

3rd Annual Buy Local Plan Compliance Report of the Buy Local Industry Advocate of the Northern Territory

December 2020



BUY LOCAL

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1. Executive Summary

This is my third Annual Report on my assessment of the Northern Territory Governments compliance with the Buy Local Plan.

For the reasons mentioned throughout my report, I am unable to conclude whether the Buy Local Plan has had a positive effect in increasing procurement spending by the NT Government with Territory Enterprises.

I continue to hold concerns around the government's ability to accurately record and analyse all of its procurement transactions from the systems it currently has in place. Due to this lack of reliable information the task of measuring the effectiveness of the Buy Local Plan is one that cannot be reliably undertaken.

I believe the concept of Value for Territory is still misunderstood by some. Until Value for Territory becomes widely accepted and understood by those making procurement decisions it is highly unlikely that the delivery of best Value for Territory through the procurement process will be obtained in all procurement activities.

I again consider this year that optimisation of Value for Territory outcomes in individual procurement transactions remains inconsistent.

One factor which has had a significant impact on the procurement profile of the NT Government this year has been COVID-19. Given the size, nature, complexity and urgency of many procurement activities which were required in response to the emergence of COVID-19, there were many procurements that were exempt from full compliance with the standard NT Government procurement processes. This led to some urgent procurements being made from outside the NT, which in normal times perhaps would not have occurred. However, given the shortage of products experienced both within Australia and around the world, this also led to some innovative thinking around how alternative or substitute products could be sourced from within the NT.

In my previous Annual Report I identified 22 Opportunities For Improvement for the NT Government to consider to improve its ability to maximise the effectiveness of the Buy Local Plan, and to enable the measurement of its effectiveness. In [Section 3](#) of this report I summarise those matters and my understanding of the current status of the actions (if any) taken to address them.

Again this year, [Section 8](#) of this report contains Opportunities For Improvement that I believe would contribute to a further improved procurement framework, more effective Buy Local Plan and more consistent delivery of Value for Territory outcomes. Some of these opportunities for improvement remain from last year or in my view have only been partly addressed by the government since last year.

Through my ongoing engagement with agencies I continue to experience a willingness by most of them to improve and refine their procurement processes, with some of them continuing to make significant changes to their internal systems to accommodate improved compliance with the procurement framework.

Of particular interest to me this past year has been agency compliance with Contract Management Planning and Contractor Performance Reporting obligations. Unfortunately, it appears to me that many agencies do not devote sufficient resources and effort to ensure that these functions are effectively performed. There needs to be a greater focus and commitment

across government to improve contract management and reporting processes to ensure that what was contracted for is actually what is delivered, and that contractors are aware of their performance expectations. In addition there needs to be a single point of reference within government for procurement staff to access contractor performance information.

Of particular interest to industry this year has been the proposed roll out of the Value for Territory Assessment Framework. There has been a significant level of stakeholder consultation undertaken by Procurement NT, and industry appears to be supportive of the initiative, however it does hold serious concerns with the length of time it has taken for the framework to get to its current state of development, and ultimately its final delivery. The government announced its rollout in late January 2020, indicating that industry consultation would be completed by the end of April 2020, with full implementation of the framework concluding in 2021. At the time of writing this report industry consultation has occurred, however the first stage of the framework (Local Content Assessment) is still only in testing and evaluation phase. I have been advised that this first stage should be rolled out by March 2021, however I hold serious concerns whether the balance of the framework will be able to be delivered in the announced time frame of 2021.

Finally, I would like to thank my Executive Officer, Brylie Neve. Brylie was seconded to another section within the Department of Industry, Tourism and Trade part way through the year to assist in the governments COVID-19 response. Linda Nguyen has been standing in for Brylie during that time. I would like to acknowledge the support of both of these wonderful ladies over the last year. Without it I would have struggled to deal with the many matters that my role encompasses.

2. Background

The position of the Buy Local Industry Advocate was established as part of a series of major procurement reforms announced by the NT Government in February 2017, and which came into force on 1st July 2017.

Under the terms of my appointment my responsibilities are:

1. Advocacy.
 - Acting as an independent link between local business and the NT Government;
 - Providing information and assistance to local businesses to strengthen their capability and competitiveness in the NT Government procurement system;
 - Representing the interests of local business and industry as a member of the Procurement Review Board;
2. Promoting the adoption of Buy Local principles to industry and government.
3. Undertaking a Value for Territory Assurance Program, comprised of internal and external audits, designed to measure the effectiveness of agency implementation of the Buy Local Plan.
4. The Buy Local Plan.
 - With the assistance of the Buy Local Subcommittee of the Procurement Review Board:
 - overseeing agency and industry compliance with the Buy Local Plan; and
 - monitoring the overall effectiveness and impact of the Buy Local Plan, including monitoring for unintended consequences;
 - Preparing reports for public release on Buy Local Plan compliance;
 - Investigating complaints relating to adherence to the Buy Local Plan;
 - Making recommendations to government on ways to improve the Buy Local Plan.

The following sections of this report outline my findings and observations insofar as they are relevant to the performance of each of my responsibilities.

3. NT Government's response to the 2nd Buy Local Plan Compliance Report

My second Annual Report was released on 10 December 2019. Section 8 of that report identified 22 Opportunities For Improvement that I suggested should be addressed by the NT Government to maximise and enable measurement of the effectiveness of the Buy Local Plan, and to maximise Value for Territory procurement outcomes.

I received formal acknowledgement of my second Annual Report in a letter from the Chief Minister on 28 July 2020, together with a summary of actions taken by the government to that time to address the Opportunities For Improvement I had identified.

