



## **Australian Government**

Australian Government response to the  
Standing Committee on Infrastructure, Transport and Cities report:

Government Procurement: A sovereign security imperative

June 2023

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## Preamble

### Background

On 31 March 2022 the then House of Representatives Standing Committee on Infrastructure, Transport and Cities inquired into and released its report on procurement practices for government-funded infrastructure. The Terms of Reference for the report required the Committee to report on procurement practices for government-funded infrastructure and the potential to enhance the sovereign capability of the Australian industry, with particular reference to:

- a) existing infrastructure pipelines and related supply requirements
- b) challenges and opportunities with existing procurement practices, including frameworks, standards, rules and norms, and intersections between tiers of government and the private sector
- c) challenges and opportunities to enhance Australia's sovereign industry capability, including for Australian owned businesses
- d) lessons from other Australian jurisdictions and other portfolio areas, including Defence's industry capability approaches
- e) how Australia can balance its international obligations with maximising local content opportunities, including by leveraging foreign direct investment
- f) alternative procurement models, including reference to international examples
- g) other relevant matters.

The Inquiry commenced on 1 June 2021 with six public hearings held over September to November 2021. The Committee received 63 submissions, including from the Australian National Audit Office, the Department of Finance, Infrastructure Australia, the then Department of Infrastructure, Transport, Regional Development and Communications, and the then Department of Industry, Science, Energy and Resources.

The final report notes eight recommendations to the Australian Government for consideration across the broad themes of:

- 1) Facilitation of better planning and co-ordination across the national infrastructure pipeline.
- 2) The practical application of the Commonwealth Procurement Rules, and options to improve the training of government procurement officials.
- 3) The introduction of a mechanism to monitor and rate funding recipients' performance on government-funded infrastructure projects.
- 4) The introduction of a collaborative mechanism for the Australian Government, or another entity, to draw lessons from completed projects.
- 5) Opportunities for standardisation on similar projects.
- 6) Maximising development of Australia's sovereign capacity to deliver infrastructure projects.
- 7) Adoption of a digital by default approach in infrastructure projects.
- 8) Means to improve productivity in the construction industry.

## The state of the infrastructure investment market

The Australian Government acknowledges this report, which highlights both the challenges in the heavy civil construction sector, and the complexity of infrastructure delivery. The Government is committed to building the infrastructure needed for the future through its infrastructure investment pipeline. In acknowledgement of the complexity of each of these issues, the responses address each recommendation individually.

More broadly, it is crucial to note three key factors in considering the recommendations of this report.

### 1. Governments make significant investments

Governments at all levels used significant infrastructure investments to stimulate the Australian economy during the COVID-19 pandemic, with public investment in transport infrastructure alone increasing 22 per cent over two years from \$22.1 billion in 2019-20 to \$27.0 billion in 2021-22 (2021-22 prices).

Total infrastructure investment in Australia, both public and private, for all infrastructure types has been steady in recent years, at \$64.6 billion in 2019-20, \$58.8 billion in 2020-21, and \$67.6 billion in 2021-22 (2021-22 prices).

The Australian Government makes significant investments in land transport infrastructure across Australia through its Infrastructure Investment Program (IIP).

### 2. State, territory and local governments are responsible for the delivery of most IIP projects

It is critical to acknowledge that states, territories and local governments are responsible for delivering most infrastructure projects funded under the IIP. The Australian Government works closely with state, territory and local governments to deliver infrastructure projects, including ensuring that procurement practices deliver value for money and support the longer-term capacity and diversity of the construction market.

### 3. Challenges in the construction sector

The Australian Government acknowledges the challenges facing the infrastructure sector. Governments at all levels invested a significant amount to stimulate the Australian economy during the COVID-19 pandemic.

The high level of infrastructure investment, particularly in transport infrastructure, is contributing to a range of economic challenges in the construction industry, including upward pressure on project costs and labour force capacity constraints. This can lead to the increased cost of delivering commitments, with governments competing for resources and delaying project completion timeframes.

As the Australian economy stabilises, the Australian Government needs to help ensure that infrastructure investment settings are sustainable, well targeted, and aligned to market capacity and resource availability.

## Initiatives under way

The Australian Government supports the development and use of innovative procurement practices that are fit-for-purpose, maximise the effectiveness of planning, support early stakeholder engagement, achieve value for money outcomes, build Australian capability and make tendering processes more efficient, cost effective and flexible.

