



# ETHICS IN PROCUREMENT

A REPORT BY THE ETHICS ALLIANCE

PLACING ETHICS AT THE CENTRE OF HOW WE DO BUSINESS.

# Introduction

## Biting the Hand That Feeds

A recent inquiry into late payments by large organisations to their suppliers fuelled a national discussion about the many ways big businesses misuse their buying power. Examples include forcing small businesses to be their unwilling credit-providers, and allowing short-term thinking to dictate procurement decisions that are not in the longer-term interests of the company, its customers or society.

The Australian Small Business and Family Enterprise Ombudsman, Kate Carnell, told The Ethics Alliance she was “horrified” to discover some corporations admitting to taking up to 120 days to pay bills. A 30 day turnaround from the receipt of a correct invoice is regarded as acceptable business practice.

“They said: ‘If there is nothing that makes us pay shorter, then we will pay longer. That is just the way we operate,’” Carnell said last year of conversations she had with some CEOs during her inquiry into late payments in 2018. Since then, Carnell has completed a review of payment terms, times and practices and found that more than one in ten big businesses surveyed take 60 days or more to pay their suppliers – and some admitted to 90 day standard terms.

When organisations ignore the often unintended consequences of their procurement practices on the broader ecosystem – their suppliers and customers and communities – they can destroy small businesses, harm the people who work in those businesses (and those who depend on them) and they can damage their own brand reputations. In effect, they ‘bite the hands that feed them’.

There is a gathering momentum to do something to redress the power imbalance around payment times and conditions. Initiatives launched in 2018 by Federal and State governments include an announcement that Commonwealth departments will pay within 20 calendar days when the contracts are valued at less than a million dollars, or interest will be accrued. All Australian Government agencies will be required to report payment performance from 1 July 2019.

In addition, the Business Council of Australia launched a voluntary code, which dictates a 30-day payment time for small businesses.

Public awareness of the issue has also put pressure on businesses to exercise fairness in their treatment of their suppliers. In one example, supermarkets faced a public campaign to increase the amount of money they pay their milk suppliers and charge more for the product on their shelves. The Labor Party proposed putting a floor price on the amount farmers could be paid for their milk.

However, the business of procurement raises many ethical challenges beyond the length of time taken to pay the ‘little guys’ or squeezing their profit margins into negative figures. Other questions may include:

- **Should companies have an open tender and invite all to bid, or save time and money by targeting known suppliers?**
- **Should companies accept the cheapest complying bid, or pay more to a company that distributes a proportion of its profits to a good cause?**
- **Should companies be transparent in their dealings with suppliers, or will this open them up to disputes?**
- **Is it reasonable for companies to impose a significant administrative burden in the first round of a tender process – often asking for information which is not directly relevant to the project in question?**

These questions and more have been canvassed by The Ethics Alliance through interviews and discussion with ten of its member organisations. The Ethics Alliance is a community of organisations accessing unique insights, inspiration and core tools, to embed ethics at the centre of what they do.

This paper examines some of the procurement based issues identified through that process, looking at the causes of ethical tension and offering frameworks for each stage of the procurement process.



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## PART 01

# Ensure a fair transaction

Organisations that are buying goods or services can encounter many forks in the road, requiring decisions on how to respond. By viewing those questions through an ethical lens, we are more able to make decisions that align with the purpose, values and principles that our organisations are committed to – and that we may also hold as individuals.

The tender process is intended to ensure that competition among bidders delivers a result that represents the best purchase at the best price, taking place in an environment of decision making transparency. When done well, this builds trust by demonstrating that the winning supplier was chosen fairly, with no suspicion of favouritism or under-the-table deal making.

Trusting (and trustworthy) business relationships have many benefits, including cutting the cost of doing business, forming alliances that stimulate innovation and creating an environment where people will want to come and work.

Three common ways of approaching a tender are:



### 01 OPEN

The classic model where anyone in the market can bid for a contract. It is designed to foster as much competition as possible, based on price and quality.



### 02 SELECTIVE

The contractor is chosen from a pre-selected list of potential suppliers with a relevant track record.



### 03 SOLE

A single supplier may be appropriate for highly specialised contracts where there is only one supplier available, however, the competitive element of tendering is reduced. Selective or sole tenders are often used when there is a commitment to local or Indigenous suppliers.

Each of these models presents its own challenges and tensions, because purchasing decisions do not exist in a vacuum. There are pre-existing business relationships to be taken into account, for instance, and questions about whether the most cost effective choice will end up being the best solution for the buyer.

# Look after your suppliers

## Where do your trusted suppliers fit when you go to open tender?

When respect for people and relationships is a core principle of ethics, it would seem that an open tender offers the best solution because it treats all suppliers equally. They are evaluated and chosen based on their proposal, rather than reputation, size or history.

So, open market tendering seems like the obvious choice to ensure competitiveness and fairness, however it is not always the most cost effective and time efficient method of procurement. It can take weeks or months to set up the tender and dispassionately evaluate the suppliers, and then even the most rigorous processes offer no guarantees of success.

Given the speed of decision making required in today's fast-moving business environment, businesses will often take the convenient option of approaching their known and already-trusted suppliers instead.

Another factor to think about is that respecting the trusted and long-term relationships you have with your existing suppliers may mean these companies might not be forced to leap rigid and arduous compliance hurdles every time they do business with you.

This is a dilemma with no clear answer, but needs to be considered when decisions are made about whether or not to go to tender.

## Is your compliance process a benefit, or a burden?

Trust is built when people and businesses respect each other and their behaviours reflect voluntary goodwill, rather than mere compliance.

Overly rigid policies can inhibit trust. If every interaction with a supplier is viewed through the lens of risk mitigation, it can become a box ticking exercise. This kind of transactionalism is a particular burden for small businesses, which do not have the time or resources to meet arduous criteria.

