

Chapter 5

Government Procurement

5.1 This chapter outlines the Australian Government's current procurement frameworks and policies in relation to steel, and details issues raised by inquiry participants regarding past and current procurement policies.

5.2 The chapter focuses on issues raised that have not been addressed in the recent revisions to the Commonwealth Procurement Rules, which came into effect on 1 March 2017, and ends with a committee view and recommendations to address aspects of current government procurement policies that continue to disadvantage the Australian steel industry. It should be noted that much of the evidence that this inquiry received related to a previous iteration of the Commonwealth Procurement Rules.

5.3 A number of other recent parliamentary inquiries have considered or are considering the issue of government procurement and local content, including the Joint Select Committee on Government Procurement, which tabled its final report in June 2017; and this committee's ongoing inquiry into the future of Australia's naval shipbuilding industry, which is due to report in June 2018. As appropriate, evidence received and findings made in these inquiries are referred to throughout this chapter.

Current Commonwealth Procurement Rules

5.4 A number of the current Commonwealth Procurement Rules (CPRs) are relevant to the Australian steel industry and set out below.

5.5 Much of the evidence that this inquiry received concerned previous provisions of the Commonwealth Procurement Rules that were in effect from July 2014. These were replaced in March 2017 by the amended current CPRs.¹

5.6 The current CPRs require governments to take into account a range of financial and non-financial costs in making procurement decisions, including quality, fitness for purpose, the supplier's experience and performance, environmental sustainability and whole-of-life costs.

5.7 However, Division 2 of the current CPRs sets financial thresholds at which additional requirements apply for larger projects. These include: the requirement that tender responses demonstrate the capability for goods to meet an Australian standard; the requirement that relevant entities make reasonable inquiries to determine compliance with a standard; and the requirement for Commonwealth officials to take into account economic benefit to the Australian economy for procurements above \$4 million.²

1 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

2 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.10 (emphasis in original), clause 10.30 and clause 10.37.

5.8 The 2017 CPRs stipulate that '[a]ll potential suppliers to government **must**...be treated equitably...and not be discriminated against due to their size, degree of foreign affiliation or ownership, location, or the origin of their goods and services'.³

Other government procurement policies and instruments

5.9 The Commonwealth Government has a number of other policies and legislative instruments related to government procurement. This inquiry also received evidence outlining the procurement policies of South Australia and Victoria and recommendations that Commonwealth procurement adopt some of these principles. These are outlined below because a number of their features are now evident in the 2017 CPRs.

Australian Industry Participation Framework

5.10 The Australian Industry Participation framework and policies are intended to provide opportunities for Australian industry to compete for or take part in major private and public projects. As the Department of Industry, Innovation and Science (Department of Industry) in its submission explained, the 'key objective of AIP policy is that Australian industry should have full, fair and reasonable opportunity to supply goods and services to major projects'.⁴

5.11 Since the commencement of the *Australian Jobs Act 2013* in December 2013, 'proponents of major private and public projects (\$500 million and above)' have been required to develop and implement AIP Plans ensuring 'full, fair and reasonable opportunity for Australian entities to supply key goods and services'.⁵

5.12 Since 2010, the Australian Government has required that tenderers for government procurements of \$20 million or above develop AIP Plans, including, from 2012, Commonwealth funded infrastructure projects. The Department of Industry explained that AIP plans:

...outline the actions a tenderer will take to provide Australian suppliers, especially small and medium enterprises, with full, fair and reasonable opportunities to supply goods and services on a project.⁶

5.13 In February 2017, the Department of Industry noted that the government is currently working with states and territories to review the Australian Industry Participation National Framework. The review is considering 'opportunities for greater consistency of industry participation requirements between jurisdictions and better information sharing and reporting of outcomes for Australian industry'.⁷

3 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 5.3 (emphasis in original).

4 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

5 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

6 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

7 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

5.14 Australian states and territories also have industry participation policies to assist local businesses to compete for private and public projects. These include, for example, the Victorian Industry Participation Policy, outlined below.

Code for the Tendering and Performance of Building Work 2016

5.15 The *Code for the Tendering and Performance of Building Work 2016* (the Code), which applies to steel used in building work, requires all new tenders for Commonwealth-funded work to provide information on: the extent to which Australian sourced and manufactured building materials will be used; whether the building materials comply with Australian standards; the impact of the project on jobs; whether the project will contribute to skills growth; and the whole-of-life costs of the project.⁸

5.16 The Code requires Commonwealth funding entities to only enter a building contract 'with a code covered business...where that business uses products in building work that comply with the relevant Australian standards published by, or on behalf of, Standards Australia'.⁹

5.17 The Code's model clauses for work directly funded by the Commonwealth require tenderers to acknowledge that they will comply with the Code and ensure that their subcontractors do so. Tenderers also must declare that they will only enter into a subcontract in which 'the subcontractor undertakes to only use products in relation to the Works that comply with the relevant Australian standards published by, or on behalf of, Standards Australia'.¹⁰

5.18 The Code is an important instrument for government procurement, but the question of who holds responsibility for the enforcement of compliance with the Code is yet to be determined.

South Australian Government procurement policies

5.19 The committee received evidence outlining the procurement policy of South Australia, aspects of which have been adopted in the 2017 CPRs. The South Australian procurement policy, notably, requires reinforcing and structural steel used in projects that the South Australian Government funds to:

...fully meet the requirements of the relevant Australian Standards. Steelwork procured for public projects must be supplied by independently-verified fabricators who are capable of meeting required standards to ensure its quality and safety.¹¹

8 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

9 Department of Industry, Innovation and Science, *Submission 41*, p. 4.

10 Australian Building and Construction Commission, *Code for the Tendering and Performance of Commonwealth Funded Building Work 2016: Funding Entity Model Clauses: Directly Commonwealth Funded Building Work*, 1 September 2017, https://www.abcc.gov.au/sites/g/files/net2406/f/funding_entity_clauses_1_september_2017.pdf (accessed 24 November 2017).

11 Government of South Australia, *Submission 44*, p. 8.

5.20 The South Australian Government also has a Steel Economic Participation Policy, requiring 'tenderers to commit, through an Industry Participation Plan, to the level of economic benefit the State can expect to receive from packages of work under the contract'.¹²

5.21 South Australia's Steel Task Force was given responsibility for 'the coordination of action across government to give Arrium's mining, smelting and manufacturing operations in and around Whyalla every chance to thrive'.¹³ This has included working with South Australia's Industry Participation Advocate 'to establish a third party audit, to ensure State Government projects use certified Australian standard steel'.¹⁴

5.22 The South Australian Government's *Support Our Steel* website also outlines its steel industry participation initiative, which states that it aims:

...to ensure all South Australian Government projects include contract conditions specifying that:

- Steel must be sourced from mills with Australasian Certification Authority for Reinforcing and Structural Steel (ACRS) third party certification.
- Steelwork must be sourced from steel fabricators independently certified to the recently created National Structural Steelwork Compliance Scheme.¹⁵

5.23 The South Australian Industry Advocate, Mr Ian Nightingale, advised that the reason the South Australian Government had selected ACRS third party certification was because this body provides accreditation to foreign steel mills, thereby not interfering with Australia's trade obligations, and because of the number of audits that ACRS carries out.¹⁶

5.24 Mr Nightingale outlined that the South Australian Government provides financial assistance to steel fabricating businesses so that they can quickly obtain certification and apply for government contracts. He also gave more detail about the South Australian Government's planned third-party audit for 12 months to ensure that contractors are meeting the obligations of their contracts, 'right through from where the steel is being sourced from – is it an ACRS accredited mill? – to the documentation around the steel certification'. This audit would examine a random

12 Government of South Australia, *Submission 44*, p. 8.

13 Government of South Australia, *Steel Task Force*, <http://supportoursteel.com/steel-task-force/> (accessed 6 October 2017).

