



Australian Government

Independent Review of Services Australia and NDIA Procurement and Contracting: Taskforce Report to the Independent Reviewer

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Executive summary

Scope and methodology

The *Independent Review of Services Australia and NDIA Procurement and Contracting* (the Review) was established on 1 December 2022 to examine internal Services Australia (SA) and National Disability Insurance Agency (NDIA) procurement and contracting processes related to matters raised in the media regarding Synergy 360 and associated entities.

Dr Ian Watt AC was appointed as the Independent Reviewer. Dr Watt was supported by a team (the Taskforce) with representatives from the NDIA, SA and the Department of Finance with expertise in the areas of procurement, legislation, reviews, investigations, research and governance. The Taskforce shared its analysis, findings and report drafts with the Independent Reviewer throughout the review.



This Report has been developed by the Taskforce to outline its findings against the Terms of Reference to the Independent Reviewer.

The NDIA and SA identified 13 entities with procurements that were determined to be in scope for the Review.

Entities were identified if:

- the entity was specifically referred to in the media **or** the entity was acquired by an entity named in the media¹
- and**
- the entity was awarded contract/s during the reference period.

The Review considered 95 procurements (the procurements) – 11 for the NDIA and 84 for SA – entered into between 1 July 2015 and December 2022. The procurements had a total value of approximately \$618 million.

The Review was established to consider:

- Whether the process undertaken in these procurements was consistent with the Commonwealth Procurement Rules (CPRs) and whole-of-APS best practice, where applicable.
- If the processes for, and circumstances surrounding, these procurements were consistent with other comparable procurements undertaken by SA and the NDIA within the same reference period.
- Any real or perceived conflicts of interest, or possible misconduct in these procurements, by SA and NDIA employees and related contractors.

¹ Based on publicly-available information.

The Taskforce undertook a comprehensive assessment that included an initial desktop analysis and collation of records by procurement officials within each agency, followed by independent assessment by a procurement expert within the Taskforce.

Following the initial assessment, some procurements were reviewed further, including through a comprehensive evaluation against the CPRs, a comparison of their procurement processes with similar procurements outside of the Review's scope, and an intelligence assessment process to consider real or perceived conflicts of interest or possible misconduct in these procurements.

For the purposes of the Report, the Taskforce has focused on whether a procurement was consistent with 'good practice' rather than 'best practice'. Given the overall standard of procurements reviewed, good practice is a more useful benchmark.

The Review focused on internal agency practices, processes and the conduct of officials. It did not consider matters relating to the conduct of Ministers and Ministerial staff, or the Lobbying Code of Conduct.

Findings

Commonwealth Procurement Rules

Of the 95 procurements, 65 (with a value of approximately \$220 million) were initially found to be broadly consistent with the CPRs and good practice. Eleven procurements (valued at approximately \$24 million) were found not to have complied with the CPRs (most commonly, by not meeting the requirement to report on AusTender within 42 days) but did not raise broader issues warranting further investigation (such as real or perceived conflicts of interest or a significant change in scope or scale).

Nineteen procurements, with a total value of approximately \$374 million, were identified as requiring further investigation. Of these:

- 10 had insufficient conflict of interest documentation
- 4 had insufficient risk considerations
- 7 had insufficient records
- 12 had unclear or insufficient value for money justification
- 11 involved significant contract extensions or variations.

Following that further investigation, 2 of these 19 procurements were found to have been broadly consistent with the CPRs and good practice.

Comparison against similar procurement processes

As part of the further investigation process, a selection of the 95 procurement processes were compared to other procurements conducted by the NDIA and SA within the same reference period and which had a similar process, scale and scope. The Taskforce found that the processes and circumstances of the procurements in scope for the Review were broadly similar to the set of comparator procurements.

Of the 19 procurements identified as requiring further investigation, the Taskforce found:

- 10 were a similar standard to the comparator procurement processes

- 4 were a higher standard
- 5 were a lower standard.

This indicates that sub-optimal procurement processes were not limited to the procurements determined to be in scope for the Review. Rather, it suggests a broader issue of processes and capability at the time the procurements were undertaken.

Conflicts of interest and possible misconduct

The Taskforce did not identify any examples of misconduct in the 95 procurements. The Taskforce identified conduct that was not good practice. There were a number of procurements with insufficient conflict of interest documentation and a number of instances where actual, potential or perceived conflicts of interest were not adequately addressed.

Additionally, there were examples of poor practices and close relationships between some APS officials and suppliers and those relationships were not always managed effectively.

Introduction

About the Review

On 1 December 2022 the Minister for the National Disability Insurance Scheme and the Minister for Government Services, the Hon Bill Shorten MP, announced in Parliament that Ms Rebecca Falkingham PSM, CEO, National Disability Insurance Agency and Ms Rebecca Skinner PSM, CEO, Services Australia had jointly established the *Independent Review of Services Australia and NDIA Procurement and Contracting*. This followed media reporting regarding contracts relating to Synergy 360 and associated entities.

Dr Ian Watt AC, formerly Secretary of the Department of the Prime Minister and Cabinet, the Department of Defence, the Department of Finance and Administration and the Department of Communications, Information Technology and the Arts, was appointed to lead the Review.

Dr Watt was supported by a team comprised of representatives from the NDIA, SA and the Department of Finance (the Taskforce) with expertise in the areas of procurement, legislation, reviews, investigations, research and governance.

The Review focused on internal agency practices and processes, and the conduct of officials. It did not consider matters relating the conduct of Ministers and Ministerial staff, or the Lobbying Code of Conduct.

This document, the *Independent Review of Services Australia and NDIA Procurement and Contracting: Taskforce Report to the Independent Reviewer*, was developed by the Taskforce to support the Independent Reviewer.

Terms of Reference

The scope of the Review was determined by the Terms of Reference, shown in full on page 7.

Objectives

Following recent reporting about procurements and contracts across Services Australia and the National Disability Insurance Agency (NDIA), Ms Rebecca Skinner PSM, CEO, Services Australia, and Ms Rebecca Falkingham PSM, CEO, NDIA, have jointly established the Independent Review of Services Australia and NDIA Procurement and Contracting.

Timeframe and approach

The Independent Review of Services Australia and NDIA Procurement and Contracting (the Review) will run for approximately 8 weeks.

The Review will assess whether internal agency procurement and contracting processes related to matters raised in the media regarding Synergy 360 and associated entities, and other relevant procurements, were consistent with the Commonwealth Procurement Rules and APS best practice, where applicable. The Review will consider contracts entered into during the period from 2015–16 to present.

Scope

The Review will consider, among other things:

- Whether the process undertaken in these procurements was consistent with the Commonwealth Procurement Rules and whole-of-APS best practice, where applicable.
- If the processes for, and circumstances surrounding, these procurements were consistent with other comparable procurements undertaken by Services Australia and the NDIA within the same reference period.
- Any real or perceived conflicts of interest, or possible misconduct in these procurements, by Services Australia and NDIA employees and related contractors.

Review team

The Review will be led by Dr Ian Watt AC. Dr Watt will be supported by a joint Services Australia – NDIA team established in Services Australia with expertise in areas including procurement, legislation, reviews, investigations, research and governance.

The Department of Finance will provide specialist procurement expertise as required.

Dr Watt will engage with both Services Australia and the NDIA, as well as other relevant Commonwealth agencies where appropriate, to complete the Review.

Deliverables

Dr Watt will provide a report to the CEO of Services Australia and the NDIA in February 2023.

The report will address the relevant procurements, and where appropriate, provide recommendations to improve Services Australia and NDIA procurement and contracting processes, including to enhance transparency and accountability in future contracting arrangements.

A copy of the report or part of the report may be provided to other agencies, where it raises issues relevant to their functions or activities.

Scope of the Review

On 24 November 2022, media reporting² appeared alleging that Synergy 360³ was involved in lobbying government officials on behalf of companies and received a commission upon government contracts being successfully secured. The articles included copies of alleged leaked Synergy 360 emails from 2017 and 2018.

Following the media reports regarding Synergy 360 and associated entities, the NDIA and SA identified 13 entities with which they had procurements that were determined to be in scope for the Review. The Taskforce considered procurements from the period 1 July 2015 to December 2022.

Entities were identified if:

- the entity was specifically referred to in the media **or** the entity was acquired by an entity named in the media⁴
- and**
- the entity was awarded contract/s during the reference period.⁵

The inclusion of these entities within the scope of the Review does not imply any wrongdoing on the part of the entities or their staff, nor does it necessarily imply a shortcoming in the process leading to the award of relevant contracts to these entities.

The Taskforce did not examine the processes leading to the establishment of panels of suppliers by other agencies, but it did examine the internal procurement processes leading to contracts issued by the NDIA and SA under such panels.

² A Brown and A Mitchell, 'MP Robert's lobbying contract links probed', *The Canberra Times*, 24 November 2022;
D Crowe and N McKenzie, 'Senior Coalition MP Stuart Robert gave secret advice to lobbyist', *The Sydney Morning Herald*, 24 November 2022;
D Crowe and N McKenzie, 'Bill Shorten orders review into deals linked to Stuart Robert', *The Sydney Morning Herald*, 24 November 2022;
D Crowe and N McKenzie, 'Leaked files reveal meetings with minister over contracts', *The Sydney Morning Herald*, 1 December 2022;
D Crowe and N McKenzie, 'Robert denies pressuring officials over leaked emails', *The Sydney Morning Herald*, 1 December 2022;
P Karp, 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims', *The Guardian*, 1 December 2022;
K Murphy and P Karp, 'Labor orders investigation into government contracts linked to Stuart Robert', *The Guardian*, 24 November 2022;
J Robertson, 'Revealed: Stuart Robert's new connection to business partner', *The New Daily*, 24 November 2022, accessed 14 December 2022.

³ Synergy 360 – a registered business name of Milo Consulting Pty Ltd – is a Canberra based business that provides consultancy services to government and corporate clients in the areas of strategic business advice, project management, requirements management, systems engineering, bid development, information technology architecture, information technology security and sourcing advice (including procurement and contracting).

Synergy 360 Consulting, *Our Services*, synergy360.com.au, 2022, accessed January 2023. Synergy 360 is distinct from Synergy Group, another Canberra based consulting firm that the Taskforce understands is not associated with Synergy 360.

⁴ Based on publicly-available information.

⁵ There are other entities that were mentioned in the media or known to be associated with Synergy 360, but the NDIA and SA did not enter into contracts with these entities between 1 July 2015 and December 2022.

The entities identified are:

- Adobe Systems Pty Ltd
- Adobe Systems Software Ireland Ltd
- Aspen Corporate Health
- Aspen Medical Pty Ltd
- Australian Property Reserve Pty Ltd
- Delv Pty Ltd
- Infosys Technologies Limited
- Milo Consulting Pty Ltd, trading as Synergy 360
- Oracle Corporation Australia Pty Ltd
- Portland Group Pty Ltd
- SFDC Australia Pty Ltd
- Unisys Australia Pty Ltd
- Vlocity Inc.

Relevant sources for each entity are outlined at Appendix A on page 44.