The Australian Government is progressing a series of initiatives to address challenges in the market, including:

#### 1. Reviewing the investment pipeline

The Australian Government is reviewing the national infrastructure investment pipeline to ensure delivery is focused on nationally significant projects that will deliver the greatest productivity gains for the Australian economy. A nationally coordinated, clearly defined, transparent and predictable pipeline of infrastructure projects will provide the construction sector with more certainty and enable better strategic planning. This will support the industry to respond to the chronic skills and labour shortages it is currently facing.

#### 2. Updates to the Commonwealth Procurement Rules

On 1 July 2022 updates to the Commonwealth Procurement Rules (CPRs) came into effect to reflect the Australian Government's commitment to sourcing from small and medium enterprises (SMEs) and ensure more opportunities are available to SMEs to participate in Commonwealth procurement.

#### 3. A review of Infrastructure Australia

On 22 July 2022 the Australian Government announced an independent review of Infrastructure Australia (IA). The review considered IA's role as an independent adviser to the Commonwealth on nationally significant infrastructure priorities, and advised on what changes may be needed to IA's focus, priorities and legislation. On 8 December the Minister for Infrastructure, Transport, Regional Development and Local Government released the reviewers' report and the Australian Government's response, which supported most of the recommendations.

#### 4. Secure Australian Jobs Plan

The Australian Government's Secure Australian Jobs Plan includes the Australian Skills Guarantee, which will ensure that one in 10 workers on major, federally funded government projects is an apprentice, trainee or paid cadet. The Australian Skills Guarantee will use the Australian Government's investments in major projects to secure a pipeline of skilled workers into the future.

#### 5. Buy Australian Plan

Under the Australian Government's 10-point *Buy Australian Plan*, National Partnerships will drive increased local participation in major projects. The Future Made in Australia Office has been established to coordinate the delivery and implementation of the Buy Australian Plan across the Australian Public Service and engage directly with businesses and industry sectors to help lift their competitive capabilities.

#### 6. Australian Industry Participation Plan

The *Australian Jobs Act 2013* requires proponents of eligible major public and private projects with capital expenditure of \$500 million or more to develop an Australian Industry Participation Plan (AIP plan). An AIP plan must set out how the proponent will provide Australian suppliers, including those located in the project region, the opportunity to bid for work on the project.

The overarching AIP Framework was agreed to by the Australian Government and state and territory governments, and supports a nationally-consistent approach to maximising Australian industry participation in major projects, including those receiving Commonwealth funding.

Under the National Partnership Agreement on Land Transport Infrastructure Projects, state and territory project proponents must develop a Local Industry Participation Plan (LIPP) or an AIP plan for all projects in receipt of Commonwealth payments over \$20 million.

## Recommendation 1

Number	Recommendation
1	<p>The committee recommends, with a view to addressing Australia’s historically piecemeal approach to infrastructure planning and project delivery, the Australian Government investigate, in consultation with state, territory and local governments, and relevant industry bodies and stakeholders, how to facilitate better planning and coordination of the infrastructure pipeline.</p> <p>As part of this work, consideration should be given to:</p> <ul style="list-style-type: none"><li>• the effectiveness of planning, and stakeholder and industry engagement prior to project commitments being made</li><li>• avenues for enhancing cooperation with existing bodies, and/or bolstering independent expertise, to support more integrated and holistic infrastructure planning</li><li>• extending governments’ approach to long-term infrastructure planning from a decade to a strategic outlook of 20 to 50 years, as applicable</li><li>• periodic reporting on priorities and progress on the <i>2021 Australian Infrastructure Plan</i> items for which the Australian Government has been identified as the proposed lead agency.</li></ul>

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### Support.

The Australian Government supports better planning and coordination of the infrastructure pipeline and acknowledges the importance of working with state, territory and local governments, and relevant industry bodies and stakeholders. At the 30 September 2022 Infrastructure and Transport Ministers’ Meeting (ITMM), Ministers finalised a new workplan that will guide activities through to the end of 2023, with a focus on market capacity constraints affecting the construction industry, improving interoperability of rail systems, decarbonisation of infrastructure and transport, heavy vehicle productivity and road safety.