Companies we spoke to in the preparation of this report acknowledged the importance of procurement policies and compliance – but many noted the danger in making such processes overtly codified or rules based.

An environment of trust and trustworthiness allows people to have a degree of flexibility in their relationships with others and fluidity with their business practices. But when the levels of trust and trustworthiness are low, people try to protect their interests by introducing rigid forms of compliance, which cost time and money. A situation of trust built on mutual respect for persons and relationships is the best outcome for all.<sup>1</sup>

<sup>1</sup> This principle of trust and respecting relationships was part of the justification the Business Council of Australia used when setting up the voluntary Australian Supplier Code (2017). By making the code voluntary, rather than pushing for legislation, it was believed there could be a more profound effect on organisational culture, where the relationship fostered between businesses was mutual and voluntary, rather than just compliant.

**“Sometimes we’re forced to give suppliers contracts of two or three hundred pages, where 50-60 are made up of data security, even though that supplier will never be given sensitive data.”**

CFO, Financial Services

## What value should you put on relationships?

Constant competition, offered through processes such as open market tendering, is often believed to provide the best and most efficient outcome. However, long-term relationships with trusted suppliers can also offer efficiencies. A deep understanding of the client can enable a supplier to add more value to their offer, perhaps to supply a cheaper, targeted and more time efficient solution. Clients may receive an offer from a long term supplier that meets a need they didn't even know they had.

Suppliers with that kind of trusted relationship can act almost as partners in the business of the client.

This demonstrates the difference between price and value and requires a reconsideration of the assumption that open market competition is always best. The procurement process needs to be flexible enough to account for the size of the supplier, the degree of actual risk, and the value of loyalty and reliability that are part of a longer relationship.

# Practical issues to be solved

“Awareness is weak (57% of CSR managers) and risks are likely under-estimated – 79% of senior CSR managers think it is unlikely there is any slavery in their supply chains despite the high prevalence of modern slavery in our closest trading region.”

Deloitte's 2018 'State of CSR' report.

## Getting to grips with modern slavery

A key element of the procurement process is compliance. Many businesses have much work to do to meet the reporting standards required by the recently legislated Modern Slavery Act 2018, according to research by Deloitte's 2018 State of CSR report.

The complexity of global supply chains makes it increasingly difficult for companies to know what is happening at each step in their production of goods or delivery of services. The Act requires significantly more understanding and reporting around the issue, with businesses with a consolidated revenue of more than \$100 million having to report annually on:

- **The risks of modern slavery in their supply chains**
- **Actions they have taken to address those risks**
- **The effectiveness of their responses.**

Modern slavery only refers to the worst forms of exploitation and not to other breaches of human rights such as the denial of worker safety or the freedom of association. The International Labour Organisation estimates that more than 21 million people worldwide are forced labourers, with half of them being in the Asia-Pacific.

Although there will not be financial penalties for businesses who fail to disclose, a public name and shame register will be set up and maintained by the Commonwealth. Smaller businesses below the revenue threshold can report voluntarily. Companies will want to do everything possible to meet the reporting requirements, if they are to maintain their reputation in the eyes of the public, as well as retaining trusting relationships with stakeholders.

A thorny issue arises when suppliers work with organisations that are not subject to the same codes or laws as the client's home country. Many organisations don't have the time or money to mitigate risk in every step in the supply chain – which leads to a mindset that, as well as outsourcing the work, they have outsourced the risk and accountability.

Clients often have their hands tied if a breach of conduct in the supply chain is discovered while work on a project is underway. In most cases, ceasing work is too costly an option to consider.

## Pay on time

Larger businesses are “always” or “frequently” late payers to small business, according to an inquiry conducted by the Australian Small Business Family Enterprise Ombudsman (ASBFEO). This culture of delayed payment threatens the viability of SMEs, restricts their ability to finance future projects and makes it hard to cover fixed expenses, such as wages.

The imposition of late penalty fees is not a serious option because small to medium sized businesses believe they are “impossible to enforce”, “not an industry standard” and overwhelmingly because they are unwilling to jeopardise ongoing trading relationships, according to ASBFEO.

The big end of town can seem to have SMEs over a barrel. While there may also be delays from the supplier side, such as late delivery of invoices causing late payments, or issues with the delivery of goods or services, the problem seems to be mainly with tendering businesses. This power imbalance means that if SMEs demand timely payments and adherence to contracts, they put at risk their relationship with a larger organisation – threatening their own reputation and cash flow. An unpaid invoice can ruin a small business, but a big business can always find another supplier.

As a response to concerns about this issue, the Business Council of Australia created the Australian Supplier Payment Code (2017) to promote a mutual understanding and respect between large firms and SMEs. Signatories to the code commit to paying small business suppliers within 30 days of receiving a correct invoice, to pay invoices on-time and to work with suppliers to apply technologies and practices that will improve the efficiency and accuracy of invoicing and payment processes.

Unfortunately, as it is a voluntary code, the worst offenders of late payments are under no obligation to sign it but there are potentially reputational consequences for non-signatory businesses that pay small business on longer terms, plus the prospective threat of regulation. As it stands, there are no formal repercussions if an organisation breaches the rules, however signatories of the code can be expelled should regular breaches not be adequately addressed.

There are currently no laws in Australia penalising large organisations for making delayed payments to SMEs. In contrast, in Europe, the EU Late Payment Directive (2011/7/EU), is an instrument that forces all member states to implement the late payment fines into federal law. As of March 2013, suppliers that operate in countries in the EU must be paid within 60 days of receiving an invoice and, if not, are given the right to claim compensation in the form of interest for each day the payment is delayed.