14 Government of South Australia, *Industry Advocate*, <http://supportoursteel.com/industry-advocate/> (accessed 6 October 2017).

15 Government of South Australia, *Industry Advocate*, <http://supportoursteel.com/industry-advocate/> (accessed 6 October 2017).

16 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 22.

sample of state government projects, followed by investigations of breaches of contract if necessary.¹⁷

5.25 Mr Nightingale explained that the specific approach the South Australian Government takes to defining 'economic value' in procurement involves measuring economic value in terms of 'labour, capital investment and supply inputs'.¹⁸ This means making a distinction between economic benefit and price.¹⁹ He further noted three key elements in the state's industry participation policy: looking at labour issues (for example, employment and where that employment is sourced from); where the supply inputs come from (in this case, steel and the components to the steel); and the capital investment to the state.²⁰

5.26 The Industry Advocate has the power to intervene, Mr Nightingale advised the committee, if there is 'a deviation from the commitments made to the particular tender and when those industry participation plans were assessed'.²¹

5.27 A number of submitters and witnesses to this inquiry emphasised the benefits of the South Australian Government's procurement policies and the positive effects of the Industry Advocate on the South Australian steel industry. For example, the Executive General Manager of Steel Manufacturing and Integration, Arrium Mining and Materials, told the committee that:

the South Australian and Victorian governments...have engaged us very early on projects, and we have been able to work very successfully to maximise local content. It is a benefit to our company, but it is also of tremendous benefit, and has a multiplier effect, to the economy and to federal and state governments.²²

Victorian Government procurement policies

5.28 Some evidence provided to the committee also drew attention to aspects of the Victorian Government's procurement policies that have positively impacted the steel industry. The Victorian Industry Participation Policy for small and medium-sized enterprises (SMEs) sets minimum local content requirements and other conditions,

17 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 19.

18 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

19 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 23.

20 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

21 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 18.

22 Mr Neil Gibson, Executive General Manager, Steel Manufacturing and Integration, Arrium Mining and Materials, *Committee Hansard*, 6 April 2016, p. 32.

determined on a case-by-case basis, for government procurements valued at \$50 million or more.²³

5.29 In some instances, minimum local content requirements have been applied to steel used in Victorian Government projects. The Victorian Government has provided reassurances that its policy framework meets its obligations under Free Trade Agreements.²⁴

5.30 A representative of the Australian Workers' Union highlighted how the Victorian Government had mandated Australian-manufactured steel in some projects:

[I]n Victoria...they are using Australian-manufactured, Australian-made, steel 100 per cent on the rail crossings. A minimum of 86 per cent local content has been used on their projects. That has assisted the construction and manufacturing industry in Victoria that has been suffering, has been going downhill...We would encourage whatever level of government in whatever state to certainly look at what is happening in Victoria and build on it. It is a good thing.²⁵

Issues raised about government procurement

5.31 Submitters and witnesses to the inquiry raised a number of issues that have not been addressed directly by the 2017 amendments to the CPRs. These included calls for government procurement to explicitly favour Australian steel; for all steel used in Defence contracts to only include local content; competitive neutrality; a lower threshold in Australian Industry Participation Plans; consistency across jurisdictions; monitoring of conformance; and accreditation showing commitment to environmental sustainability.

Policies to preference Australian steel

5.32 Mr Michael Zelinsky from the Australian Workers' Union highlighted that more than half of government spending on steel goes to overseas producers:

The net impact has been that basically we are under 50 per cent [that is Australian steel] in terms of overall procurement in this country. In terms of

23 Australian Steel Institute, *Submission 19*, p. 30; Australian Workers' Union, *Submission 25*, p. 21; Department of Economic Development, Jobs, Transport and Resources, *Victorian Industry Participation Policy: Local Jobs First*, https://economicdevelopment.vic.gov.au/victorian-industry-participation-policy#utm_source=economicdevelopment-vic-gov-au&utm_medium=vanity-url-301ssredirect&utm_content=vipp&utm_campaign=/victorian-industry-participation-policy (accessed 24 November 2017).

24 Victorian Government Department of Economic Development, Jobs, Transport and Resources, *Victorian Industry Participation Policy Annual Report 2014–15*, November 2015, p. 6.

25 Mr Wayne Phillips, Branch Secretary, The Australian Workers Union, *Committee Hansard*, 1 April 2016, p. 24.

government spending on steel, less than half of every dollar goes to an Australian producer.²⁶

5.33 The Australian Steel Institute in its submission suggested that the future of the Australian steel industry depended on the domestic market:

For the Australian steel industry to remain viable and profitable, it firstly needs to produce at (or near) capacity and secondly sell as much of its product as possible into the domestic market and sell less into the less profitable (or often unprofitable) export markets where global oversupply has pushed down prices and margins.²⁷

5.34 A number of submitters and witnesses argued that the government should explicitly preference Australian produced steel in its procurement policies so as to increase domestic demand for Australian steel.²⁸

5.35 Mr Geoff Crittenden from the Welding Technology Institute of Australia told the committee that '[w]e would like to see a positive procurement plan that favoured Australian steel and Australian fabricators'.²⁹

5.36 Several witnesses and submitters drew on a report by BIS Shrapnel, commissioned by the Australian Workers' Union, to highlight the positive effects of a government procurement policy that would favour domestic steel. For example, Mr Wayne Phillips from the Australian Workers' Union stated:

...through the BIS Shrapnel report we call on the government for a 90 per cent mandated use—or some other terminology—of Australian steel products in government funded projects. The report clearly indicates to us that that would secure our industry—us and Arrium—in this country and globally. We do not accept that the [World Trade Organisation] blocks that. Currently, we have a Victorian government who has mandated the use of 100 per cent local product for their level train crossings.³⁰

5.37 The BIS Shrapnel report noted an increase in the five years prior to 2015 in the use of imported steel in publicly funded projects:

Over the past five years, the share of imported steel in publicly funded projects has increased steadily from 45 per cent in 2009/10 to 51 per cent in 2014/15, an average increase of 1 per cent per annum. If this trend

26 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 15.

27 Australian Steel Institute, *Submission 19*, p. 9, citing a BIS Shrapnel report provided to the committee by the Australian Workers' Union as *Submission 25.1*.

28 For example, Australian Workers' Union, *Submission 25*, p. 5; Australian Manufacturing Workers' Union, *Submission 27*, p. 8.

