, representing more than 120 of Australia's leading employers.

The Commonwealth Government must not introduce procurement rules that increase the risk of corruption and higher costs in the awarding of taxpayer-funded contracts, while making Australia's productivity crisis even worse.

In 2024–25, the Commonwealth was responsible for almost 87,000 contracts with a reported total value of approximately $105 billion.[1] If just one per cent of that value were wasted, more than $1 billion would be lost, enough to fund the National Disability Insurance Scheme (**NDIS**) for about a week, based on its $48.98 billion cost in 2024-25.[2] Every dollar wasted on inflated contract prices is a dollar unavailable for disability support, health care or other essential services. Decisions involving taxpayer funding on this scale must be based on value for money and who can effectively deliver the product or service.

The BCA is deeply concerned that the Framework and the proposed amendments to the Supplier Code risk undermining these principles by favouring businesses with union-covered enterprise agreements.

As the investigations in Victoria and Queensland have shown, this approach carries unacceptable risk for the taxpayer and the economy.

Geoffrey Watson SC's investigation into the Victorian Construction, Forestry and Maritime Employees Union (**CFMEU**) documented how influence over enterprise agreements and access to work was exploited through corrupt payments that flowed to organised crime figures.[3]

In Queensland, the ongoing Commission of Inquiry into the CFMEU has examined evidence about government procurement policies that increased union influence over contractors and subcontractors, significantly increasing the cost to taxpayers.

The Commonwealth's proposed changes risk embedding this rotten approach across the economy and to many industries and services beyond construction.

At a time when Australia is facing a productivity crisis, these changes will further compound that problem, making the task of improving living standards for all Australians even harder.

The proposals would give unions greater influence over who wins taxpayer-funded work, without requiring better value for money. The preference for union-covered enterprise agreements would be incorporated into Commonwealth contracts, with four significant consequences:

- Better-paying businesses can be disadvantaged. A supplier offering higher wages and better conditions can be assessed less favourably for Commonwealth contracts than a lower-paying competitor, simply because its enterprise agreement does not cover a union.
- Businesses without union-covered agreements have no clear way to meet certain Supplier Code workplace requirements. Those without an enterprise agreement must demonstrate conditions above applicable awards and prevailing industry standards, using employers with enterprise agreements as

[1] Department of Finance, Statistics on Australian Government procurement contracts, "2024–25 financial year", accessed 21 October 2026. The reported 86,926 contracts total $104,899.8 million. Values include new contracts and amendments and reflect maximum contract value over the contract's life, rather than annual expenditure.
[2] National Disability Insurance Agency, *Annual report 2024–25*, 2025, p 97, statement of comprehensive income. Total expenses were $48,976.626 million, including participant plan expenses and administration. The comparison is illustrative: one per cent of $105 billion is $1.05 billion, equivalent to approximately 7.8 days at that annual expense rate.
[3] Geoffrey Watson SC, *Rotting from the top: the CFMEU in Victoria during the Setka era*, paras 69, 346, 355 and 419–420.

comparators. But the drafts do not explain how that comparison will be made or what benchmarking evidence will be accepted. Businesses with non-union agreements are not offered a benchmarking option.

- A union-covered agreement could become the only practical way for some suppliers to secure Commonwealth work. A supplier that cannot meet enough other workplace criteria may need a union-covered agreement to satisfy the Supplier Code, even if it already provides good pay and conditions.
- The Supplier Code would extend the integrity risk to subcontractors. Commonwealth contracts generally require suppliers to comply with the Code. The union-covered agreement preference would therefore become part of their contractual obligations. Head contractors would also have to ensure their subcontractors comply with the Code. Failure to comply could put both government contracts and subcontracting work at risk. Smaller businesses, with fewer resources to absorb additional compliance costs, could be shut out of these supply chains, narrowing the choice of specialist suppliers and subcontractors available to larger businesses.

A supplier generally needs a union's cooperation to secure a union-covered agreement. This creates opportunities for improper demands, favouritism and exclusion. Corruption cases in cleaning and horticulture show that these risks extend beyond construction. Permission to submit a tender does not remove these pressures.

The Government should not proceed with these changes. If it does, it should at a minimum not finalise them until the Royal Commission into the Integrity of Major Public and Civil Infrastructure Construction Projects in Victoria (**Victorian Royal Commission**) has delivered its final report, and the Commonwealth has considered and responded to its findings. The Royal Commission is examining whether procurement and workforce arrangements on taxpayer-funded projects enabled misconduct. It would be reckless to extend similar arrangements to other industries before its findings are known.

These proposals undermine the competition and productivity improvements Australia urgently needs. Labour productivity has gone backwards by an average of 0.1 per cent a year over the past six years. Discouraging competition on price, quality and innovation could leave taxpayers paying more without securing better jobs or services.

Compliance with applicable workplace laws and the existing Supplier Code should satisfy the workplace standards required for Commonwealth work, while preserving agencies' ability to specify skills and capabilities needed for a particular contract.

The Government should publish its promised assessment of costs, benefits and effects on competition before finalising any changes. This submission sets out practical recommendations to help ensure that the Framework and Supplier Code promote good workplace practices, encourage fair competition and secure quality goods and services that deliver value for taxpayers.

2. Key recommendations

Recommendation 1.

(a) The Government should not proceed with the Framework or the proposed Supplier Code amendments.

(b) If the Government does not accept (a), it should at a minimum defer finalising or implementing the Framework or the Supplier Code amendments until the Victorian Royal Commission has delivered its final report and the Commonwealth has considered and responded to its findings.

Recommendation 2.

Commonwealth procurement should select suppliers on merit and value for money, taking account of quality, risk and ethical conduct. Demonstrating compliance with applicable workplace laws and the existing Supplier Code should satisfy the workplace standards required to be awarded Commonwealth work, without limiting agencies' ability to specify workforce capabilities necessary to deliver a particular contract, such as specialist technical skills. The BCA's remaining recommendations, and the policy design principles set out in Part A of the submission, apply if the Government nevertheless proceeds to introduce broader workplace requirements through the Framework and Supplier Code.

Recommendation 3.

a) Replace indicator 1.1(a) in its entirety with an indicator recognising good practice across different lawful employment and contracting arrangements. For example: Suppliers can demonstrate how their workforce arrangements support continuity and predictability of paid work and income, taking account of operational needs and worker preferences. They take reasonable steps to give workers accurate information about expected hours, assignment duration and known changes.

b) Alternatively, if current indicator 1.1(a) is retained, allow suppliers to meet the alternative outlined above instead, with equal recognition in assessing Principle 1.1. Confirm that neither "majority" nor "over 80%" is a threshold. Assessment should recognise genuine operational reasons for lawful workforce arrangements.

c) Revise indicator 1.1(b) to recognise existing statutory pathways and reasonable, commercially sustainable opportunities for permanent or direct employment, taking account of continuing work, redeployment opportunities and worker preferences.

d) Accept existing contracts, rosters, communications with workers and other relevant records where sufficient to demonstrate the applicable indicator.

e) Make corresponding changes to Code section 3.5.

Recommendation 4.

a) Amend indicator 1.2(c) and Supplier Code section 3.4 to confirm that compliance with existing representation and access obligations under legislation, modern awards and enterprise agreements satisfies the expectation. Delete the reference to induction. Alternatively, if the reference to induction is retained, make it clear that neither the Framework nor the Supplier Code creates additional communication or access obligations during induction beyond existing legal or agreed obligations. Do not treat the absence of union communication during induction, by itself, as evidence of non-compliance.

b) Amend indicator 1.2(d) to focus on workers' awareness of their existing representation rights. Suppliers should demonstrate that workers have been provided with, or can readily access, accurate and balanced information about those rights and how to exercise them.

c) Confirm in the Framework, Supplier Code and assessment guidance that suppliers may rely on existing information and ordinary records where sufficient, without preparing a new policy or information sheet. Acceptable evidence should include onboarding materials, employee communications, accessible intranet

resources and records of providing the Fair Work Information Statement, which already covers freedom of association, workplace rights and right of entry.

d) Clarify the period and evidence assessed under indicator 1.2(a). Assessment should reflect the seriousness and recurrence of breaches, recognise effective remediation and prevention, and avoid automatically disadvantaging suppliers for identifying and correcting errors. Apply this approach consistently in Supplier Code section 3.4 and assessment guidance.

Recommendation 5.

a) Amend Principle 1.3, indicator 1.3(c) and Supplier Code section 3.2 to confirm that compliance with applicable laws and the Supplier Code's existing requirements to assess risks and take reasonable steps to prevent labour exploitation satisfies the expectation. Do not introduce additional reporting or due diligence obligations through the Framework or Code amendments.

b) Accept existing modern slavery statements and relevant records where sufficient to demonstrate compliance. Suppliers outside the Modern Slavery Act's reporting regime should be able to demonstrate compliance with existing Supplier Code requirements through relevant records, without preparing a separate public report solely for procurement purposes.

c) For all suppliers, clarify that the steps and evidence expected must reflect the relevant risks and the supplier's control or influence.

Recommendation 6.

a) Delete indicator 2.1(a) and the corresponding preference for union-covered enterprise agreements in Supplier Code section 3.5. Assess suppliers against the remaining indicators, as amended in this submission, on the same basis.

b) Remove indicator 2.1(d)'s separate independent public benchmarking requirement for suppliers without enterprise agreements. Accept existing employment terms and relevant records where sufficient as evidence of compliance with applicable workplace laws and to demonstrate the relevant workplace practices being assessed.

c) Apply these changes consistently in the Framework, Supplier Code, tender and contract documents, and assessment guidance, including assessments of subcontractor compliance. Implement the recommendation in Part B to remove the Majority Test and recognise equivalent practices.

Recommendation 7.

a) Remove indicator 2.1(d)'s separate independent public benchmarking requirement and the corresponding wording in Supplier Code section 3.5.

b) Apply the same assessment approach to suppliers with and without enterprise agreements. That is, recognise clear, enforceable employment terms and compliance with the legal obligations concerning pay and entitlements applicable to each supplier. Do not require suppliers to match or exceed other employers' enterprise agreement terms, or exceed prevailing industry pay and conditions, simply because they do not have an enterprise agreement. Accept existing employment contracts, applicable industrial instruments and relevant payroll and employment records where sufficient to demonstrate compliance.

c) Allow suppliers to use suitable existing remuneration benchmarking as optional supporting evidence where meaningful comparisons are available. Do not require a new independent assessment or public disclosure of confidential employment information simply because a supplier has no enterprise agreement.