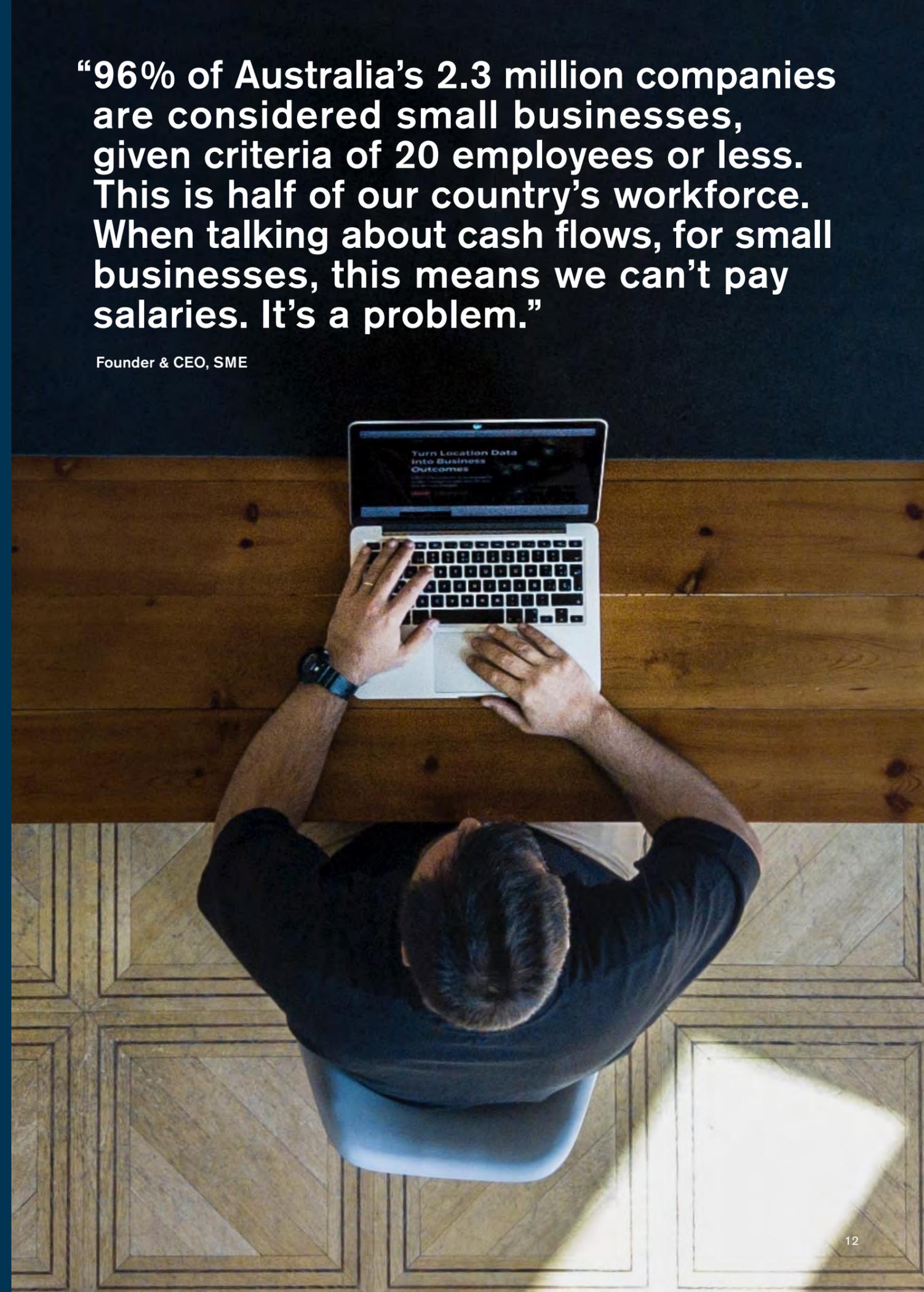
While this seems to be a step in the right direction, the directive is subject to the same criticisms of that of the BCA's supplier code. Most notably, the directive legislates that organisations have the right to claim compensation for late payments, but it doesn't legislate that businesses have to pay on time. As a result, it is still up to the decision of the supplier on whether or not they want to claim the compensation. As explained previously, self-regulation is insufficient as many of suppliers are unwilling to risk their ongoing trading relationships.

### QUESTIONS FOR BUSINESSES PAYING INVOICES:

- 01 Have you paid invoices within 30 days?
- 02 If unable to pay within 30 days, have you agreed upon terms that are reasonable, fair, and that take into consideration the best interest of the supplier?
- 03 Have you thought about moving to an online procurement platform that can help organise and streamline invoice payment?

**“96% of Australia’s 2.3 million companies are considered small businesses, given criteria of 20 employees or less. This is half of our country’s workforce. When talking about cash flows, for small businesses, this means we can’t pay salaries. It’s a problem.”**

Founder & CEO, SME



**“Online procurement platforms would be welcomed from a small business perspective. Anything that puts rigour into the process is good so that we can just focus on delivering value.”**

Head of Procurement, Financial Services

## Keep suppliers in the loop

Transparency at the start of the tendering process allows suppliers to see what the requirements are and whether they meet these requirements. The quality of the procurement outcome is improved by having more frequent and deeper interactions between possible suppliers and purchasers. Feedback for suppliers is also invaluable, helping them to improve by identifying areas of strength and weaknesses and enhancing the relationships.

If there is a multi-factor tendering approach, that needs to be made clear from the beginning of the tendering process. This might include things like safety, environmental impact and supply chain awareness, as well as price.