The Australian Government supports the development and use of practices to maximise the effectiveness of infrastructure planning and project delivery, including better co-ordination of the pipeline for publicly funded projects. This work is already underway in close consultation with state, territory and local governments.

Reforms to expedite major projects through approvals processes and optimise job opportunities from the national infrastructure pipeline are being implemented with states and territories. A number of forums have been established to progress the Government’s commitment to a more integrated and collaborative approach nationally:

- Commonwealth, state and territory infrastructure ministers meet regularly at ITMM. The ITMM provides a forum for intergovernmental collaboration, decision-making and progressing priorities of national importance, which going forward will include promoting a more consistent approach to the national infrastructure pipeline.
- A Streamlining and Optimising Working Group (SOWG) was established in 2021 as a forum for Commonwealth, state and territory infrastructure and transport officials to discuss progress made to streamline planning and approval processes and optimise job

opportunities. It also provides a forum to share planning, approvals and procurement best practice and identify opportunities to enhance efficiency and productivity.

- A roundtable with industry was held on 19 August 2022, led by the Hon Catherine King MP, Minister for Infrastructure, Transport, Regional Development and Local Government. The discussion was focused on exploring means to build a robust, better-trained and more productive workforce.

On 22 July 2022 the Australian Government announced an independent review of Infrastructure Australia (IA). The review considered IA's role as an independent adviser to the Commonwealth on nationally significant infrastructure priorities, and advised on what changes may be needed to IA's focus, priorities and, legislation. The IA review provided advice on how IA should best interact with state and territory infrastructure advisory bodies to achieve a nationally coordinated approach. The Australian Government supported most of the recommendations from the review.

## Recommendation 2

Number	Recommendation
2	<p>Given the crucial role that procurement plays in planning, the tendering process and delivery of infrastructure projects, the committee recommends that the Australian Government review the practical application of the Commonwealth Procurement Rules, with a particular focus on the extent to which factors other than price are assessed in practice.</p> <p>As part of this work, the Australian Government should explore ways to support the training of government procurement officials in procurement best practice approaches to support sophisticated assessments of value for money, and ways to maximise Australian local industry engagement.</p>

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### Support.

The Australian Government acknowledges the importance of procurement in the successful delivery of infrastructure projects. The Government, via the Department of Finance, regularly assesses the operation and impact of the Commonwealth Procurement Rules (CPRs) and updates them as required with appropriate consultations, including providing updated guidance and support.

The most recent updates to the CPRs, which came into effect on 1 July 2022, reflect the Government's commitment to sourcing from small and medium enterprises (SMEs) and ensuring more opportunities are available to SMEs to participate in Commonwealth procurement.

The CPRs require that officials responsible for a procurement must be satisfied, after reasonable enquiries, that a procurement achieves a value for money outcome, including factors other than price. This includes a consideration of relevant financial and non-financial costs and benefits.

In support of Australian local industry engagement, the *Australian Jobs Act 2013* requires proponents of eligible major public and private projects with capital expenditure of \$500 million or more to develop an Australian Industry Participation Plan (AIP plan). The AIP Framework, agreed to by the Australian Government and state and territory governments, supports a nationally-consistent approach to maximising Australian industry participation in major projects, including those receiving Commonwealth funding.

The key principle of the AIP Framework is to provide Australian businesses with a full, fair and reasonable opportunity to participate. This is applied to major projects by:

- conducting Australian Government procurements through an Australian Industry Participation procurement connected policy
- providing grants through the Commonwealth Grants Rules and Guidelines
- issuing loans or investments by the Clean Energy Finance Corporation and the Northern Australia Infrastructure Facility through their mandates
- making payments to state and territory governments for large infrastructure projects through the National Partnership Agreement on Land Transport Infrastructure Projects.

Further, an AIP plan must set out how the proponent will provide Australian suppliers, including those located in the project region, the opportunity to bid for work on the project. The AIP plan must include outlining an engagement and communication strategy for suppliers and publication of any pre-qualification requirements.

Effective training for government officials to undertake such assessments is a priority for the Australian Government, which has committed to a significant procurement reform program under the *Buy Australian Plan*. To deliver this commitment, the Future Made in Australia Office (Office) has been established within the Department of Finance. A priority for the Office will be the development and delivery of procurement and contract management training and capability building for entities. This will be delivered in collaboration with the Australian Public Service Commission's APS Academy.