Recommendation 8.

a) Amend Framework indicator 2.1(b) to reflect the Fair Work Act's conditions and timeframes for issuing a Notice of Employee Representational Rights. Suppliers should not be disadvantaged for declining to issue a notice where the Act does not require one.

b) Replace Framework indicator 2.1(f)'s broad pay-parity expectation with recognition of compliance with applicable pay obligations, including protected pay rates where a Fair Work Commission labour hire order applies. Preserve the statutory conditions, exclusions and pay-calculation rules.

c) Confirm in the Supplier Code and assessment guidance that compliance with these legal requirements satisfies indicators 2.1(b) and 2.1(f). Procurement assessment should not impose broader bargaining-notice or labour hire pay obligations.

Recommendation 9.

a) Remove the general expectation in Framework indicator 2.1(i) and Supplier Code section 3.5 that incoming suppliers employ outgoing workers or maintain their wages and conditions beyond applicable transfer of business legal requirements. Any contract-specific transition requirements should be necessary for service continuity, accommodate different delivery models and be clearly defined before tendering.

b) Clearly identify in the tender documents the workers, roles and employment conditions covered by any transition requirements, and provide sufficient workforce information for bidders to assess and price those requirements before submitting their bids. Any expectation to offer employment to outgoing workers should take account of suitable vacancies, workers' choices and practical transition constraints.

Recommendation 10.

a) Identify the employment standards accreditation is intended to verify. Recognise accreditation as one form of assurance and accept existing certifications, independent audits and other evidence that provide equivalent assurance about the relevant practices. Suppliers should not have to join a particular scheme where sufficient assurance is already available.

b) Establish transparent criteria for recognising schemes and equivalent evidence, with appropriate governance, conflict-of-interest safeguards and independent review arrangements. Procurement decisions should remain accountable to the Commonwealth.

Recommendation 11.

a) Clarify which accreditation schemes and management frameworks qualify under indicator 3.1(a), and what evidence demonstrates their implementation. Accept existing systems and records where sufficient, without requiring additional certification or reporting.

b) Amend indicator 3.1(d) and Supplier Code section 3.1 to recognise effective, lawful consultation as an equally valid way to demonstrate good WHS practice where workers have not requested or elected HSRs. Preserve workers' existing representation rights.

c) Amend the HSR training expectation to expressly reflect entitlements under applicable WHS laws, including requirements concerning approved courses, course selection, paid time and costs. Confirm that meeting those obligations satisfies the training expectation and creates no additional obligation to fund courses or provide training time. Reflect these clarifications in both the Framework and Supplier Code.

Recommendation 12.

a) Replace indicator 4.1(f) with assessment of the supplier's pay-gap analysis, relevant actions and progress. Use existing WGEA information where sufficient and provide alternative evidence options for suppliers without published data.

b) Exclude inapplicable indicators from assessment. Recognise practical recruitment, retention, development and barrier-removal actions as equally valid alternatives to numerical participation targets where appropriate. Accept relevant existing targets and reporting, with realistic assessment periods.

c) Make clear that suppliers pursuing participation targets under indicators 4.1(b) and 4.1(g) must comply with both federal and applicable state or territory discrimination laws. Where a program requires an exemption under applicable discrimination law, the procurement assessment should take account of the time needed to obtain approval before the program can begin.

d) Redraft indicator 4.1(c) to explain the practices and evidence expected. Expressly recognise different forms of flexibility that suit the work and how it is organised, including flexible rostering, adjusted hours and job sharing.

e) Accept existing policies, employee communications, diversity plans and reports where sufficient to demonstrate the relevant indicator, to avoid duplicate procurement reporting. Where workforce data is needed, accept aggregated data that protects individuals' identities. Do not disadvantage suppliers because workers may decline to disclose their cultural background or First Nations status. Assess family and domestic violence support through policies, communications and access to confidential assistance, without requiring details of individual workers' experiences. Apply this approach consistently in the Framework, Supplier Code and assessment guidance.

Recommendation 13.

a) Define "local" in Principle 5.1. For indicator 5.1(a), specify which economic benefits will be assessed and what evidence suppliers can provide. Accept relevant information already provided during the procurement.

b) Apply indicators 5.1(b)–(d) according to their relevance to the contract and recognise alternative contributions to Australian capability. For example, suppliers should receive recognition for training existing workers and transferring technical knowledge without also employing apprentices or trainees where those arrangements are unsuitable.

c) Revise indicator 5.1(e) to recognise legitimate reasons for FIFO and DIDO arrangements, including required skills, assignment duration, local workforce availability, delivery time and cost.

Recommendation 14.

a) Publish consistent evidence and assessment guidance before implementation. Assess the supplier entity tendering for the contract and focus operational assessment on the work and workforce proposed to deliver it.

b) Require a clear justification for broader enquiries and prevent automatic extension to unrelated group operations. Accept sufficient existing records without separate contract-level reporting. Limit additional information requests to what is necessary and proportionate, and accept aggregated, sampled or redacted records where sufficient. Protect personal and commercially sensitive information.

Recommendation 15.

a) Use the Framework, amended as recommended in this submission, to guide assessment of relevant workplace practices when selecting suppliers, supported by a targeted procurement-connected policy.

b) Alternatively, if the Government retains the Supplier Code mechanism, revise expectations written directly into the Code as recommended in this submission, clearly identify which Framework principles apply and the binding requirements in both documents, and explain how relevant indicators will be selected and assessed.

c) Under either mechanism, confirm that good practice indicators are illustrative and suppliers need not meet all indicators or a prescribed number. Replace the Majority Test with clear assessment criteria giving equal

recognition to alternative practices that achieve equivalent or better outcomes. Additional workplace requirements should be included in contracts only to address delivery risks not adequately covered by existing arrangements.

d) Tender documents should state suppliers' obligations, acceptable evidence and required reporting or checks during delivery. Where specific delivery commitments are included in the contract, explain how compliance with those commitments will be assessed if staffing needs or the work required change during delivery. Contract clauses and responses to non-compliance should reflect the seriousness of the failure and its consequences.

e) Transition arrangements should specify when changes commence and how they apply to existing contracts, renewals and extension options. Prevent additional, unpriced requirements from applying automatically to existing contracts, and allow suppliers and officials sufficient preparation time after final requirements and guidance are published.

f) Clearly define the construction exclusion and confirm that it applies to both the Framework and the new requirements introduced through the Supplier Code amendments. Explain how the exclusion applies to contracts combining construction with other goods or services and to suppliers operating across industries.

g) If the proposed competition reforms and Supplier Code amendments proceed, ensure that labour requirements head contractors must impose on subcontractors are exempt, where necessary, from the new competition law prohibitions on agreements between businesses that fix or control workers' pay and employment conditions. Any necessary exemption should take effect before those contractual requirements apply.

h) Publish DEWR's promised impact analysis before finalising the Framework and Supplier Code amendments. Assess the administrative and operational costs of meeting the proposed requirements for suppliers and subcontractors of different sizes, benefits for workers, and effects on competition and tender prices.

i) Do not extend the Framework to Commonwealth grants or other taxpayer-funded arrangements outside procurement. Delete the provision proposing its implementation in other financial frameworks.

3. Policy design

The Framework sets out five principles defining the workplace outcomes the Government expects Commonwealth suppliers to support. Each principle is supported by indicators, which the Framework describes as examples of how suppliers can demonstrate good practice and meet the principles. The Government proposes to implement the Framework in procurement through amendments to the Supplier Code.

The draft amended Supplier Code states that businesses seeking Commonwealth work should demonstrate compliance with the Framework. It writes some Framework principles and indicators directly into sections 3.1 to 3.5. Suppliers must comply with those sections. The Supplier Code states that suppliers are also expected to meet a majority of the Framework indicators relevant to each principle in sections 3.1 to 3.5 (the **Majority Test**).[4]

The Commonwealth Procurement Rules require relevant entities to incorporate the Supplier Code into all Commonwealth forms of contract, subject to a documented decision by the entity's accountable authority or an authorised delegate to exclude it wholly or partly.[5] The Department of Finance's guidance states that incorporation is not mandatory for non-Commonwealth forms of contract, including where industry practice is to use the supplier's terms and conditions.[6] Outside those processes, neither the Procurement Rules nor the Supplier Code gives procurement officials a general discretion to choose which Code requirements apply.[7]

Suppliers must comply with the Supplier Code as incorporated into their contracts. Framework principles and indicators written directly into the Code therefore have contractual force unless they are subject to an authorised exclusion. Describing them as examples in the Framework does not make compliance optional. The Code allows entities to tailor their compliance checks to the scale, scope and risk of the procurement. That flexibility concerns how compliance is checked, for example, what evidence is requested. It does not authorise officials to waive or change the underlying requirements.[8] Where the Department of Finance's model clause applies, failure to comply with the Code is a material breach, regardless of how extensively the entity checks compliance.[9]

Part A of this submission examines the Framework's principles, indicators and evidence requirements. Part B considers how the Framework is to be implemented through procurement processes and Commonwealth contracts.

Part A: Principles, indicators and evidence requirements

The Framework should support value for money, quality goods and services, and high standards of ethics, integrity and accountability in how suppliers conduct business, treat workers and deliver contracts. The BCA's position is that demonstrating compliance with applicable workplace laws and the existing Supplier Code should satisfy the workplace standards required to be awarded Commonwealth work. The Government's proposals would introduce additional requirements. The analysis below identifies the risks those requirements create and sets out the BCA's recommendations if the Government nevertheless proceeds. The following principles of good policy design guide that assessment:

1. **Value for money must remain the core of Commonwealth procurement**. Procurement should secure quality goods and services through fair competition. Suppliers should be held to high standards of ethics, integrity and accountability, but dictating their industrial arrangements is overreach, not ethical procurement.

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[4] Department of Employment and Workplace Relations (DEWR), *Amendments to the Supplier Code of Conduct to implement the Secure Australian Jobs Framework in procurement processes*, consultation draft, September 2026, p 3 and ss 3.1–3.5 (Draft amended Supplier Code).
[5] Department of Finance, *Commonwealth Procurement Rules*, effective 17 November 2025, para 6.13.
[6] Department of Finance, Commonwealth Supplier Code of Conduct—guidance for Commonwealth entities, "Are there circumstances where the Code does not apply?", accessed 21 October 2026.
[7] Department of Finance, *Commonwealth Procurement Rules*, para 6.13.
[8] Department of Finance, *Commonwealth Supplier Code of Conduct*, effective 1 July 2024, introduction, accessed 21 October 2026.
[9] Department of Finance, *Commonwealth Procurement Rules*, para 6.13; Department of Finance, Supplier Code of Conduct, ClauseBank, cls X.2 and X.7, accessed 21 October 2026.

2. **Additional requirements should be strictly necessary for the particular contract**. Where an indicator reflects existing law, compliance with that law should satisfy it. Any requirement beyond existing law and Supplier Code obligations should address a specific risk to quality, safety, integrity or contract delivery that existing obligations and enforcement cannot adequately address.

3. **Indicators must reliably demonstrate good workplace practices.** Alternative practices that achieve equivalent or better outcomes should receive equal recognition.