29 Mr Geoff Crittenden, Chief Executive Officer, Welding Technology Institute of Australia, *Committee Hansard*, 6 April 2016, p. 38. See also Mr Nicholas John, Chief Executive Officer, ICE Engineering and Construction Pty Ltd, *Committee Hansard*, 5 April 2016, p. 2.

30 Mr Wayne Phillips, Branch Secretary, Australian Workers' Union, *Committee Hansard*, 1 April 2016, p. 18.

continues, then the share of imports will increase to 57 per cent by 2019/20 meaning that the proportion of domestically sourced steel will fall to 43 per cent.³¹

5.38 BIS Shrapnel proposed 'a procurement policy which aims to have at least 85 [per cent] to 90 [per cent] of local steel in all publically funded projects', and outlined that a local steel content policy involving 90 per cent of local steel content would cost 'an average of \$61 to 80 million annually in extra costs to the public sector', while adding 'a cumulative \$1.3 billion to real GDP over the next five years'.³²

5.39 The same report estimated that such a policy would lead to an increase in domestic steel used in publically funded projects from the 2014/15 annual volume of 633kt to 1514kt, worth around \$989 million in steel sales. It argued that the extra tonnages in public sector construction would enable Arrium and BlueScope to remain open.³³

5.40 On the other hand, the committee also received evidence arguing against mandated local content. Mr Mark Vassella from BlueScope Australia and New Zealand agreed that domestic steel should be used in government procurement, but highlighted that any such policy would be limited by Australia's obligations to the World Trade Organisation (WTO):

We absolutely support the use of domestic steel—that is vitally important for us. Our view is that it is difficult to have mandated percentages, particularly in relation to the WTO requirements. Any policies that reflect competitive neutrality and take into account the value of domestic manufacturing—those domestic tonnes are vitally important to our business, but we have not gone as far as suggesting mandated percentages, because of the challenges we think that brings governments.³⁴

5.41 Best Bar Reinforcements was strongly against a policy that would prevent any company using imported steel tendering for government projects, arguing:

[T]his would essentially hand OneSteel and BlueScope a regional monopoly in supply of steel for government projects...OneSteel and BlueScope do not produce goods that compete [domestically], so essentially such a requirement would mean that there is no competition for government tenders in the relevant state. The cost of infrastructure projects would increase significantly because, in the absence of any other suppliers, BlueScope and Arrium would be able to win tenders at any price they named.

While this may assist BlueScope and Arrium, it would cause significant injury to the rest of Australia's steel industry, as well as the tax payers who

31 BIS Shrapnel, *Submission 25.1*, p. iii.

32 BIS Shrapnel, *Submission 25.1*, p. i.

33 BIS Shrapnel, *Submission 25.1*, p. ii.

34 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 7.

fund the infrastructure projects. Additionally, such a policy would run the serious risk of breaching the State's obligation not to enter into contracts or arrangements if to do so would have the effect of seriously lessening competition.³⁵

5.42 On the question of whether AIP Plans could be used to increase the use of Australian steel in government contracts, a representative from the Department of Industry stated: 'I think the answer is a fairly clear no, under a provision for the AIP framework being restricted to a full, fair and reasonable opportunity to compete and bid for work'.³⁶

5.43 The Department of Industry in its submission outlined that the AIP Framework does not have mandated minimum local content and is subject to Australia's international trade obligations:

The [AIP National] Framework does not mandate a minimum level of Australian content and Australian suppliers must be competitive in terms of price, schedule and capability to be considered for contract award. Activities under the Framework are consistent with Australia's international obligations, including those under the World Trade Organisation and Free Trade Agreements.³⁷

International obligations

5.44 Australia has a range of specific obligations regarding government procurement practices under a number of international agreements. To the extent these obligations may be relevant to the current Australian Government procurement framework in relation to steel, or to any potential changes to that framework, they are set out below.

5.45 While not yet a signatory, Australia is an observer to the WTO Agreement on Government Procurement (GPA). In September 2015, Australia presented an initial accession offer to the WTO Committee on Government Procurement to become a party to the GPA. As of November 2017, Australia had presented its second revised offer to the Committee but had not yet become a party.³⁸

5.46 Should Australia become party to the GPA, it will be obligated to base its procurement policies on the principles of transparency and non-discrimination, as is

35 Best Bar Reinforcements, *Submission 22*, p. 4.

36 Dr Gary Richards, General Manager, Advanced Technologies Branch, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, p. 63.

37 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

38 Department of Foreign Affairs and Trade, *WTO Agreement on Government Procurement (GPA)*, August 11 2017, <http://dfat.gov.au/international-relations/international-organisations/wto/Pages/wto-agreement-on-government-procurement.aspx> (accessed 5 October 2017).

the case in Australia's FTAs, and for foreign parties to the GPA tendering for government contracts be treated equally in government procurement.³⁹

5.47 Currently, Australia maintains exemptions in all free trade agreements, including exemptions for defence and for SMEs. For example, the Australia-United States Free Trade Agreement may allow government procurement policies to preference SMEs.⁴⁰

5.48 However, the Joint Standing Committee on Government Procurement in its inquiry into 2017 Commonwealth Procurement Rules heard evidence expressing concern that by acceding to the GPA, Australia could risk losing its current flexibility to exempt SMEs and support local suppliers in government procurement policies.⁴¹

5.49 Similarly, under the Australia and New Zealand Government Procurement Agreement (ANZGPA), the Commonwealth, states and territories are required to treat New Zealand suppliers on an equal basis to Australian suppliers in making procurement decisions, and vice versa.⁴² The ANZGPA states that value for money should be the primary determinant in all procurement decisions.⁴³

5.50 Australia is also a party to free-trade agreements (FTAs) that include procurement commitments with Singapore, the United States, Chile, Korea and Japan. While Australia's current FTAs with Thailand and China currently do not include government procurement commitments, they allow for the possibility of future negotiations to include government procurement.⁴⁴

Defence procurement to only use local content

5.51 Some of the evidence taken by the committee stressed the importance of steel to the Australian defence industry, and questioned why local content is not mandated in Defence contracts, given relevant exemptions in our trade agreements. Mr Zelinsky from the AWU noted that some countries have legislated that only local steel can be used in Defence contracts:

That lever, the procurement lever, is there for every government around the world, so it comes down to how hard or how vigorously each government wants to pull that lever. The American government makes it very clear in the Buy American Act. I think what is also interesting within that is the so-called Berry amendment, which says if it is for a defence contract it has

39 Department of Foreign Affairs and Trade, *WTO Agreement on Government Procurement (GPA)*, August 11 2017; World Trade Organisation Agreement on Government Procurement, Article IV(1).

40 Australian Steel Institute, *Submission 19*, p. 17.

41 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 89–90.