The National Partnership Agreement on Land Transport Infrastructure Projects (NPA) supports a competitive infrastructure market that promotes opportunities for local and Indigenous participation, and includes provisions assessing and approving targets for Indigenous Participation Plans.

Under the NPA, state and territory jurisdictions must develop and implement a local Industry Participation Plan or an AIP plan for all infrastructure projects in receipt of Commonwealth payments over \$20 million.

The plans provide detail on the expected opportunities to supply goods and services to the project, how proponents will communicate project opportunities and pre-qualification requirements to potential Australian suppliers, and how proponents will assist suppliers to develop capability and integrate into global supply chains.

Further, most states and territories have policies in place to support and facilitate the participation of small and medium enterprises in their government procurement practices, promoting the engagement of local and regional businesses and employees in government contracts.

## Recommendation 3

Number	Recommendation
3	The committee recommends that the Australian Government, in consultation with state, territory and local governments, establish a mechanism for monitoring and rating funding recipients' performance on government-funded infrastructure projects, capturing elements of whether the project was delivered to the required standards, on time and on budget.

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### **Noted.**

The Australian Government monitors state, territory and local government delivery of infrastructure projects that receive Commonwealth funding through required reporting against milestone payments under funding agreements. The Australian Government is also working with state and territory governments through the forums noted at Recommendation 1.

Any further formal rating mechanisms would need careful consideration of the risks and be developed and established in consultation with state and territory governments, local governments and, where appropriate, with industry.

## Recommendation 4

Number	Recommendation
4	<p>The committee recommends that state, territory and local government infrastructure projects that receive Australian Government funding should be subject to verification of value for money by the Australian Government or a specified entity.</p> <p>To support this, the Australian Government should establish a mechanism for assessing state, territory and local governments' plans and performance for proposed and delivered infrastructure projects using Australian Government funds, capturing elements of project delivery to the required standards, on time and on budget.</p>

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### Noted.

The Australian Government works with state, territory and local governments to ensure optimal management of projects which receive Australian Government funding, and there is a recognised mutual understanding that all parties have an interest in improving outcomes in infrastructure and need to work together to achieve those outcomes.

To deliver these outcomes, the Australian Government and state and territory governments have agreed to a National Partnership Agreement on Land Transport Infrastructure Projects (NPA). The NPA, and various supporting governance documents, such as the Notes on Administration, set out the necessary administrative arrangements for the delivery of projects under the Infrastructure Investment Program (IIP). The NPA includes a section setting out Performance Monitoring and Reporting obligations (Part 4).

When a proponent seeks Australian Government funding for a project, under the NPA, it must provide a Project Proposal Report (PPR) to support decision making.

- The PPR contains information such as project rationale/objectives, total outturn costs, a Benefit Cost Ratio, preferred procurement method, budget profiles, governance structures, information on financing and procurement, risk, sustainability, and stakeholder engagement plans.
- Proponents seeking an Australian Government contribution of greater than \$7.5 million must also provide an Indigenous Participation Plan.
- Projects seeking an Australian Government contribution of greater than \$20 million must also provide an AIP plan.
- Infrastructure Australia is required to assess the business case for projects seeking more than \$250 million in Australian Government funding.

The Department of Infrastructure, Transport, Regional Development, Communications and the Arts assesses the PPR and provides advice to the responsible Minister. Milestone payments for projects under the IIP are also required to meet specific criteria and are assessed against information provided by the proponent, and against the PPR. Project proponents are also required to provide a Project Completion Report as part of their final milestone claim. This report requires the project proponent to provide advice on results against Indigenous Participation Targets, as well as on performance against cost, time and schedule more generally.

## Recommendation 5

Number	Recommendation
5	To improve planning, procurement and delivery efficiencies for infrastructure projects, the committee recommends the Australian Government, in consultation with state, territory and local governments, explores opportunities for standardisation on like projects.

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### Support-in-principle.

The Australian Government has committed to a significant procurement reform program under the *Buy Australian Plan*, which includes exploring opportunities for standardisation. The Future Made in Australia Office has been tasked with enhancing multilateral engagement with states and territories on public sector procurement and contracting.