4. **Indicators must work across relevant industries and workforces.** They should account for differences in industries, occupations and workforces while providing a consistent, reliable basis for assessing good workplace practices.

5. **Suppliers must know how they will be assessed before bidding.** Tender documents should identify applicable Framework indicators, acceptable evidence and assessment methods. Suppliers and procurement officials should have clear guidance on how these will be applied consistently.

6. **Evidence must support a reliable assessment at proportionate cost.** The utility of evidence in assessing workplace practices should justify the time and cost of preparing and reviewing it. Existing records and reports should be accepted where sufficient.

Procurement must remain open to capable suppliers

Several Framework indicators favour particular employment or bargaining arrangements without demonstrating better outcomes for workers. Others impose unclear, overlapping requirements that risk increasing bidding and delivery costs. These requirements could deter or exclude capable suppliers, particularly smaller businesses, and narrow the choice of subcontractors and specialist providers available to businesses delivering Commonwealth work. They could compound known procurement barriers. For example, the Australian Small Business and Family Enterprise Ombudsman (**ASBFEO**'s) procurement inquiry identified high tendering costs and a complex procurement framework that restricted entry, competition and innovation.[10] An Organisation for Economic Co-operation and Development (**OECD**) report found documentation and bidder requirements disproportionately burden small and medium enterprises (**SMEs**) and exclude many from participating.[11]

Accreditation and benchmarking expectations could exclude suppliers that already hold sufficient evidence of good practice. The NSW Small Business Commissioner reported that ISO certification requirements had excluded some small businesses from tendering, and recommended greater recognition of equivalent standards.[12] The Framework and Code should accept equivalent assurance rather than make a particular accreditation or assessment process a condition of competing for Commonwealth work.

Prescriptive requirements can also constrain innovation. A survey of 800 UK public sector suppliers identified overly prescriptive tender specifications among the principal reported barriers to innovation, with smaller firms reporting that these conditions discouraged their participation in procurement.[13] The Framework should assess workplace outcomes across different workforce models and preserve scope for more efficient delivery.

Writing these requirements into the Supplier Code could extend the barriers to subcontractors through contractual obligations. Reduced competition could mean less incentive to innovate, improve quality and control costs. The result could be higher costs for taxpayers without better jobs or services.

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[10] Australian Small Business and Family Enterprise Ombudsman (ASBFEO), *Procurement inquiry final report*, 15 December 2023, pp 36–37 and 44–45.
[11] Organisation for Economic Co-operation and Development (OECD), *SMEs in public procurement: practices and strategies for shared benefits*, OECD Publishing, Paris, 2018, pp 60 and 70–71.
[12] NSW Small Business Commissioner, *Submission to the parliamentary inquiry into the procurement practices of government agencies in New South Wales and the impact on the social development of the people of New South Wales*, 21 December 2023, p 5.
[13] Elvira Uyarra, Jakob Edler, Javier Garcia-Estevez, Luke Georghiou and Jillian Yeow, Barriers to innovation through public procurement: a supplier perspective, *Technovation*, vol 34, no 10, 2014, pp 631–645, especially pp 635–637 and 640–641, doi:10.1016/j.technovation.2014.04.003. The finding about smaller firms being discouraged from participating concerns prequalification procedures and conditions (p 637).

The proposals also raise serious integrity risks, examined under Principle 2 below. The Government should not proceed with the Framework or proposed Supplier Code amendments until Victoria's construction Royal Commission has completed its work and the Commonwealth has considered and addressed its findings.

Recommendation 1.

(a) The Government should not proceed with the Framework or the proposed Supplier Code amendments.

(b) If the Government does not accept (a), it should at a minimum defer finalising or implementing the Framework or the Supplier Code amendments until the Victorian Royal Commission has delivered its final report and the Commonwealth has considered and responded to its findings.

Recommendation 2.

Commonwealth procurement should select suppliers on merit and value for money, taking account of quality, risk and ethical conduct. Demonstrating compliance with applicable workplace laws and the existing Supplier Code should satisfy the workplace standards required to be awarded Commonwealth work, without limiting agencies' ability to specify workforce capabilities necessary to deliver a particular contract, such as specialist technical skills. The BCA's remaining recommendations, and the policy design principles set out in Part A of the submission, apply if the Government nevertheless proceeds to introduce broader workplace requirements through the Framework and Supplier Code.

Principle 1: Secure work and fair treatment of workers

Secure work and employment arrangements

The BCA supports policies that promote good workplace practices and enable businesses to create and sustain jobs, while respecting worker preferences and preserving flexibility needed to meet genuine operational requirements. Existing laws already restrict repeated fixed-term contracts and avoidance arrangements,[14] govern casual classification and pathways to permanent employment,[15] and provide labour hire pay protections where a Fair Work Commission order applies.[16] These protections reflect substantial legislative changes introduced by this Government. The Framework should recognise those changes, rather than impose an unnecessary second layer of restrictions that disadvantages suppliers for using lawful arrangements suited to their work and workforce.

Principle 1.1 recognises that there may be genuine operational reasons for using casual, fixed-term and labour hire arrangements. However, the supporting indicators do not clearly explain how suppliers can demonstrate good practice or establish genuine operational reasons for using these arrangements. It is also unclear how suppliers engaging independent contractors or employee-like workers can demonstrate that they meet the principle.

Suppliers cannot create sustainable permanent positions where the work does not support them. The Commonwealth's own contract terms affect the duration and certainty of the work available. A short contract may not support additional permanent positions where the supplier cannot realistically redeploy workers elsewhere in its business. Assessment must therefore account for the duration and pattern of demand across the supplier's business, opportunities to redeploy workers and worker preferences. It should also recognise that security involves continuity and predictability of paid work and income, alongside legal protections. Different lawful employment and contracting arrangements can support these outcomes. For example, a specialist contractor may sustain regular paid work across several clients, while a labour hire employee may remain

[14] Fair Work Ombudsman, Fixed term contract employees, "Limitations on fixed term contracts" and "Protections for employees", accessed 21 October 2026.
[15] Fair Work Ombudsman, Casual employees, "A casual employee" and "Becoming a permanent employee", accessed 21 October 2026.
[16] Fair Work Ombudsman, Protected pay rates for labour hire employees, accessed 21 October 2026.

permanently employed by their agency across assignments. A supplier's proportion of directly and permanently employed workers does not capture these different ways of sustaining work and income.

Workforce composition alone is not a reliable measure of good practice

Indicator 1.1(a) states: "Suppliers support direct and permanent employment wherever possible. For example, the majority of the workforce is employed on a direct and permanent basis, e.g., over 80%." Both "majority" and "over 80%" are examples. The Framework should expressly clarify that neither is an eligibility threshold or numerical benchmark for assessment. A high proportion of direct, permanent employees may reflect continuing demand for a business's services, rather than better employment practices. The indicator risks overlooking suppliers that support secure work through other lawful arrangements. Indicator 1.1(a) should therefore be replaced with an indicator recognising good practice across different lawful workforce arrangements. If retained, suppliers should be able to meet an equally valid alternative indicator instead.

The preference for a predominantly direct, permanent workforce can also distort competition and increase delivery costs. It can discourage suppliers from using the workforce arrangements best suited to delivering the contract. For example, a specialist engaged for a short assignment may attract a higher hourly rate while costing less overall than maintaining equivalent capacity beyond that assignment. A supplier with continuing demand across many contracts may sustain and redeploy permanent employees. A smaller supplier or new entrant may not have that opportunity. Applying the same employment benchmark to both can favour scale and incumbency, restrict competition and increase delivery costs.

Workforce proportions can change without reducing the security of existing jobs. A supplier with 40 permanent employees that hires 60 additional casual workers for a seasonal peak in demand would have a 40% permanent workforce. Principle 1.1 and Code section 3.5 recognise that there may be genuine operational reasons for the use of casual employment arrangements. However, it is not clear from the Framework whether demonstrating those reasons is sufficient to demonstrate that the supplier has met principle 1.1, Supplier Code section 3.5 or any of the related indicators in the Framework. If procurement officials were to apply a numerical benchmark (i.e. a majority or 80% direct permanent employment), the supplier could fail to meet the indicator. If that also causes it to fail the Majority Test, it could be in material breach of its contract under the Department of Finance's model clause.[17]

Employment pathways must be commercially sustainable

Framework indicator 1.1(b) supports pathways to permanent or direct employment after at least six months for workers who want them, "wherever possible". Six months of completed work does not establish that continuing work or a suitable position exists.

The language "wherever possible" does not distinguish what is technically possible from what is commercially viable. Although the indicator concerns pathways rather than automatic conversion, suppliers could face pressure to offer ongoing employment unsupported by continuing work. The indicator must expressly recognise operational needs, available work and redeployment opportunities, while preserving existing statutory rights.

The recommendations below would support the Government's objective by recognising practical steps that improve predictability and help sustain work across different lawful arrangements. Earlier notice of known work and timely communication about likely continuation help workers plan their finances and other commitments. Pathways based on suitable positions and continuing work can lead to lasting employment. These practices provide a clearer basis for assessing how suppliers support workers than a six-month reference point that does not establish whether ongoing work is available.

Recommendation 3.

a) Replace indicator 1.1(a) in its entirety with an indicator recognising good practice across different lawful employment and contracting arrangements. For example: Suppliers can demonstrate how their workforce arrangements support continuity and predictability of paid work and income, taking account of operational

[17] Department of Finance, Supplier Code of Conduct, cls X.2 and X.7.

needs and worker preferences. They take reasonable steps to give workers accurate information about expected hours, assignment duration and known changes.

b) Alternatively, if current indicator 1.1(a) is retained, allow suppliers to meet the alternative outlined above instead, with equal recognition in assessing Principle 1.1. Confirm that neither "majority" nor "over 80%" is a threshold. Assessment should recognise genuine operational reasons for lawful workforce arrangements.

c) Revise indicator 1.1(b) to recognise existing statutory pathways and reasonable, commercially sustainable opportunities for permanent or direct employment, taking account of continuing work, redeployment opportunities and worker preferences.

d) Accept existing contracts, rosters, communications with workers and other relevant records where sufficient to demonstrate the applicable indicator.

e) Make corresponding changes to Code section 3.5.

Recognise existing representation rights and improve worker awareness

Freedom of association protects workers' choices to join or not join a union, participate or not participate in lawful industrial activities, and seek or decline union representation. Existing law requires suppliers to respect those choices. Workplace delegates have rights to reasonable communication with union members and workers eligible to join their union, including during working hours under applicable award terms. Union officials who meet legal entry requirements can enter a workplace to hold discussions during meal or other breaks with employees who are eligible to join the union and wish to participate. These provisions do not establish a general, unqualified entitlement to communication during induction, although particular circumstances or enterprise agreements may provide for it.[18]

Framework indicator 1.2(c) states: "A supplier's workers are entitled to communicate directly with a registered employee organisation or workplace delegate in relation to their workplace rights, including during an induction." Supplier Code section 3.4 states: "Suppliers should ensure that their personnel are entitled to communicate directly with a registered employee organisation or workplace delegate in relation to their workplace rights, including during an induction." Neither provision expressly preserves the conditions and limits that apply to existing communication and access rights. This leaves suppliers uncertain about whether compliance with their legal obligations is sufficient, or whether they are expected to establish a broader entitlement through their employment terms, policies or practices, with contractual consequences if they fail to do so.