42 Australia and New Zealand Government Procurement Agreement, September 2013, Article 4.

43 Australia and New Zealand Government Procurement Agreement, September 2013, Article 2.

44 Department of Foreign Affairs and Trade, *Submission 25* to the Joint Standing Committee on Government Procurement, p. 2.

to be 100 per cent American produced steel. We are having a very large debate at the moment around submarine contracts and around various other maritime acquisitions in our Navy. There is going to be a lot of steel used in that. Some form of Berry amendment in the Australian legislative procurement mechanisms would be very welcome.⁴⁵

5.52 The South Australian Industry Participation Advocate also mentioned this issue in his evidence, stating that in the United States, '[t]here is a clear piece of legislation that affects that 100 per cent [American] steel for Defence contracts and that may be something that the Australian Government needs to consider'.⁴⁶

5.53 The BIS Shrapnel report highlighted the Buy American Act and the benefits that a local steel content policy in Defence contracts would bring to the domestic industry:

If these projects were also subject to a local steel content policy, then there is upside to the above tonnages from the construction sector. It should be noted that under the US 'Buy American Act', the Berry Amendment requires certain purchases to be 100% American in origin. If the Commonwealth aimed for a high level content for Australian defence expenditure, it would have significant benefits, to not only the steel sector, but other suppliers. If the next round of submarines are built in Australia, and further major defence projects are undertaken, then a local content policy would realise further tonnages for domestic steelmakers.⁴⁷

5.54 The Whyalla Branch Representative of the Australian Workers' Union also contended:

Part of our mantra here is that Defence spending should be looking at Aussie steel as well. If you are spending money on Aussie defensive devices, and they need steel to be made, I do not see what reason you could come up with to give it to another country to supply other workers with work and to bring the steel back into the country and use it here. It is crazy to me.⁴⁸

5.55 The Australian Manufacturing Workers' Union highlighted the risks of relying on imported steel in the defence industry, arguing that 'complete reliance on imported steel for the nation's defence industry represents an existential threat in any scenario where the defence forces are called upon to defend Australia'.⁴⁹

45 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 24.

46 Mr Ian Nightingale, Industry Participation Advocate, Department of State Development, South Australia, *Committee Hansard*, 5 April 2016, p. 24.

47 BIS Shrapnel, *Submission 25.1*, p. 14.

48 Mr Scott Andrew Martin, Branch Organiser, Australian Workers' Union, *Committee Hansard*, 5 April 2016, p. 16.

49 Australian Manufacturing Workers' Union, *Submission 27*, p. 3.

5.56 Currently, Australian Industry Capability plans are required for Defence procurements above \$20 million or where procurements will impact Sovereign Industrial Capabilities. The Australian Industry Capability Program under the Department of Defence does not mandate local content. However, its stated aims include providing 'opportunities for Australian companies to compete on merit for defence work within Australia and overseas'.⁵⁰

5.57 The issue of local content in Australia's naval shipbuilding industry has been taken up by the Senate inquiry into the future of Australia's naval shipbuilding industry, due to report in June 2018.

Competitive neutrality

5.58 The committee heard that Australian businesses often incur additional costs than some of their international competitors because they may operate in a stricter regulatory environment. The Chief Executive of the Australian Steel Institute outlined some of the areas that may cause competitive disadvantage:

I want to understand the disadvantages that [the Australian steel industry] has vis-a-vis some of its international competitors, because they do not face any of those issues. It is twofold. The international players get subsidies on land, they are state owned and they get support around power and support around all sorts of issues. Our businesses here have higher levels of standards to meet around occupational health and safety, the environment and payroll tax. We do not argue they should not be there; we think, in a sophisticated developing economy, we want that, but we want it reflected in the way we do our procurement that the people they compete with compete on a level playing field.⁵¹

5.59 The Chief Executive of BlueScope Australia and New Zealand proposed that the principle of competitive neutrality between Australian and foreign businesses be incorporated into government procurement policies to counter this competitive disadvantage:

Major employers such as BlueScope are at a competitive disadvantage with overseas competitors, due to inefficient state taxes, such as payroll tax, and high costs that reduce our competitiveness. This added cost puts us at a competitive disadvantage, especially when we are bidding for government funded infrastructure projects. We would like to see competitive neutrality with foreign suppliers so that when governments are making decisions on local content our higher cost base is taken into account.⁵²

50 Department of Defence, *Australian Industry Capability Program*, <http://www.defence.gov.au/SPI/Industry/AIC.asp> (accessed 10 October 2017).

51 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 8.

52 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *BlueScope, Committee Hansard*, 1 April 2016, p. 3.

5.60 The Department of Industry in its submission emphasised its commitment to creating an environment in which Australian businesses are given equal opportunities to tender:

The Australian Government supports an open market economy as the best way to generate investment and employment, and is committed to fostering an environment where Australian businesses have equal opportunities to bid for work on major Australian public and private projects and be evaluated on the merits of their offerings, consistent with Australia's international trade obligations.⁵³

5.61 The Department of Industry drew attention to particular advantages that Australian plants have over international competitors, but also acknowledged the need for further examination of areas that add to domestic costs:

Australian plants appear to have some advantage in terms of raw materials cost for crude steel production...the drivers of labour and overhead costs, and their impacts on cumulative stage costs, are areas that require further investigation.⁵⁴

5.62 It should be noted that the 2017 CPRs explicitly state that environmental sustainability is to be taken into account in procurement decisions.⁵⁵

Lower threshold in Australian Industry Participation Plans

5.63 Some evidence in this inquiry called for a lower threshold for projects to qualify for AIP Plans.⁵⁶ For example, the Australian Steel Institute argued that:

The current threshold of \$500m for a project to qualify for an Australian Industry Participation Plan is too high. This threshold was set amidst the mining boom with \$400b of projects in the pipeline. This threshold should be reduced to a more realistic figure like \$200m.⁵⁷

5.64 Evidence from representatives of the Australian Steel Institute further outlined why, in their opinion, the current threshold for AIP Plans is too high:

...the threshold was set when we had the mining boom...There were \$450 billion worth of projects in the pipeline and that was carved up to say you needed 60 people to maintain all these 60 projects that were coming online. We are living in a different completely different project environment.⁵⁸

The biggest spend going forward is going to be infrastructure and the government funded infrastructure, particularly driving the infrastructure needs right across the country and there have been some good initiatives as

53 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

54 Department of Industry, Innovation and Science, *Submission 18*, p. 27.

55 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

56 Mr Stephen Young, Managing Director, E&A Ltd, *Committee Hansard*, 5 April 2016, p. 35;

57 Australian Steel Institute, *Submission 19*, p. 7.

58 Mr Ian Cairns, National Manager, Industry Development and Government Relations, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 4.

part of that. That, to my best estimate, is going to be under \$200 million so the demand curve is significantly lower.⁵⁹

5.65 The Australian Industry Group also proposed that 'a lower threshold than \$500 million should apply, supported by effective monitoring and compliance'. They also urged 'continuing disclosure and greater transparency of the extent of local participation in major projects'.⁶⁰

5.66 Mr Travis Wacey from the Construction, Forestry, Mining and Energy Union suggested that AIP Plans should expressly take into account not just financial cost, but also social, economic and environmental costs:

[The Jobs Act] was ultimately about providing for the full, fair and reasonable participation of Australian industry in not just government projects but private sector projects above a certain threshold—my recollection is that it was \$500 million. Part of that element should be to ensure that providing that full, fair and reasonable participation takes into account the social, economic and environmental costs, not just the price tag.⁶¹

5.67 In its submission, the Department of Industry acknowledged a decrease in recent years in the number of large projects, but argued that projects below the threshold still provided opportunities for the involvement of local businesses:

Since 2013 there has been a reduction in major project activity particularly in the resources sector and an increase in government funded infrastructure projects. Many of these new projects fall below the \$500 million threshold but still present opportunities for local industry involvement. Increasingly, communities are looking to such projects to provide economic growth, particularly in regional areas. Proponents in the resources sector have long recognised the need for a social licence to operate from local communities and a large part of this is achieved through the provision of jobs and opportunities to supply goods and services for a project.⁶²

Consistency across jurisdictions

5.68 The Australian Industry Group called for consistency across jurisdictions, proposing in its submission that 'Procurement agencies at all levels of Government – Commonwealth, State and Territories commit to a consistent approach to purchasing steel product certified to internationally aligned Australian Standards'.⁶³

59 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 4.