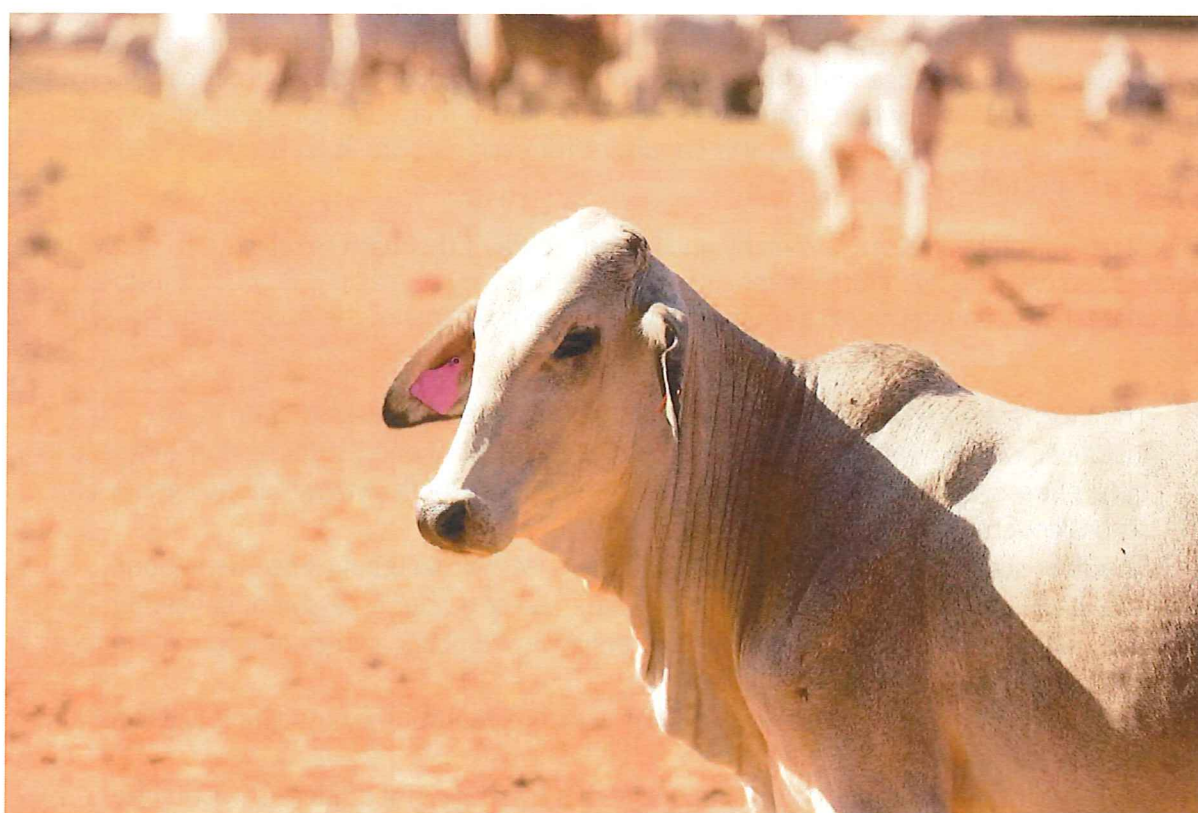
In that letter the Chief Minister stated *"My Government recognises and values public procurement as an important lever to drive economic growth, and we continue to commit to the Buy Local Plan and the delivery of Value for Territory"*. I would like to acknowledge the government's restated commitment to the Buy Local Plan and delivery of Value for Territory.

The following table identifies each of the Opportunities For Improvement referred to in my previous Annual Report and provides my understanding of the actions (if any) taken to address to them to date.

Identified Opportunity For Improvement	Assessment of actions taken to date to address matters raised
The establishment of an integrated whole of government procurement management and reporting system to facilitate, monitor and report on both agency and whole of government procurement activities at all procurement Tier levels	Refer Section 8.1 of this report
Increased effort by agencies to undertake more effective contract management and reporting as required under procurement rules and policy	Refer Section 8.2 of this report
More consistent and appropriate use of the Industry Capability Network NT by NT Government procurement staff	Refer Section 8.3 of this report
Better structured and improved career development pathways for procurement staff within the NT Government	Refer Section 8.4 of this report
Appropriate use of alternate tenders	Refer Section 8.5 of this report
Improved accuracy and relevance of tender scoping specifications and information	Refer Section 8.6 of this report
More transparent and instructive tender debriefs including disclosing to tenderers their scores for each scoring criteria	Refer Section 8.7 of this report

Identified Opportunity For Improvement	Assessment of actions taken to date to address matters raised
Adequate agency resourcing to properly implement correct procurement processes and policies, particularly at peak times with time sensitive delivery time frames, and also for appropriate and timely contract management of awarded contracts	Refer Section 8.8 of this report
Increased consistency and transparency of Local Content assessment and scoring	Refer Section 8.9 of this report
Clear direction to grant recipients of how Buy Local policy intent is to be applied, assessed and enforced in respect to all NT grant funding government	Refer Section 8.10 of this report
Clear direction to all Statutory Authorities of how Buy Local policy intent is to be applied, assessed and enforced in respect to NT Government funding provided to these bodies	Refer Section 8.11 of this report
Wider and more detailed education of both industry and NT Government staff of the concept of Value for Territory, its benefits, how it is assessed, and its impact on procurement decision making	Refer Section 8.12 of this report
Development of guidance for NT Government staff on how to assess Value for Territory in Tier 1 & 2 procurement activities	Refer Section 8.13 of this report
Determination of accurate across government baseline data to inform the assessment of the effectiveness of the Buy Local Plan	Refer Section 8.14 of this report
Undertake an economic impact assessment on the value and impact on the NT economy of spending by the NT Government with Territory Enterprises	Refer Section 8.15 of this report
Use of normalised scoring by all NT Government agencies	Normalised scoring was introduced by DIPL from 1 July 2020. All NT Government agencies are now using normalised scoring.
Improvement in the production and retention of relevant documentation to support defensible decision making	Refer Section 8.16 of this report
Consistent interpretation and application of the definition of a Territory Enterprise by procurement staff	Refer Section 8.17 of this report

Identified Opportunity For Improvement	Assessment of actions taken to date to address matters raised
Improved pre tender market assessment and research by procuring agencies	Refer Section 8.18 of this report
Improved consistency in scoring of Past Performance, Timeliness and Capacity	Refer Section 8.19 of this report
Development of clear policy on when and to what level reference checks are required	Refer Section 8.20 of this report
Development of clear policy on how non NT Government past performance is to be assessed when assessing Past Performance and Capacity	Refer Section 8.21 of this report



4. Advocacy

The impact of COVID-19 has limited my ability to engage face to face with industry and government in the first half of this calendar year.

In the time that has passed since the introduction of the Buy Local Plan the requirements from industry bodies to engage with me has waned, presumably because they are comfortable that they and their members are aware of the Buy Local Plan and its implications. Notwithstanding the reduction in the level of interactions, I have continued to engage one on one with industry participants, and more generally through industry bodies, seminars and conferences whenever the opportunity has presented itself.

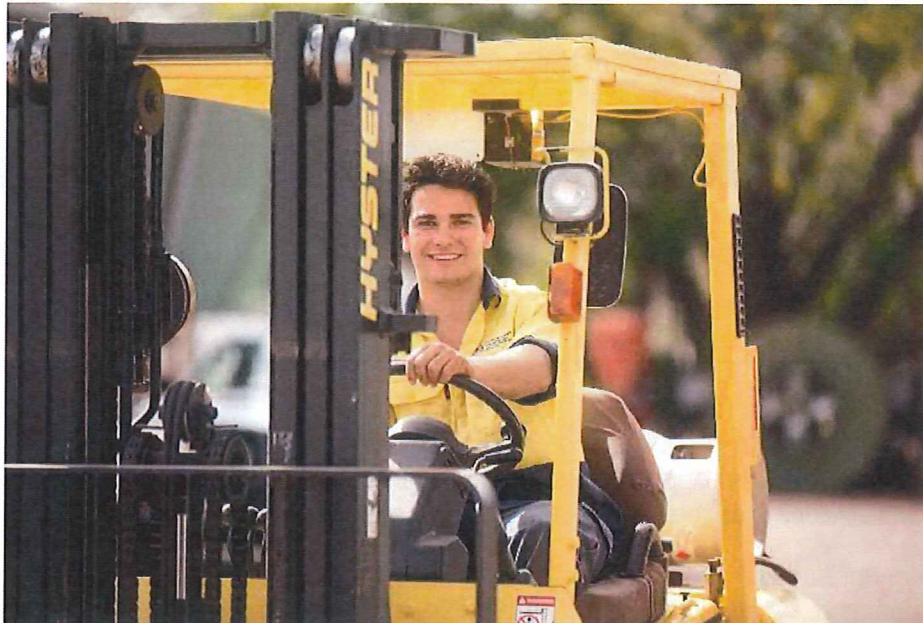
Engagement with NT Government agencies has continued at a level similar to previous years. This engagement is designed to provide industry feedback, assist with and support education and development of agency staff, and deal with agency specific procurement issues.