Compliance with existing representation and access obligations should satisfy indicator 1.2(c) and Supplier Code section 3.4. Neither document should require suppliers to provide additional union access or arrange union participation beyond existing legal or agreed obligations. This is an area where workers have strong, established legal protections. Good practice should help workers make informed choices and exercise their representation rights. The indicator should address the practical problem it is intended to solve. If the concern is awareness, suppliers should demonstrate that workers can access accurate, balanced information about their existing rights. If the concern is a barrier to exercising those rights, the Government should identify that barrier and specify an effective, proportionate response.

Indicator 1.2(d) states that workers have a right to representation concerning their workplace rights, including from a registered employee organisation, but does not explain what suppliers should demonstrate. Suppliers could provide existing policies or records showing how they have handled representation requests, but should not be disadvantaged if no worker has requested representation. The BCA's recommendation on indicator 1.2(c) would confirm that suppliers must respect existing representation and access rights. Reframing 1.2(d) would give it a distinct, practical purpose, helping workers understand those rights and how to exercise them.

Indicator 1.2(a) asks suppliers to demonstrate that they have rectified "any historic breaches", without defining the period or evidence required. Assessment should distinguish unresolved or repeated non-compliance from errors

[18] *Fair Work Act 2009* (Cth) ss 346–350C, 484–490; *General Retail Industry Award 2020* [MA000004] cl 33A.

that suppliers identify and remedy. Suppliers should not be automatically disadvantaged for detecting and correcting errors. Officials should consider the seriousness and recurrence of breaches, the adequacy of remediation and the steps taken to prevent recurrence. Clear limits on the period and evidence assessed would support consistent decisions without requiring suppliers to reconstruct an unlimited compliance history.

Recommendation 4.

a) Amend indicator 1.2(c) and Supplier Code section 3.4 to confirm that compliance with existing representation and access obligations under legislation, modern awards and enterprise agreements satisfies the expectation. Delete the reference to induction. Alternatively, if the reference to induction is retained, make it clear that neither the Framework nor the Supplier Code creates additional communication or access obligations during induction beyond existing legal or agreed obligations. Do not treat the absence of union communication during induction, by itself, as evidence of non-compliance.

b) Amend indicator 1.2(d) to focus on workers' awareness of their existing representation rights. Suppliers should demonstrate that workers have been provided with, or can readily access, accurate and balanced information about those rights and how to exercise them.

c) Confirm in the Framework, Supplier Code and assessment guidance that suppliers may rely on existing information and ordinary records where sufficient, without preparing a new policy or information sheet. Acceptable evidence should include onboarding materials, employee communications, accessible intranet resources and records of providing the Fair Work Information Statement, which already covers freedom of association, workplace rights and right of entry.

d) Clarify the period and evidence assessed under indicator 1.2(a). Assessment should reflect the seriousness and recurrence of breaches, recognise effective remediation and prevention, and avoid automatically disadvantaging suppliers for identifying and correcting errors. Apply this approach consistently in Supplier Code section 3.4 and assessment guidance.

Avoid overlapping supply-chain obligations

The existing Supplier Code already requires suppliers to assess human rights risks and make reasonable efforts to prevent abuses in their operations and supply chains. These requirements apply regardless of whether a supplier must report under the Modern Slavery Act.[19]

Indicator 1.3(c) calls for suppliers to publish information about modern slavery risks and their response, without limiting this to entities covered by the Modern Slavery Act's mandatory reporting regime. Suppliers below the Act's mandatory reporting threshold of $100 million in annual consolidated revenue[20] could therefore be disadvantaged in procurement for not publishing a report the law does not require, even where they comply with the Supplier Code's existing obligations to identify and address human rights risks.

The Government's 2018 impact assessment for the Modern Slavery Act's reporting regime estimated annual compliance costs of $21,950 per reporting entity. It explained that mandatory reporting was targeted at larger businesses better equipped to comply.[21] Retailers have since reported annual costs of $50,000–$100,000 to prepare reports and assess and manage modern slavery risks.[22] Extending public reporting expectations to smaller suppliers through the Framework requires a separate assessment of the costs, benefits and effects on competition.

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[19] Department of Finance, *Commonwealth Supplier Code of Conduct*, s 3.2.
[20] *Modern Slavery Act 2018* (Cth) s 5(1)(a).
[21] Department of Home Affairs, *Modern slavery reporting requirement: regulation impact statement*, 2018, pp 12–14. The $21,950 annual estimate is the minimum reasonable compliance cost per reporting entity and excludes additional discretionary action.
[22] National Retail Association, NRA calls for more collaboration to improve modern slavery outcomes, 9 January 2023. The $50,000–$100,000 annual estimate includes reporting and broader risk-management activities, including audits, management systems, grievance mechanisms and staff resources; its scope is wider than the 2018 government estimate.

The Government has recently consulted on reforms to Australia's modern slavery laws, including a proposed corporate offence of failing to prevent modern slavery in supply chains.[23] Introducing further reporting or due diligence requirements through the Framework while those reforms remain unsettled risks inconsistent standards, duplicate reporting and repeated changes to suppliers' compliance systems. Overlapping legislative and contractual requirements could add costs without a demonstrated improvement in worker protection, particularly disadvantaging smaller suppliers without dedicated compliance teams. The Framework should recognise sufficient existing evidence that suppliers are managing modern slavery risks, without requiring suppliers outside the Act's mandatory reporting regime to publish an additional report.

Recommendation 5.

a) Amend Principle 1.3, indicator 1.3(c) and Supplier Code section 3.2 to confirm that compliance with applicable laws and the Supplier Code's existing requirements to assess risks and take reasonable steps to prevent labour exploitation satisfies the expectation. Do not introduce additional reporting or due diligence obligations through the Framework or Code amendments.

b) Accept existing modern slavery statements and relevant records where sufficient to demonstrate compliance. Suppliers outside the Modern Slavery Act's reporting regime should be able to demonstrate compliance with existing Supplier Code requirements through relevant records, without preparing a separate public report solely for procurement purposes.

c) For all suppliers, clarify that the steps and evidence expected must reflect the relevant risks and the supplier's control or influence.

Principle 2: Fair wages and conditions

The Commonwealth must not recreate across the economy the conditions that enabled corruption in the construction sector. Giving unions power over access to taxpayer-funded work creates a serious corruption risk. Investigations in construction have demonstrated how enterprise agreements can be traded for payments and legitimate businesses can be shut out.[24]

The BCA has consistently opposed giving suppliers an advantage in government procurement because their enterprise agreements cover a union. Fundamentally, the primary objective of Government procurement is to secure quality goods and services that deliver value for money for tax payers. Suppliers offering equivalent or better workplace outcomes and value for money should not be disadvantaged because of their choice of lawful labour models or bargaining arrangements. Such industrial relations preferences have no place in government procurement.

The BCA is deeply concerned that the lessons of the construction sector have been ignored. We have identified four key mechanisms in the draft Framework and Supplier Code that would entrench serious integrity risks in Commonwealth procurement, undermine value for money and favour union-covered enterprise agreements without requiring better pay or conditions for workers.

1. The amended Supplier Code would embed a preference for union-covered enterprise agreements in Commonwealth contracts, without providing a clear, reliable alternative for demonstrating compliance.

The Framework states that it "does not require an employer to enter an enterprise agreement as a condition of receiving government funding".[25] The Government has given repeated assurances that an enterprise agreement

[23] Attorney-General's Department, Strengthening Australia's response to modern slavery in supply chains, consultation, 2026, "Overview", accessed 21 October 2026.
[24] Watson, *Rotting from the top*, paras 379–386 and 419–423.
[25] DEWR, *Draft Secure Australian Jobs Framework*, September 2026, p 2.

is not required to tender for Commonwealth work.[26] Yet it proposes to write a clear, unambiguous preference for union-covered enterprise agreements into the Supplier Code, which would become contractually binding on suppliers, and by extension, their subcontractors, while under contract with the Commonwealth.[27] The Supplier Code places a 'positive duty on suppliers to take proactive action to prevent and discourage breaches of the Code'.[28] Under the proposed changes, the following would be inserted directly into the Supplier Code:

> *'In industries where enterprise bargaining is accessible,* suppliers and the majority of their workers are covered by an enterprise agreement genuinely agreed and negotiated in good faith, approved by the Fair Work Commission, *and covered by a registered employee organisation/s.* If no enterprise agreement is in place, suppliers can demonstrate through appropriate independent public benchmarking that they have transparent and enforceable mechanisms to provide workers with safe and secure jobs with good conditions, that exceed the applicable modern award and the prevailing industry-standards (compared with employers with an enterprise agreement).'

Neither the Framework nor the Supplier Code specifies any industries in which the Government regards bargaining as inaccessible. Enterprise bargaining is legally available to all national system employers under the Fair Work Act. This preference would affect businesses seeking Commonwealth work across a wide range of industries, from large defence contractors to companies selling office supplies. Without clear, workable alternatives for suppliers to demonstrate compliance with the Supplier Code, the Government's assurances that an enterprise agreement will not be a condition of securing Government work count for little. The message to business is clear: if you want to work with the Commonwealth Government, you should have a union-covered enterprise agreement.

For a supplier seeking to demonstrate that it meets the expectation in section 3.5 of the Supplier Code to 'support secure work with good pay and conditions', the options are limited:

a) **Suppliers with a qualifying union-covered enterprise agreement** can demonstrate that they meet the section 3.5 expectation by producing that agreement. It must cover the supplier and a majority of its workers, and have been approved by the Fair Work Commission.

b) **Suppliers without an enterprise agreement** can enter into a qualifying union-covered agreement or rely on 'independent public benchmarking'. The benchmarking alternative requires the supplier to show that their employment terms and conditions exceed the applicable modern award *and* the prevailing industry standards, *compared with* employers with an enterprise agreement. 'Independent public benchmarking' and 'prevailing industry standards' are undefined. It is entirely unclear how a supplier is to select comparator employers or agreements, or whether individual conditions or the overall employment package must exceed the benchmarks. Suppliers will not be able to determine with reasonable confidence what benchmarking evidence and results will be accepted; and even if this were possible, it could mean that paying above-market is the de facto price of not bargaining with a union. This would hurt competitiveness and deter capable suppliers.

c) **Suppliers with an enterprise agreement that does not cover a union** will have no clear way to satisfy the enterprise agreement expectation in section 3.5 of the Supplier Code. Their agreement does not meet its union-coverage requirement, and the benchmarking alternative is expressly limited to suppliers without enterprise agreements. It is unclear whether meeting the Majority Test for Framework Principle 2.1 would satisfy that expectation. And *even if* that were sufficient, (a) the Supplier Code does not expressly state that separate majorities must be met for Framework Principles 1.1 and 2.1, which it groups together in section 3.5; (b) the draft does not explain how procurement officials will determine which

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[26] DEWR, Secure Australian Jobs Framework – Draft Framework, "Enterprise agreements", accessed 21 October 2026; Amanda Rishworth, ACCI Business Leaders' Summit, speech, 13 October 2026. Both sources state that an enterprise agreement is not required as a condition of Commonwealth work or funding.
[27] DEWR, *Draft amended Supplier Code*, s 3.5, pp 6–7; Department of Finance, *Commonwealth Procurement Rules*, para 6.13; Department of Finance, Supplier Code of Conduct, cls X.2 and X.7.
[28] DEWR, *Draft amended Supplier Code*, p 3.

indicators are relevant; and (c) it does not expressly explain how inapplicable indicators affect the majority calculation.