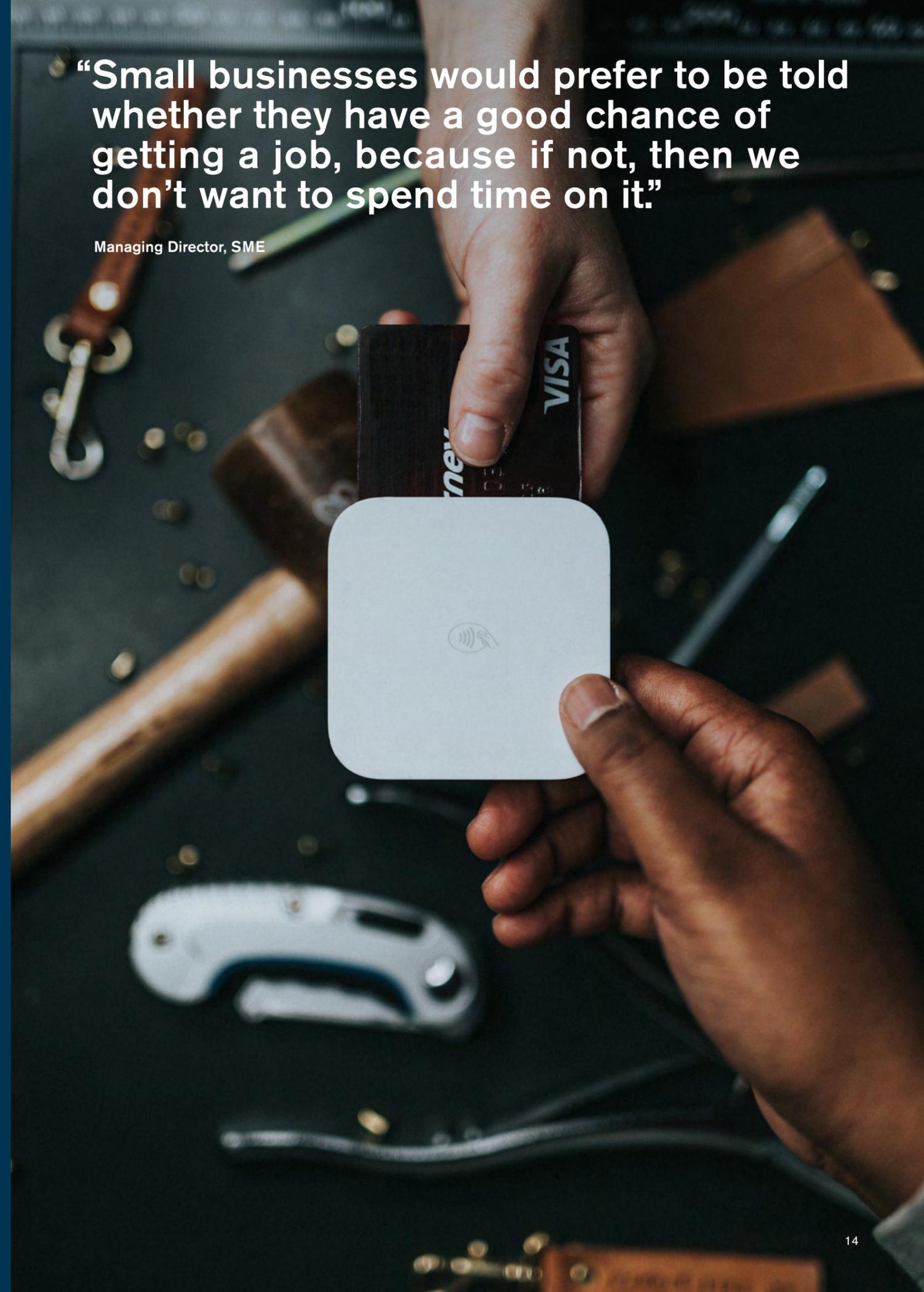
However, many large organisations make the procurement process opaque by being unwilling to provide feedback. On one hand, this is seen as a way of reducing accountability – many organisations believe that limiting communication between both firms can protect them if a dispute arises over the procurement process. On the other hand, communication may be limited because businesses want to give potential suppliers the same, equitable treatment, and there are confidentiality and competition laws which impose heavy penalties if the procurement process is compromised. Limiting communication is a way of being risk averse.

These practices can be frustrating for suppliers who are unsuccessful in being awarded the tender. They are also a significant barrier to developing trust – remembering that bids may include suppliers' valuable intellectual property, provided in the hope that it won't be misappropriated or shared with their competitors.

Developing trusting relationships requires an assurance that sensitive information will be safe, and both transparency in the process and feedback after the process.

**“Small businesses would prefer to be told whether they have a good chance of getting a job, because if not, then we don't want to spend time on it.”**

Managing Director, SME



# Reasons you might have a problem

## Held hostage by short-term thinking

If price is the only measure of procurement success, companies may end up paying more in the longer term. Unfortunately this kind of “short-termism” is commonplace – 80% of CFOs at 400 US companies admitted that they would “sacrifice economic value for the firm to meet that quarter’s earnings expectations”, according to a study published in the Harvard Business Review<sup>2</sup>.

Short-termism is where short-term profits are maximised at the expense of long-term value creation, often as a result of shareholder pressure. When executive bonuses are dependent upon meeting short-term criteria, such as increasing market capitalisation and cost cutting, they become more focused upon these performance indicators than long-term value.

This tendency to focus on the short-term can filter through the organisation, compelling employees to do the same. Incentive structures designed to enhance employee performance can have unintended consequences, encouraging people to make decisions that benefit themselves and their company in the short-term, but could have detrimental consequences in the future.

The Banking Royal Commission revealed numerous instances of excessive short-termism, where employees of major banks were incentivised to recommend investments and insurance plans that were not in the best interest of customers. They may not even have been in the long-term interests of the bank itself.

Short-termism is also exacerbated when employees believe they are not accountable for their actions in the long-term. When employees believe they will not work in a position or firm in the near future, it promotes an acceptance of short-term gains that will eventually become disadvantageous – because someone else will have to pay the price.