The Taskforce identified 95 procurements (the procurements) with these entities within the relevant time period (11 for the NDIA and 84 for SA).

The Taskforce examined the procurement processes during the reference period (1 July 2015 – December 2022) leading to the awarding of contracts to Milo Consulting (trading as Synergy 360) and to the entities listed above.

About Commonwealth procurement processes

Procurement represents considerable Commonwealth Government expenditure. In 2021–22, there were 91,996 contracts across the APS reported on AusTender, with a combined value of \$80.5 billion.⁶ Of these, 3,297 contracts with a combined value of approximately \$2.4 billion were entered into by SA.⁷

In the same period, the NDIA entered into 1,506 contracts with a total value of approximately \$843 million.⁸

Commonwealth government procurement is the responsibility of officials, not Ministers or their advisers. Officials must comply with a number of legislative and regulatory requirements when undertaking a procurement process. These are set out in several different sources.

⁶ Data from AusTender.

⁷ Data from AusTender.

⁸ Data provided by the NDIA. The NDIA is not required to publish contract information on AusTender.

Public Governance, Performance and Accountability Act 2013 (PGPA Act)

The PGPA Act establishes a system of governance and accountability that applies across all Commonwealth entities. It establishes rules not only for financial management, but also for the broader governance, performance and accountability of the Commonwealth public sector.

Public Service Act 1999

The *Public Service Act 1999* includes in its objects, establishment of an apolitical Australian Public Service (APS) that is efficient and effective, providing the legal framework for employment and the Act sets out:

- The standard of behaviour expected of APS employees via the APS Values and Employment Principles and the APS Code of Conduct.
- Sanctions which may be imposed upon APS employees who breach the Code of Conduct.
- The rights, duties and powers of any employer in relation to APS employees in the department/agency.

Commonwealth Procurement Rules (CPRs)

The CPRs are issued under section 105B(1) of the PGPA Act. The CPRs combine Australia's international obligations with recognised procurement good practice.

Compliance with the CPRs is mandatory for all non-corporate Commonwealth entities (NCEs) and those prescribed corporate Commonwealth entities (CCEs) listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule).

SA is a NCE whereas the NDIA is a CCE which is not prescribed in the PGPA Rule.

The responsibility for ensuring that procurements are conducted in line with the CPRs and broader legislative obligations sits with Commonwealth officials.

Achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquiries, that the procurement achieves a value for money outcome. Price is not the sole factor when assessing value for money and procurement officials must consider all relevant financial and non-financial costs and benefits.⁹

The CPRs also aim to ensure that officials properly use and manage public resources¹⁰ and state 'officials undertaking procurement must act ethically throughout the procurement. Ethical behaviour includes:

- a. recognising and dealing with actual, potential and perceived conflicts of interest;
- b. dealing with *potential suppliers*, *tenderers* and *suppliers* equitably, including by
 - i. seeking appropriate internal or external advice when probity issues arise, and

⁹ *Commonwealth Procurement Rules 2022*, para 4.5.

¹⁰ 'Properly' meaning efficiently, effectively, ethically and economically. *Commonwealth Procurement Rules 2022*, para 6.1.

- ii. not accepting inappropriate gifts or hospitality;
- c. carefully considering the use of *public resources*; and
- d. complying with all directions, including *relevant entity* requirements, in relation to gifts or hospitality, the Australian Privacy Principles of the *Privacy Act 1988* and the security provisions of the *Crimes Act 1914*.¹¹

The CPRs prescribe accountability and transparency requirements in relation to government procurement activities. Officials are responsible for the actions and decisions they take in relation to procurement and for the resulting outcomes. Relevant entities must take steps to enable and facilitate the appropriate scrutiny of their procurement activity.

Meeting the CPR standards for accountability and transparency in procurement requires, among other things:¹²

- Maintaining and retaining a level of documentation commensurate with the scale, scope and risk of the procurement.
- Relevant entities¹³ publishing the necessary notifications to the market and contract documentation on AusTender.
- Providing sufficient information to potential suppliers to assist the preparation and lodging of submissions.
- Following the rejection of a submission or the award of a contract, promptly informing the affected tenderers of the decision and making debriefings available upon request.
- Protecting the Commonwealth's confidential information.
- Maintaining the confidentiality of submissions before and after the award of contract.

SA must comply with the CPRs when conducting any procurement process, except when applying a paragraph 2.6 or Appendix A exemption.¹⁴ Services Australia must apply additional rules (Division 2 of the CPRs) for most procurements over \$80,000.¹⁵

The NDIA does not have a legislative requirement to comply with the CPRs when conducting procurements. However, the NDIA's Accountable Authority Instructions (AAIs) state that officials 'must procure goods and/or services in a manner consistent with the CPRs'. The NDIA also applies additional rules (Division 2 of the CPRs) for most procurements over \$400,000.¹⁶

¹¹ *Commonwealth Procurement Rules 2022*, para 6.6.

¹² *Commonwealth Procurement Rules 2022*, paras 7.1–7.27.

¹³ The requirement to publish on AusTender applies only to officials in non-corporate Commonwealth entities and officials in prescribed corporate Commonwealth entities listed in the *Public Governance, Performance and Accountability Rule 2014*, s 30.

¹⁴ The CPRs does not apply 'to the extent that an official applies measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value'.

Commonwealth Procurement Rules 2022, para 2.6, Appendix A.

¹⁵ CPRs provide the exception 'other than procurements of construction services' *Commonwealth Procurement Rules 2022*, para 9.7.

¹⁶ CPRs provide the exception 'other than procurements of construction services' *Commonwealth Procurement Rules 2022*, para 9.7.

Accountable Authority Instructions

AAIs are written instruments that may be issued by the accountable authority to instruct officials on matters relating to finance law. They may be used to assist the accountable authority to meet duties under the PGPA Act and to establish internal controls for their entity.

The CEO is the accountable authority for SA and issues the AAIs under section 20A of the PGPA Act. The AAIs provide directives to officials on matters relating to the use of public resources in the delivery of policies, programs and services, the procuring of goods and services and the awarding of grants.

The Board of the NDIA is the accountable authority for the NDIA and issues the AAIs for the NDIA. These AAIs apply to all officials of the NDIA and constitute lawful and reasonable directions with which they must comply.

The NDIA AAIs include instructions regarding procurements, grants and other commitments and arrangements. The AAIs state that goods and/or services must be procured 'in a manner consistent with the Commonwealth Procurement Rules (CPRs). The Board, CEO or CFO (up to the limits of their respective Financial Authorisations) are the only officials who may elect to apply section 2.6 of the CPRs up to the limits of their respective Financial Authorisations.'¹⁷

The NDIA CEO, the CFO and the Board are able to grant exemptions from compliance with the AAIs where:

- a. the exemption is granted prior to undertaking the action
- b. the relevant AAI is not a legislative requirement and
- c. if the exemption relates to a non-financial policy, the policy owner has been consulted.

Any exemption granted from the AAIs must be recorded in the NDIA's internal Financial Management and Compliance System.

Procurement methods

Under the CPRs, procurements can occur by way of open tender or limited tender. For procurements over the relevant threshold, limited tenders must comply with the conditions for limited tender in paragraph 10.3 of Division 2 of the CPRs (unless otherwise exempted).¹⁸

Panel arrangements

Use of a panel (or standing offer) arrangement can be a way to procure goods or services regularly acquired by entities more efficiently, with reduced cost and enhanced service and quality. Panels are usually established under a Deed of Standing Offer, with suppliers appointed to supply goods or services for a set period of time under agreed terms and

¹⁷ The CPRs do not apply 'to the extent that an official applies measures determined by their Accountable Authority to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value'.

Commonwealth Procurement Rules 2022, para 2.6.

¹⁸ *Commonwealth Procurement Rules 2022*, para 10.3.

conditions, including agreed pricing. Individual contracts are formed under those deeds when the goods or services are acquired.

A panel can be established via open or limited tender, and subsequent procurements from a panel are reported as per the original procurement method used to establish it.

Panel procurements are not subject to Division 2 of the CPRs but must still comply with the rules in Division 1 (unless otherwise exempted). An official must demonstrate value for money has been achieved.

Single supplier approach

For the purposes of the Review, the term ‘single supplier approach’ has been used to reflect the process of approaching a single supplier. This includes approaching a supplier from a panel classified as either an open or limited tender procurement, including from a panel with only one supplier.¹⁹

About the Report

The *Independent Review of Services Australia and NDIA Procurement and Contracting: Taskforce Report to the Independent Reviewer* was developed through a comprehensive assessment and review process to determine whether internal NDIA and SA procurement and contracting processes were:

- consistent with the CPRs and good practice (where applicable)
- consistent with other comparable procurement processes undertaken by the NDIA and SA within the same reference period and
- affected by any real or perceived conflicts of interest, or possible misconduct in these procurements.

The Taskforce has considered whether a procurement is consistent with ‘good practice’ rather than ‘best practice’. Given the overall standard of the procurements reviewed, good practice is a more useful benchmark. The Taskforce considered a process to demonstrate ‘good practice’ where – taking into account the scale, scope and risk of the procurement – there was evidence of compliance with rules that ‘*should*’ be followed as per the CPRs.

For the purposes of the Review, misconduct refers to action or behaviour that could be determined to be in breach of the APS Values, Employment Principles or the APS Code of Conduct.²⁰

The following pages of the Report detail the Taskforce’s review methodology (pages 14-18) and findings (pages 19-36).

¹⁹ While ‘panel’ implies multiple suppliers, standing offers with one supplier may also be referred to as ‘panels’.

²⁰ *Public Service Act 1999* ss 9, 10, 13.

Review methodology

The Taskforce designed a comprehensive assessment methodology to assess whether internal agency procurement and contracting processes for procurements determined to be in scope for the Review were consistent with the CPRs and APS good practice (where applicable).

The assessment process for each procurement consisted of:

- an initial desktop analysis and collation of records by procurement officials within each agency, and
- an independent assessment by a procurement expert within the Taskforce.

Some procurements were then reviewed further, involving:

- evaluation against the CPRs and good practice through an Evaluation Framework designed by the Taskforce
- comparison of their processes with similar procurements outside the Review's scope, and
- an intelligence assessment to better understand whether there were any real or perceived conflicts of interest, or possible misconduct in these procurements by NDIA and SA employees.

Further details about each step of the process are provided below. An overview of the assessment process is at Figure 1 on page 16.

Initial analysis

In late November 2022, media reports about procurement and contracting processes relating to Synergy 360 and associated entities began to emerge. In response to these reports, the NDIA and SA identified 95 procurements determined to be in scope for the Review (11 for the NDIA and 84 for SA) with a value of approximately \$618 million. These contracts were entered into between 1 July 2015 and December 2022.

To make an initial assessment of whether the procurement process was consistent with the CPRs, NDIA and SA procurement officials collated relevant contract materials and undertook an initial desktop review of each of these procurement processes.

This assessment process provided an overview of each procurement process, and highlighted a number of instances where procurements appeared, from the evidence available, to be inconsistent with the CPRs and good practice.