60 Australian Industry Group, *Submission 10*, p. 7.

61 Mr Travis Kent Wacey, Policy Research Officer, Forestry, Furnishing, Building Products and Manufacturing Division, Construction, Forestry, Mining and Energy Union, *Committee Hansard*, 6 April 2016, p. 16.

62 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

63 Australian Industry Group, *Submission 10*, p. 8.

5.69 The Council of Australian Governments in its Communique on 9 June 2017 stated its agreement on the important role of governments in ensuring the future of the Australian steel industry:

Leaders further agreed that governments have an important role to play in ensuring our funded infrastructure projects use Australian steel and that Australian steel products are not discriminated against in procurement processes.⁶⁴

5.70 The issue of consistency in standards across states and territories was broadly discussed in chapter 4.

Conformance by subcontractors to be monitored and enforced

5.71 The committee heard concerns expressed about the level of monitoring of subcontracting in government projects. For example, Mr Ian Waters, who appeared on behalf of 63 businesses, gave an example of:

...a project that had New South Wales government money in it...It was not totally their project, but it had significant New South Wales government money in it. It was one of those public-private partnerships. This project had a lot of tonnes of steel, the equivalent of 1,000 semitrailers of steel lined up one after the other...A contractor paid by our state government issued specifications for the steel, and the guidance notes in those specifications said, 'For this project, structural steel is intended to be sourced from imported materials and fabricated outside Australia'. And we have found other examples where that is the case.⁶⁵

5.72 In their submission, the same 63 businesses outlined this issue in greater detail and argued that subcontracting of government contracts may lead to safety concerns if these are not properly regulated:

Businesses in our group who are intimately involved with fabrication and steelmaking have observed that the NSW and other Governments' implementation of large Infrastructure projects involves 'handing over' the responsibility of procurement to the tier 1 Contractors. This 'handing over' includes every aspect of the procurement including price, delivery, decision on who the supplier is and most importantly – quality...We have no issue with Contractors engaging whoever they wish – from any country in the world – as partners. This is a normal business decision. We do have an issue though with the NSW and other Governments' management of some contractors where the financial need of the contractor to get the cheapest price/support their partner overrides the need of the taxpayer to have safe structures erected and the need of hundreds of fabricators and the two steelmakers in the nation to survive.⁶⁶

64 Council of Australian Governments, COAG meeting Communiqué, 9 June 2017, <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communicue-9-june-2017> (accessed 4 October 2017).

65 Mr Ian Waters, on behalf of 63 businesses, *Committee Hansard*, 6 April 2016, p. 50.

66 Joint submission from 63 Australian businesses, *Submission 31*, p. 9.

5.73 The committee notes that this issue informed one of the recommendations (4) made by the Joint Select Committee on Government Procurement in its inquiry into the new CPRs. Specifically, the report recommended that 'good procurement practices are implemented down through the supply chain so that both prime and subcontractors:

- Implement best practice terms and conditions; and
- Are contractually obligated to report on those terms and conditions'.⁶⁷

5.74 The committee also notes that the government recently rejected this recommendation in its response to the inquiry's report.⁶⁸

5.75 The Department of Industry in its submission stated that the AIP Authority currently monitors compliance with legislation for projects required to use AIP Plans: '[t]he Jobs Act created the statutory position of the AIP Authority to monitor compliance with the legislation and provide guidance to proponents'.⁶⁹

5.76 According to a representative from the Department of Industry, enforcing compliance with standards would be antithetical to the principles of the AIP Authority:

An Australian industry participation plan will typically address the standards to be applied and the AIP authority, if you like, will monitor compliance with those standards, but the authority is not in a position to enforce standards—there are no powers to enforce which particular standards are used. That would go significantly beyond the remit of full, fair and reasonable, and I think you would want to have a look at the destruction that they would cause within the general procurement framework. At the moment, there is a clear delineation, separation and synergy of the role of AIP. I think if you are doing such a fundamental revisit of the role of AIP and those national frameworks then it would need to be a holistic review including the procurement policy and the complementary AIP and any standards.⁷⁰

5.77 The Head of the Sectoral Growth Policy Division in the Department of Industry gave evidence suggesting that ultimately responsibility for enforcement of non-conforming products should lie with states and territories:

With issues around conformance, the federal government chairs the Building Ministers Forum and, not only in relation to steel but more broadly with building products, it has been looking at ways in which

67 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. iii–iv.

68 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 9.

69 Department of Industry, Innovation and Science, *Submission 18*, p. 26.

70 Dr Gary Richards, General Manager, Advanced Technologies Branch, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, pp. 63–64.

information can be better shared between agencies so that better enforcement responses can be delivered. As well as that, the key enforcement of those issues actually falls with the states and territories. My feeling is that that is something that is not widely accepted, but it is a fact that the states and territories are responsible for the use of the product that goes into building their structures.⁷¹

5.78 The Australian Steel Institute submitted that procurement policies should require a compliance management plan that sets out the steps taken to ensure products conform to standards:

The steps taken to ensure that only products meeting Australian standards are being used in infrastructure should...be recorded in a compliance management plan. This should be a mandatory requirement imposed in the procurement framework document.

This is an important management tool for complex infrastructure projects such as the development of freeways, where no one standard or construction code can act as a normative document to guide the development of a quality project.⁷²

Environmental accreditation

5.79 Some of the evidence that the committee received concerned the competitive advantage that the Australian steel industry has over some imported steel because of its greater attention to environmental issues.⁷³

5.80 The Australian Steel Institute proposed that 'all steel products [should] be procured from businesses accredited under the steel industry's Environmental Sustainability Charter'.⁷⁴ Members of this Charter declare that they will commit to operating their businesses to reduce their environmental footprint, increase the efficiency of their resource use, demonstrate environmental responsibility and share their knowledge of sustainability with others. In addition, they commit to using these principles when choosing their sub-contractors and suppliers as well.⁷⁵ Accreditation is used to demonstrate companies' commitment to environmental sustainability, especially if they are required to demonstrate this commitment in contracts, as well as by regulators and environmental rating agencies and bodies.⁷⁶

5.81 Although the 2017 CPRs do not mention certification of environmental standards, they do require that the 'environmental sustainability of the proposed goods

71 Mr Peter Chesworth, Head of Division, Sectoral Growth Policy Division, Department of Industry, Innovation and Science, *Committee Hansard*, 6 April 2016, pp. 57–58.