## Trapped in your silo without a wider view

In silo based organisations, employees tend to work towards financial outcomes for their own department, without regard for the whole. In the context of procurement, this might mean focusing just on price or safety without considering the impact of environmental or labour costs.

When problems arise in lengthy projects, poor decision making only becomes visible when the full process of a project is considered from end-to-end. Individuals may believe that they were performing correctly and it was only when they stood back to take a wider view that they could see the issue. Problems can therefore be difficult to identify and mediate, and often no individuals are held accountable because no one is responsible for the full process.

The disadvantages of a silo based structure suggest the need to shift toward an enterprise view or matrix model, where decisions by employees and departments are made in a holistic context, in the interests of the organisation’s values and purpose.

## Consultants may not be on the same page

Management consultants will often advise organisations to transfer the financing of large projects onto their supply chains, pushing the risk onto suppliers and SMEs. In practical terms, this could mean delaying payment for goods and services or forcing suppliers to take on more of the risk.

During her 2017 inquiry, Small Business Ombudsman, Kate Carnell, saw two reports from professional services firms explicitly recommending their large clients improve their own cash flow management by “blowing out payment times” to their small suppliers.

“I think it is unethical ... it depends what your version of ethics is, I suppose. It is legal,” Carnell told The Ethics Alliance in an interview last year.

Leaders are obliged to act on behalf of shareholder interests, sometimes at the expense of other organisations and the relationships they have with them. However, financially squeezing the small businesses that depend on their business is an example of short-termism and this may not be top of mind for the consultants that are called in to help improve efficiency.

Consultants cannot maximise the value they provide if they are understood solely in terms of cost reduction. There needs to be greater recognition of the non price related risks that are pivotal to the overall procurement process.

## You don’t have the right people

Procurement is one of many roles in an organisation where getting it right is critically important. Ethical and cultural fit can be overlooked in recruitment if there is an excessive focus on job performance. You may hire someone who hits all their financial targets, but is careless about how they achieve those results. In interviews, candidates should be examined to ensure they align with company values and work practices: ask them what kind of environment they are looking for and how they have encountered and dealt with past ethical dilemmas.

Employees who are a good cultural fit tend to have superior performance, higher job satisfaction and remain with the organisation for a longer time.

Despite the many benefits, many organisations (particularly in the finance sector) find it difficult to integrate the measure of cultural fit into their recruitment processes. One reason for this is a lack of awareness in our recruitment and education systems. At universities, ethics is either a non-compulsory subject or is incorporated marginally into other subject areas. In the workplace, discussion of ethics can seem unnecessary and tokenistic if it is poorly taught and only superficially implemented.

While organisations need the right people making ethically sound decisions when interacting with suppliers, they also need leaders who have the right qualities. Leaders who show vulnerability and can admit when they have been wrong can allow their teams to grow. By accepting their own fallibility, they are more likely to listen to other points of view, make well founded decisions and take positive risks.

<sup>2</sup> “Yes, Short-Termism Really Is a Problem” (2015)



## PART 02

# Practical framework

A just and fair framework is necessary to ensure that procurement is handled ethically, and that risks are systematically assessed and dealt with.

Following are the steps to consider at each stage of the procurement process.

### 01 Before you qualify a supplier

- Make the requirements clear
- Apply risk filters
- Ensure operational efficiency
- Identify gaps and training

### 02 Awarding the contract

- Ensure the independence of your supplier selection panel
- Use an IT procurement system
- Get a supply chain council
- Deal with special case suppliers
- Keep the money flowing

### 03 After you sign the contract

- Look after the relationship
- Enable whistleblowers

# 01 Before you qualify a supplier



## 1.1 MAKE THE REQUIREMENTS CLEAR

Contractors should understand the nature, risk and scale of the work, including requirements around Health, Safety, Security and Environment (HSSE), social performance, ethics, quality and finance.

Once this is clear, contractors should self-assess, perhaps through uploading their information to an online Supplier Qualification System.

There should also be an Ethical Conduct Due Diligence process, which includes investigating possible corruption, bribery, work practices and conflicts of interest. All contractors also need to demonstrate a commitment to social performance – such as their use of local content (in employment and procurement), Indigenous participation and community engagement.

Prospective contractors should provide examples of projects completed in the last five years – including the scope of work, project value, and appropriate reference contacts. They should also identify which tier of their supply chain they fit into and understand the specific requirements at each level.

For example, a contract between \$5 million to \$50 million in value may require:

- **Health and Safety: Strong safety culture visible at all levels and complies with AS/NZS4801 or BS OHSAS 18001**
- **Quality: Mature quality system in place, compliant to ISO 9001**
- **Finance: Full audited financials include 1) Profit and Loss statement (or P&L statement), 2) Balance Sheet, 3) Cash Flow statement**
- **Environment: Clear policies and procedures, with environmental technical support for specific aspects of scope (e.g. rehabilitation, soils, waste) as required.**



## 1.2 APPLY RISK FILTERS: ONLINE SUPPLIER QUALIFICATION SYSTEM

An online Supplier Qualification System (SQS) helps store and collect information on suppliers. It provides a standard and streamlined approach to the prequalification process and ensures suppliers complete relevant assessments.

It also makes it easy for suppliers to clearly and transparently see what the criteria are for different contracts and to self-evaluate.