I have found over the past year that agencies have generally demonstrated an increased willingness to acknowledge and consider industry perspectives on procurement matters. There will always be instances where industry and government will have differing perspectives on the same issues, however I believe that it is important for each party to at least understand the others perspective.

The issues raised by industry are many and varied. Some of the matters referred to below have been raised with me by industry ever since I commenced my role as the Buy Local Industry Advocate. I still continue to raise them with government whenever the opportunity presents itself:

- The inconsistent scoring of Local Content criteria by tender assessment panels;
- Instances where a tenderers Local Content assessment in one tender response results in a different score than in another similar tender response, both within the one agency and across government agencies;
- The poor scoping and description of goods/services within tender documentation;
- The adequacy of technical experience or expertise of tender assessment panel members;
- The quality of tender debriefs and tenderers ability to obtain sufficient information to improve future responses;
- Inadequate contract management and performance reporting by procuring agencies, leading to issues such as:
 - Substitution of suppliers and subcontractors by successful tenderers post tender award;
 - Under-priced winning tenders and subsequent cost overruns due to variations; and
 - Poor past performance of tenderers not being properly documented and considered in current tender assessments;
- The lack of understanding and clarity around what is a Territory Enterprise;
- Inappropriate allowance for alternate tenders to be considered and guidance on how they will be assessed;
- The lack of clarity and consistency of how Past Performance, Capacity and Timeliness will be assessed;
- Appropriate and consistent checking of referees;
- Proper identification and management of conflicts of interest;
- Incorrect use of the classification of Territory Enterprises by procurers;

- Non publication of winning tenderers name and pricing of contract awards made under panel contracts;



My efforts this past year in advocating for changes with the government have focused generally around all of the above matters, but have had a specific focus on:

- Effective contract management. During the year I undertook a compliance program to review 9 selected agencies compliance with Procurement Rule 26 (Contract Management Planning). The outcome of my review program is detailed at [Section 8.2.1](#) of this report.
- Effective contractor performance reporting. During the year I undertook a compliance program to review 9 selected agencies compliance with Procurement Rule 28 (Performance Reporting). The outcome of my review program is detailed at [Section 8.2.1](#) of this report.
- Continued focus on the timely development of a Local Content Assessment Framework as outlined in my previous Annual Report. In January 2020 the NT Government responded to industries calls for the development of this framework by announcing its intention to introduce the Value for Territory Assessment Framework. Further details are provided at [Section 8.9](#) of this report.
- Normalisation of non-price tender assessment scores to maximise their value to all tenderers. This has now been adopted by government and has been in place across all government agencies since 1 July 2020.
- The appropriate classification of Territory Enterprises by procurement staff when going to market and also in describing the correct status of successful tenderers.

As I concluded last year, changes to government policy and process often involves considerable time and effort, and invariably does not happen as quickly as industry would like. This still applies, but I do acknowledge the co-operation and willingness of government to support the changes that have been made to date, and which are planned for the future.

5. Promoting Buy Local Principles to Industry and Government

The following Table contains details of the number of formal consultation activities undertaken by my office over the last 3 financial years.

	FY 2018	FY 2019	FY 2020
Industry consultations	49	142	94
Government agency consultations	22	119	111
Ministerial and Parliamentary consultations	1	6	4

In addition to these formal consultations I continue to engage in informal consultation opportunities whenever the opportunity presents itself. The promotion of Buy Local principles and Value for Territory is at the core of all of these consultations.

As stated in my previous Annual Reports, and again in other sections of this report, there is varying opinion as to what "Buying Local" looks like, or at least should look like. I will continue to promote the principles of what I think buying local looks like under the Buy Local Plan.

As I have no reliable statistical evidence from which to form a conclusion as to whether either government to business, or business to business support is growing in favour of NT businesses, I can only form my view based on anecdotal evidence gathered through my various consultations.

The impacts of COVID-19 on the supply lines of particular goods and services has I believe, contributed to an increased focus on procuring goods from within the NT. Even without COVID-19, I believe that awareness of the value of buying locally continues to gain momentum within the business community, and I again must acknowledge the efforts of both the NT Government and industry bodies in continuing to focus efforts around educating business on the benefits of supporting other local businesses.



In my previous Annual Report I recommended the preparation of an economic impact assessment on the value and impact on the NT economy of spending by the NT Government with Territory Enterprises. The Economic Reform team with the Department of Industry, Tourism and Trade have been assisting me to understand economic multipliers and how they are determined.

From what I have understood there are multipliers that exist for broad industry categories. These multipliers quantify how much economic output is produced for one dollar spent in that industry. For example, according to the Economic Development Team, one dollar spent in the agriculture sector generates \$1.68 economic output for the NT economy.

The multipliers produced by the Economic Development Team are calculated industry by industry, and vary according to each industry group. There is no one “whole of economy” multiplier, and nor are there multipliers for every type of good or services procured by the NT Government.

While the above multipliers provide some clarification around this matter, I still believe it would be useful to be able to gauge the overall value to the NT economy for each dollar spent by the NT Government with a Territory Enterprise.

6. Value for Territory Assurance Program

6.1. What is Value for Territory

The definition of Value for Territory is:

Achieving Value for Territory involves determining the extent to which a response will deliver the best combination of whole-of-life costs and quality (non-cost) factors.

Factors that may be considered in assessing Value for Territory include:

- *fit for purpose and quality*
- *whole of life costs (including support, warranty, licensing and disposal)*
- *efficiency and effectiveness*
- *timeliness*
- *flexibility*
- *innovation*
- *local benefit*
- *intangible costs and benefits*
- *contribution to NTG priorities*

The Buy Local Plan provides further context to the concept of Value for Territory, wherein it states:

The primary objective of the Buy Local Plan is to ensure that the largest possible proportion of every dollar spent by the NTG is retained within and delivers benefits for the Territory economy and community. With an effective value-for-Territory procurement framework in place, local content inputs such as employment, industry development, up-skilling, regional and indigenous development can be converted into tangible, long lasting local benefits for the Territory.

There are a broad range of benefits to be realised through the Buy Local Plan. These include the direct, immediate benefits of local content to the goods, services or works delivered under a given contract. This also extends to indirect benefits which may not necessarily be realised during the term of the contract, such as economic stimulation, local industry development and infrastructure development.

6.2. Value for Territory Assurance Program Framework

The Buy Local Plan requires the Buy Local Industry Advocate to have overall responsibility for the Value for Territory Assurance Program. The Value for Territory Assurance Program is not described by legislation or regulation. It has therefore been left to me to determine what aspects the Value for Territory Assurance Program will cover.

The Value for Territory Assurance Program requires all agencies to undertake an internal Value for Territory audit each calendar year, and provide a copy of it to me by the following 31st of March. The audits are designed to test the ability of agencies internal processes to deliver procurement activities that comply with all of the NT Governments Procurement Rules.