Following the establishment of the Review on 1 December 2022, this initial desktop analysis was provided to the Taskforce for consideration as part of the independent assessment and broader Review process.

Independent assessment

A representative from the Taskforce undertook a subsequent independent assessment of each procurement process. The representative was selected for their expertise in procurement. They did not have involvement in any of the procurement processes, nor in the initial assessment process.

This independent assessment:

- considered the initial analysis from the desktop review process
- assessed compliance under the CPRs and APS good practice and
- considered any additional relevant procurement and contract information.

Following this, each of the procurements was assigned a category:

- 'Green': no issues identified relevant to the Review
- 'Amber': issue/s identified; no further investigation recommended
- 'Red': issue/s identified; further investigation recommended.

Green – no issues identified

A procurement was assessed as 'green' where appropriate documentation was available for review, the procurement was consistent with the CPRs, and there were no other issues identified that warranted further investigation relevant to the Review (for example, concerns about conflicts of interest).

Amber – issue/s identified; no further investigation recommended

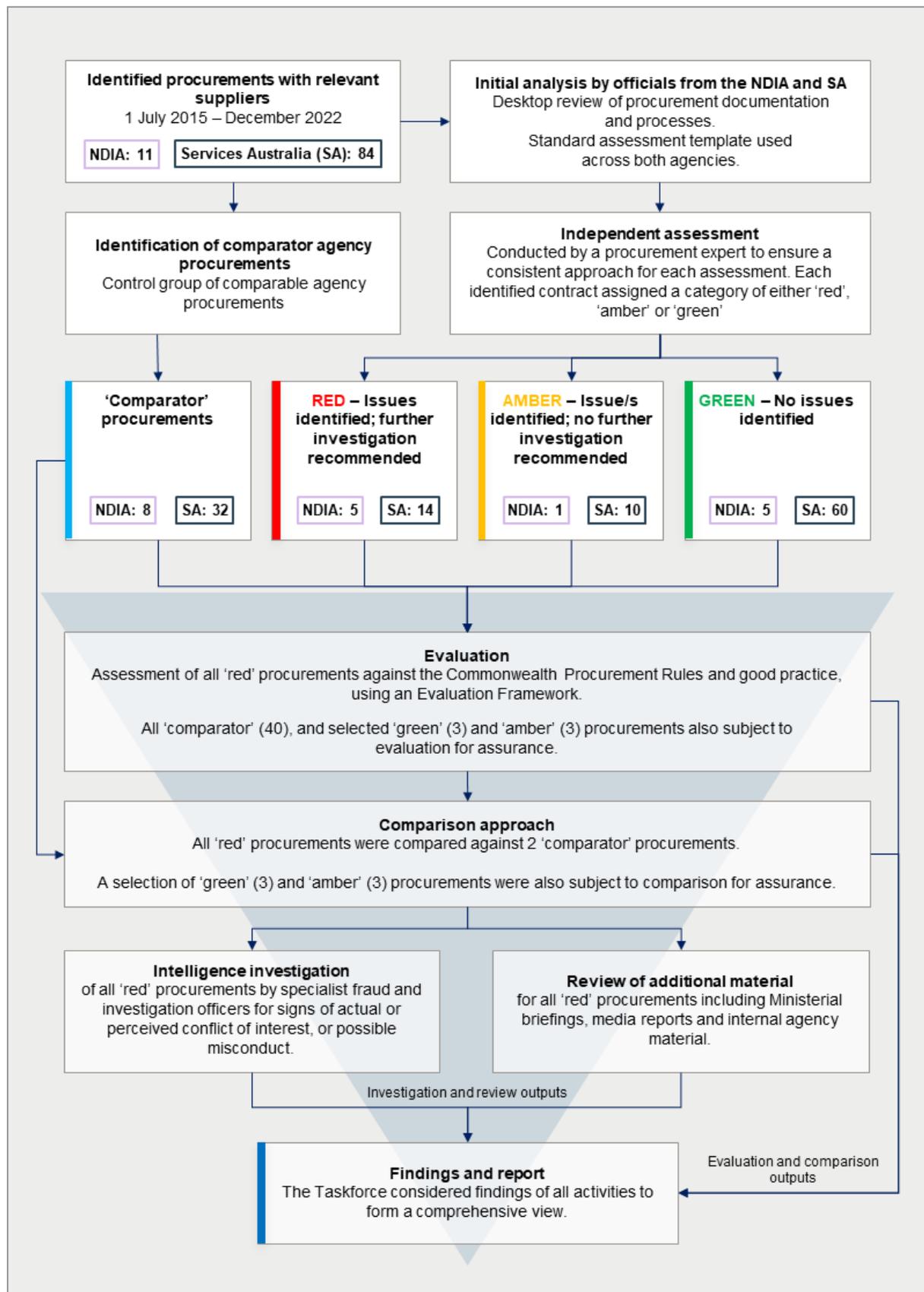
A procurement was assessed as 'amber' where a non-compliance with CPRs was identified but there was no indication of any broader issues that would benefit from further investigation.

Red – issue/s identified; further investigation and evaluation recommended

A procurement was assessed as 'red' where non-compliance or possible non-compliance with CPRs was identified and there was not enough information available to assess it as 'green' or 'amber', and/or there was an indication of broader concerns that warranted further investigation.²¹

²¹ Note: A 'red' category does not of itself indicate issues with the procurement process. There were 2 cases where, following the conclusion of the assessment process, the Taskforce determined that a procurement that had been flagged for further investigation was broadly consistent with CPRs.

Figure 1: Independent Review Taskforce Assessment process



Further investigation

Following the independent assessment, the Taskforce undertook further investigation of each procurement categorised as 'red', as well as a sample of procurements categorised as 'green' and 'amber', to provide assurance of the independent assessment process.

Evaluation

An Evaluation Framework was developed by the Taskforce to assess the procurements against the CPRs and good practice.

All the 'red' procurements, as well as a selection of 'green', 'amber' and comparator (out of scope of the Review) procurements were assessed using the Evaluation Framework.

The Evaluation Framework (at Appendix B on page 46) included 14 evaluation criteria that were applicable to the procurements determined to be in scope for the Review. These criteria were identified from CPRs that officials *must* comply with, and those that indicate good practice.

Under the Evaluation Framework, the Taskforce considered a process to be consistent with good practice where, taking into account the scale, scope and risk of the procurement, there was evidence of compliance with rules that '*should*' be followed as per the CPRs.

Comparison approach

The Taskforce also undertook a comparison process to determine whether the processes for and circumstances surrounding the procurements were consistent with comparable procurement processes undertaken by NDIA and SA within the same reference period.

The comparison process was applied to all procurements categorised as 'red', as well as a small sample of 'amber' and 'green' procurements.

Comparator procurements were identified by the NDIA's and SA's Procurement Branches, in collaboration with the Taskforce. Comparators were selected based on having similar processes, scale, scope, value, complexity and/or level of risk to the procurements determined to be in scope for the Review.

Each procurement process was compared against 2 comparator procurement processes. While unique comparators were selected where possible, there were several instances where the same comparators had to be used for multiple procurements.²²

The 3 procurement processes (one procurement determined to be in scope for the Review and 2 comparators) were then considered against a comparator framework, which was developed for the Review. The Comparator Framework (at Appendix C on page 48) included consideration of:

- how the procurement need was identified
- the procurement approach
- evaluation and decision (including panel and delegate seniority, evaluation detail and consideration of value for money)

²² Generally, this occurred where the procurement processes were similar in terms of scale, scope, value, complexity, process and/or risk.

- approach to variations, and
- documentation and record keeping.

A selection of comparator procurements was also evaluated using the Evaluation Framework. The findings were considered as part of the comparison approach to determine if procurement processes were of a similar, higher or lower standard than the comparators.

Intelligence investigation

Each 'red' procurement process was reviewed by internal intelligence and investigation officers to determine if there were any real or perceived conflicts of interest, or possible misconduct evident in these procurements by the NDIA and SA employees and related contractors.

These enquiries were conducted by accessing and reviewing email correspondence and other documentation relating to the procurements. The same approach was used across both agencies to ensure consistency.

Intelligence and investigation officials reviewed and analysed relevant emails, shared drive (network) folders, agency databases (including agency HR and contract management systems) and company searches. The focus of each review was the period leading up to and including the approach to market, the evaluation process and the decision-making process.

Commercial assessment

A commercial assessment was also undertaken on each 'red' procurement by lawyers from an external law firm with procurement expertise, who were embedded within the Taskforce. This provided strategic guidance on practices observed across the procurements.

Review of additional material

The Taskforce also considered other relevant additional information where available, including Ministerial briefings, media reports and internal agency material.

About the data

Financial data in this report has generally been rounded to the nearest million. Procurement data is point in time and was extracted from systems in December 2022. The procurement data is the total value of contracts awarded and does not necessarily reflect actual expenditure. Note that data on some procurements may have changed since, including on contracts that are still active.

Final assessment

The Taskforce considered the outcomes of each of the review and assessment processes in aggregate to form a comprehensive view of each procurement process.

Key themes from the final assessment were analysed and used to inform the findings of the Review.

Overview of findings

The Taskforce identified 95 procurements in scope for the Review (11 for the NDIA and 84 for SA), with a value of approximately of \$618 million.

Key findings

Of the 95 procurements, the initial independent assessment identified:



- 65 (approximate value of \$220 million) as 'green'. These were broadly consistent with the CPRs and demonstrated good practice.
- 11 (approximate value of \$24 million) as 'amber' – issue/s identified; no further investigation recommended. In each of these procurements, non-compliance with a CPR rule was identified but there was no indication from the documentation reviewed of broader issues warranting further investigation. The most common issue was a failure to meet the requirement to publish on AusTender within 42 days.²³
- 19 (approximate value of \$374 million) as 'red', such that further investigation was recommended and undertaken. These procurements were assessed as having possible CPR breaches, showing some unusual characteristics for investigation (such as potential conflicts of interest) or lacking the necessary information to categorise them as 'amber' or 'green'.

Consistency with CPRs and good practice

Key findings

Upon further investigation, 2 of the 19 'red' procurements were found to be broadly consistent with the CPRs and good practice.

In total, the Taskforce found:



- 71% (67 procurements) were broadly consistent with the CPRs and good practice.
- 29% (28 procurements) did not meet the CPRs or good practice.

The procurements reviewed suggest low value and less complex procurements are more likely to demonstrate good or better practice than larger, higher value and/or more complex procurements.

It was apparent from the review process that the agencies have taken significant steps during the reference period to improve procurement practices. However, continuous

²³ The NDIA is not required to report on AusTender. The requirement to publish on AusTender applies only to officials in NCEs and officials in prescribed CCEs listed in the *Public Governance, Performance and Accountability Rule 2014*, s 30.

improvement of agency procurement processes will be required to consistently achieve good practice and move closer to demonstrating best practice.

Further discussion relating to consistency with CPRs and good practice is at page 25.

Key findings

The Taskforce found a number of the 'red' NDIA and SA procurements were inconsistent with the CPRs and did not demonstrate good practice.