Progress has also been made towards harmonising construction contractual documents and implementing standardised contracts within some jurisdictions, with the lessons learnt shared through the forums noted in the response to Recommendation 1.

Through the Infrastructure Investment Program, the Government is funding projects that demonstrate collaborative contracting arrangements, early contractor engagement and a smoother delivery process. For example:

- **Alliance contracting:** government clients work collaboratively with private suppliers to deliver a project. Risks of project delivery are often jointly managed by the parties, although financial exposure lies mostly with the government client.
- **Public-Private Partnerships:** a service contract between the public and private sectors where the Australian Government pays the private sector (typically a consortium) to deliver infrastructure and related services over the long term. The private provider will build the facility and operate or maintain it to specified standards over a long period. The private provider usually finances the project.
- **Government packaging** of works into smaller scopes, package sizes and risk profiles that lower-tiered contractors are more capable of managing, increasing participation.

Governments are driving systemic change through procurement practices, opting for more collaborative engagements and reducing the use of tendering practices that lead to adversarial relationships. However, state, territory and local government planning, procurement and delivery activities are governed by their respective frameworks. Therefore, further opportunities for standardisation will need to be pursued in close consultation with state, territory, and local governments and, where relevant, with industry.

## Recommendation 6

Number	Recommendation
6	<p>The committee sees increasing the access of tier two and three companies, and related Australian small and medium enterprises, to projects in the Australian infrastructure pipeline as key to enhancing Australia's sovereign industry capacity.</p> <p>Accordingly, the committee recommends that the Australian Government examine ways to maximise developing Australia's sovereign capacity in infrastructure delivery.</p> <p>As part of this work, consideration should be given to:</p> <ul style="list-style-type: none"><li>• providing opportunities in procurement and contracting to engage local industry and utilise local content</li><li>• ways to break up projects into packages of less than \$500 million to increase competitiveness by tier two and three companies</li><li>• making as a condition of Australian Government funding for major infrastructure projects over \$500 million industry sustainability criteria within the early stages of procurement design that encourage tier one contractors to partner/joint venture with a non-tier one company in the head contract</li><li>• education and training for government officials to support these objectives</li><li>• reviewing market conditions for infrastructure insurances and the impact on small and medium enterprises.</li></ul>

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### Noted.

The Australian Government is working across a number of areas to boost participation of tier two and three companies. Recent changes to the Commonwealth Procurement Rules will allow more opportunity for small and medium enterprises to bid for government work and develop Australia's sovereign capability. These include:

- requiring a consideration of whether large projects should be broken into smaller packages to maximise competition (disaggregation)
- recommending the limitation of insurance requirements in contracts to reflect actual risk borne by suppliers
- recommending suppliers should not be directed to take out insurances until a contract is to be awarded.

In addition, the Future Made in Australia Office has been tasked with enhancing multilateral engagement with states and territories on public sector procurement and contracting.

The Australian Government is committed to delivering the Secure Australian Jobs Plan to invest in the skills and training Australia needs to drive future economic growth. The Government's plan includes the Australian Skills Guarantee, which will ensure that one in 10 workers on major, federally funded government projects is an apprentice, trainee or paid cadet.

The Australian Skills Guarantee will use the Commonwealth's investments in major projects to secure a pipeline of skilled workers into the future. This policy will help to address skilled worker shortages and build capability, including for future infrastructure delivery.

The *Australian Jobs Act 2013* requires proponents of eligible major projects with capital expenditure of \$500 million or more to develop an Australian Industry Participation Plan (AIP plan). The AIP plan sets out how the proponent will provide Australian suppliers, including those located in the project region, the opportunity to bid for work on the project.

Through the Infrastructure Investment Program, the Australian Government is helping to build the capability and capacity of lower tier companies by providing increased opportunities to be involved in significant projects, including through joint ventures, collaboration and partnerships with larger companies.

Under the National Partnership Agreement on Land Transport Infrastructure Projects, proponents must develop and implement a Local Industry Participation Plan or an AIP Plan for all infrastructure projects in receipt of Commonwealth payments of \$20 million or more. These plans assist to promote, develop and maintain a sustainable Australian industry capability by encouraging competition in investment projects.