There are 5 key principles that must be applied in every NT Government procurement activity. They are:

1. Value for Territory;
2. Ethical Behaviour and Fair Dealing;

3. Open & Effective Communication;
4. Enhancing the Capabilities of Territory Enterprises and Industries; and
5. Environmental Protection

The procurement framework used by the NT Government is described as a Value for Territory procurement framework, which if followed should deliver the best Value for Territory outcome for every procurement activity undertaken. As a consequence an effective Value for Territory Assurance Program must focus on all aspects of compliance with the procurement framework, not just those aspects relating to Local Content. Assessing agency compliance with all aspects of the procurement framework therefore continues to be the cornerstone of the Value for Territory Assurance Program.

The Value for Territory Assurance Program aims to provide me with assurance in respect to the effectiveness of agency compliance with procurement rules and policies, from which I can then form a view as to whether Value for Territory has been delivered by each agency, and subsequently the government as a whole over the period since my previous Annual Report.

My overall assessment on the delivery of Value for Territory is based upon information gathered by me through;

- Monitoring, reviewing and providing feedback on the results of Value for Territory audits undertaken by procuring agencies. These audits test agency compliance with all mandatory procurement rules and procedures;
- Review of specific Procurement activities as determined by me;
- Review of agency compliance with specific Procurement Rules as determined by me;
- Review of procurement complaints referred to me for investigation;
- Industry consultation and feedback; and
- Agency consultation and feedback.

6.3. Outcome of Value for Territory audit reviews

This year there were 22 NT Government agencies that were required to provide Value for Territory Audit Reports to me for review and consideration. As outlined above, these reports are used by me as an integral part in my determination of whether agency procurement processes are being adequately complied with to deliver Value for Territory.

The reports covered the calendar year ending 31 December 2019, and were due for submission to me by 31 March 2020. Due to the impacts of COVID-19 a number of agencies requested, and were granted, extensions of time for lodgement of their reports.

At the time of writing my second Annual Report there were two agencies that had not provided their Value for Territory Audit Report to me for review. Those reports were subsequently received and my reviews completed. I concluded that both agencies delivered satisfactory Value for Territory for the year ended 31 December 2018. Both of those agencies provided their most recent Value for Territory Audit Report on time.

All 22 agencies have submitted their Value for Territory Audit reports for the year ended 31 December 2019, however two agencies were unable to submit their reports by their due date, or an agreed extended due date. They were:

- NT Electoral Commission (due 31/3/20, received 22/5/20)
- Department of Treasury and Finance (due 30/4/20, received 5/5/20)



Of the 22 reviews I undertook I concluded that 20 agencies were likely to have delivered satisfactory Value for Territory through their procurement process during the period 1 January 2019 to 31 December 2019.

I was unable to conclude that the following 2 agencies delivered satisfactory Value for Territory during the same period:

- *Department of Health (DoH)*

In my previous Annual Report I considered that DoH had not delivered satisfactory Value for Territory. I went on to acknowledge that DoH had commenced implementation of a series of structural changes within their procurement group to address these deficiencies. As these changes were not able to be implemented by the agency until part way through last calendar year their impact was somewhat limited.

I acknowledge the progress made by the agency in improving their procurement process, and their willingness to engage with me to assist in those improvements, however I consider that satisfactory Value for Territory has not been delivered by DoH for the second year running,

- *NT Police, Fire and Emergency Services (NTPFES)*

In my previous two Annual Reports I considered that NTPFES had not delivered satisfactory Value for Territory. I went on to acknowledge that NTPFES had commenced implementation of a series of structural changes within their procurement group to address

these deficiencies, however these changes have not yet been sufficient to increase compliance levels to a satisfactory level.

I acknowledge the progress made by the agency in improving their procurement process, and their willingness to engage with me to assist in those improvements, however I consider that satisfactory Value for Territory has not been delivered by NTPFES for the third year running,

6.4. Compliance with Procurement Rules 26 and 28.

6.4.1. Auditor-Generals June 2020 Report to the Legislative Assembly

The Auditor-General of the Northern Territory tabled a Report to the Legislative Assembly in June 2020. Within that report the Auditor-General published the results of a performance management system audit that was undertaken. The scope and objectives of the audit were to;

..... determine the performance management systems in place at Selected Agencies that enable the agency to manage contracts (and the performance of contractors) in order to achieve the agency's objectives economically, efficiently and effectively.

The Auditor-General reviewed and reported on the following two agencies:

- Department of Infrastructure, Planning and Logistics; and
- Department of Health and its controlled entities

The Auditor-General's Audit Opinion concluded that;

Whilst instances of good practice were identified, as a result of the matters identified during the audit, I have concluded that the performance management systems within the Selected Agencies that enable them to manage contracts (and the performance of contractors) require strengthening in order to enable the agencies to assess whether their objectives are being achieved economically, efficiently and effectively (as they apply to contract outcomes).

In addition, the Auditor-General went on to state the following;

In my opinion, some opportunities exist to enhance performance management systems and processes in relation to contract management. These opportunities relate to:

- *the establishment and/or improvement of contract management guidance that is made available to employees and enforced by management, which will ensure consistency across the agency of contract management practices and their alignment with NTG procurement principles.*
- *improving the methods by which contract information is recorded, managed and communicated across the agency to ensure efficiency, consistency and completeness and provide value to future procurement and contract management processes in addition to reducing risks associated with poor record keeping and contract management.*
- *improved documentation of discussions held during start-up meetings and contractor performance discussions.*
- *clarifying and communicating agency requirements as they pertain to contractor performance monitoring and management.*
- *enhancing the controls and documentation supporting the consideration and subsequent approval or rejection of applications for contract variations.*

6.4.2. Buy Local Industry Advocate's review of selected agencies

At the conclusion of my review of individual agency Value for Territory audits this year I identified that many agencies displayed high non-compliance rates with Procurement Rule 26 (Contract Management Planning) and Procurement Rule 28 (Performance Reporting).

As a result of these high non-compliance rates I undertook a program of reviews of specific contracts selected by me. The reviews took place from July to September this year and covered the following agencies:

- Former Department of Trade Business & Innovation
- Department of Attorney-General and Justice
- Former Department of Tourism, Sport and Culture
- Former Department of the Chief Minister
- Former Department of Environment and Natural Resources
- Former Office of the Commissioner for Public Employment
- Department of Treasury and Finance
- Former Department of Primary Industries and Resources, and
- Former NT Police Fire and Emergency Services

All agencies provided the requested information to me within the time frame allowed. The reviews resulted in eight of the nine selected agencies being considered as having unsatisfactory compliance rates with Procurement Rules 26 and 28.

The outcome of this review program has reinforced my lack of confidence that effective contract management planning and performance reporting has been adequately performed across the NT Government.

As a result of my findings in these reviews, I have decided to continue my program of reviews. I will be selecting more agencies, including some of those already reviewed, for further review of Procurement Rule 26 and 28 compliance in the future. These reviews will occur in addition to the normal Value for Territory Audits to be undertaken by agencies.

6.5. Has Value for Territory been delivered?

The focus on delivery of Value for Territory in individual procurement activities continues to be challenging for some agencies and individuals. Again this year I have seen several instances of procurement activities where I do not believe that the selection of the successful tenderer has delivered the best potential Value for Territory outcome due to departures from the procurement framework.

The current framework for assessment of Value for Territory within procurement activities still contains several elements which require subjective evaluation to be made by those undertaking assessment of offers. In circumstances where subjectivity forms part of the decision making process to determine the best Value for Territory across a number of offers, different people will have conflicting views as to which offer, in their opinion, delivers the best Value for Territory.