Of the 'red' procurements:²⁴

- 10 had insufficient conflict of interest documentation commensurate with the scale, scope and risk
- 4 had insufficient risk considerations commensurate with the scale, scope and risk
- 7 had insufficient records commensurate with the scale, scope and risk
- 9 of the SA 'red' procurements had not met the requirement to publish on AusTender within 42 days.



Value for money

Achieving value for money is 'the core rule of the CPRs'.²⁵ Procurement documentation must demonstrate why the chosen supplier represents value for money. Failing to properly assess and document value for money is a serious omission from a procurement process.

The Taskforce found 12 of the 'red' procurements lacked clear value for money justification. In some instances, the lack of documentation and available records about how value for money was considered made it difficult to determine whether value for money had been sufficiently evaluated and determined.

Of the 'red' procurements, 14 procurements were conducted using a single supplier approach. Of these, 10 were found to have insufficient value for money justifications. Single supplier approaches can make it more difficult to ensure and demonstrate value for money, due to the absence of competition.

Further analysis and discussion relating to value for money is detailed at page 25.

Standing offer (panel) arrangements

Standing offer (panel) arrangements can create a streamlined and efficient process for procuring regularly acquired goods and services. However, officials must ensure that each procurement is individually determined to provide value for money.

Of the 13 'red' procurements that were conducted via panel arrangements, 8 were found to lack clear justification of value for money.

These findings do not necessarily indicate that panel arrangements are more likely to lack clear value for money, or that the affected procurements were not value for money. Rather, that value for money was not well justified in the relevant documentation.

²⁴ Some procurements had multiple issues.

²⁵ *Commonwealth Procurement Rules 2022*, Foreword.

Contract variations

In a number of cases contract extensions and variations were used to amend the scope of a procurement. The Taskforce found 11 of the 'red' procurements had significant variations including increased scope (6), increased price (10) and increased duration (7).

Some procurements were found to have sufficient documentation in place to justify the variation, whereas others could have benefited from clearer articulation of the reasoning.

Further analysis and discussion relating to changes to scope and scale is detailed at page 27.

Comparison process

As part of the Review, all 'red' and a selection of 'amber' and 'green' procurement processes were compared to other procurements of a similar scale and scope, conducted by the agencies, within the same reference period. The Taskforce found that many of the processes and circumstances of the procurements determined to be in scope for the Review were similar to the comparator procurements.

Key findings

When reviewed against comparator procurements, the Taskforce found:

- 10 of the 'red' procurement processes were of a similar standard
- 4 of the 'red' procurement processes were of a higher standard
- 5 of the 'red' procurement processes were of a lower standard.



When a selection of 'green' and 'amber' procurement processes was reviewed against comparator procurements:

- 'amber' procurement processes were found to be broadly consistent with the comparator procurements
- 'green' procurement processes were found to have a higher overall standard than the comparator procurements.

'Red' procurements

The fact that the 'red' procurement processes were found to be broadly similar to the comparator processes indicates that poor or inconsistent quality in procurement processes is not limited to the procurements determined to be in scope for the Review. It appears there was a broader issue of procurement processes and capability in both agencies at the time the procurements were undertaken.

As mentioned previously, both agencies have taken steps to improve capability. There are ongoing opportunities for more to be done across the NDIA and SA to continue to improve procurement expertise, knowledge and processes to drive better outcomes.

Uplifting procurement capability is discussed further on page 34.

‘Green’ and ‘amber’ procurements

A selection of ‘green’ and ‘amber’ procurements were also evaluated using the Evaluation Framework to confirm process consistency. The ‘amber’ and ‘green’ procurements were found to be broadly consistent with the CPRs.

This selection of ‘green’ and ‘amber’ procurements was also reviewed with comparator procurements. The ‘amber’ procurements were found to be broadly consistent with their comparator procurements, with the comparators lacking some documentation.

The ‘green’ procurements were found to be of a higher standard overall than their comparator procurements, with greater detail and documentation available.

Conflicts of interest and possible misconduct

Recognising and addressing actual, potential and perceived conflicts of interest is a requirement under the CPRs for all procurements, regardless of value. It is also a duty under the PGPA Act and a requirement of the APS Code of Conduct.

Key findings

Of the ‘red’ procurements:

- The Taskforce did not identify staff misconduct
- 10 had insufficient conflict of interest documentation
- 4 had actual, potential or perceived conflicts of interest that were not adequately addressed.



The Taskforce found several procurements that highlighted issues related to conflicts of interest. Of the ‘red’ procurements, 10 had insufficient conflict of interest documentation. Additionally, 4 procurements involved actual, potential or perceived conflicts of interest that were not adequately addressed.

In one example, a conflict of interest was disclosed to a senior official but not declared formally in the procurement process. The procurement official continued to act as a decision maker in the procurement process.

The investigation process looked at available materials such as agency emails and records. From the materials available, the Taskforce did not identify staff misconduct related to the procurements.

While there was no evidence of misconduct, there were examples of poor practices and relationships between APS officials and suppliers that were not well managed. This is an area that could be improved.

Further analysis and discussion of conflicts of interest and possible misconduct is detailed at page 32.

Figure 2: Initial assessment: desktop review

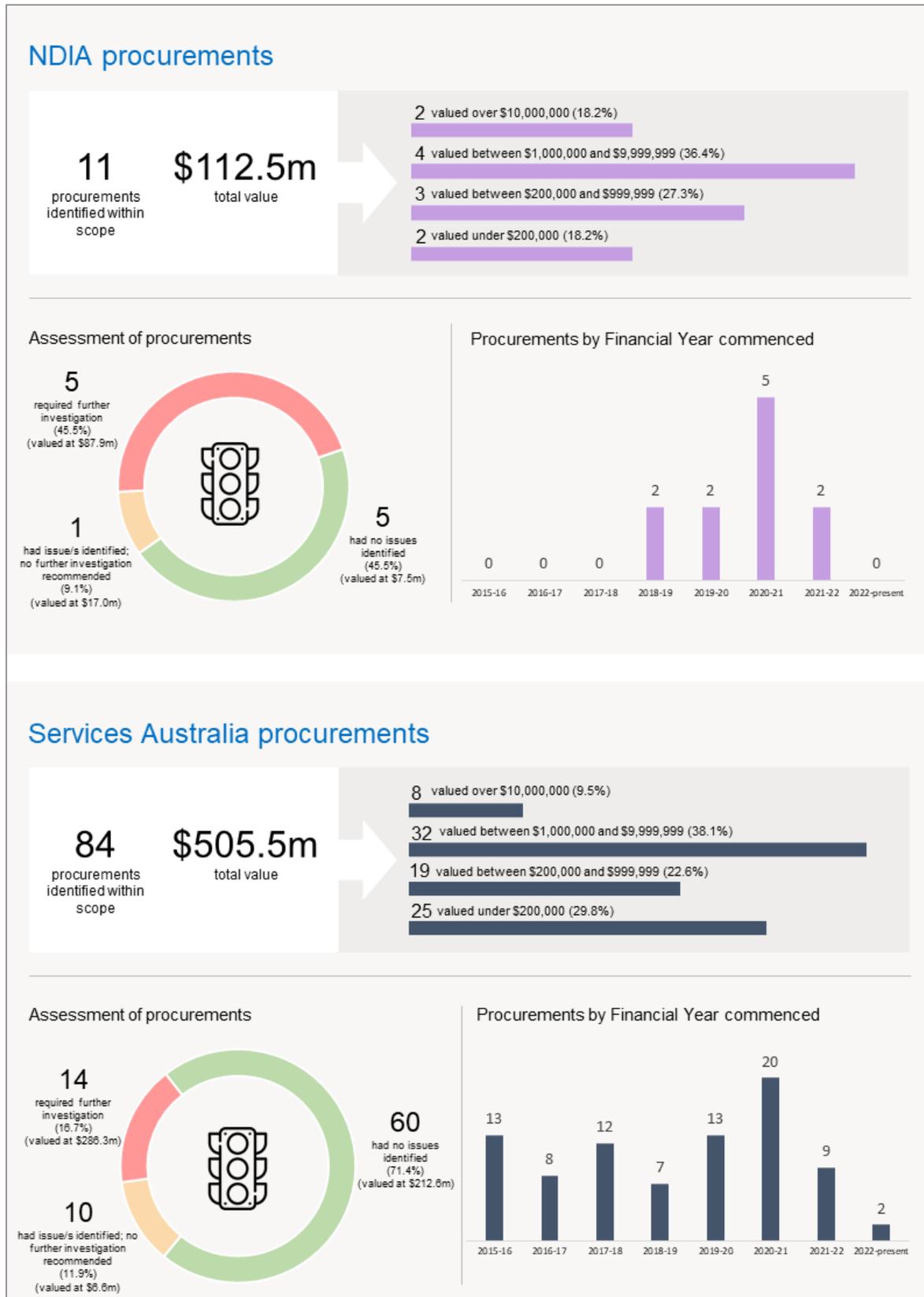


Figure 3: Findings following further investigation



Further analysis of findings

The findings of the Review focused on consistency with the CPRs and APS good practice, comparison of procurement processes to other NDIA and SA procurements undertaken within the reference period, and the identification of any actual, potential or perceived conflicts of interest or possible misconduct within the procurement processes.

As well as the procurements determined to be in scope of the Review, the Taskforce reviewed additional materials regarding procurement processes across the APS. These materials included Australian National Audit Office (ANAO) reports, Joint Committee of Public Accounts and Audit submissions and the Independent Review of the Australian Public Service (Thodey Review).

This section of the Report provides further analysis of the Taskforce's findings within the broader context of procurement in both agencies.

Appendix D (on page 49) summarises additional findings that were specific to individual procurements, and did not represent a broader pattern within the procurements determined to be in scope for the review.

Consistency with the CPRs

The Taskforce found that:

- 71% of the procurements (approximate value of \$267 million) were broadly consistent with the CPRs and good practice
- 29% of the procurements (approximate value of \$351 million) did not meet the requirements of the CPRs, or were broadly considered to be inconsistent with good practice.

Demonstrating value for money

Achieving value for money is a key principle of public sector procurement, and it is essential that value for money be demonstrated in all procurement processes. Procurement documentation must contain justification as to why the chosen supplier represents value for money.

The Taskforce found that 12 of the 19 'red' procurements had insufficient value for money justifications. These 12 procurements had a total value of almost \$102 million.

Ensuring value for money is not as simple as choosing the lowest price. Procurement officials need to consider a range of factors including quality, flexibility, experience and environmental sustainability.²⁶ In the ICT space reuse is also a factor, including designing and building for reuse and enabling reuse by others.²⁷ Reusable technology and capability may cost more initially but can lead to lower overall build costs across other projects and programs.

Competition is a key element of the Government's procurement framework and competition can be an effective way to demonstrate value for money.

²⁶ *Commonwealth Procurement Rules 2022*, para 4.5.

²⁷ Digital Transformation Agency (DTA), *Purpose of the Digital and ICT Reuse Policy*, dta.gov.au, n.d., accessed January 2023.