## 1.3 OPERATIONAL EFFICIENCY AS A REQUIREMENT

As well as the above multifactor considerations, selection criteria should also include operational efficiency as one of the metrics to choose a suitable supplier. This includes things like adherence to the buyers' accounts payable process and evidence of an efficient dispute resolution plan. When drafting a contract, in addition to standard clauses about contract value and duration, it may be worthwhile to consider terms and conditions such as:

- **Arrangements for invoice payment, including frequency of invoices, payment terms (e.g. 30 days after receiving a correctly rendered invoice) and preferred payment methods (e.g. EFT, credit card etc)**
- **Dispute resolution plan and key contact person for dispute resolution**
- **Agreement to protect confidential information as well as compliance with the Privacy Act.**



## 1.4 IDENTIFY GAPS & TRAINING

Any deficiencies need to be understood and the risks associated with them must be managed before a contract is awarded. Proper qualification of suppliers helps you make stronger sourcing decisions and helps demonstrate to stakeholders and regulators that the business acts with integrity and takes appropriate measures to protect staff and contractors. Training to fill in gaps in capability is particularly beneficial for local and Indigenous suppliers.

## 02 Awarding the contract



### 2.1 ENSURE THE INDEPENDENCE OF YOUR SUPPLIER SELECTION PANEL

An independent supplier selection panel is necessary to select vendors based on objective and suitable evaluation criteria. A transparent and systematic supplier selection process provides confidence to suppliers and the public in the procurement outcomes. The supplier selection panel should fulfil a number of obligations including:

- **Avoiding placing themselves in situations where potential or perceived bias could occur**
- **Not receiving gifts or benefits from potential suppliers**
- **Probity and conflict of interest requirements applied appropriately to evaluation process**
- **Confidential information handled appropriately during entire procurement process.**

This (non-exhaustive) list of requirements for the supplier selection panel ensures that all suppliers are treated fairly and equitably, and that the values provided in the ethical framework, outlined later in the report, are lived.



### 2.2 USE AN IT PROCUREMENT SYSTEM

The use of an IT Procurement System can improve the efficiency of processing of procurement data, reduce costs and track purchase orders and invoices in real time. An online platform also benefits suppliers by making the sourcing and tender processes easier and more transparent – the requirements for a tender are clearly spelled out and suppliers can provide their web catalogues for the tendering company wishing to place orders.

This system maintains the benefits of competition by offering a fair playing field to all potential suppliers. To make sure that all bids are evaluated equitably, formalised evaluation plans should consider HSSE, commercial, technical capabilities and local content. Meanwhile, any proposals for sole source arrangements should come under the additional scrutiny of a supply chain governance body.



### 2.3 GET YOURSELF A SUPPLY CHAIN COUNCIL

A governance body specifically designed for managing supply chain issues and risks can be hugely beneficial. This can be comprised of senior leaders from the business and functional teams, including Contract Procurement, Health Safety Security Environment, Finance, and Legal. The experience and insights offered by members of this council can be used to challenge decisions and support best practices, especially in areas such as safety (technical) capability, commercial value, legal, and local content. This council is separate from the supplier selection panel, focussing more on project management risks rather than tender evaluation.

A council can help break down organisational silos, make sure a company's values and purpose are lived in the procurement process, and provide a space for issues to be discussed and resolved when conflicts arise.

It can guide and approve procurement decisions, optimising commercial value and ensuring informed risk-taking. In larger organisations, a Supply Chain Council's remit may only be for contracts of a certain size, such as more than \$2 million.



### 2.4 DEALING WITH SPECIAL CASE SUPPLIERS

Organisations and governments can use the concepts of target-setting and ring-fencing to fulfil their social responsibility commitments to employ and do business with local and Indigenous communities. Ring-fencing guarantees that money will be spent on a particular purpose, which means a sole-tendering or selective-tendering model can be used.

There are a number of tools that can identify local capability and measure local economic impact. See, for example, PwC's Total Impact Measurement and Management (TIMM) framework.

The majority of interactions with local/Indigenous and small businesses vendors will be small in scope and, possibly, less than the threshold for the attention of the Supply Chain Council. In these cases, a smaller group of business leaders from different functional lines should collaborate to make sure social targets are met and that ring-fencing is done as transparently and as fairly as possible.

Because this approach is different from the standard, large corporate tender processes, it may require longer lead times and more proactive upfront engagement. However, fostering business relationships with these parties is crucial and time should be spent to ensure their specific needs are accommodated.



### 2.5 KEEP THE MONEY FLOWING

Payment terms should be clearly stated and understood, and in most cases should not exceed 30 days (as outlined by the Business Council of Australia's Supplier Payment Code). This is especially important for smaller businesses who rely on on-time payment for cash flow.

Where payments longer than 30 days are necessary, negotiations should be made under conditions that are fair, reasonable and do not exert duress on smaller businesses. There must be recognition of the power imbalance between larger organisations and smaller suppliers so that both parties can act as honestly and transparently as possible.

Because delayed or late payments are often caused by disorganisation or silos, rather than ill-intention, an IT procurement system may help to automate payment or provide reminders when invoices are due.

## 03 After you sign the contracts



### 3.1 LOOK AFTER THE RELATIONSHIP

Once contracts are awarded, a contract management team should look after the contracts and relationships through a contract management plan and safety management plan. These cover transition management and performance monitoring and help both parties understand and fulfil their agreed commitments.

The contract management team should make sure there is regular engagement with the contract through collaboration and communication at all levels – such as with the Supply Chain Council. Regular business performance reviews should be conducted to ensure safe ways of working are maintained, risk is mitigated, contract performance is acceptable, and conflicts are brought to the attention of the right people and handled appropriately. Meetings should be attended by senior leaders from both parties, as well as the contract management teams. Operational meetings should address operational compliance and progress.

A program of examining the performance of the contract should be presented to the Supply Chain Council for appraisal and challenge, as well as periodic audits from independent central teams.