The alternatives to a union-covered enterprise agreement are so convoluted and unclear that even sophisticated suppliers cannot determine, with reasonable confidence, how to satisfy the relevant Supplier Code and Framework requirements. Until those uncertainties are resolved, the Government cannot reasonably present these alternatives as clear, workable options on which businesses can rely when bidding for and delivering Commonwealth work. A union-covered enterprise agreement is therefore the only clear and certain way to satisfy this part of section 3.5. The expectation is also contractual. The Supplier Code is incorporated into Commonwealth contracts by default, so a supplier is bound to meet it for the life of the contract, and under the Department of Finance's model clause a failure to do so is a material breach.[29]

This uncertainty and contractual risk could deter capable suppliers, particularly smaller businesses, and narrow the choice of subcontractors and specialist providers available to businesses delivering Commonwealth work. Commonwealth entities also need clear, workable rules to compare bids and manage contracts. Leaving procurement officials to resolve these ambiguities risks inconsistent decisions, delays and higher costs.

2. The Supplier Code and the Framework favour union-covered agreements without requiring better wages or conditions.

Consider two suppliers whose enterprise agreements provide identical wages and conditions. One agreement covers a registered union, the other does not. Only the first supplier satisfies indicator 2.1(a) and the corresponding provision in section 3.5 of the Supplier Code, despite both suppliers meeting every other requirement of that indicator and providing identical wages and conditions. Nor can the second supplier rely on independent public benchmarking under either indicator 2.1(d) or section 3.5 of the Supplier Code, as that benchmarking option is expressly limited to suppliers without enterprise agreements.

Worse still, indicator 2.1(a) can also recognise a business offering less favourable conditions while withholding that recognition from a better-paying competitor. Consider two suppliers doing the same work. One has a union-covered enterprise agreement providing lower wages and standard leave. The other has an agreement that does not cover a union, but provides higher wages and an additional week of leave, with all other employment conditions the same. Both agreements meet indicator 2.1(a)'s other requirements. Only the supplier offering the less generous package satisfies indicator 2.1(a).

The scenarios outlined above demonstrate that the Framework favours the supplier with a union-covered agreement, without requiring a dollar more in wages or any improvement in conditions or better value for taxpayers. The indicator can recognise a supplier offering lower wages and less generous conditions while withholding that recognition from a better-paying competitor. This severs the link between the procurement assessment and value for money or improved outcomes for workers.

The BCA supports enterprise bargaining that delivers productivity improvements and higher wages. Our objection is to giving a union-covered enterprise agreement a procurement advantage, rather than assessing the practices and outcomes it demonstrates. As shown above, this can lead to adverse outcomes for workers, capable suppliers and taxpayers. Principle 1.2 already addresses workers' representation and freedom of association rights. Suppliers should receive equal recognition for respecting those rights, whether they have a union-covered enterprise agreement, an agreement that does not cover a union, or no enterprise agreement.

3. The Majority Test could make a union-covered agreement necessary to win work for some suppliers.

The draft amendments to the Supplier Code state that suppliers are expected to meet "the majority of the indicators...relevant to each principle outlined in sections 3.1 to 3.5". It does not say whether a "principle" is a Code section, a numbered part of the Framework such as 1.1 or 2.1, or one of the Framework's five principles. This is especially significant for section 3.5, which draws on twelve indicators from Principles 1.1 and 2.1 in the

[29] Department of Finance, Supplier Code of Conduct, cls X.2, X.7 and X.9.

Framework. The draft also does not expressly explain how indicators that do not apply to a supplier are counted, or whether meeting exactly half is enough.

How indicators are counted can determine whether a supplier passes. On the most natural reading, Principles 1.1 and 2.1 are assessed separately, and indicators that do not apply to a supplier are disregarded. On that reading, a union-covered enterprise agreement always satisfies at least one more indicator than any other arrangement. It satisfies both 2.1(a) and 2.1(c). A non-union agreement satisfies 2.1(c) but fails 2.1(a). A supplier without an agreement can satisfy 2.1(d) by showing, through independent benchmarking, that its conditions exceed the applicable award and prevailing industry standards. Where a supplier's other results are finely balanced, that extra indicator can decide whether it meets the Code's expectation. The draft provides no clear safeguard to ensure that suppliers offering equivalent employment outcomes can satisfy the Majority Test without a union-covered agreement.

Consider two suppliers whose enterprise agreements provide identical wages and conditions and have two years remaining before nominal expiry. One agreement covers a union; the other does not. An eligible union asks each supplier to begin bargaining for a replacement. Both lawfully decline and neither issues a Notice of Employee Representational Rights. If officials assess indicator 2.1(b) by that response and the only Principle 2.1 indicators that apply are 2.1(a), (b), (c) and (g), the supplier without union coverage would meet two of four indicators and fail the Majority Test for Principle 2.1. Its union-covered competitor would meet three of four and pass. Even paying above-market wages would not open the benchmarking alternative, which is limited to suppliers without enterprise agreements. On this assessment approach, a union's request could mean that a supplier's lawful decision not to begin bargaining early adversely affects its access to Commonwealth work, while an otherwise identical supplier with a union-covered agreement could make the same decision and still pass the Majority Test.[30]

The Government has given assurances that do not reflect realistic outcomes of applying the Framework and draft amendments to the Supplier Code. The Framework's preamble rules out requiring an enterprise agreement as a condition of government funding. However, the draft Framework and proposed amendments to the Supplier Code fail to give practical effect to that assurance. A supplier that cannot meet enough other Principle 2.1 indicators, and would reach the majority with a union-covered agreement, has no practical alternative. Formal eligibility to tender provides little comfort to a supplier without a workable alternative for satisfying the assessment requirements.

A union's cooperation is generally required to secure a union-covered agreement. Access to this procurement advantage therefore depends on a union's decision, without requiring better pay or conditions for workers, or greater value for taxpayers. That could give unions greater influence over which businesses win Commonwealth work. Construction sector experience has shown how such influence can be abused through corrupt payments, favouritism and exclusion.

4. The Supplier Code would carry the integrity risk down to subcontractors.

The Department of Finance's model contract clause, which Commonwealth agencies use to include the Supplier Code in their contracts, requires head contractors to ensure their subcontractors comply with the Supplier Code when performing the Commonwealth contract. Failure to fulfil that obligation is a material breach of the head contract.[31]

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[30] This example assumes that a majority means more than half, separate majorities are calculated for Framework Principles 1.1 and 2.1, inapplicable indicators are excluded from the calculation, and only indicators 2.1(a), (b), (c) and (g) are counted. Both suppliers meet all requirements of 2.1(a) other than the difference in union coverage, satisfy 2.1(c), and have a history of maintaining or increasing wages and conditions when bidding, satisfying 2.1(g). Officials assess 2.1(b) by the response to the current bargaining request, and neither supplier issues a Notice of Employee Representational Rights. The requesting union is entitled to represent the relevant workers, and neither supplier is otherwise legally or contractually required to bargain or issue a notice. Indicator 2.1(d) is excluded because both suppliers have enterprise agreements. Indicators 2.1(e), (f), (h) and (i) are excluded because neither supplier is in a government-funded sector, engages labour hire workers, operates in an industry with a relevant accreditation scheme, or is taking over an existing contract. The comparison concerns the Majority Test for Principle 2.1; it does not establish compliance with every requirement written directly into the Supplier Code. See DEWR, *Draft Secure Australian Jobs Framework*, indicators 2.1(a)–(i); *Draft amended Supplier Code*, p 3; *Fair Work Act 2009* (Cth) s 173(2A).

[31] Department of Finance, Supplier Code of Conduct, cls X.2 and X.7.

Head contractors therefore have a strong commercial incentive to make Supplier Code compliance a condition of awarding and retaining subcontract work. Following the changes introduced by the Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Act 2026, the Fair Work Act now permits businesses in a Commonwealth contracting chain to favour subcontractors whose agreements cover a union when buying goods or services.[32]

Where a union-covered agreement helps a subcontractor meet the Supplier Code, or is needed to meet it, the head contractor could prefer subcontractors that have one, or make obtaining one a practical condition of winning or keeping work. The integrity risks discussed below could therefore also arise in private decisions between businesses about who wins subcontracts on Commonwealth projects.

A union-covered enterprise agreement counts as evidence of good practice under indicator 2.1(a) and Supplier Code section 3.5. A non-union agreement on identical terms does not. A union-covered agreement can therefore carry greater commercial value, because it improves a supplier's prospects of winning and keeping Commonwealth work. In some cases, it may be needed to meet the Code's expectations at all. Either way, a supplier has an additional reason to accommodate union demands. The Government would be creating that additional leverage through its procurement rules.

Influence over an arrangement that helps win valuable contracts can create opportunities for improper demands, favouritism and exclusion. Union officials, intermediaries or businesses seeking an advantage could misuse that influence to obtain secret payments, favour particular suppliers or exclude businesses that refuse improper demands. The risk does not depend on the Framework formally requiring a union-covered agreement. It is enough that one improves a supplier's chances.

The consequences of this kind of influence are already documented.

Geoffrey Watson SC's *Rotting from the Top* report found that control over enterprise agreements in Victorian construction while John Setka led the CFMEU's Victorian branch was abused through corrupt payments, favouritism and exclusion. He identified that control as one way the industry could be opened to organised crime. Known criminals were among the beneficiaries. He recorded evidence that two businessmen paid an intermediary $250,000 to secure a civil infrastructure agreement. Watson concluded that the Victorian CFMEU and organised crime had become intermeshed.[33]

The misuse of union bargaining power and industrial influence is not confined to construction or the CFMEU. The Royal Commission into Trade Union Governance and Corruption found that, in the cleaning industry, Cleanevent paid the Australian Workers' Union $25,000 p.a. under an arrangement that, in substance, committed the union not to seek better conditions for three years. The Commission found that the company and union benefited at workers' expense. In horticulture, its investigation into Chiquita Mushrooms identified a secret payment arrangement worth $24,000 that accompanied bargaining and left workers worse off.[34]

These findings show that union influence can be abused to obtain improper benefits at workers' expense across different industries. Excluding construction from the Framework does not address the risk of giving unions greater influence over which businesses win Commonwealth work in other sectors. The Government should not use procurement rules to create new opportunities for improper demands, favouritism and exclusion. It should not proceed with these changes until Victoria's construction Royal Commission has completed its work and the Commonwealth has considered and addressed its findings.