72 Australian Steel Institute, *Submission 19*, p. 35.

73 For example, Bisalloy Steel Group Limited, *Submission 33*, p. 5.

74 Australian Steel Institute, *Submission 19*, p. 6.

75 Australian Steel Institute, *The Environmental Sustainability Charter (ESC)*, p. 3, http://steel.org.au/media/File/Environmental_Sustainability_Charter_info_sheet_rev1.pdf (accessed 25 November 2017).

76 Australian Steel Institute, *Australian Steel Institute Environmental Sustainability Charter*, p. 1.

and services', including energy efficiency and environmental impact, be taken into account.⁷⁷

5.82 However, the committee notes that the government has recently rejected a recommendation (3) from the Joint Select Committee on Government Procurement that proposed '...the introduction and application of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured'.⁷⁸

Commitment to research and innovation

5.83 One submission, from a number of academic experts, proposed that the government should consider funding research and development work to further improve the domestic steel industry's environmental sustainability, because this feature of Australian steel gives it a competitive advantage:

We would argue that, as countries around the world, including Australia, seek to decrease their emissions in an effort limit climate change impacts...the projected emissions from iron and steel production are going to become increasingly problematic, and their mitigation will result in significant investment....

Where other countries might currently have an advantage because of lower costs of labour, we would argue that as the requirements for reduced environmental emissions gradually become more stringent, our natural resources advantage will play an increasing role in our ability to compete.

We believe that, alongside the other incentives required to sustain our local iron and steel industry, the Australian Government should look to establish programs to support this research and development work, in collaboration with technology companies, universities and CSIRO.⁷⁹

5.84 The South Australian Government called for the development of a National Steelmaking Road Map to identify 'key strategies to ensure steel makers and supply chain participants remain globally competitive by adopting world-best practice'. This proposed Road Map 'would consider research and development activities, the uptake of and commercialisation of new technology and innovation [and] development of new materials and application'. The South Australian Government also highlighted 'significant opportunities for productivity improving investment by industry that will

77 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 4.5.

78 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. iii; Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 8.

79 ANU Solar Thermal Group, Swinburne University of Technology and University of Adelaide, *Submission 43*, pp. 1–2.

reduce emissions from steel productions, such as harnessing significant waste heat to generate power'.⁸⁰

5.85 The Department of Industry outlined in its submission recent measures that it has undertaken to fund innovation and research to strengthen collaboration between the steel industry and research:

The Government is supporting the deepening of collaboration between Australia's steel industry and the research sector. The Government, through the Australian Research Council, has provided \$5 million to the Steel Research Hub, launched on 4 September 2014. The Steel Research Hub, based at the University of Wollongong, brings together the Commonwealth, universities and industry partners to develop cutting-edge processes and product innovations. This will enable steel industry partners to improve their global competitiveness.⁸¹

Re-establishment of a Steel Supplier Advocate

5.86 The Australian Industry Group called in its submission for the 're-establishment of a dedicated Steel Supplier Advocate to improve opportunities for Australian steel and fabrication businesses to access and supply to major projects'. They also proposed that a major role of the Steel Supplier Advocate could be 'to champion industry innovation and process improvements throughout the steel supply chain' by working closely with the steel industry, industry associations and research organisations.⁸²

5.87 The Australian Steel Institute also called for the Australian Government to:

commit resources to ensure...that a properly resourced steel supplier advocate is allowed to operate properly to assist SME businesses operating in the steel supply chain to identify business opportunities and to generally champion the Australian steel supply chain...⁸³

5.88 The Chief Executive of BlueScope Australia and New Zealand noted that '[a]nything that advocates and assists us with domestic use of steel—domestically manufactured steel—is a positive from our perspective'.⁸⁴

5.89 The call for the re-establishment of a Steel Supplier Advocate was echoed by the Australian Workers' Union, the Australian Workers' Union Victoria and the Australian Manufacturing Workers' Union.⁸⁵

80 Government of South Australia, *Submission 44*, pp. 6–7, 9, 10–11.

81 Department of Industry, Innovation and Science, *Submission 18*, p. 27.

82 Australian Industry Group, *Submission 10*, p. 7.

83 Australian Steel Institute, *Submission 19*, pp. 38–39.

84 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 9.

85 Australian Workers' Union, *Submission 25*, p. 6; Australian Workers' Union Victoria, *Submission 26*, p. 2; Australian Manufacturing Workers' Union, *Submission 27*, p. 10.

Issues raised by submitters addressed in current procurement rules

5.90 The evidence that this inquiry received was provided prior to the 2017 revisions to the CPRs. A number of the issues raised in this evidence were directly or indirectly addressed in the amended 2017 CPRs. These include standards, third-party certification and calls for a revised understanding of the concept of value for money, as outlined briefly below.

5.91 Several submitters and witnesses requested that government procurement policies explicitly require the use of steel that conforms to Australian standards.⁸⁶ For example, the Australian Industry Group argued that 'an uneven approach to standards...often allows foreign suppliers to avoid the same quality and performance assessment that is applied to local producers'.⁸⁷

5.92 Several submitters proposed compulsory third-party certification attesting that standards are met in all steel used in government procured contracts.⁸⁸ This call was echoed in evidence from Mr Tony Dixon of the Australian Steel Institute:

ASI [the Australian Steel Institute]...believes that all Australian governments should have in place a system to ensure that products that are used in government projects meet the standards promised. Therefore, procurement documentation should specify that steel and steel products should only come from suppliers who are accredited by third party programs certifying that the supplier has in place procedures that will meet the quality and environmental standards expected by Australian taxpayers.⁸⁹

5.93 It should be noted that at present standards compliance ascertained by assessing relevant certifications is compulsory only for large contracts above certain thresholds, as outlined in Division 2 of the 2017 CPRs, and these standards may be international (see chapter 4).⁹⁰

5.94 Submitters called for Commonwealth procurement principles that included a focus on whole-of-life costs, rather than the lowest immediate financial cost when determining 'value for money'. For example, the Australian Industry Group proposed that:

86 For example, Illawarra Business Chamber, *Submission 5*, p. 1; South Coast Labour Council, *Submission 23*, p. 8; Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, BlueScope, *Committee Hansard*, 1 April 2016, p. 3.