Use of standing offer arrangements

Standing offer arrangements (panels) are intended to create a streamlined process for officials to procure goods or services that are regularly required. Panels are designed to deliver efficiencies for agencies and suppliers, reduce risk in procurement processes and leverage Commonwealth buying power to achieve improved pricing and better value for money.

The use of panel procurements has been increasing steadily over time.²⁸ Data from the Department of Finance shows that in the 2021–22 financial year approximately 48% of contracts involved a procurement from a panel arrangement, up from 36% in 2017–18.²⁹

Procurements using a panel arrangement offer a number of advantages, including that suppliers are to an extent prequalified and have already been evaluated as part of establishing the panel. However, officials must still ensure value for money is demonstrated for each individual procurement from a panel, unless otherwise exempt.³⁰

On 1 July 2022, paragraph 9.14 was added to the CPRs to encourage officials to approach multiple suppliers on a panel. This change was intended to improve competition, drive value for money outcomes and ensure a better deal for the taxpayer.³¹

The Taskforce found some good and some poor practices in the procurements it reviewed which were from a panel arrangement.

Of the 19 'red' procurements, 13 were conducted through panel arrangements and 8 of these were found to have insufficient value for money justifications.

One panel arrangement was used for 11 of the 95 procurements reviewed. Although the initial procurement was conducted in accordance with the CPRs and demonstrated good practice, the quality of documentation and evaluation for the subsequent procurements was less consistent. A number of the subsequent procurements did not provide separate value for money justifications, instead they relied on value for money justification from the initial procurement.

When procuring from a panel, quotes from multiple potential suppliers promote competition and demonstrate value for money. Additionally, officials involved in procurements should avoid solely relying on documentation from previous procurements to justify subsequent decisions.

²⁸ This can be attributed in part to the Department of Finance increasing the number of mandatory coordinated procurement arrangements. These arrangements are established for goods and services commonly used by the Commonwealth, and require some entities make certain procurements only from these arrangements.

Department of Finance, *Whole of Australian Government Procurement*, finance.gov.au, accessed February 2023.

²⁹ Department of Finance, Submission No 11 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023) p 8.

³⁰ Department of Finance, *Procuring from a Panel – Panels 101*, finance.gov.au, 2022.

³¹ Senator the Hon K Gallagher and The Hon J Collins MP, *A Better Deal for Australian Businesses Under Commonwealth Contracts* [media release], 1 July 2022.

Single supplier procurement approaches

Competition is a key element of the Government's procurement framework.³² Where single supplier approaches are used, value for money may be harder to obtain and difficult to demonstrate. The ANAO states that the underutilisation of open and competitive procurement processes is 'inconsistent with the principle of achieving value for money and at odds with the Australian Government's stated preferred approach'.³³

Single supplier approaches are appropriate in some circumstances, however officials should be conscious of promoting competition, treating all suppliers equitably and justifying the procurement process commensurate with the scale, scope and risk of the procurement.

A single supplier approach conducted through a panel can be reported either as an open or limited tender procurement, depending on how the panel was formed, as per paragraph 9.13 of the CPRs.³⁴ In this way, an approach to a single supplier from a panel formed through an open tender, would be considered and reported as an open tender.

The Taskforce found that many procurements within the scope of the Review used a single supplier approach. Of the 95 procurements, 74 (approximately \$472 million) used a single supplier approach, with 25 of these (approximately \$409 million) reported as open tender and 49 (approximately \$63 million) reported as limited tender.

Panels can be established with a single supplier. This typically occurs where only that supplier can deliver the goods or services. This is common with ICT products. Of the 74 single supplier approach procurements, 51 were conducted under a standing offer (panel) arrangement with a single supplier.

Fourteen of the 'red' procurements used a single supplier approach. Of these, 10 were found to have insufficient value for money justifications. It is essential to ensure that value for money justifications are well-documented to demonstrate why a single supplier approach is appropriate.

Care should be taken to manage the risks of familiarity and incumbency bias in procurement processes to ensure that agencies do not allow familiarity to influence repeat contracts or value for money decision-making. Within the 'red' procurements, it was not always clear from the documentation that genuine consideration was given to alternatives to single supplier approaches.

Change of scope and scale

There are many instances in which the scope of a procurement may vary. Contract variations and extensions account for a significant amount of APS procurement expenditure. ANAO analysis of AusTender data suggests that value of contract amendments amounted to approximately \$29.8 billion in 2021–22, compared to approximately \$50.9 billion in parent contracts.³⁵

³² *Commonwealth Procurement Rules 2022*, para 5.1.

³³ Australian National Audit Office (ANAO), Submission No 12 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023) p 5.

³⁴ 'Officials should report the original procurement method used to establish the standing offer when they report procurements from standing offers'. *Commonwealth Procurement Rules 2022*, para 9.13.

³⁵ ANAO, Submission No 12 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023) p 11.

Eleven of the 'red' contracts had significant variations from the original contract. The value of contract variations across the 'red' procurements accounted for a 44% (approximately \$98 million) increase from the initial total value of the procurements.

The Taskforce notes the difference between variations that extend the scope, price or term of a contract, and extensions which are authorised in the original contract (and are within the scope of the original procurement). The latter typically do not pose any probity risk, while variations can do so if they unreasonably extend a contract beyond the scope of the original procurement.

In several cases contract variations were used to amend the scope of procurements, sometimes significantly. The Taskforce found that in some instances procurement documentation showed clear and sufficient justification for this approach, while in others this was not the case.

In one instance a single contract had costs varied 4 times, raising the total value and changing the scope of work. The Taskforce found that the associated procurement documentation did not clearly articulate how each variation represented value for money.

There has been public commentary suggesting significant contract variations may sometimes be matters of necessity – for example, as a result of an agency's funding model. Agencies cannot approach the market for a procurement where a project is not yet funded, or where they cannot commit to engaging with a supplier for periods exceeding the duration of their current funding. As a result, they may need to vary existing contract terms once funding is approved.³⁶

Where the scope and scale of the procurement has significantly increased, if it is possible and appropriate to, it can be better for agencies to approach the market again rather than vary the original contract. Where this is not done, care should be taken to document the justification for this decision, and why the procurement as varied continues to be consistent with the CPRs.

Keystone projects

Some procurements assessed by the Taskforce were related to 'keystone' projects. A keystone project is a project or program with an initial procurement that begins, and effectively locks in, a series of subsequent procurements with the same supplier. For example, procuring specific ICT software can lead to this product being used for many years, as the costs of changing products can be significantly higher than renewing or increasing the number of software licences or further developing the licensed software.

In one agency, the Taskforce identified 2 procurements from across 2 programs of work which led to 12 further procurements. The procurement of the supplier used for the first program of work resulted in them being used for the second.

The documented justification for the procurement of the same supplier for the second program of work included the already extensive investment with the supplier, potential synergies in reusing the products across agency programs and the delays associated with running a new procurement process. The supplier was engaged for contracts exceeding \$200 million.

³⁶ Evidence to Joint Committee of Public Accounts and Audit, Parliament of Australia, Canberra, 10 February 2023.

Processes for specific procurements must be commensurate with the scale, scope and risk of the procurement. However, in cases where lower value procurements *could* lead to ongoing and higher value work, agencies should, where possible, consider the scale, scope and risk of the procurement in the context of the potential ongoing work.

The ANAO suggests that, in these circumstances, pre-agreed prices and terms for these potential additional works could be decided in the initial approach to market to drive competition and value for money. These potential additional works could then be included as optional works in the contract.³⁷

In cases where the first procurement is likely to lead to the same supplier being 'locked in', limited tender or a single supplier approaches may be less appropriate than a more competitive process.

Contractors

An incumbent contractor can have a competitive advantage over potential new entrants, due to their prior work on a specific project or program. This advantage stems from the incumbent's familiarity with the project, established relationships with stakeholders and the perception of the time and money already invested. This can be particularly pronounced in relation to large scale programs of work with high levels of complexity and long timelines, such as transformative ICT projects.

The Taskforce identified instances in which incumbent contractors/labour hire employees were rolled over from one project to the next without documented consideration of other suppliers or a return to market. In one instance, an initially low-value contract was varied up to 3 times the original value. This procurement led to a subsequent direct approach for related work which was worth more than 7 times the value of the original contract.

There can be benefits to using contractors who have expertise in an agency's operations and projects. Contracted staff can provide specialist services and skills that are not otherwise available within an agency, or within the broader APS. They can also provide services which are time limited to address fluctuating workforce demands.

However, it is important that contractors share these skills with APS staff to build internal capability. From 2019–20, SA started including skills transfer clauses in all contractor contracts. Similarly, within the NDIA skills transfer clauses are common in large contracts for consultancy. They are not standard for labour hire contracts, but are included where relevant.

The ANAO has previously raised concerns about embedded contractors being able to pitch for further work while employed as a contractor, or having an unfair advantage due to learning about potential upcoming opportunities for new work. The ANAO has suggested that agencies ensure that their procurement frameworks address the risks of incumbency advantage, in part by considering whether incumbent providers may have gained access to information that would give them an unfair advantage in the procurement process.³⁸

Agencies may wish to consider implementing additional training for managers of contractors to ensure they are aware of probity requirements, and can appropriately manage

³⁷ ANAO, *Western Sydney Airport Procurement Activities*, ANAO, Australian Government, 2019, p 11, para 26.

³⁸ ANAO, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, ANAO, Australian Government, 2022, p 14, para 21.

contractors' access to information that may give them or their organisation a competitive advantage in future procurements.

Probity

Probity is designed to provide 'assurance to delegates, suppliers and the Commonwealth that a procurement was conducted in a manner that is fair, equitable and defensible'.³⁹ It is important that agencies consider probity advice and that they seek it in a manner appropriate to the scale and complexity of a procurement. This is particularly important when probity issues arise throughout the process.

The Taskforce found inconsistent approaches to internal and external probity and legal advice in the procurements. The Taskforce was unable to locate, or found only minimal documentation of, probity plans and advice for a number of procurements.

Eleven of the 19 'red' procurements, with a total value of approximately \$341 million, had documented some form of legal or probity advice, including either internal or external advice.

The ANAO has identified that the effective use of probity advisors could be improved across the public-sector, noting that merely engaging a probity advisor to meet requirements and 'tick a box' does not in itself manage probity risks. Agencies must understand that they also need to be appropriately responsive to any issues raised by probity advisors to benefit from that advice.⁴⁰

Legal and probity advice can add value. This is particularly the case for procurements with greater complexity. Clear internal guidance on the use of probity and legal advice would ensure a more consistent approach. Where the risk, complexity or value is significant, procurements may benefit from external legal and/or probity advice.

The ANAO has also identified that completion of probity training, and subsequent probity awareness declaration forms, can support officials in understanding and maintaining probity.⁴¹ Probity declarations confirm that officials have received probity training and understand and acknowledge their probity responsibilities.