The preference would also weaken competition and productivity.

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[32] *Fair Work Act 2009* (Cth) s 354(2A), inserted by the *Workplace Relations Legislation Amendment (Building Cooperative Workplaces No. 1) Act 2026* (Cth) sch 1 item 55. The exception covers the Commonwealth and persons acting as required or authorised by a Commonwealth contract or a contract in the relevant contracting chain.
[33] Watson, *Rotting from the top*, paras 379–386, 419–423 and 488–499.
[34] Royal Commission into Trade Union Governance and Corruption, *Final report*, December 2015, vol 4, ch 10.2, paras 414–418 (Cleanevent), and ch 10.6, paras 102–108 (Chiquita Mushrooms).

A supplier offering better value should not lose work because a competitor has a union-covered enterprise agreement. Where industrial arrangements determine access to contracts, capable suppliers can be disadvantaged regardless of how efficiently they deliver the work. Discouraging those suppliers from competing weakens the pressure to innovate, improve quality and control costs. The Commonwealth risks paying more without requiring any corresponding improvement in workers' wages or conditions.

Queensland's experience provides a direct warning. The Queensland Productivity Commission found that subcontractor prequalification rules for state government construction projects restricted competition, hindered smaller and regional businesses and effectively required subcontractors to adopt enterprise agreement conditions they otherwise would not have accepted. Its modelling estimated that continuing the state's Best Practice Industry Conditions, which set workplace conditions on certain government construction projects, could increase project costs by 10–25%, with substantial productivity costs remaining even when wages were assumed unchanged.[35] These findings concern different construction policies, but show how procurement requirements can restrict competition and entrench costly industrial arrangements. The Commonwealth should not recreate those pressures in other supplier markets.

International experience reinforces the need to assess these commercial consequences before imposing industrial requirements. In *MVL USA Inc v United States*, the US Court of Federal Claims found that agencies had unlawfully required union project labour agreements (pre-hire agreements with unions that set terms for a construction project) on particular procurements despite their own market research warning of reduced competition and higher costs. One agency increased its cost estimate because the requirement was included.[36] A policy preference for union-negotiated agreements cannot justify disregarding evidence about competition and delivery costs.

Australia's productivity crisis makes these risks especially serious.[37] Labour productivity fell 0.2% over the year to June 2026[38] and has fallen by an average of 0.1 per cent a year for the past six years.[39] Commonwealth procurement should strengthen competition and reward suppliers that deliver better goods and services with more efficient use of resources.

If the preference in indicator 2.1(a) displaces an equally capable supplier offering the same employment conditions at a lower price, taxpayers pay more without securing better outcomes for workers or better services.

The Commonwealth Procurement Rules make value for money the core rule and require procurement to encourage competition and accountable decision-making. Value for money includes relevant financial and non-financial benefits, and the BCA supports considering quality, risk and ethical conduct. But a union-covered enterprise agreement does not, in itself, demonstrate better outcomes for workers or taxpayers. A preference that rewards it without requiring better employment or delivery outcomes directly undermines value for money and competition.[40]

A union-covered enterprise agreement should confer no procurement advantage and must not become a practical condition of access to Commonwealth work.

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[35] Queensland Productivity Commission, *Opportunities to improve productivity of the construction industry*, final report, October 2025, p 14, Box 2 and "Reform prequalification".
[36] *MVL USA, Inc v United States* (US Court of Federal Claims, No 24-1057 and consolidated cases, 21 January 2025) 2, 29–33, 36–37. The finding concerned the challenged procurements, rather than the validity of the federal policy generally. In separate proceedings, the Eleventh Circuit upheld the refusal of a preliminary injunction, emphasising exceptions protecting competition: *Associated Builders and Contractors Florida First Coast Chapter v General Services Administration* (US Court of Appeals for the Eleventh Circuit, No 25-11375, 21 April 2026) 12–15.
[37] Productivity Commission, Australia's productivity performance, September 2026 update, accessed 21 October 2026.
[38] Productivity Commission, Australia's productivity performance, September 2026 update, "Labour productivity—whole economy", year to June 2026, accessed 21 October 2026.
[39] Business Council of Australia, Business Council urges reform to turn around Australia's productivity slide, media release, 14 September 2026.
[40] Department of Finance, *Commonwealth Procurement Rules*, paras 4.4–4.5.

Recommendation 6.

a) Delete indicator 2.1(a) and the corresponding preference for union-covered enterprise agreements in Supplier Code section 3.5. Assess suppliers against the remaining indicators, as amended in this submission, on the same basis.

b) Remove indicator 2.1(d)'s separate independent public benchmarking requirement for suppliers without enterprise agreements. Accept existing employment terms and relevant records where sufficient as evidence of compliance with applicable workplace laws and to demonstrate the relevant workplace practices being assessed.

c) Apply these changes consistently in the Framework, Supplier Code, tender and contract documents, and assessment guidance, including assessments of subcontractor compliance. Implement the recommendation in Part B to remove the Majority Test and recognise equivalent practices.

Determining fair wages

Principle 2 seeks safe and secure jobs with fair wages and conditions. Fair pay should reflect the work, skills and responsibilities involved, comply with legal entitlements and be competitive in the relevant labour market. Suppliers should not have to exceed prevailing market standards simply because they do not have an enterprise agreement.

The Framework sets a higher benchmark for suppliers without enterprise agreements. The better off overall test (**BOOT**) assesses whether an enterprise agreement leaves award-covered workers better off overall than under the relevant award. Indicator 2.1(d), however, requires suppliers without an agreement to exceed both the award and prevailing industry standards, with a comparison to the conditions offered by employers with enterprise agreements. Suppliers with a qualifying union-covered agreement face no equivalent requirement to exceed industry standards under indicator 2.1(a). There is no apparent reason to impose this additional requirement on suppliers who do not have an enterprise agreement.

The comparison also risks making conditions negotiated under other employers' enterprise agreements an indirect procurement requirement. Those agreements may reflect different occupations, working arrangements and operating needs.

Requiring suppliers to increase already competitive remuneration or adopt more costly conditions could inflate tender prices without improving productivity or contract delivery. Taxpayers could pay more for the same service. That is not a sound basis for assessing fair employment practices or value for money.

The indicator does not identify the comparator employers or agreements, define prevailing industry standards, or explain how different employment packages should be compared. It should clarify whether those standards refer to remuneration under comparable agreements, standards verified by the schemes in indicator 2.1(h), or another benchmark. Suppliers combine salary, bonuses, hours, leave and other benefits differently. It is unclear whether the comparison concerns individual conditions or the overall package, and what standard suppliers must exceed.

Consider a supplier employing highly paid technical specialists on individually negotiated contracts. Its closest comparators may be other specialist businesses without enterprise agreements. Indicator 2.1(d) does not explain whether those comparisons are acceptable. A meaningful enterprise agreement comparison may not exist.

It is also unclear whether established remuneration surveys, such as Mercer's, would qualify or whether a separate independent assessment would be required. The draft does not explain whether "public benchmarking" means using publicly available comparison data or publishing the supplier's own benchmarking assessment. Remuneration surveys can help establish whether pay is competitive in the relevant labour market.[41]

[41] Mercer, Global employee benefits & compensation data, accessed 21 October 2026. Mercer is an illustrative example; the Framework does not identify this service as an accepted source.

These uncertainties also risk increasing the cost of tendering. Suppliers could incur costs buying remuneration data or commissioning comparisons that procurement officials subsequently reject. Different approaches across tenders could require repeated assessments.

Recommendation 7.

a) Remove indicator 2.1(d)'s separate independent public benchmarking requirement and the corresponding wording in Supplier Code section 3.5.

b) Apply the same assessment approach to suppliers with and without enterprise agreements. That is, recognise clear, enforceable employment terms and compliance with the legal obligations concerning pay and entitlements applicable to each supplier. Do not require suppliers to match or exceed other employers' enterprise agreement terms, or exceed prevailing industry pay and conditions, simply because they do not have an enterprise agreement. Accept existing employment contracts, applicable industrial instruments and relevant payroll and employment records where sufficient to demonstrate compliance.

c) Allow suppliers to use suitable existing remuneration benchmarking as optional supporting evidence where meaningful comparisons are available. Do not require a new independent assessment or public disclosure of confidential employment information simply because a supplier has no enterprise agreement.

Procurement should not create a parallel bargaining or labour hire pay regime

Indicator 2.1(b) does not accurately express the statutory circumstances requiring a Notice of Employee Representational Rights. A Notice of Employee Representational Rights tells employees they can choose who represents them in bargaining. For a single-enterprise agreement covering existing employees, the law requires the notice when the employer starts or agrees to bargain, receives a valid written request to bargain for a replacement agreement, or a majority support determination or scope order comes into operation. Employers must take all reasonable steps to give affected employees the notice as soon as practicable and within 14 days.[42]

Indicator 2.1(b), however, expects suppliers to issue the notice whenever workers or a union entitled to represent them request bargaining, regardless of whether the Fair Work Act requires it. For example, a request to negotiate a business's first enterprise agreement does not, by itself, trigger the notice requirement.

Suppliers could therefore face pressure to take formal bargaining steps where the Act allows them to decline the request. A supplier can provide safe, secure jobs with good pay and conditions while lawfully declining a bargaining request. Requiring it to issue a notice in those circumstances does not reliably demonstrate better employment practices, yet failing to do so could count against it in procurement assessments. Using government purchasing power to penalise that lawful choice, without a demonstrated additional benefit for workers, is unjustified overreach. Compliance with the Act's notice requirements should satisfy the indicator.

Indicator 2.1(f) similarly proposes a broad expectation that labour hire workers receive at least the same pay as directly hired workers doing the same work. The Government's 2023 Closing Loopholes reforms introduced a statutory labour hire pay regime that operates through Fair Work Commission orders, defined conditions and exclusions, with protected rates calculated under the host's relevant workplace instrument. The indicator does not preserve those boundaries or explain its comparison method.[43]

This is a substantial policy difference. It could extend pay-parity expectations beyond the statutory regime and leave procurement officials to determine comparability and compliance through contract management. Compliance with the recently legislated regime should satisfy the indicator, without a separate procurement pay requirement.