87 Australian Industry Group, *Submission 10*, p. 34.

88 Australian Steel Institute, *Submission 19*, p. 34; Welding Technology Institute of Australia, *Submission 32*, p. 2.

89 Mr Tony Dixon, Chief Executive, Australian Steel Institute, *Committee Hansard*, 6 April 2016, p. 2.

90 Department of Finance, Commonwealth Procurement Rules, 1 March 2017, clause 10.37.

...the value for money principle in Government procurement must look beyond 'least cost', and bring to bear and make more transparent, a broader cost-benefit equation or value model that considers whole-of-life costs.⁹¹

5.95 The Australian Industry Group expressed concern that there was currently 'an undue emphasis on upfront costs rather than whole of life costs in public sector procurement' that does not take into account maintenance and through-life support. As a result, the Australian Industry Group stated, its member companies 'increasingly report being locked out of contracts'.⁹²

5.96 The Australian Steel Institute suggested that the concept of value for money should take into account 'the cost to Government involved in purchasing the good judged on a whole-of-life basis' and 'the environmental costs and benefits of purchasing the good'.⁹³

5.97 The National Vice President of the Australian Workers' Union proposed that a revised definition of the concept of value for money take into account economic benefit:

The government could still demand value. The government is still able to go into the market and look at what the price is and then make an assessment. If you look at the Victorian model they make an assessment of the price that they would be charged and they calculate the value based on the economic value that is generated throughout the economy and the multipliers, which are spelled out within various documents. The government is not a passive actor there where: 'We've now made commitments to procurement and now we are simply bound by price'.⁹⁴

5.98 Mr Vassella from BlueScope Australia and New Zealand also recommended that '[t]he value of local production and the contribution we make' be taken into account in government procurement, 'rather than just a flat "dollar per tonne"'.⁹⁵

5.99 It should be noted that the 2017 CPRs only require an assessment of economic benefit for procurements greater than \$4 million.⁹⁶

Joint Select Committee on Government Procurement

5.100 Many of the issues raised with the committee were also brought before an inquiry into the amendments of the 2017 CPRs by the Joint Select Committee on Government Procurement (JSCGP). The JSCGP published its report in June 2017,

91 Australian Industry Group, *Submission 10*, p. 7.

92 Australian Industry Group, *Submission 10*, pp. 33–34.

93 Australian Steel Institute, *Submission 19*, p. 5.

94 Mr Michael (Misha) Zelinsky, National Vice President, Australian Workers' Union, *Committee Hansard*, 6 April 2016, p. 24.

95 Mr Mark Vassella, Chief Executive, BlueScope Australia and New Zealand, *BlueScope, Committee Hansard*, 1 April 2016, p. 7.

96 Department of Finance, *Commonwealth Procurement Rules*, 1 March 2017, clause 10.30.

including a number of recommendations that addressed some of the areas of concern brought before this inquiry. These are presented below.

5.101 Although the JSCGP did not publish recommendations related to product compliance, the inquiry received evidence strongly encouraging:

...the use of suitably endorsed accreditation bodies to oversee compliance with the standards required...for both clauses 10.10 and 10.37. Tenderers should be expected to provide evidence of third-party certification and third-party audit reports should form part of the 'reasonable enquiries' undertaken when determining compliance.⁹⁷

5.102 The JSCGP received evidence arguing that the Australian Government should follow the example of the United Kingdom by setting a target for SME participation in procurement, surveying supply chains to assess the extent of SME participation in government procurement, and requiring the terms and conditions of primary contracts to be applied equally to subcontractors, up to three levels removed.⁹⁸

5.103 The JSCGP report noted inconsistencies in the 2017 CPRs between 'the new clause 10.10 and existing clause 10.9(c) which requires technical specifications to be based on international standards'.⁹⁹ However, the Department of Finance highlighted that internationally recognised standards are rarely different from Australian standards, and clarified that 'international standards' refers to standards published by international standards organisations, not the standards of other countries.¹⁰⁰

5.104 Because of this inconsistency, the JSCGP recommended that 'the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable'.¹⁰¹ In its response to the JSCGP report, the Australian Government rejected this recommendation.¹⁰²

5.105 The JSCGP inquiry recommended, in response to concerns that the requirement to prove economic benefit only applies to prime contractors and not subcontractors, that clause 10 of the Commonwealth Contracting Suite become mandatory for all Commonwealth contracts, no matter their size. This clause currently

97 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 79.

98 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, pp. 96–97.

99 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 56.

100 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, p. 81.

101 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 1, p. 129.

102 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 8.

stipulates that the obligations of prime contractors also apply to all subcontractors in contracts less than \$1 million.¹⁰³ The government indicated its in principle support for this recommendation in its response to the report.¹⁰⁴

5.106 A further recommendation from the JSCGP to address the issue of the extent of Australian industry participation was that the Department of Finance and the Department of Industry 'develop and implement a framework to collect relevant data' on the extent to which Commonwealth procurement projects are supplied by Australian-owned businesses, contain Australian-manufactured goods, or use Australian-based services.¹⁰⁵ The Australian Government rejected this recommendation in its response to the JSCGP report.¹⁰⁶

5.107 The JSCGP recommended that the Government create an Australian Industry Advocate as a statutory authority under the responsibility of the Minister for Industry, Innovation and Science. The objectives of the proposed Australian Industry Advocate would be, among others, to assist Commonwealth agencies to create procurement processes that 'maximise benefits to the Australian economy'; provide support to Australian businesses so that they could access Commonwealth procurement; and 'monitor suppliers' delivery of contracted economic benefits'.¹⁰⁷ The Australian Government in its response to the JSCGP report rejected this recommendation.¹⁰⁸

Committee view

5.108 The committee notes that a number of the amendments to the Commonwealth Procurement Rules, implemented in March 2017, address some of the concerns raised to this inquiry. The unanimous and bipartisan recommendations put forward by the Joint Standing Committee on Government Procurement would have created the framework for the effective implementation of the new Commonwealth Procurement Rules and evened the playing field for thousands of local Australian firms. However, the majority of the recommendations from the report of the Joint Standing Committee

103 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 5, pp. 133–34.

104 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 4.

105 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 7, p. 135.

106 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 10.

107 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 14, p. 141.

108 Australian Government, *Australian Government response to the Joint Select Committee on Government Procurement report: Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, November 2017, p. 11.

on Government Procurement were rejected by the Australian Government in its response to the inquiry, tabled in Parliament on Tuesday 10 November 2017.

5.109 The committee is concerned that the Australian Government's decision on a number of the recommendations will undermine the intent of the new Commonwealth Procurement Rules, negatively impacting job creation, and disadvantaging local businesses. The Minister for Finance, Senator the Hon. Mathias Cormann, cited cost and red tape as the basis for the rejections of the recommendations from the Joint Standing Committee on Government Procurement.

5.110 It is clear, based on the evidence provided to this committee, that in some instances the amendments to the Commonwealth Procurement Rules do not go far enough, and further action is required to secure the future of Australia's steel industry. The Australian Government should lead the way by considering how the use of locally made steel can be maximised in Commonwealth funded projects, without compromising Australia's international obligations.

Recommendation 7

5.111 The committee recommends that the Australian Government maximise the use of locally made steel in Commonwealth funded projects.

5.112 Without an overarching steel policy, the committee is concerned that efforts to defend Australia's steel manufacturing value chain will be fragmented, given that the issues impacting the sector are multifaceted and spread across a number of different portfolios and government jurisdictions. Given this, the committee proposes that consideration should be given to creating a comprehensive, all-government approach that coordinates efforts across procurement, policy, trade measures and other relevant areas.