Record keeping

Record keeping is an essential part of the procurement process. Officials are required to maintain a level of documentation commensurate with the scale, scope and risk of the procurement.⁴² Clear records of evaluation and decision-making process are essential to being able to demonstrate value for money. Appropriate storage of these records is also critical so that documented decisions can be reviewed in future.

Records should be sufficiently detailed to articulate how the decision was made. The evaluation committee and or/decision maker's thinking behind a recommendation or decision should be clearly captured, and stored using proper record keeping practices (i.e. in a system compliant with the *Archives Act 1983*).

³⁹ Department of Finance, *Ethics and Probity in Procurement*, finance.gov.au, 2021, accessed January 2023.

⁴⁰ ANAO, Submission No 12 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023) 10; ANAO, *Western Sydney Airport Procurement Activities*, p 11, para 26.

⁴¹ ANAO, *Western Sydney Airport Procurement Activities*, pp 50-51, para 3.106.

⁴² *Commonwealth Procurement Rules 2022*, para 7.2.

Of the 19 procurements assessed as 'red' by the Taskforce, 7 were found to lack appropriate documentation commensurate with the scale, scope and risk of the procurement. There was often a lack of documentation to demonstrate that value for money had been achieved.

As well as some documentation having insufficient detail, the Taskforce also found that record management and storage could be improved.

For example, in one high-value procurement, the Taskforce could not locate appropriate evaluation, risk assessment, probity or approach to market documentation. The level of record keeping was not commensurate with the value of the procurement and meant that the Taskforce was unable to determine that value for money was suitably assessed or achieved.

The Taskforce found that record keeping practices have significantly improved over the seven-and-a-half year period captured within the Review. More recent procurements generally had more complete and accessible documentation. However, there is still more that can be done in this space.

Successive ANAO audits into procurement have found that record keeping is a key area in which procurement processes could be improved.⁴³ Adequate records must be maintained not only to demonstrate the CPRs have been followed but also so that procurements can be accurately reviewed for performance evaluation and future planning.⁴⁴

The ANAO has noted that in reviewing procurements it is regularly necessary for them to examine additional materials such as departmental emails or engage in meetings with the officials involved because the record keeping is not sufficient to fully understand the facts of the process.⁴⁵ The Taskforce experienced similar challenges.

Risk management

The CPRs require relevant entities to establish processes to identify, analyse, allocate and treat risk when conducting a procurement. The effort directed to assessing and managing risks should be commensurate with the scale, scope and risk of the procurement.

The Taskforce found that 4 of the 'red' procurements failed to sufficiently document consideration of risk within the procurement process. For one high value procurement, the Taskforce was unable to find evidence of risk assessment or risk management having been conducted.

AusTender publication

The CPRs require that relevant entities report contracts and contract amendments on AusTender within 42 days, if the value of the contracts reaches a certain threshold. Reporting contracts and contract amendments within the specified time frame is important to ensure transparency in the procurement process.

⁴³ ANAO, *Procurement by the National Capital Authority*, ANAO, Australian Government, 2022, p 11, para 21; ANAO, *Procurement of Delivery Partners for the Entrepreneurs' Programme*, p 47.

⁴⁴ ANAO, *Procurement by the National Capital Authority*, p 11, para 21.

⁴⁵ ANAO, Submission No 12 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023) p 10-11.

The Taskforce found that 17 (20%) of the 84 SA procurements⁴⁶ did not meet the requirement to publish on AusTender within 42 days. For the 'red' procurements, this figure was 64% (9 of 14).

Conflicts of interest

The CPRs require officials to act ethically throughout the procurement, including 'recognising and dealing with actual, potential and perceived conflicts of interest'.⁴⁷

Additionally, the APS Code of Conduct and the PGPA Act require that APS employees take reasonable steps to avoid any real or apparent conflicts of interest and disclose details of any material personal interest of the employee in connection with the employee's APS employment.⁴⁸

Conflicts of interest registers

Disclosing conflicts of interest is an obligation for all public servants under the *Public Service Act 1999*, and this obligation extends beyond procurement.

When participating in a procurement process over a certain threshold, conflict of interest declarations must be completed for each specific procurement. This is in addition to the regular requirement to disclose material conflicts of interest, which applies to all staff.

Within the NDIA and SA, there is no formal requirement for staff participating in a procurement process to be a specific level. While staff at all levels are required to disclose material conflicts of interest, agencies often have additional conflict of interest processes for senior employees.

Agency heads and SES employees across the APS are required to 'submit, at least annually, a written declaration of their own and their immediate family's financial and other material personal interests'.⁴⁹ Accordingly, both the NDIA and SA's conflict of interest policies require SES employees to provide annual declarations of conflicts of interest. Additionally, SA requires an annual declaration from employees acting in SES roles for more than 3 consecutive months.

Conflict of interest declarations

In addition to general conflict of interest declarations for senior staff, the NDIA and SA have conflict of interest declaration forms for use in procurement processes. Services Australia requires that conflict of interest declarations be made for all evaluation committee members, chairs and contract managers, for all procurements with a value over \$10,000. The NDIA requires that conflict of interest declarations be made for all procurements above \$1 million, or when a procurement is deemed to be complex in nature.

⁴⁶ The requirement to publish on AusTender applies only to officials in non-corporate Commonwealth entities and officials in prescribed corporate Commonwealth entities, and does not apply to the NDIA.

⁴⁷ *Commonwealth Procurement Rules 2022*, para 6.6.

⁴⁸ *Public Service Act 1999*, s13(7); *Public Governance, Performance and Accountability Act 2013*, S29(1).

⁴⁹ Australian Public Service Commission, *APS Values and Code of Conduct in practice*, Australian Public Service Commission, Australian Government, 2021.

The Taskforce found that there was inconsistency in the use, storage and treatment of these conflict of interest declarations. Of the 19 procurements assessed as 'red' by the Taskforce, 10 lacked sufficient conflict of interest documentation.

In one example the Taskforce was unable to locate conflict of interest declarations for any members of the evaluation committee for a high-value procurement.

'Actual' conflicts of interest appear to be well understood, however 'potential' and 'perceived' conflicts can be more difficult for staff to identify, report and manage.

Conflict of interest processes benefit from clear case studies and examples that inform staff about the kinds of circumstances that may be actual, potential or perceived conflicts of interest. It may be beneficial for forms and templates to be reviewed and redesigned using user-centred design to ensure all staff understand their obligations and can easily document conflicts.

In line with previous ANAO findings, compliance with conflict of interest requirements can also be promoted through regular awareness raising and on-the-job and formal training.⁵⁰

Managing known conflicts

Where a conflict is known and has been declared, it is critical it be appropriately managed and that this management is well documented and recorded. The ANAO advises that management of identified conflicts of interest require entities to take an active rather than passive approach.⁵¹

The Taskforce found conflicts of interest were not always declared and managed effectively.

In one instance, potential conflicts of interest were inconsistently managed across the same procurement process. One official declared a conflict of interest during the procurement, which was disclosed to the evaluation committee. The Taskforce found appropriate probity and conflict management advice was sought and instituted to mitigate any associated risks.

In the same procurement, another official disclosed a potential conflict of interest to an appropriate senior official. However, this was not declared as part of the relevant procurement process and the Taskforce could not locate a probity management plan for this conflict of interest. The official continued to participate in, and provide approvals during, the procurement process.

Where possible, conflicts of interest should be avoided. For example, it is better practice for someone with a known conflict of interest to not participate in a procurement process, either as a procurement official or as a decision maker, unless the potential for conflict can be appropriately and properly managed.

Where conflicts of interest are declared upon commencement of a procurement, they should be documented and managed throughout the procurement process. The ANAO suggests entities consider a specific management plan for identified conflicts in high-risk procurement processes, including mechanisms to monitor whether relevant parties are adhering to the plan.⁵² If new conflicts of interest or other forms of influence arise during the procurement process, these should be recorded and appropriately managed.

⁵⁰ ANAO, 'Management of Conflicts of Interest in Procurement Activity and Grants Programs', *Audit Insights*, ANAO, 2020.

⁵¹ ANAO, Management of Conflicts of Interest in Procurement Activity and Grants Programs.

⁵² ANAO, Management of Conflicts of Interest in Procurement Activity and Grants Programs.

Relationships and familiarity

Agencies should be mindful of close working relationships between officials and suppliers and the potential impact on a procurement process. There is potential for familiarity with suppliers to develop, particularly with contractors who are engaged for extended periods of time. This may be more pronounced where officials are closely connected to a relevant industry, or have worked with individuals across numerous suppliers.

The Taskforce did not identify any examples of staff misconduct related to the 95 procurements.

The Taskforce identified close working relationships between APS officials and suppliers. Staff from suppliers were embedded with agency staff as part of blended workforce arrangements. The Taskforce also identified instances in which officials had personal relationships with representatives of certain suppliers during the procurement process. This included organising social events in personal time with representatives from a supplier. These relationships need to be carefully managed.

Procurement processes and capability

The Taskforce's comparison process found that procurement processes for comparator procurements were similar to the procurements determined to be within scope for the Review. This indicates that inconsistent quality in procurement processes is not limited to the procurements determined to be in scope for the Review.

A focus on improving procurement processes, training and overall capability is key to ensuring consistent quality in the procurement process.

The Taskforce notes that there is currently work underway within both agencies and across the APS to make improvements in these areas, and supports this work.

Procurement training

Procurement training is not mandatory in either the NDIA or SA before staff act as a procurement official or delegate. In contrast, SA staff are required to complete and pass a mandatory eLearning course quiz before being issued a corporate credit card.

The CPRs, AAls, and procurement-specific sections of the PGPA Act are not included in Services Australia's Induction Program. Procurement-specific online training is available for SES level staff but consultation suggests it is not highly utilised.

Services Australia has engaged a training provider to build web-based training and tools for procurement processes. These will be available to all agency staff and will help uplift procurement capability.

NDIA staff undertake a mandatory induction program which includes introductions to the PGPA Act, decision-making responsibilities, management of public resources and spending agency money. Procurement-specific training is available and recommended for staff procuring goods and services on behalf of the agency, but is not mandatory.

The benefit in implementing mandatory training requirements for officials would be better understanding of the broader Commonwealth Procurement Framework, their own accountabilities and their agency's specific requirements.

The NDIA and SA may benefit from instituting mandatory training and procurement experience requirements prior to staff being permitted to participate, or act as a decision maker, in a procurement. Services Australia may also benefit from including appropriately detailed procurement information in induction and mandatory refresher programs.

Improvements to procurement processes and capability

The NDIA and SA have made changes in recent years to improve their procurement processes, uplift capability and promote consistency with the CPRs and APS good practice.

Both agencies have centralised procurement support functions and developed procurement partnership models that provide additional support and guidance to officials undertaking procurements.

Services Australia

Services Australia restructured its procurement functions in 2022, bringing the Technology Sourcing Branch – which is responsible for ICT procurement – into the Chief Financial Officer Division alongside the Procurement Branch. This better aligns the agency's primary procurement areas and will promote knowledge-sharing and consistency in procurement activities.

In Services Australia, all proposed procurements above \$10,000 must be reviewed and supported by either the Procurement Branch or Technology Sourcing Branch.