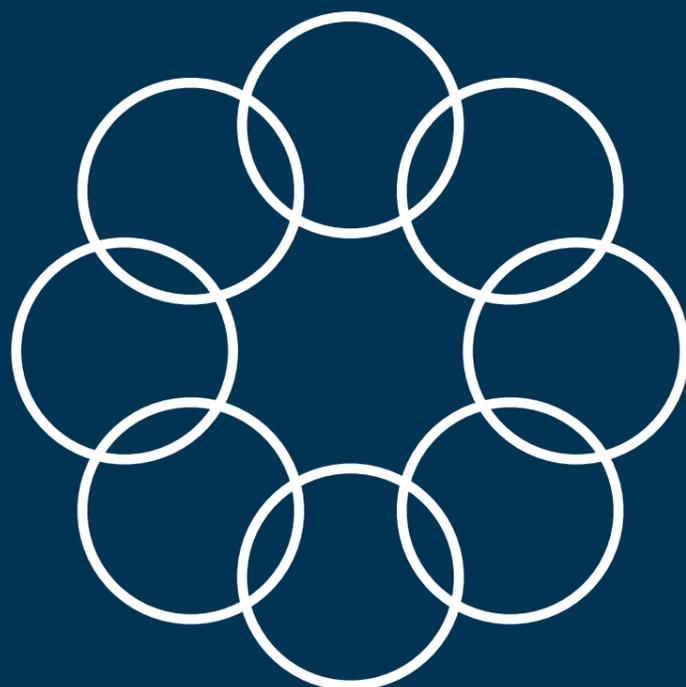
### 3.2 ENABLE WHISTLEBLOWERS

A helpline can be provided so that any wrongdoing or potential wrongdoing by the company or employees can be reported. This service should be available to all employees and contract staff, as well as third-party suppliers. Ideally, this would be available 24/7 via telephone and online, staffed by an independent third party which can assist in multiple languages. Reports should be able to be submitted anonymously.



# Ethical framework

The following fundamental values and principles have emerged from The Ethics Alliance's research and thinking about procurement practices. They are equally applicable to business operations outside of procurement.



## 01 RESPECT PEOPLE & RELATIONSHIPS

The respect for persons principle states that every person has intrinsic value, irrespective of their background or identity. As such, a person may never be used merely as a means to an end, or as nothing more than a commodity, or tool, to be employed for the sake of some other purpose.

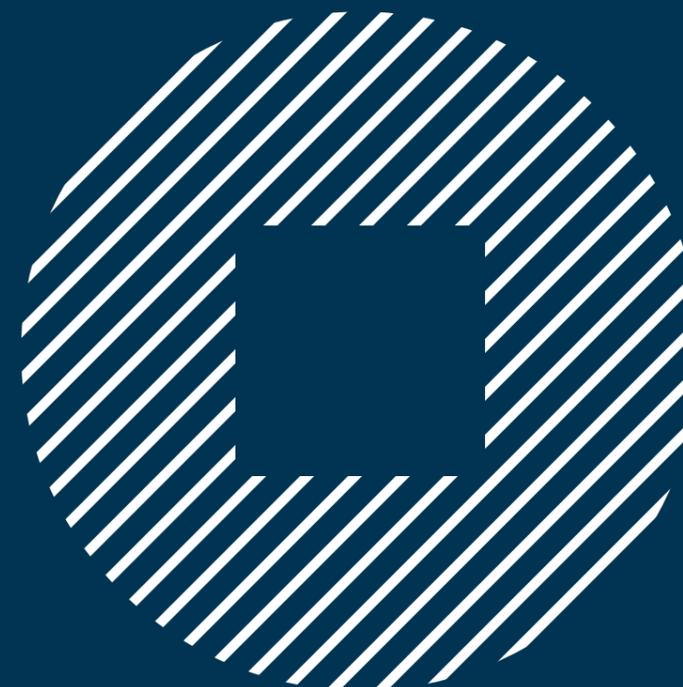
It is this principle that forbids slavery and provides the philosophical foundation for Australia's Modern Slavery Act. The Act identifies eight different types of modern slavery: trafficking in persons, slavery, servitude, forced labour, forced marriage, debt bondage, child labour, and deceptive recruiting. While this sits at the extreme end of the respect for persons principle, each of these levels is underpinned by this fundamental idea.

This focus on respect for persons extends into a respect for relationships between people. This includes relationships with suppliers, subcontractors, or anyone in the supply chain. Once the inherent dignity or worth of a person is respected, mutual relationships of equality and reciprocity can develop.

Respect for people and relationships underpins the trust between people and communities. It is also central to our market economy, allowing flexibility rather than rigid compliance to a plethora of rules.

### THRESHOLD INDICATORS:

- Does the company act fairly, reasonably, equitably and cooperatively with suppliers in a manner that is consistent with their inherent dignity as persons, and respect for the mutual relationship?
- Does the company provide goods or services that are used to undermine fundamental human rights?
- Does any part of the company or its supply chain make use of slave or forced labour, deny employees the right to free assembly, pay wages below subsistence levels, or expose employees to potentially lethal, unmediated health and safety risks?
- Does the company provide material support to governments or regimes that employ torture, impose cruel and unusual punishments, or undermine fundamental human rights?



## 02 HAVE INTEGRITY

In a narrow sense, integrity means being honest and true to one's word. However, we believe it has a broader meaning because it also involves acting fairly and transparently with all stakeholders.

Acting with integrity means that principles are upheld, no matter what other people or organisations are doing. In the context of procurement, integrity means not only being honest and transparent, but treating applications with confidentiality and impartiality.

This is particularly important in the current context where risks of data leakage and hacking are high. Having integrity means ensuring that the sensitive information of suppliers is treated with the utmost confidentiality and security.

### THRESHOLD INDICATORS:

- Does the company treat tender applications with maximum confidentiality, especially where IP is involved? What project management systems are in place to ensure this data security?
- Is the company impartial when evaluating tender applications, and are there processes for disclosing conflicts of interest that may arise?
- Does the company give clear requirements for tender; i.e. do bidding suppliers have a reasonable understanding of whether they may be successful? Can they receive feedback?
- Has the company (or anyone in its value/supply chain) been convicted of any offence for dishonesty (theft, fraud etc)?