I applaud the NT Governments announced intention to develop and implement the Value for Territory Assessment Framework, as among other things it aims to reduce the amount of subjectivity required to assess tender responses. This should lead to more consistent and defensible procurement decisions.

Initial industry feedback on the Local Content component of the framework has been very positive, however I cannot overemphasise the importance of its timely roll out if the government intends to keep industry engaged and supportive of it.

I review only a very small percentage of the total government procurement activities each year, most of which are instigated through the receipt of a complaint from industry. Of those activities reviewed I regularly find departures from the Procurement Rules, some of which may be considered minor and which do not affect the overall assessment outcome. There are however some departures from the Procurement Rules which lead me to conclude that the best Value for Territory tender response may not have been selected.

I am very concerned about the high level of non-compliance with the procurement rules that govern contract management planning and performance reporting. What is particularly concerning to me is that this high level of non-compliance reduces my confidence that the NT Government is receiving the level of goods or services it has contracted and paid for, and that due to the poor level of performance reporting, that it continues to deal with businesses that have not met the expected level of service delivery in past contracts. Neither of these outcomes are likely to lead to best Value for Territory procurement outcomes.



Based on the above, I have concluded that the majority of procurement awards made by the NT Government in the last year are likely to have been determined based on selection of the best Value for Territory outcome as anticipated under the procurement framework. However due to poor contract management and performance reporting practices I hold concerns that best Value for Territory is what has always been delivered. This reduces my overall confidence that Value for Territory is being delivered by all agencies so I am therefore unable to form the conclusion that optimal Value for Territory has been delivered across the NT Government in the period since my last Annual Report.

Future delivery of optimal Value for Territory by the NT Government is unlikely to occur until its commitment to effective contract management planning and performance reporting is improved across all government agencies to the levels anticipated by the Procurement Rules.

7. The Buy Local Plan

The Buy Local Plan is an overarching policy document of the government which sets out a broad framework for how it intends to meet its stated objective of ensuring that the largest possible proportion of every dollar spent by the NT Government is retained within, and delivers benefit for, the Northern Territory economy and community.

The Buy Local Subcommittee is a subcommittee of the NT Procurement Review Board, and was established at the same time as the role of the Buy Local Industry Advocate.

Since my second Annual Report the subcommittee has met on 4 occasions. The members of that subcommittee are;

- Denys Stedman – Buy Local Industry Advocate (chair)
- Andrea Moriaty – Killarney Homes – industry representative
- Margaret Michaels – Clayton Utz – industry representative
- Kevin Peters – ICNNT representative
- Greg Ireland (replaced Greg Bicknell from April 2020) – NT Chamber of Commerce representative

In addition, the chair of the Procurement Review Board, Mr Doug Phillips, is invited to attend as an observer at the subcommittee meetings, as is a representative from Procurement NT.

I thank the members for their input and counsel in respect to matters which the subcommittee has considered, and for their ability to bring an industry related focus to our discussions.



7.1. Effectiveness of the Buy Local Plan

Measuring the effectiveness of the Buy Local Plan is subjective in nature and remains a challenge.

The ability to measure the effectiveness of the Buy Local Plan would be strengthened by incorporating a number of changes into the procurement framework, as discussed in [Section 8](#) and elsewhere in this report.

The principles contained in the Buy Local Plan continue to receive support both from government and industry regarding the importance of supporting Territory Enterprises and buying local.

Year on Year Comparison of Contracts Awarded

The reporting of agency and whole of government spending over all procurement Tier levels is still unavailable. I again urge the government to commit the resources required to introduce a system capable of capturing and accurately reporting this information.

The current NT Government systems provide NT Government contract award data for Tier 2 to 5 procurements (\$15,000 and above). The data does not include government owned corporations and pre-existing period contracts. The data available to me shows the number and value of contracts awarded by the NT Government over the last 4 years is as follows:

Financial Year	Total Contracts Awarded		Contracts awarded to Territory Enterprises			
	No of contracts	Value of contracts	No of contracts	% of Total	Value of contracts	% of Total
2016/17	1860	\$657,297,081	1493	80.3%	\$536,519,272	81.6%
2017/18	2319	\$1,492,627,918	1892	81.6%	\$1,134,262,795	76.0%
2018/19	1645	\$935,873,098	1497	81.9%	\$848,667,326	90.7%
2019/20	2070	\$1,239,912,900	1683	81.3%	\$911,821,986	73.5%

As can be seen from the above table the number of contracts awarded to Territory Enterprises for the 2020 financial year has increased in comparison to the previous year (as has the total number of contracts awarded overall), however the percentage of total contracts awarded to Territory Enterprises has marginally decreased to 81.3%.

The value of contracts awarded to Territory Enterprises shows an increase from the previous year, however the percentage value of the total contracts awarded to Territory Enterprises has declined significantly to 73.5%.

One reason for the major decline in the percentage value of contracts awarded during the year was due to the awarding of a 5 year panel contract for the provision of passenger and light commercial vehicles. The value of this contract is estimated to be \$150,000,000 over the five year period. Due to the contractual requirements of the vehicle manufacturers 8 of the 11 awarded panel contractors are the manufacturers of the vehicles, which are reported for procurement purposes as not being Territory Enterprises. This is despite the fact that the sale and supply of all vehicles will be through NT based dealers associated with those manufacturers. If the contract was to be reclassified as with Territory Enterprises (given the vehicle sales and delivery will all be through NT dealers) then the total value of contracts

awarded to Territory Enterprises would increase to \$1,020,912,895, and the percentage of the value awarded to Territory Enterprises would then rise to 82.3%

Both the unadjusted and adjusted figures above indicate that since my previous Annual Report the awarding of contracts to Territory Enterprises has fallen on a proportionate basis to total NT Government procurement spending for Tiers 2 through 5.

The primary objective of the Buy Local Plan is to ensure that the largest possible proportion of every dollar spent by the NT Government is retained within and delivers benefits for the Territory economy and community. The above figures suggest that this objective has not been met when compared to the previous year.

7.2. Investigation of Complaints

Often a business may contact me to raise a complaint, but after initial discussions with the business it is identified that the matter is not in fact a complaint, but rather an opportunity to engage with the business to improve their understanding of the procurement process. These contacts are not considered by my office to be complaints, but rather as consultations.

In respect to complaints I aim to provide constructive feedback to both the complainant and the agency as to the findings of my review of a specific procurement activity within three to four weeks, however delays sometimes occur.

In debriefing complainants about the outcome of my review I try to provide additional context and feedback relating to the tender process, the quality of the tenderers submission and provide suggestions about how future tenders may be improved. The outcome of some reviews highlight the tenderers poor understanding of the procurement process and/or the quality of their tender submission as the reason for their inability to be successful.

The provision of feedback to agencies is at times challenging, especially where their focus is on justifying the outcome they have reached rather than considering whether the process could have, or should have, been undertaken differently, and therefore a potentially different outcome reached. The feedback I provide highlights where I believe there has been any departures from the procurement framework and I try and suggest solutions to how processes may be changed moving forward to avoid similar outcomes in the future. The reviews undertaken do sometimes show that the correct procurement process has been applied by the agency and no further action is required.