## Recommendation 7

Number	Recommendation
7	<p>The committee recognises the potential benefits for increased efficiencies and productivity through the adoption of a digital by default approach in infrastructure projects, in which governments take the lead in providing accessible digital options that can be utilised by government officials and businesses, from planning to post-delivery assessment and, where applicable, for future application to like projects.</p> <p>The committee recommends that the Australian Government in consultation with state, territory and local governments, support a digital by default approach in infrastructure projects, with consideration for:</p> <ul style="list-style-type: none"><li>• the digital by default recommendations in the <i>2021 Australian Infrastructure Plan</i></li><li>• tender requirements that utilise Building Information Modelling (BIM) or similar technologies</li><li>• supporting openBIM or similarly interoperable methods for digital delivery that allow for exchanging project information</li><li>• fostering contractor upskilling for small and medium enterprises in digital approaches when undertaking government-funded infrastructure projects</li><li>• facilitating whole of life digital strategies in project plans.</li></ul>

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### Support.

The Australian Government acknowledges the potential for digital technologies to improve the efficiencies and productivity of the heavy civil construction sector.

The Australian Government will work with industry and all levels of government to understand the barriers to the adoption of a digital by default approach in infrastructure projects. The implementation of digital by default options will need to be developed in close consultation with state, territory and local governments, as well as industry partners.

## Recommendation 8

Number	Recommendation
8	<p>To deliver on Australia’s significant infrastructure pipeline of projects over the next decade, the committee acknowledges the importance of improving productivity in the construction industry and recommends that the Australian Government investigate how in the tender and delivery processes for government-funded infrastructure projects, firms can demonstrate their:</p> <ul style="list-style-type: none"><li>• commitment to, and compliance with, modern workplace standards</li><li>• support for sector cultural reform in areas including wellbeing, working hours and diversity of their workforces, and having regard to the Culture Standard for the Construction Industry being developed by the Construction Industry Culture Taskforce.</li></ul>

### Support-in-principle.

The Australian Government is committed to improving the productivity of the construction sector, and supports proposals that will drive improvements in delivery processes.

In terms of ensuring ‘commitment to, and compliance with, modern workplace standards’, the Government is committed to removing punitive and unnecessary rules imposed on building and construction workers and their representatives. In this regard, the Government introduced the *Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022* (Secure Jobs, Better Pay Act) to abolish the Australian Building and Construction Commission and the *Code for the Tendering and Performance of Building Work 2016* (Building Code).

The Australian Government supports the tackling of key challenges in the sector, particularly through tripartite consultation and cooperation. This includes recent industry roundtables led by the Minister for Infrastructure, Transport, Regional Development and Local Government, with stakeholders from across industry, local government, peak groups, rural youth, and research and community groups from regional Australia.

The Australian Government hosted the Jobs and Skills Summit on 1 and 2 September 2022. An outcome of the Jobs and Skills Summit was agreement by business, unions and Government to work proactively together to establish a tripartite National Construction Industry Forum to constructively address issues such as mental health, safety, training, apprentices, productivity, culture, diversity and gender equity in the industry. This commitment is implemented by the Secure Jobs, Better Pay Act.

At the Jobs and Skills Summit, the Government also identified areas for further work. The Government committed to include targets for women in the Australian Skills Guarantee to provide more opportunities for women to work and train on major projects, including in industries like construction that have historically had a low level of female participation.

There are also a range of existing mechanisms in the Commonwealth Procurement Framework that require procuring officials to consider tenderer practices when conducting a procurement process. These include that relevant entities must not seek to benefit from supplier practices that may be dishonest, unethical or unsafe, and any lack of compliance with applicable workplace standards.

The Australian Government also committed to establishing a Secure Australian Jobs Code as part of its Buy Australian Plan election commitment to prioritise secure work in government contracts and ensure that government purchasing power is being used to support businesses that engage in fair, equitable, ethical and sustainable practices.

The Australian Government is committed to continual improvement of the safety culture in the building and construction industry through the Federal Safety Commissioner (FSC) and the Work Health and Safety Accreditation Scheme. Building and construction companies must be accredited under the Scheme in order to win contracts for Commonwealth-funded building work above certain financial thresholds. To receive, and maintain accreditation, companies must meet the FSC's safety standards which apply over and above obligations in state and territory work health and safety laws. Scheme accredited companies are safer; between 2017 and 2021, accredited companies reduced their lost time injury frequency rate (LTIFR) by 21 per cent.