### 03 DO NO HARM

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The principle of non-maleficence requires that the goods and services produced by a corporation should objectively confer some net benefit to those who purchase and use them. This net benefit must include an understanding of harms potentially incurring in the supply chain during the production.

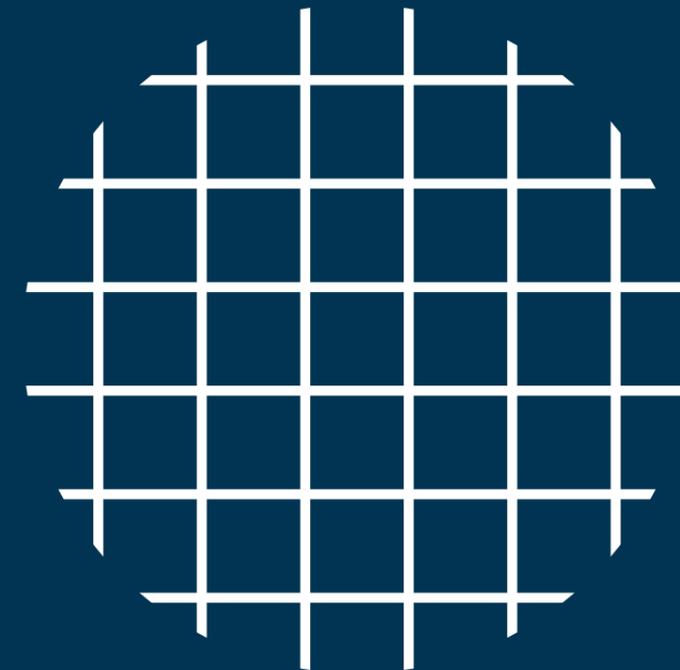
This principle includes the exertion of undue power and duress over smaller suppliers by being unclear with the tendering process or not paying them on time. And, as a bare minimum, the goods or services a business produces must be able to be used, at least to some degree, without harm.

Non-maleficence also requires that those who profit from engaging in harmful activity disclose the nature of the risk that their conduct gives risk to – allowing those risks to be assessed and managed by those whose interests are affected.

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#### THRESHOLD INDICATORS:

- Is the company a proactive steward of labour rights, the environment and ethical supply practices?
- Does the company understand the impacts of late payments on suppliers?
- Is the company paying invoices within 30 days, or if greater than 30 days, have you negotiated terms that are fair, reasonable and do not exert duress?
- Does the company derive profits from activities that impose a negative impact on third parties?
- Does the company engage in partnerships with others, and proactively seek solutions, when there is harm caused by self or others?



### 04 BE RESPONSIBLE

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This principle states that benefits should be proportionate to responsibility – that is, those who derive the ultimate benefit should have the ultimate responsibility for the conduct that produced the benefit. One should also look beyond artificial boundaries, such as the legal structure of corporations, to take into account the conduct of the companies upstream (suppliers) and downstream (distributors).

Therefore, it becomes the responsibility of a large corporation to ensure safe working conditions for the people, sometimes in other parts of the world, who work for its suppliers. This principle also relates to matters such as corporate tax – its avoidance and evasion.

The corporation should not act unconscionably by abusing asymmetries in power and information to the detriment of weaker third parties.

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#### THRESHOLD INDICATORS:

- Has the company mapped the sustainability impacts of its value chain of its goods and services? Are the true value of the social or environmental externalities known?
- What (if any) is the extent of any potential liabilities for environmental damage or liabilities for poor labour practices across the value/supply chain?
- Does the company identify and address any areas of power asymmetry with stakeholders, such as towards smaller suppliers?

# Acknowledgements

## **Writing and Research – Ben Robinson**

Ben led the writing and research for this report. He has worked in various roles at The Ethics Centre since 2016. Ben studied Philosophy and Political Economy at the University of Sydney, and in July 2019, commenced work as a graduate Ethics and Sustainability consultant at Deloitte.

## **Practical Framework – Shell Australia**

Shell generously shared its approach to procurement with The Ethics Alliance, providing the content and structure for the Practical Framework section. Shell has a market-leading approach to procurement, and we are very grateful for their commitment to helping their procurement industry peers.

## **Conducting Interviews – Cris Parker and David Moffatt**

Cris provided the vision for this report. With David, she conducted the 10 interviews of the Alliance members, and helped Ben with the research and report writing. Cris heads The Ethics Alliance at The Ethics Centre.

David has been a supporter and friend of The Ethics Centre for over a decade. As an executive leader with more than 30 years of experience, currently the Executive Chairman of Ventia Infrastructure, he volunteered his time on this project.

The below Ethics Alliance members generously gave up their time to talk to Cris and David about procurement issues affecting their business.

- **Shell Australia**
- **Macquarie Bank**
- **Clayton Utz**
- **The Reserve Bank of Australia**
- **Allianz**
- **TrinityP3**
- **The Business Council of Australia**
- **AIA Australia**
- **Insurance Australia Group (IAG)**

## **Roundtable Discussion – Alliance members**

Credit is also due to all the individual Alliance members who attended the Roundtable discussion at the end of 2018, and who spoke openly at Alliance events over the past 12 months. The origin of this report was a conversation at an Alliance (Chatham House) gathering about late payment of invoices, which expanded into a broader discussion about procurement ethics and supply chain management. Without that candidness and open collaboration, this report would not have been possible.

## **Transcribing Interviews – Laura Ligonis**

Laura was a volunteer at The Ethics Centre and is studying a Bachelor of Economics at the University of Sydney.



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