Since the emergence of COVID-19 there has been a significant drop in the number of complaints. I believe that this reduction in complaints is due to three principle factors;

1. Businesses have been focused on what steps they need to take to ensure the ongoing viability and survival of their business, including restructuring their business models and accessing the various government support programs available to them and their employees;
2. The rapid stimulation of economic activity by governments through accelerating spending on procurement activities planned for later periods. In addition the development of economic stimulus initiatives such as the Tourism Voucher Scheme, The Home Improvement Scheme and Business Improvement Grants have also helped to encourage immediate economic activity; and
3. The quarantine and travel restrictions placed on every part of the country and in particular the Northern Territory, due to COVID-19, has led to both business and

government having to find non-traditional supply options and products able to be sourced closer to home to be able to meet realistic delivery time frames. The severe restrictions on the ability to access interstate labour, and slow delivery times for products has helped stimulate the development of innovative processes and products by NT businesses, which has helped to keep them engaged and busy.

The following table sets out on an annual basis the number of complaints received and actioned by my office for the past 3 financial years.

	FY 17/18	FY 18/19	FY 19/20
Open complaints b/f	-	8	18
Complaints raised	34	59	34
Complaints closed	26	49	46
Open complaints c/f	8	18	6

I have noticed a slowly increasing rate of complaints since July 2020, however the current rate of complaints has still not returned to pre COVID-19 levels.

7.3. Unintended Consequences

In my previous Annual Reports I identified that the Buy Local Plan has increased awareness of the value to the NT economy of local business supporting other local business.

I continue to see an increase in the number of businesses who have developed and actively implement their own "Buy Local" policies which are aimed at supporting regional and other NT based businesses, in preference to interstate or overseas options.

Coupled with this I continue to see through engagement with industry peak bodies a sustained and increasing focus at an industry level on the value of local business supporting local business. I see this as a positive unintended outcome of the Buy Local Plan.

This year I have not identified any additional unintended consequences from the introduction of the Buy Local Plan.

7.4. ICAC

As a Public Officer as defined under the ICAC Act I have a mandatory obligation to report improper conduct, whether real or suspected. Improper conduct includes Corrupt Conduct, Misconduct and Unsatisfactory Conduct.

Since my previous Annual Report I have referred one matter to ICAC for investigation of Unsatisfactory Conduct.

7.5. Authority of the Buy Local Industry Advocate

The authority to undertake my role is not defined by any specific statute.

My role is outlined in Section 6 of the Buy Local Plan.

My authority to request information is contained in Procurement Rule 1.7.

Section 6 of the Buy Local Plan makes it quite clear that part of my role is to ensure that "... Value for Territory is considered in all aspects of government contracting..."

It is not uncommon for me to experience situations where my authority to request access to information is called into question by agency staff, and nor is it uncommon for me to be accused of overstepping my remit when considering complaints, undertaking reviews, and providing input into policy. Some consider my role is purely about Local Content and buying local. Perhaps this view is influenced by my title.

As local content is only one component of Value for Territory, I will continue to ensure I consider all aspects of procurement policy and process to ensure that best Value for Territory is being delivered.

8. Opportunities For Improvement

In my previous Annual Reports I identified matters that in my opinion presented opportunities for the NT Government to strengthen and improve the procurement framework to deliver more consistent Value for Territory outcomes, strengthen the intent of the Buy Local Plan, and enable meaningful measurement of the effectiveness of the Buy Local Plan.

As outlined in other sections of this Annual Report some of these matters have been addressed or partially addressed by government. The following Opportunities For Improvement remain for government to consider.

8.1. Whole of Government Procurement and Reporting System

There still does not exist one single whole of government system that collects, collates and reports all procurement information.

As I have stated previously, in order for any valid assessment of the effectiveness of the Buy Local Plan to occur, reliable baseline and ongoing spending data needs to be captured and reported at an agency level which can then be consolidated into whole of government data. I believe that this information would provide significant benefit to agencies in monitoring and controlling their entire procurement spend.

This matter has been acknowledged by government, but at this point in time there has been no commitment made to progress implementation of a system capable of capturing this information.

The original version of the Buy Local Plan stated that the NT Government spends \$3bn on goods, works and services annually. The table in [Section 7.1](#) of this report shows that the highest procurement spend over the last 4 years was \$1.492bn. This is not even half of the estimated annual procurement spend.

I therefore again call on the government to establish an integrated whole of government procurement management and reporting system to facilitate, monitor and report on both agency and whole of government procurement activities at all procurement Tier levels.

8.2. Contract Management

Poor contract management continues to be an area that causes me concern.

Poor contract management contributes to the delivery of poor contract outcomes including cost overruns, subcontractor/supplier substitution, increased whole of life costs and ineffective relationships between the agency and supplier. This does not support delivery of optimal Value for Territory procurement outcomes.

8.2.1. Contract Management Planning

My review of Value for Territory Audit Reports this year indicated that instances of non-compliance in the application of procurement rules relating to contract management planning has not improved, and in some instances has worsened.

My concerns led me to initiate a rolling review of all agency's compliance with Procurement Rule 26 - Contract Management Planning. The first stage of this review focused on specific procurement activities of nine agencies selected by me. Procurement transactions of additional

agencies will be selected over the coming year, with a view to completing a review of all agencies compliance with Procurement Rule 26 over the forthcoming year.

The results of the reviews of the nine selected agencies led me to the conclusion that of these nine agencies, only one could demonstrate satisfactory compliance with the Contract Management Planning rules. This low compliance rate is of concern to me, and is in urgent need of rectification.

8.2.2. Contract Management

The “substitution” of nominated sub-contractors and suppliers post tender award has been an area of industry concern for some time. While the instances of this occurring appears to be better managed by agencies as time goes by, it is still being raised with me by industry often enough that it remains a concern.

The delivery of contracted undertakings of successful tenderers, such as nominated employment, training and community development outcomes is receiving more scrutiny by agencies, particularly with respect to projects in the building and construction industry. There still exists however enough instances of non-delivery of these outcomes to suggest that further work is needed to improve this aspect of contract management.

8.2.3. Contrax

I had hoped that the adoption and use of the Contrax contract management and reporting platform would contribute to improved compliance levels, and would have been adopted by all agencies by the end of 2020. Unfortunately, at the date of writing this report this appears unlikely as the status of agency adoption of Contrax is as follows:

- One agency has completed adoption of Contrax;
- Five agencies have commenced, but not completed, adoption of Contrax;
- Seven agencies have commenced, but subsequently put on hold, adoption of Contrax; and
- Eight agencies have not started the adoption of Contrax, or consider it not to be required.

Some agencies have raised concerns around the ability of Contrax to meet their specific contract management requirements, and have provided feedback relating to possible system modifications. Work is currently being undertaken within government to accommodate these requirements, which has delayed its full implementation by some agencies.

I am concerned that there remain some agencies that are not proceeding to implementation, even though their existing contract management systems are not delivering adequate results. I strongly urge the government to consider mandating adoption of Contrax by all agencies. If Contrax is not considered to be fulfilling the government's needs I suggest another contract management system be identified and adopted by all agencies as soon as possible.