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[42] *Fair Work Act 2009* (Cth) s 173(1)–(3). Under s 173(2A), a replacement-agreement request must be in writing from an employee bargaining representative; the earlier single-enterprise agreement must have passed its nominal expiry date no more than five years earlier; no single interest employer authorisation must have ceased because that earlier agreement was made; and the replacement must cover the same or substantially the same employees.

[43] DEWR, Closing Loopholes, accessed 21 October 2026; Fair Work Ombudsman, Protected pay rates for labour hire employees.

Recommendation 8.

a) Amend Framework indicator 2.1(b) to reflect the Fair Work Act's conditions and timeframes for issuing a Notice of Employee Representational Rights. Suppliers should not be disadvantaged for declining to issue a notice where the Act does not require one.

b) Replace Framework indicator 2.1(f)'s broad pay-parity expectation with recognition of compliance with applicable pay obligations, including protected pay rates where a Fair Work Commission labour hire order applies. Preserve the statutory conditions, exclusions and pay-calculation rules.

c) Confirm in the Supplier Code and assessment guidance that compliance with these legal requirements satisfies indicators 2.1(b) and 2.1(f). Procurement assessment should not impose broader bargaining-notice or labour hire pay obligations.

Contract transition obligations must be clearly defined and priced

Protecting workers and maintaining service continuity are legitimate transition objectives. The proposed expectations are nevertheless too broad and uncertain to apply consistently across different services and delivery models.

Framework indicator 2.1(i) and Code section 3.5 use different qualifications for offering employment to outgoing workers and maintaining wages and conditions. Both refer to providing conditions no less favourable to "all employees", without clearly defining the affected workforce or the comparison required. It is unclear whether this includes the incoming supplier's existing employees assigned to the contract.

Although framed around a future contract transition, neither document explains whether bidders must demonstrate past practice, make commitments for the proposed contract, or both. Suppliers should not be disadvantaged simply because they have not previously taken over another provider's contract.

An incoming supplier may propose a different mix of skills, technology or working arrangements. Those roles may not map directly onto the outgoing contractor's workforce. For example, a supplier maintaining government buildings may remotely monitor air-conditioning and other equipment, using a central technical team and fewer staff on site. The drafts do not explain how available positions or "no less favourable" conditions would be assessed where the new roles differ from those of the outgoing contractor. An undefined obligation to maintain existing conditions can constrain the new model and make its labour costs impossible to price reliably. Workers may also prefer different roles, hours or working arrangements with the incoming supplier. Any transition expectations should accommodate those preferences while preserving applicable legal entitlements.

Unclear transition obligations may lead bidders to increase tender prices to cover the risk of higher labour costs, or decide not to bid. Higher prices and reduced competition would put value for money for taxpayers at risk. The incumbent also holds workforce information that competitors may lack. The tender process should give bidders sufficient information to assess the transition obligations and price the work.

Recommendation 9.

a) Remove the general expectation in Framework indicator 2.1(i) and Supplier Code section 3.5 that incoming suppliers employ outgoing workers or maintain their wages and conditions beyond applicable transfer of business legal requirements. Any contract-specific transition requirements should be necessary for service continuity, accommodate different delivery models and be clearly defined before tendering.

b) Clearly identify in the tender documents the workers, roles and employment conditions covered by any transition requirements, and provide sufficient workforce information for bidders to assess and price those requirements before submitting their bids. Any expectation to offer employment to outgoing workers should take account of suitable vacancies, workers' choices and practical transition constraints.

Industry accreditation must allow equivalent assurance

Indicator 2.1(h) and Code section 3.5 identify accreditation as good practice wherever joint industry labour standards schemes exist. Accreditation can provide useful assurance, but the existence of a scheme does not establish that participation is necessary for every supplier.

Suppliers may already hold independent assurance covering the relevant employment practices. For example, a supplier may already have had its award classifications, payroll and employment entitlements independently audited. Officials should accept those findings where their scope and results provide equivalent assurance about the practices being assessed. Requiring accreditation through another scheme without identifying a gap adds cost and gives that scheme's decision-makers unnecessary influence over access to Commonwealth work.

Recommendation 10.

a) Identify the employment standards accreditation is intended to verify. Recognise accreditation as one form of assurance and accept existing certifications, independent audits and other evidence that provide equivalent assurance about the relevant practices. Suppliers should not have to join a particular scheme where sufficient assurance is already available.

b) Establish transparent criteria for recognising schemes and equivalent evidence, with appropriate governance, conflict-of-interest safeguards and independent review arrangements. Procurement decisions should remain accountable to the Commonwealth.

Principle 3: Safe and healthy workplaces

WHS indicators should clearly define accreditation expectations and reflect existing consultation and training rights.

Framework indicator 3.1(a) refers to suppliers participating in work health and safety (WHS) accreditation schemes "where required" or implementing "recognised WHS management frameworks". It does not currently identify which schemes or frameworks qualify, or whether independent certification is expected. Government accreditation, implementation of a management standard such as ISO 45001, and independent certification involve different requirements and costs. The Framework should identify the accepted schemes and frameworks, and explain how suppliers can demonstrate effective implementation through existing systems and records. Without clear recognition of effective existing systems and records, accreditation expectations could become another barrier to Commonwealth work, particularly for smaller suppliers, without demonstrating better safety outcomes.

Indicator 3.1(d) and Supplier Code section 3.1 identify having health and safety representatives (HSRs) as an indicator of good WHS practice. However, it is for workers to decide whether to seek HSR representation. Effective, lawful consultation should receive equal recognition where HSRs have not been requested or elected, while preserving workers' representation rights.[44]

Indicator 3.1(d) also refers to HSRs accessing "recognised health and safety training of their choice". Existing laws already govern approved courses, course selection, training entitlements, paid time and costs. The indicator should reflect those rights and requirements. Suppliers should not face an undefined additional obligation to fund courses or provide training time beyond their existing obligations.[45]

[44] Safe Work Australia, Health and safety representatives and work groups, "Health and safety representatives (HSRs)", accessed 21 October 2026.
[45] Comcare, Health and safety representatives (HSRs), "HSR training"; WorkSafe Victoria, Health and safety representative training, accessed 21 October 2026.

Recommendation 11.

a) Clarify which accreditation schemes and management frameworks qualify under indicator 3.1(a), and what evidence demonstrates their implementation. Accept existing systems and records where sufficient, without requiring additional certification or reporting.

b) Amend indicator 3.1(d) and Supplier Code section 3.1 to recognise effective, lawful consultation as an equally valid way to demonstrate good WHS practice where workers have not requested or elected HSRs. Preserve workers' existing representation rights.

c) Amend the HSR training expectation to expressly reflect entitlements under applicable WHS laws, including requirements concerning approved courses, course selection, paid time and costs. Confirm that meeting those obligations satisfies the training expectation and creates no additional obligation to fund courses or provide training time. Reflect these clarifications in both the Framework and Supplier Code.

Principle 4: Gender equality and diversity

The industry midpoint is not a reliable test of good practice.

Framework indicator 4.1(f) identifies an average total remuneration gender pay gap below the industry midpoint as good practice. The industry midpoint is the middle value when employers' gender pay gaps are ranked from lowest to highest. Even if every employer reduces its gap, roughly half can still remain above the midpoint. Relative position does not establish whether an employer has identified the drivers of its pay gap and taken effective action.[46]

Procurement requirements should help identify suppliers offering good workplace practices and value for money. A relative ranking that does not reliably demonstrate either should not become another barrier to competing for Commonwealth work.

Recruiting women into junior roles in a male-dominated workforce can initially widen the reported gap while building career pathways. The indicator could therefore disadvantage a supplier for recruiting more women and creating opportunities for them to progress. That risks discouraging recruitment and leaving women with fewer employment opportunities, which is the opposite of the Framework's objective.

The Framework should also explain how suppliers outside WGEA's reporting regime, or without a separately published pay gap for the tendering entity, can demonstrate good practice.[47] Those suppliers should be able to demonstrate good practice through sufficient existing evidence, without having to replicate WGEA reporting solely to compete for Commonwealth work.

Participation expectations must be lawful and suited to the workforce

Indicator 4.1(b), concerning women's participation in male-dominated industries, will not apply to every supplier. An inapplicable indicator should not count against a business demonstrating good practice through other relevant measures.

Indicator 4.1(g) identifies setting targets to improve the representation of people from culturally and linguistically diverse (CALD) backgrounds and First Nations people as an example of good practice. Targets need to reflect workforce size, existing representation and opportunities to recruit people with the necessary skills. A ten-person specialist business with no vacancies cannot change its workforce composition simply by adopting a target. Recruitment, retention, development and barrier-removal actions may provide more meaningful evidence of good practice.

Targets must also be implemented lawfully. Removing barriers and encouraging applications differs from reserving jobs or programs for particular groups. Federal law permits qualifying special measures, but suppliers

[46] Workplace Gender Equality Agency (WGEA), Publishing employer gender pay gaps, "The industry mid-point", accessed 21 October 2026.
[47] WGEA, Publishing employer gender pay gaps, "Where does the data come from?" and "Why can't I see an employer gender pay gap?".

must also satisfy state and territory laws. Anti-Discrimination NSW identifies women-focused graduate recruitment among initiatives that may require an exemption. Procurement assessments should recognise different lawful ways to improve participation and take account of any exemption approvals needed before an initiative can proceed.[48]

Existing WGEA obligations should be recognised. Its statutory target regime allows covered employers to select targets and provides three years to meet or demonstrate improvement against them. Procurement assessment should recognise those choices and timeframes.[49]

WGEA reporting does not necessarily provide the CALD and First Nations information needed for indicator 4.1(g). Assessment must respect voluntary self-identification and privacy, including where small groups could be identifiable.[50]

Clarify flexible work and employee support expectations

Indicator 4.1(c) is unclear about what suppliers must demonstrate concerning flexible work and employer-funded parental leave. Assessment should recognise forms of flexibility suited to different roles and operational needs, such as flexible rostering for on-site employees. Employer-funded parental leave is also distinct from statutory leave and government-funded payments. The indicator should explain how suppliers can demonstrate that these benefits are available and accessible, accepting existing policies, employee communications and relevant records where sufficient.[51]

Recommendation 12.

a) Replace indicator 4.1(f) with assessment of the supplier's pay-gap analysis, relevant actions and progress. Use existing WGEA information where sufficient and provide alternative evidence options for suppliers without published data.

b) Exclude inapplicable indicators from assessment. Recognise practical recruitment, retention, development and barrier-removal actions as equally valid alternatives to numerical participation targets where appropriate. Accept relevant existing targets and reporting, with realistic assessment periods.

c) Make clear that suppliers pursuing participation targets under indicators 4.1(b) and 4.1(g) must comply with both federal and applicable state or territory discrimination laws. Where a program requires an exemption under applicable discrimination law, the procurement assessment should take account of the time needed to obtain approval before the program can begin.

d) Redraft indicator 4.1(c) to explain the practices and evidence expected. Expressly recognise different forms of flexibility that suit the work and how it is organised, including flexible rostering, adjusted hours and job sharing.

e) Accept existing policies, employee communications, diversity plans and reports where sufficient to demonstrate the relevant indicator, to avoid duplicate procurement reporting. Where workforce data is needed, accept aggregated data that protects individuals' identities. Do not disadvantage suppliers because workers may decline to disclose their cultural background or First Nations status. Assess family and domestic violence support through policies, communications and access to confidential assistance, without requiring details of individual workers' experiences. Apply this approach consistently in the Framework, Supplier Code and assessment guidance.

