



**Australian
Human Rights
Commission**

President

Professor Gillian Triggs

5 April 2017

Committee Secretary
Joint Select Committee on Government Procurement
PO Box 6021
Parliament House
Canberra ACT 2600

By email: JSCOGP@aph.gov.au

Dear Secretary,

Inquiry into the Commonwealth Procurement Framework

The Commission welcomes the opportunity to make comments to the Joint Select Committee on Government Procurement in relation to the above inquiry.

Please note that this letter does not aim to address all the Terms of Reference for the Inquiry. We primarily want to focus the References Committee's attention on terms of reference a. (the Commonwealth procurement framework) and c. the new clause 10.18.

Public procurement is a major component of the overall economy with consequences for enjoyment of human rights.¹

The value of public procurement in Australia has doubled in less than ten years from \$26,361.8 million in 2007-8 to \$56,912.3 million for the 2015-16 financial year.² The purchase of goods and services by the public sector therefore represents a significant opportunity for the Australian Government to demonstrate adherence to its international obligation to protect against human rights abuses.

In 2011, the United Nations Human Rights Council unanimously endorsed the United Nations Guiding Principles on Business and Human Rights (UNGPs)³, now recognised as a global standard on business and human rights. The UNGPs affirm the duty of states to protect against human rights abuses by businesses; the responsibility of businesses to respect human rights, and the right of victims to a remedy for any business-related human rights abuses.

The UNGPs apply to government in its business operations and highlight the need to take active steps to avoid involvement in human rights abuses through government's purchasing practices and contracting arrangements.⁴

In recent years, there has been increased scrutiny of human rights breaches in business supply chains. Government is not immune to such scrutiny.⁵ Some of the high-risk areas for human rights impacts in government procurement include cleaning and construction contracts, procurement of IT goods, clothing/uniforms and procurement via supply chains that employ workers on temporary visas.

A significant part of our work in investigation and conciliation of complaints involve businesses in their role as an employer or as a service provider. In 2015-16, half the complaints made against organisations were against private enterprises, which illustrates some of the human rights challenges that the Australian government is facing by procuring goods and services in the Australian business context.

International research on public procurement suggests the Australian regulatory framework is insufficient to prevent human rights abuses from occurring in Commonwealth procurement.⁶ Current provisions of the Commonwealth Procurement Rules do not explicitly refer to human rights nor provide guidance to ensure that all relevant human rights are adequately considered.

There are a number of countries that have already incorporated human rights into their procurement processes, including, but not limited to the United States⁷ of America and the Netherlands.⁸ It is expected that more countries will follow suit as part of their national action plans on business and human rights.⁹ A good example of public procurement initiative focused on human rights is the Swedish county council's two year review of the human rights policies and due diligence of its IT contractor.¹⁰

We have recently commenced a similar process to review our own internal procurement at the Commission with respect to human rights due diligence, however, we are too early in the process to be able to share further information.

The Commission welcomes the new clause 10.18, which covers some of the relevant human rights through the reference to "labour regulations", "ethical employment practices" and occupational health and safety". However, the scope of this clause is inadequate in terms of the human rights protected; further, it is limited in its application in that it applies only to procurement over \$80,000 (for non-corporate Commonwealth entities), \$400,000 (for prescribed Commonwealth entities) and \$7.5 million for procurement of construction services threshold.

Recommendations

1. That the Commonwealth Procurement Rules be assessed against, and aligned, with the UNGP requirements.
2. That guidance be developed to ensure the UNGP requirements regarding human rights due diligence in procurement are met through implementation of the Commonwealth Procurement Rules, and mandatory training delivered to all procurement officers.
3. That the new clause 10.18 be broadened to reference all universally recognised human rights.

4. That clause 10.18 apply to all procurement activities regardless of the procurement threshold.
5. That existing materials on implementation of clause 10.18, be strengthened to provide more comprehensive guidance to procurement officers on mitigating human rights risks through procurement activities.

If you would like to discuss these matters further, please do not hesitate to contact Spela Berlec on spela.berlec@humanrights.gov.au.

Yours sincerely,

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President

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¹ The Danish Institute for Human Rights, *Public procurement and human rights*, (2017). At <https://www.humanrights.dk/projects/public-procurement-human-rights> (viewed 20 March 2017).

² Australian Government, Department of Finance *Statistics on Australian Government Procurement Contracts*, (2016). At <https://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/> (viewed 20 March 2017).

³ Office of the High Commissioner for Human Rights, *The UN Guiding Principles on Business and Human Rights*, (2011). At http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (viewed 20 March 2017).

⁴ Expert Workshop organised by the UN Working Group on Business and Human Rights, *DIHR-ICAR Briefing Note: Protecting Human Rights through Government Procurement*, (7 May 2014). At https://www.humanrights.dk/files/media/dokumenter/business/unwg_8_may_workshop_icar_dihr_procurement_final.pdf (viewed 20 March 2017).

⁵ Christopher Knaus, 'ACT government keeps school cleaning contractor accused of underpaying migrant workers', *The Canberra Times* (online) 22 June 2016. At <http://www.canberratimes.com.au/act-news/act-government-keeps-school-cleaning-contractor-accused-of-underpaying-migrant-workers-20160621-gpny2l.html> (viewed 20 March 2017).

Adele Ferguson and Sarah Danckert, '7-Eleven workers pay up to \$70,000 for visa in indentured labour scheme' *Sydney Morning Herald* (online) 23 September 2015. At <https://business-humanrights.org/en/australia-7-eleven-workers-pay-up-to-70000-for-visa-in-indentured-labour-scheme> (viewed 20 March 2017).

⁶ International Learning Lab on Public Procurement and Human Rights, *Public Procurement and Human Rights: A Survey of Twenty Jurisdictions*, (2016). At <http://www.hrprocurementlab.org/wp-content/uploads/2016/06/Public-Procurement-and-Human-Rights-A-Survey-of-Twenty-Jurisdictions-Final.pdf> (viewed 21 March 2017).

⁷ United States Department of State Bureau of Democracy, Human Rights, and Labor, *U.S. Government Approach on Business and Human Rights*, (2013). At <https://www.humanrights.gov/wp-content/uploads/2013/06/usg-approach-on-business-and-human-rights-updatedjune2013.pdf> (viewed 28 March 2017).

⁸ PIANOo, *Public Procurement in the Netherlands*, (2017). At <https://www.pianoo.nl/public-procurement-in-the-netherlands/sustainable-public-procurement-spp>

⁹ United Nations Human Rights, Office of the High Commissioner, *State national action plans* (2017). At <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

¹⁰ Electronics Watch, *Public Procurement and Human Rights Due Diligence to Achieve Respect for Labour Rights Standards in Electronics Factories: A Case Study of the Swedish County Councils*

and the Dell Computer Corporation, (2016). At http://electronicswatch.org/en/public-procurement-human-rights-due-diligence-a-case-study-of-the-swedish-county-councils-and-the-dell-computer-corporation-february-2016_2456642.pdf