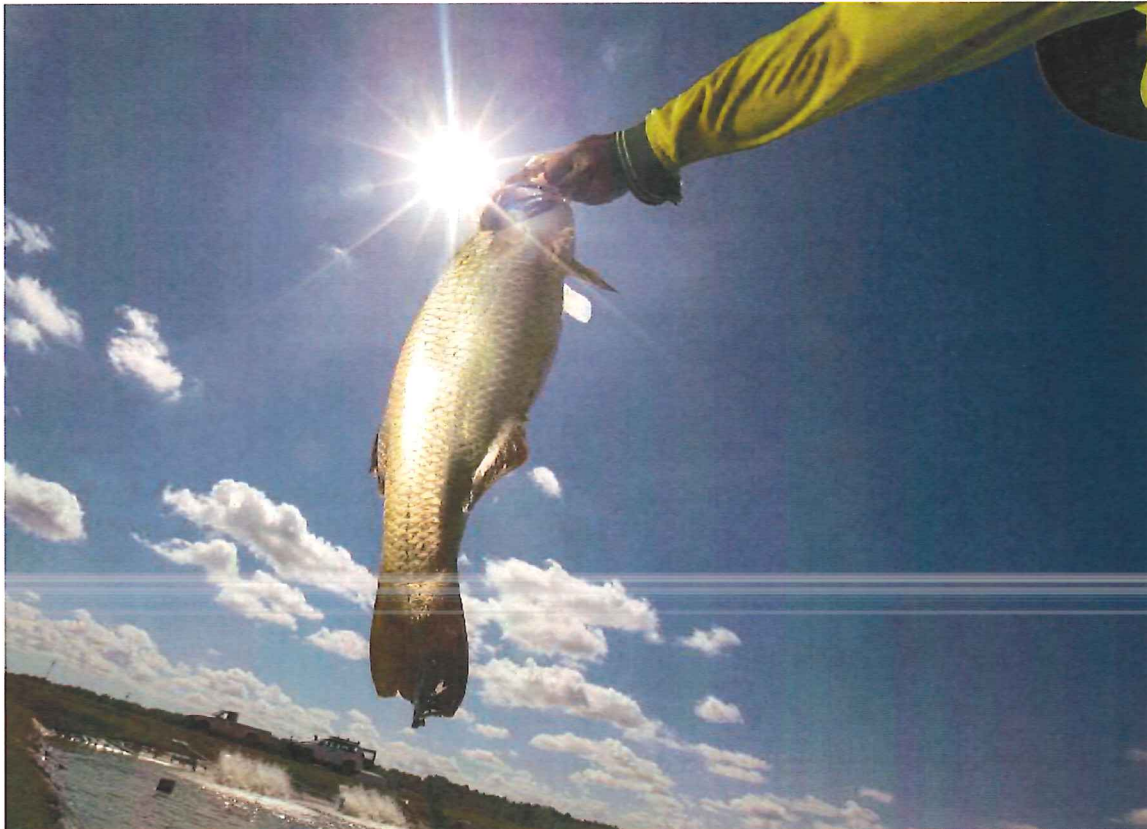
8.2.4. Training

I note that the government engaged an independent contractor to deliver advanced contract management training to agency staff commencing in August 2020. The completion of this training by staff will occur over time, and at different rates according to agency priorities.

I commend the government for this initiative and hope to see the results of improved contract management outcomes from now on.

8.3. Use of ICNNT

Appropriate engagement by agencies with ICNNT continues to improve, however there still exists some misconceptions by government procurement staff on how to correctly access ICNNT databases.



Procurement NT and ICNNT have issued guidance material for procurement staff, and have also commenced a rolling program of staff information sessions to ensure proper understanding and use of the ICNNT process.

The appropriate use of ICNNT needs to be regularly monitored and reported to ensure it continues to improve.

8.4. Procurement Staff Career Development

Over the past year the government has introduced a Procurement Capability Development Framework for procurement staff. This framework will take 3 years to fully implement.

The framework includes both accredited and non-accredited training opportunities in procurement specific skills, with annual Agency Procurement Management Plans now requiring specific commitments to capability improvement, and subsequent reporting on delivery of commitments to the Procurement Review Board.

I commend the government for committing the resources to develop and deliver this important initiative, and encourage it to monitor and refine its implementation (if required) to ensure it delivers the appropriate outcomes.

8.5. Alternative Tenders

In my two previous Annual Reports I raised the issue of how the use of alternate tenders was managed, and how they were assessed.

In April 2020 Procurement NT undertook to develop a process to identify ways to strengthen guidance for agencies on how to assess alternate tenders. At the date of writing this report that work is yet to be progressed by Procurement NT.

8.6. Tender Specifications

The accuracy and relevance of tender scoping specifications and information continues to be raised with me by industry on a regular basis.

Poorly specified tenders are unlikely to lead to an optimal Value for Territory procurement outcome.

Scope writing training has been made available to agency staff from August 2020 as part of the Career Development Framework referred to in Section 8.4. The agency and staff take up rates for this training will determine the time frame in which its benefits will be delivered.

Agencies also need to ensure they devote sufficient resources to undertake appropriate evaluation of new products to ensure they meet or exceed the required standards. An investment of effort in this area has the potential to lead to the development of innovative and improved product development, and to enhance the capabilities of Territory Enterprises and Industries.

Government needs to ensure agencies remain focused on appropriate training of staff and that they are provided with the necessary resources to allow training and product evaluation to occur.

8.7. Tender Debriefs

The Department of Infrastructure, Planning & Logistics (DIPL) completed a pilot program on 30 June 2020, whereby tenderers scores were released to them upon request at their tender debrief. DIPL has determined that it will continue the release of scores as part of its debrief process into the future.

The feedback I have received from industry since the pilot's introduction is that generally the quality and value of DIPL debriefs continues to improve. The instances where DIPL tenderers are not satisfied with the quality of debriefs has decreased, but they still do occur. In respect to other agencies the feedback relating to the quality of debriefs is still mixed, and remains at a similar level to previous years.

A determination has not yet been made by government on whether the release of scores will be introduced as government wide policy.

Noting the progress made by DIPL in respect to the quality of its tender debriefs I encourage all agencies to consider adopting the approach used by DIPL, and remind them to remain

focused on the need to continue to improve the quality of debriefs, regardless if they choose to release scores or otherwise.

8.8. Agency Procurement Resourcing

New Machinery of Government (MOG) changes contained in Administrative Arrangements Order (no. 3) 2020 came into effect from 8 September 2020.

These MOG changes involved considerable reallocation of responsibilities between agencies and are still in the process of being imbedded into some agency specific processes.

In effect all NT Government procurement resources have been centralised into the Department of Corporate and Digital Development, with the exception of the Department of Infrastructure, Planning and Logistics and the Department of Territory Families, Housing and Communities. The government considers that these new arrangements will provide improved flexibility for procurement support to client agencies.

The centralisation of procurement services does not remove the responsibility of individual agencies to ensure proper identification and scoping of procurement activities, and appropriate contract management planning and performance reporting. It is therefore very important that the government remains vigilant to ensure that individual agencies are adequately resourced to support their day to day procurement activities, and in particular their contract management and reporting obligations.

8.9. Local Content Assessment and scoring

Consistent scoring of the local content criteria by tender assessment panels remains a significant challenge.

In my previous Annual Report I advised that the government had committed to implementing a Local Content Assessment Framework by the end of March 2020, as the first stage of a broader review and development of a Value for Territory Assessment Framework (VFTAF). The Local Content Assessment Framework was unable to be delivered by that date.