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[48] Australian Human Rights Commission, *Guidelines: special measures under the Sex Discrimination Act 1984 (Cth)*, November 2018, ss 2 and 6.3–6.4; Anti-Discrimination NSW, Frequently asked questions, "What are some examples of exemptions?", accessed 21 October 2026.
[49] WGEA, Gender equality targets: frequently asked questions, accessed 21 October 2026.
[50] WGEA, Know your workforce: collecting diversity data, accessed 21 October 2026; WGEA, *Collecting employee diversity information to advance workplace gender equality*, "Respect employee agency".
[51] Fair Work Ombudsman, Payment during parental leave, "Payment types" and "Employer funded parental leave payments", accessed 21 October 2026.

Principle 5: Local jobs, skills and industry capability

The indicators do not adequately distinguish the different contributions suppliers can make to Australian capability. Training and apprenticeships (indicator 5.1(b)), SME participation (indicator 5.1(c)) and industry development (indicator 5.1(d)) are not equally relevant to every Commonwealth contract.

A specialist service provider may build capability by training existing workers and transferring technical knowledge. Employing apprentices or trainees to meet indicator 5.1(b) would not necessarily improve that contribution. Assessment should recognise the benefit delivered rather than encourage suppliers to restructure their operations to meet indicators that are not relevant to the contract.

Principle 5.1 appropriately recognises that local employment depends on suitably skilled workers being reasonably available. However, indicator 5.1(e) permits FIFO and DIDO arrangements only where "genuinely necessary", leaving suppliers uncertain about how operational alternatives will be judged.

A short technical assignment at a regional facility may be best delivered by an experienced team travelling from elsewhere. Local recruitment may not provide the required skills within the delivery period. Delaying the work or establishing a different staffing model could increase costs without creating lasting employment.

If a procurement is intended to establish additional local capacity under indicator 5.1(d), that objective should be specified and its benefits and costs assessed. Restricting FIFO and DIDO under indicator 5.1(e) does not establish whether local recruitment would create lasting jobs or skills. Without demonstrated benefits, those restrictions risk increasing contract costs without delivering better value for taxpayers.

Recommendation 13.

a) Define "local" in Principle 5.1. For indicator 5.1(a), specify which economic benefits will be assessed and what evidence suppliers can provide. Accept relevant information already provided during the procurement.

b) Apply indicators 5.1(b)–(d) according to their relevance to the contract and recognise alternative contributions to Australian capability. For example, suppliers should receive recognition for training existing workers and transferring technical knowledge without also employing apprentices or trainees where those arrangements are unsuitable.

c) Revise indicator 5.1(e) to recognise legitimate reasons for FIFO and DIDO arrangements, including required skills, assignment duration, local workforce availability, delivery time and cost.

Evidence and assessment

Suppliers need to know what evidence is required and how it will be assessed before preparing and pricing a tender. Unclear requirements can lead them to prepare reports or obtain advice that officials do not need, or overlook obligations that affect delivery costs.

If Commonwealth procurement officials request different evidence of the same practices, suppliers may have to repeat work for each tender. Preparing a report or obtaining advice may involve similar costs for a small contract and a large one. Unnecessary costs can make smaller contracts uneconomic to pursue, discourage new entrants or increase tender prices.

Framework assessment should focus on the supplier entity tendering for the contract. Assessment of operational practices should focus on the work and workforce proposed to deliver the contract. It should not automatically extend to unrelated operations or other corporate group members. Any broader enquiry should have a clearly explained connection to the procurement.

Existing statutory obligations should retain their legal scope. Where an indicator reflects existing law, evidence demonstrating compliance with that law should satisfy the indicator. Relevant entity-wide or group-wide policies and reports should be accepted where sufficient, without requiring separate contract-level reporting. Using those records as evidence should not extend contractual obligations to other group members.

Additional information should be requested only where needed to resolve a material assessment question. Requests should reflect the procurement's size and duration, relevant workplace risks and the industry and workforce involved. Officials should explain why the information is needed and why its usefulness justifies the cost of preparing and reviewing it. Aggregated, sampled or redacted information should be accepted where sufficient, with safeguards for personal and commercially sensitive information.

Recommendation 14.

a) Publish consistent evidence and assessment guidance before implementation. Assess the supplier entity tendering for the contract and focus operational assessment on the work and workforce proposed to deliver it.

b) Require a clear justification for broader enquiries and prevent automatic extension to unrelated group operations. Accept sufficient existing records without separate contract-level reporting. Limit additional information requests to what is necessary and proportionate, and accept aggregated, sampled or redacted records where sufficient. Protect personal and commercially sensitive information.

Part B: Implementation mechanism

The Government proposes to implement the Framework through amendments to the Supplier Code. As outlined above, suppliers would generally be contractually required to comply with the amended Supplier Code's workplace provisions and meet the Majority Test.

The draft amendments leave important questions unanswered. The Supplier Code broadly calls for compliance with the Framework but specifically references Principles 1–4, leaving Principle 5's status unclear. In addition, the Framework states, "It is not intended that the Secure Jobs Framework apply in the construction industry", but the draft Supplier Code does not expressly exclude construction from its new requirements. Both documents should define the construction activities excluded from these new requirements and explain how the exclusion applies to contracts combining construction with other goods or services and to suppliers operating across industries.

Some requirements, including those concerning contract transitions, are worded differently in the two documents. Although the Supplier Code prevails where they conflict, it is not clear whether meeting a Code requirement also satisfies the corresponding Framework indicator under the Majority Test.

Suppliers need these questions resolved before they price a tender and enter into a contract. Failure to comply can put both current and future Commonwealth work at risk.

The BCA recommends a different approach: using the Framework, amended as recommended in this submission, to assess relevant workplace practices when choosing suppliers, rather than incorporating its additional workplace requirements into the Supplier Code or requiring ongoing compliance with the Majority Test throughout the contract.

This approach could be implemented through a targeted procurement-connected policy specifying when the Framework applies, how officials assess workplace practices and which commitments must continue during delivery. The Commonwealth Procurement Rules already provide for procurement-connected policies.[52]

Under this approach, existing legal obligations and the current Supplier Code would continue to apply. Additional workplace commitments should become contractual requirements only to address delivery risks not adequately covered by existing arrangements. For example, an incoming call centre supplier could be required to have trained staff and suitable handover arrangements ready before taking over. Any such commitments should be disclosed before tendering.

If the Government retains the Supplier Code mechanism, it should also address the interaction with its proposed competition reforms. Those reforms provide a mechanism to exempt specified labour standards from the new

[52] Department of Finance, *Commonwealth Procurement Rules*, paras 4.9–4.10.

wage-fixing prohibitions.[53] If those prohibitions are introduced, any necessary exemption should expressly cover Supplier Code requirements that head contractors must pass on to subcontractors and be in place before those obligations take effect.

The Department of Employment and Workplace Relations has committed to undertaking an impact analysis.[54] Whichever implementation approach is adopted, the Department should publish that analysis before finalising the Framework and its implementation arrangements, assessing administrative and operational costs for suppliers and subcontractors of different sizes, benefits for workers, and effects on competition and tender prices.

The Framework also proposes extending its application to other taxpayer-funded arrangements, opening the way to imposing its industrial preferences and compliance requirements on Commonwealth grant recipients. This would spread the risks identified in this submission beyond procurement. Grants should be awarded according to the program's objectives, applicants' ability to deliver and value for taxpayers, not whether an applicant's enterprise agreement covers a union. The BCA opposes this proposed expansion.

Recommendation 15.

a) Use the Framework, amended as recommended in this submission, to guide assessment of relevant workplace practices when selecting suppliers, supported by a targeted procurement-connected policy.

b) Alternatively, if the Government retains the Supplier Code mechanism, revise expectations written directly into the Code as recommended in this submission, clearly identify which Framework principles apply and the binding requirements in both documents, and explain how relevant indicators will be selected and assessed.

c) Under either mechanism, confirm that good practice indicators are illustrative and suppliers need not meet all indicators or a prescribed number. Replace the Majority Test with clear assessment criteria giving equal recognition to alternative practices that achieve equivalent or better outcomes. Additional workplace requirements should be included in contracts only to address delivery risks not adequately covered by existing arrangements.

d) Tender documents should state suppliers' obligations, acceptable evidence and required reporting or checks during delivery. Where specific delivery commitments are included in the contract, explain how compliance with those commitments will be assessed if staffing needs or the work required change during delivery. Contract clauses and responses to non-compliance should reflect the seriousness of the failure and its consequences.

e) Transition arrangements should specify when changes commence and how they apply to existing contracts, renewals and extension options. Prevent additional, unpriced requirements from applying automatically to existing contracts, and allow suppliers and officials sufficient preparation time after final requirements and guidance are published.

f) Clearly define the construction exclusion and confirm that it applies to both the Framework and the new requirements introduced through the Supplier Code amendments. Explain how the exclusion applies to contracts combining construction with other goods or services and to suppliers operating across industries.

g) If the proposed competition reforms and Supplier Code amendments proceed, ensure that labour requirements head contractors must impose on subcontractors are exempt, where necessary, from the new competition law prohibitions on agreements between businesses that fix or control workers' pay and

[53] *Competition and Fair Work Legislation Amendment (Banning Unfair Non-Competes) Bill 2026* (Cth) (exposure draft, 3 September 2026) sch 1 items 6, 25 and 28, proposing ss 45ADA(3), 45AUA(4) and 95AG of the *Competition and Consumer Act 2010* (Cth).
[54] DEWR, Secure Australian Jobs Framework – Draft Framework, "Impacts on businesses".

employment conditions. Any necessary exemption should take effect before those contractual requirements apply.

h) Publish DEWR's promised impact analysis before finalising the Framework and Supplier Code amendments. Assess the administrative and operational costs of meeting the proposed requirements for suppliers and subcontractors of different sizes, benefits for workers, and effects on competition and tender prices.

i) Do not extend the Framework to Commonwealth grants or other taxpayer-funded arrangements outside procurement. Delete the provision proposing its implementation in other financial frameworks.[55]

[55] Department of Employment and Workplace Relations, Draft Secure Australian Jobs Framework, September 2026, p 2, 'Implementing the Secure Jobs Framework in procurement'.

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