The agency updated its procurement process and frameworks in July 2022 to require completed Procurement Plan Templates for all procurements over \$10,000. This requirement emphasises early engagement with the Technology Sourcing Branch and Procurement Branch, which ensures that procurement activity is overseen and supported by procurement advisors with appropriate capability. The templates also require funds availability sign-off by the Group Financial Management Branch and must be endorsed by the procuring branch, which is required to identify the appropriate procurement method and how many potential suppliers should be approached.

Services Australia's Procurement and Contract Management intranet page provides a full suite of Procurement and Contract Management Templates (which include detailed guidance). The Procurement Branch is also in the process of making the evaluation plan, evaluation report and spending proposal templates simpler and easier to understand and ensuring they are consistent with current good practice.

Services Australia is also improving procurement capability by endeavouring to ensure all procurement advisors have undertaken external training (such as a Certificate IV or Diploma) in Government Procurement or hold other relevant certification, such as being a Certified International Procurement Professional.

National Disability Insurance Agency

The NDIA has a centralised Procurement and Corporate Services Branch (Procurement Branch), which reports to the CFO. The Procurement Branch takes the lead role in all procurement activities, either by managing the process or by providing advice and specialised procurement skills.

The NDIA's Instrument of Delegations sets out spending limits by staff level. These are supported by the AAls, which are issued by the Board.

The NDIA requires business areas to work with the Procurement Branch to procure goods and services valued at \$100,000 or more. The Procurement Branch ensures the appropriate practice and documentation are applied and provides support as needed – for example, providing templates, helping identify an appropriate panel, or providing guidance on how to document justification of value for money and how many quotes to obtain.

For procurements over \$400,000 both ‘approach the market’ and ‘spending approval’ documents must be completed. The Procurement Branch Manager reviews these documents to ensure the procurement method is in line with the CPRs or, alternatively, that any decision not to apply the CPRs is referred to the CEO or CFO in accordance with the AAls.

Following the CPR update on 1 July 2022 which introduced paragraph 9.14 (‘to maximise competition, officials should, where possible, approach multiple potential suppliers on a standing offer’), the NDIA has incorporated this as part of its procurement practices. Any decision not to approach multiple suppliers must be approved by the CEO or CFO in accordance with the AAls.

The NDIA has established a team within the Procurement Branch to regularly review procurements, check they have been entered into the system accurately and ensure relevant paperwork has been attached.

The NDIA has also improved monitoring of procurement non-compliance by establishing a reporting team that performs sample testing, ensures breaches are being recorded (for reporting to the Board Risk Committee as appropriate) and provides education and training.

Over the past 18 months, the NDIA has doubled the size of its centralised procurement support team to better support staff in procurement activities. It has also invested in formal procurement training for the team (primarily Certificate IV). Additionally, the NDIA has reviewed its procurement policies and framework to ensure they remain relevant to the Corporate Plan and risk profile. In December 2022, the NDIA introduced a new procurement policy and accompanying guides on key topics such as confidentiality, conflict of interest, and scope of work development.

These are positive steps. Continuing to build on them will allow the NDIA and SA to further enhance their procurement capability and improve overall consistency with the CPRs and APS good practice.

Conclusion

The Taskforce found that the majority of procurements determined to be in scope for the Review were broadly consistent with the CPRs and good practice. Where inconsistencies with the CPRs were identified, these were most commonly related to unclear or insufficient value for money justifications, insufficient documentation or record keeping, and delays in reporting contracts and amendments to AusTender.

The processes and circumstances of the procurements were found by the Taskforce to be broadly consistent with other comparable procurement processes undertaken by the NDIA and SA within the same reference period.

The Taskforce did not identify clear examples of misconduct related to the procurements. However, there were some examples of poor practices and relationships between officials and suppliers that were not managed well. In a number of cases, conflict of interest documentation was found to be lacking or not available for review.

Issues identified within the procurements appear to be consistent with issues raised in other external audit reports of procurement across the public sector.

The Taskforce has observed and acknowledged efforts by both agencies to make improvements to procurement processes, training and capability. Continuing with improvements underway, and seeking further professionalisation and capability uplift, will support the NDIA and SA to achieve greater consistency with the CPRs and good practice.

Glossary

List of abbreviations

Abbreviation	Title
AAI	Accountable Authority Instructions
ANAO	Australian National Audit Office
APS	Australian Public Service
CCE	Corporate Commonwealth entity
CEO	Chief Executive Officer
CFO	Chief Financial Officer
CPRs	Commonwealth Procurement Rules
NCE	Non-corporate Commonwealth entity
NDIA	National Disability Insurance Agency
PGPA Act	Public Governance Performance and Accountability Act 2013
SA	Services Australia

Definitions

Unless stated otherwise, definitions are sourced from the Department of Finance, PGPA Glossary or Commonwealth Procurement Rules 2022, Appendix B: Definitions

Accountable Authority

The person or group of persons responsible for, and having control over, each Commonwealth entity's operations. An accountable authority can issue written instructions about any matter relating to the finance law that all officials of the entity must adhere to (Accountable authorities may also issue instructions to officials of another Commonwealth entity in relation to matters listed in section 20A(2) of the PGPA Act.). These are referred to as accountable authority instructions (AAIs).

Accountable Authority Instructions (AAIs)

Written instruments that may be issued by the accountable authority to instruct officials on matters relating to the finance law.⁵³

Approach to market

Any notice inviting *potential suppliers* to participate in a *procurement* which may include a request for tender, request for quote, request for expression of interest, request for information or request for proposal.

AusTender

The central web-based facility for the publishing of Australian Government procurement information, including business opportunities, annual procurement plans and contracts awarded.

Commonwealth entity

A Department of State or a parliamentary department or a listed entity or a body corporate that is established by a law of the Commonwealth or established under a law of the Commonwealth (other than a Commonwealth company) and is prescribed by an Act or the PGPA Rule to be a Commonwealth entity.

Commonwealth Procurement Rules

A legislative instrument issued by the Minister for Finance under section 105B of the PGPA Act, which establish the framework under which entities govern and undertake their own procurement. It also includes good practice guidance. All officials performing duties in relation to procurement must act in accordance with the CPRs.

⁵³ Department of Finance, Accountable Authority Instructions (RMG 206), finance.gov.au, 2021, accessed February 2023.

Conflict of interest

An actual, potential or perceived conflict between an employee's official duties and responsibilities and their private interests that could, or could be seen to, influence the decisions they are taking or the advice they are giving.⁵⁴

Contract

An arrangement as defined by section 23(2) of the PGPA Act, for the procurement of goods and/or services under which relevant money is payable or may become payable. This includes standing offers and panels.

Contract management

The active management through the life of a procurement contract or other contract to ensure a contractor's performance is satisfactory, stakeholders are well informed and all contract requirements are met. It includes managing the contractual relationships and ensuring that deliverables are provided to the required standard, within the agreed timeframe and achieve value for money.

Corporate Commonwealth entity

A body corporate that has a separate legal personality from the Commonwealth, and can act in its own right exercising certain legal rights such as entering into contracts and owning property. Most CCEs are financially separate from the Commonwealth.

Good practice

In relation to the Review, where, taking into account the scale, scope and risk of the procurement, the processes broadly demonstrate compliance with the rules that 'should' be followed as per the Commonwealth Procurement Rules.⁵⁵

Limited tender

Involves a relevant entity approaching one or more potential suppliers to make submissions, when the process does not meet the rules for open tender.

Misconduct

Refers to any action or behaviour determined to be in breach of the APS Values, Employment Principles or the APS Code of Conduct.⁵⁶

⁵⁴ Australian Public Service Commission, *APS Values and Code of Conduct in practice*, Australian Public Service Commission, Australian Government, 2021, s 5.

⁵⁵ Defined by the Taskforce for the purposes of the Review.

⁵⁶ Australian Public Service Commission, *Handling Misconduct – A human resource manager's guide*, apsc.gov.au, 2022, accessed February 2023.

Non-corporate Commonwealth entity

Are legally and financially part of the Commonwealth. Examples of NCEs include departments of state, parliamentary departments or listed entities, such as SA. NCEs are established under power that comes from the Constitution, usually through legislation and the exercise of executive power. NCEs form part of the executive government, and are accountable to the Parliament. NCEs are subject to the PGPA Act, which further clarifies the financial and corporate governance arrangements of these bodies.

Officials

Officials include; accountable authorities, employees, officers or members of the entity (e.g. members of a commission or members of a governing board), directors and persons prescribed by an Act (e.g. statutory office holders) or the PGPA rule.

Officials do not include; ministers, judges, consultants, or independent contractors who have not been prescribed as officials. Officials also do not include a person, or class of people, who are prescribed by an Act or rules not to be officials.

Open tender

Involves publishing an open approach to market and inviting submissions. This includes multi-stage procurements, provided the first stage is an open approach to market, such as in an open tender standing offer arrangement.

Panel

See 'Standing offer'.

Potential supplier

An entity or person who may respond to an approach to market.

Probity

The evidence of ethical behaviour; complete and confirmed integrity, uprightness and honesty in a particular process. Designed to provide assurance to delegates, suppliers and the Commonwealth that a procurement was conducted in a manner that is fair, equitable and defensible.⁵⁷

Procurement

The whole process of procuring goods and/or services. It begins when a need has been identified and a decision has been made on the procurement requirement. Procurement continues through the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a contract, delivery of and payment for the goods and services and, where relevant, ongoing contract management and consideration of disposal of goods. Procurement does not include, for example, grants, statutory appointments or engagement of employees such as under the *Public Service Act 1999*.

⁵⁷ Department of Finance, *Ethics and Probity in Procurement*, finance.gov.au, 2021, accessed February 2023.

Relevant entity

NCEs and prescribed CCEs, that must comply with the CPRs when performing duties related to procurement.

Risk management

Coordinated activities to direct and control an organisation with regard to risk.

Single supplier approach

For the purposes of the Review, a procurement method where only one supplier is approached through either an open tender or limited tender procurement method. This includes instances where the procurement was from a single supplier panel.

Standing offer

An arrangement setting out the terms and conditions, including a basis for pricing, under which a supplier agrees to supply specified goods and services to a relevant entity for a specific period. Also referred to as a panel.

Submission

Any formally submitted response from a potential supplier to an approach to market. Submissions may include tenders, responses to expressions of interest or response to request for quote.

Supplier

An entity or person who has entered into a contract with the Commonwealth.

Tenderer

An entity or person who has responded with a submission to an approach to market.

Value for money

A core requirement of the CPRs which requires the consideration of the financial and non-financial costs and benefits associated with the procurement. Officials responsible for a procurement must be satisfied after reasonable enquiries that the procurement achieves a value for money outcome.⁵⁸

⁵⁸ *Commonwealth Procurement Rules 2022*, para 3.2, 4.4.