Recommendation 8

5.113 The committee recommends that the Australian Government develop an overarching steel policy that would form the basis for decision-making and initiatives affecting the industry.

5.114 Evidence given to this inquiry highlighted the important role that the South Australian Industry Participation Advocate has had in supporting the steel industry in South Australia. The committee is of the view that a national Steel Supplier Advocate should be established to support Australian businesses, particularly SMEs, to compete for procurement contracts. The responsibilities of the Steel Supplier Advocate would include: advising the government on challenges and opportunities facing the Australian steel industry; helping Australian steel manufacturers to obtain major contracts and identify opportunities for improved competitiveness; and working with state counterparts to develop future industry initiatives.

Recommendation 9

5.115 The committee recommends the establishment of a national Steel Supplier Advocate, which will:

- **provide strategic advice to the Australian Government on the challenges and opportunities facing the industry;**

-
- **assist Australian steel manufacturers to win major contracts and identify opportunities to improve competitiveness; and**
 - **work with state government counterparts to plan for the sector and develop future industry initiatives.**

5.116 The committee supports a number of recommendations from the Joint Select Committee on Government Procurement regarding the 2017 CPRs. Given the extra cost base incurred by Australian products to meet Australian standards, and the alarming body of evidence that this inquiry received regarding steel that poses safety risks (as outlined in chapter 4), the committee recommends that all procured steel should be required to meet Australian standards, whether it is procured by a prime contractor or subcontractor. Further, the committee also agrees with the JSCGP recommendation that Commonwealth procurement policies should play an active part in supporting Australian small and medium enterprises.

Recommendation 10

5.117 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 1 of the Joint Standing Committee on Government Procurement report and request the Department of Finance revise clause 10.9(c) of the Commonwealth Procurement Rules to require all goods purchased by the Australian Government to comply with Australian standards unless none are applicable or it is inappropriate to do so.

Recommendation 11

5.118 The committee recommends that the Australian Government reconsider its decision to reject Recommendation 4 of the Joint Standing Committee on Government Procurement report and commit to enhancing the procurement-connected policy for Australian Industry Participation plans so that good procurement practices are implemented down through the supply chain, so that both prime and sub-contractors:

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

Recommendation 12

5.119 The committee recommends that the Australian Government reconsider its response to Recommendation 8 of the Joint Standing Committee on Government Procurement report and ensure that, in negotiating future trade or World Trade Organisation agreements, Australia does not enter into any commitments that undermine the Australian government's ability to support Australian businesses.

Recommendation 13

5.120 The committee recommends that, in light of the evidence provided to this inquiry by the Australian Steel Institute relating to the steel industry's Environmental Sustainability Charter, the Australian Government reconsider its decision to reject Recommendation 3 of the Joint Standing Committee on

Government Procurement report and facilitate the introduction of a procurement connected policy requiring Commonwealth agencies to evaluate the whole-of-life environmental sustainability of goods and services to be procured.

5.121 The committee is of the view that current exemptions in free trade agreements for SMEs and Defence are being underutilised. The US-Australia Free Trade Agreement, for example, may allow provision for procurement preferences to benefit SMEs. The government should investigate ways in which SME carve outs in free trade agreements can be better employed so that SMEs in the steel industry are better equipped to compete on a level playing field.

Recommendation 14

5.122 The committee recommends that the Australian Government better utilise the small and medium-sized enterprise provisions in free trade agreements.

5.123 The committee notes that changes to Commonwealth Procurement Rules include the requirement for tenderers to provide evidence of proposed economic benefit, for those projects that meet the thresholds outlined in Division 2 of the 2017 Commonwealth Procurement Rules. The committee is concerned that the Government's procurement coordinator's guidance on the recent changes relating to economic benefit explicitly reference pricing as an example of elements to be considered when determining economic benefit of a procurement. This committee therefore shares the view of the Joint Standing Committee on Government Procurement which warned, '[r]ather than supporting successful implementation, the Committee is concerned that the current guidelines developed by the Department of Finance have the potential to undermine the intent of the new CPRs'.¹⁰⁹

Recommendation 15

5.124 The committee recommends that the Department of Finance reconsider its current procurement implementation guidelines, noting the concerns of the Joint Standing Committee on Government Procurement that the current guidance may undermine the intent of the new Commonwealth Procurement Rules, specifically clause 10.30 relating to economic benefit.

5.125 The committee is concerned that in the absence of a compliance regime, steel is being used in government-funded projects that does not meet appropriate standards and may pose a public safety risk. Although the *Code for the Tendering and Performance of Building Work 2016* (the Code) requires products used in Commonwealth-funded building work to comply with relevant Australian standards, responsibility for the enforcement of compliance with the Code is yet to be determined. The committee view is that this should be clarified as soon as possible to ensure that it is clear who will audit the compliance of building materials with Australian standards.

109 Joint Select Committee on Government Procurement, *Buying into our future: Review of amendments to the Commonwealth Procurement Rules*, June 2017, Recommendation 5, p. 137.

5.126 Currently, clause 10.37 of the 2017 CPRs requires relevant entities, when applying a standard for goods procured above relevant thresholds, to make reasonable enquiries to determine compliance with a relevant standard, which can include examining evidence of certification and periodic independent auditing. In tandem with the committee's recommendations regarding compulsory standards certification outlined in chapter 4, the committee considers that this requirement to examine evidence that an Australian standard has been met should be extended to all goods procured in Commonwealth funded projects, where a standard is available.

Recommendation 16

5.127 The committee recommends that relevant entities should be required to make reasonable enquiries to determine standards compliance in all Commonwealth funded projects involving steel, not just those above relevant thresholds.

5.128 The committee notes the importance of federal Australian Industry Participation (AIP) plans in increasing the use of Australian made steel in procured projects. Given this importance, the committee considers that funding for the Australian Industry Participation Authority should be increased, and compliance with AIP plans should be monitored and audited. Further, the requirement in legislation that all tenderers for Commonwealth projects should submit AIP plans, not just the successful tenderer, should be reinstated.

Recommendation 17

5.129 The committee recommends that the Australian Government review the level of funding to the Australian Industry Participation Authority to ensure it is adequate, and that compliance with Australian Industry Participation plans should be monitored and audited.

Recommendation 18

5.130 The committee recommends that the Australian Government restore the requirement in legislation for all tenderers for Commonwealth projects to submit Australian Industry Participation plans, not just the successful tenderer.

5.131 Much of the evidence concerning the AIP plans that this inquiry received argued that the current threshold of \$500 million to qualify for an AIP plan is too high. This evidence included an admission from the Department of Industry, Innovation and Science that the threshold had been developed during the mining and resources boom, with a subsequent reduction in major project activity since mining has slowed down. The committee does not accept the Department of Industry, Innovation and Science's reassurances that projects below the \$500 million threshold provide enough opportunities for local industry, and recommends that the government review the threshold for AIP plans, with a view that they should be significantly reduced.

Recommendation 19

5.132 The committee recommends that the Australian Government review the thresholds for Australian Industry Participation plans, with a view that they should be significantly reduced to take into account recent changes in industry.