Appendices

- Appendix A: List of entities
- Appendix B: Evaluation Framework
- Appendix C: Comparator Framework
- Appendix D: Additional Findings

List of entities

Entity	Reference
Adobe Systems Pty Ltd	Karp P (1 December 2022) 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims (https://www.theguardian.com/australia-news/2022/dec/01/bill-shorten-orders-review-into-stuart-robert-lobbying-scandal-claims)', <i>The Guardian</i> .
Adobe Systems Software Ireland Ltd	Karp P (1 December 2022) 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims (https://www.theguardian.com/australia-news/2022/dec/01/bill-shorten-orders-review-into-stuart-robert-lobbying-scandal-claims)', <i>The Guardian</i> .
Aspen Corporate Health	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .
Aspen Medical Pty Ltd	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .
Australian Property Reserve Pty Ltd	Robertson J (24 November 2022) 'Revealed: Stuart Robert's new connection to business partner (https://thenewdaily.com.au/news/politics/2022/11/24/stuart-robert-connection-revealed/)', <i>The New Daily</i> .
Delv Pty Ltd	Karp P (1 December 2022) 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims (https://www.theguardian.com/australia-news/2022/dec/01/bill-shorten-orders-review-into-stuart-robert-lobbying-scandal-claims)', <i>The Guardian</i> .
Infosys Technologies Limited	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .
Milo Consulting Pty Ltd, trading as Synergy 360	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .
Oracle Corporation Australia Pty Ltd	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .

Entity	Reference
Portland Group Pty Ltd	Portland Group Pty Ltd is a wholly owned subsidiary of acquired by Infosys acquired in 2012. Infosys Portland (n.d.) ' History ', <i>About Us</i> , infosysbpm.com, accessed 27 February 2023.
SFDC Australia Pty Ltd (Salesforce)	Karp P (1 December 2022) 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims (https://www.theguardian.com/australia-news/2022/dec/01/bill-shorten-orders-review-into-stuart-robert-lobbying-scandal-claims)', <i>The Guardian</i> .
Unisys Australia Pty Ltd	Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyists (https://www.smh.com.au/national/senior-coalition-mp-stuart-robert-gave-secret-advice-to-lobbyists-20221123-p5c0kg.html)', <i>The Sydney Morning Herald</i> .
Vlocity Inc	Vlocity Inc is a wholly owned subsidiary of Salesforce, acquired in 2020. Salesforce (2020) ' Vlocity: Powering the Future of Salesforce Industries ', Digital Transformation, salesforce.com, accessed 27 February 2023.

Evaluation Framework

Selection criteria	CPR paragraph	Compliance considerations	Good practice considerations (subject to the scale, scope and risk)
Business need justification	4.2	N/A	Scope of business needs
			Evidence that procurement is best value for money approach
			Assessment of market capacity
			Clearly understanding and expressing the goals and purpose of the procurement
Clear scope of requirements	4.2; 7.3	N/A	Fair and equitable scope, not justified/aligned to incumbent supplier
Standing offer	9.14	N/A	Justification for approach
			If approaching one supplier, justification
Probity	6.6	Recognising and dealing with actual, potential and perceived conflicts of interest	Probity plan
	6.7	Dealing with potential suppliers, tenderers and suppliers equitably	Contact with potential suppliers handled
Estimated value	9.2	Expected value of the procurement must be estimated prior to making a decision on the procurement method	N/A
Value for money	4.4	Value for money is demonstrated by tender	Use public resources in an efficient, effective, economical and ethical manner
		Officials must consider the relevant financial and non-financial costs and benefits of each submission	Whole-of-life costs
Non-discrimination	5.4	All potential suppliers must be treated equitably based on their commercial, legal, technical and financial abilities	Encourage competition and be non-discriminatory
Risk assessment	8.2	Relevant entities must establish processes to identify, analyse,	Risk assessment documented

Selection criteria	CPR paragraph	Compliance considerations	Good practice considerations (subject to the scale, scope and risk)
		allocate and treat risk when conducting a procurement	
Evaluation	7.12	N/A	Relevant entities should include relevant evaluation criteria in request documentation
			Applied equitably and fairly to all suppliers
			Sufficient detail and justification
Records of appropriate delegate approvals	PGPA	Written record of PGPA section 23(3) – commitment of relevant funds	N/A
		Written record of PGPA section 23(1) – approval to enter into the arrangement	
		Sufficient detail to delegate to make decision	
Reported on AusTender	7.18	Reported correctly within 42 days of entering into contract (not applicable to the NDIA)	N/A
Tenderer feedback	7.17	Provide unsuccessful letter	Offer full debrief to unsuccessful tenderers
Records	7.2–7.4	Commensurate with the scale, scope and risk of business requirement	Procurement plan including requirement for the procurement
		Evidence of the agreement with supplier (e.g. contract, work order etc.)	Evaluation plan
		N/A	Contract management plan
Contract	4.4	Contract extensions and/or variations justified	N/A

Comparator Framework

Factor	Factors to consider	Key questions
Identification of procurement need	How was the need identified?	Was the need identified in a similar level of detail?
Procurement approach	Open, limited and panel approaches to procurement	Which type of procurement approach: open, limited or panel approach.
		Was the approach justified to a similar level of detail between both cases?
Evaluation and decision	Evaluation panel and delegate seniority	Do the delegates appear to have similar levels of seniority?
	Evaluation detail	Were the delegates provided a similar level of detail for their decision-making?
	Consideration of value for money	Was value for money considered/justified in a similar manner/level of detail?
Approach to variations	Varied contract	Were the variations justified to a similar level of detail in both cases?
Record keeping	Documentation and record keeping	Is there comparable documentation available between cases? E.g. contract, quotes, spending approvals etc.
		Were records kept to a comparable level of detail?

Additional findings

This section provides a summary of Review findings that were specific to individual procurements and did not represent a broader pattern within the procurements.

Property ownership changes

A review of a property-related procurement found that a change of property ownership was reported to the agency but that this change was not reported to the Department of Finance, which manages the Australian Government Property Register.

Panel procurement under \$10,000

The review of a panel procurement under \$10,000 found an issue where no contract was raised. This error occurred due to a miscommunication and misunderstanding regarding the requirements of the procurement process for the type of tender approach being used.

As the procurement was worth less than \$10,000 procurement officials believed that no written contract was needed. This would have been correct if the procurement was a limited tender approach, but because the procurement was sourced via a panel arrangement a work order was required to be raised. Although this was a low-value procurement, improvements to documentation and communication, in conjunction with an approach that encouraged greater competition, would have ensured that this procurement was in line with the CPRs and good practice.

Clarification around subsidiaries

A subsidiary company was treated throughout a procurement process as though it was the parent company.

In this instance, the parent company was part of a Deed of Standing Offer (panel arrangement) while the subsidiary company was not. However, contracts with the subsidiary company were reported on AusTender as procurements under the panel arrangement.

There were a number of points throughout the procurement process where this error could have (and should have) been identified. The Taskforce found no evidence of deliberate non-compliance or misreporting, suggesting that this issue was instead the result of repeated oversights and a shared misunderstanding about subsidiary companies.

Timely recording of contract terminations on AusTender

The Taskforce found a number of instances where procurement terminations were not recorded on AusTender and agency systems. For example, the Taskforce found 2 related procurements that were terminated but the change was not reflected in AusTender or internal agency systems. This is not consistent with reporting requirements under the CPRs.

References

- Australian National Audit Office (ANAO) (2019) Western Sydney Airport Procurement Activities, ANAO, Australian Government
- Australian National Audit Office (2020) 'Management of Conflicts of Interest in Procurement Activity and Grants Programs', Audit Insights, Australian Government
- Australian National Audit Office (ANAO) (2022) Procurement by the National Capital Authority, ANAO, Australian Government
- Australian National Audit Office (ANAO) (2022) Procurement of Delivery Partners for the Entrepreneurs' Programme, ANAO, Australian Government
- Australian National Audit Office, Submission No 12 to Joint Committee of Public Accounts and Audit, Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23) (2 February 2023)
- Australian Public Service Commission (APSC) (2021), APS Values and Code of Conduct in practice, APSC, Australian Government
- Australian Public Service Commission (2018) APS Values and Code of Conduct in Practice, apsc.gov.au, accessed February 2023
- Australian Public Service Commission (2022) Handling Misconduct – A human resource manager's guide, apsc.gov.au, accessed February 2023
- Australian Public Service Commission (APSC) (2020) State of the Service Report 2019-20, APSC, Australian Government
- Brown A and Mitchell A (24 November 2022) 'MP Robert's lobbying contract links probed', The Canberra Times
- Commonwealth of Australia (2019) Our Public Service, Our Future: Independent Review of the Australian Public Service, Australian Government
- Commonwealth Procurement Rules 2022 (Cth)
- Crowe D and McKenzie N (24 November 2022) 'Senior Coalition MP Stuart Robert gave secret advice to lobbyist', The Sydney Morning Herald
- Crowe D and McKenzie N (24 November 2022) 'Bill Shorten orders review into deals linked to Stuart Robert', The Sydney Morning Herald
- Crowe D and McKenzie N (1 December 2022) 'Leaked files reveal meetings with minister over contracts', The Sydney Morning Herald
- Crowe D and McKenzie N (1 December 2022) 'Robert denies pressuring officials over leaked emails', The Sydney Morning Herald
- Department of Finance (2021) Accountable Authority Instructions (RMG 206), finance.gov.au, accessed February 2023
- Department of Finance (2021) Ethics and Probity in Procurement, finance.gov.au, accessed January 2023
- Department of Finance (2022) Procuring from a Panel - Panels 101, finance.gov.au, accessed February 2023

- Department of Finance, Submission No 11 to Joint Committee of Public Accounts and Audit, *Commonwealth procurement: Inquiry into Auditor-General Reports 6, 15, 30, 42 (2021–22) and 5 (2022–23)* (2 February 2023)
- Department of Finance (2022) *Whole of Australian Government Procurement*, finance.gov.au, accessed February 2023
- Department of Foreign Affairs and Trade (2019) *Ethics Integrity and Professional Standards Policy Manual*, dfat.gov.au, accessed February 2023
- Digital Transformation Agency (n.d.) *Purpose of the Digital and ICT Reuse Policy*, dta.gov.au, accessed January 2023
- Evidence to Joint Committee of Public Accounts and Audit, Parliament of Australia, Canberra, 2 February 2023
- Evidence to Joint Committee of Public Accounts and Audit, Parliament of Australia, Canberra, 10 February 2023
- Karp P (1 December 2022) 'Bill Shorten reveals review into Stuart Robert 'lobbying scandal' claims', *The Guardian*
- Murphy K and Karp P (24 November 2022) 'Labor orders investigation into government contracts linked to Stuart Robert', *The Guardian*
- *Public Governance, Performance and Accountability Act 2013* (Cth)
- *Public Service Act 1999* (Cth)
- Robertson J (24 November 2022) 'Revealed: Stuart Robert's new connection to business partner', *The New Daily*
- Senator the Hon J Gallagher and The Hon J Collins MP (1 July 2022) *A Better Deal for Australian Businesses Under Commonwealth Contracts*, Ministers: Treasury portfolio
- Synergy 360 Consulting (2022) *Our Services*, synergy360.com.au, accessed January 2023