On the 29th January 2020 the Acting Chief Minister formally announced that the government had committed to full implementation of the VFTAF by the end of 2021. At the time of the announcement the government stated the following:

"The framework will deliver improvements across the procurement lifecycle of planning, tendering and assessment and contract management through new systems and guidelines for government staff. The framework will be designed to provide improved information for business, industry and government staff to provide consistency and increase understanding."

Since the announcement the government has undertaken extensive industry consultation in respect to stage one of the framework (Local Content) and has commenced piloting live procurements using the initial version of the Local Content question bank and assessment scoring matrix. The government intends to have the Local Content stage of the VFTAF in use by all government agencies by the end of March 2021, with the balance of the framework to be fully implemented by 31 December 2021.

Initial feedback from both industry and agency users in respect to the Local Content component has been positive to date.

The progress is encouraging, however the implementation time frames have been painfully slow. This is an important change to the procurement process which was first advocated on behalf of industry in October 2018. By the time the Local Content stage of the framework is fully implemented in March 2021, it will have been almost two and a half years in its development and roll out. For such an important change this delivery time frame is not acceptable from industry's perspective.

In its press release announcing the VFTAF the government stated **"This is a red-tape slashing, small business-boosting, job-creating reform."** Why then will it take nearly two years from its date of announcement to when it will be fully delivered, assuming it is delivered on time?

8.10. Grants

NT Government grant recipients continue to support non NT based businesses through their procurement activities, without any apparent consideration of Buy Local principles in their procurement process.

I have had discussions with staff of the Department of Chief Minister and Cabinet in respect to this matter to determine if there are changes to the process that could be adopted to deliver better Buy Local outcomes.

I have received advice from the agency that the grant policy is about to be reviewed and guidelines regarding Buy Local could be considered as part of that review, and that Buy Local could be mandated for some appropriate grants (such as already exists for the Community Benefit Fund), however it is unlikely that Buy Local could be mandated for all grants, particularly recurrent funding.

I urge the government to undertake this proposed review in a timely manner, and offer my assistance and perspective in the undertaking of their review.

I remain of the view again this year, that if the NT is to gain more Buy Local benefit from the spending of grant funds the Grant provisions need to be further strengthened to reflect the policy intent of the Buy Local Plan.

8.11. Statutory Authorities

I note that this matter is one which has now gained the interest of the Procurement Review Board who have requested clarification of which NT Government bodies are required to comply with the Procurement Act 1995. Compilation of this information has been underway for some time and is expected to be completed in the near future.

I also note that the Solicitor for the NT issued Legal Note 34 in September 2020 in a bid to provide guidance on when an NT Government body will be subject to the Procurement Act.

Given that such clear guidance now exists it should be a relatively simple process to determine which bodies are covered by the Procurement Act 1995 (and therefore the Buy Local Plan).

The current uncertainty that exists around the application of the NT Government Procurement Framework to these government bodies continues to diminish industry's perception of the value of the Buy local Plan.

Industry looks forward to clarification of this matter as a matter of urgency.

8.12. Value for Territory

The concept of Value for Territory continues to be misinterpreted and misunderstood by both industry and government.

The uncertainty that results from this continues to lead to unrealistic expectations by industry regarding their ability/inability to secure contracts, and to the awarding of procurements to tenderers who do not necessarily demonstrate the best Value for Territory outcome.

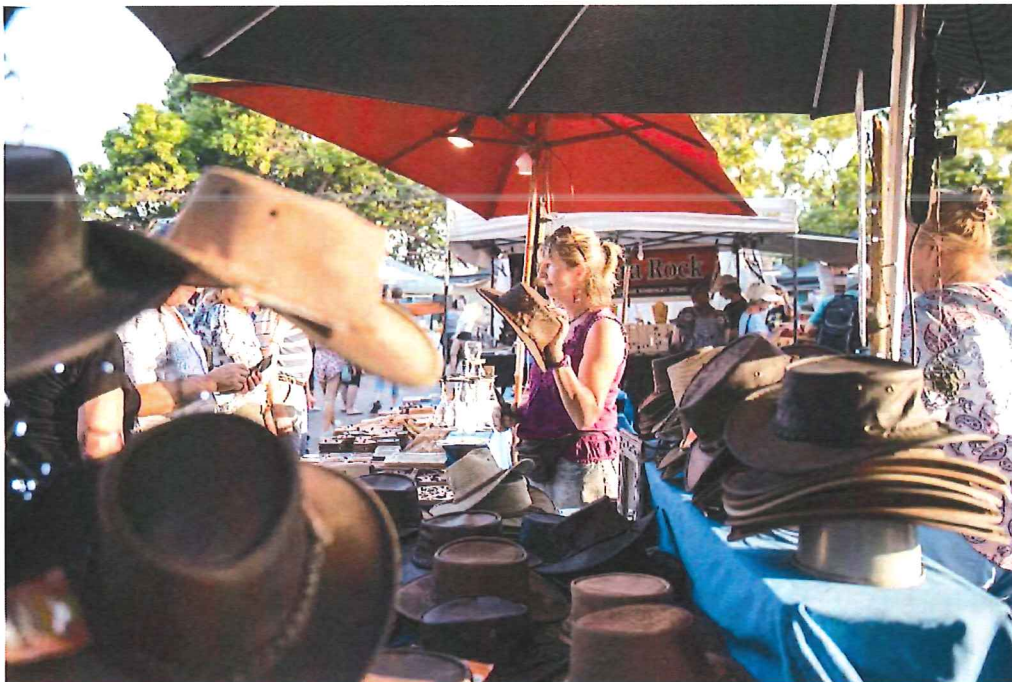
One of the government's stated outcomes from the introduction of the Value for Territory Assessment Framework is that it will deliver **"increased understanding and capability associated with the practical application of Value for Territory"**. As a result I have been informed that the government intends to develop communication/guidance on the concept of Value for Territory, which will be rolled out in conjunction with the VFTAF.

The VFTAF is well overdue in industry's view, and given its proposed delivery time frame I am concerned that the above stated outcome and guidance are unlikely to be delivered until after the framework has been completely rolled out in December 2021.

I again this year call on the government to devote further resourcing to expedite the education of industry and government staff as to what Value for Territory is.

8.13. Assessment of VFT in Tier 1 & 2 procurement activities

I have been advised by government that guidance for procurement staff on how to properly and consistently assess Local Content and more broadly best Value for Territory when undertaking Tier 1 & 2 procurement activities is currently under consideration. There has not however been any commitment made as to if and when such guidance may be issued.



I again urge the government to consider the development of such guidance together with a decision framework for use by procurement staff to support their procurement decisions.

8.14. Across Government Baseline Spending Data

I have highlighted in my two previous Annual Reports there was no accurate across government baseline spending data established at the introduction of the Buy local Plan, upon which subsequent periodic comparisons could be made to measure changes. The lack of accurate baseline information still remains.

In addition, for the reasons outlined in [Section 8.1](#), the government remains unable to establish baseline data for any of the years since the introduction of the Buy Local Plan.

The absence of this information continues to leave me unable to make a reliable assessment of the effectiveness of the Buy Local Plan based on verifiable data. Any assessment that I make can therefore only be made on incomplete statistical and anecdotal information. Given the importance of the government policy expressed through the Buy Local Plan, and the requirement for me to report on its effectiveness, the lack of this information remains a concern for me.

8.15. Value to the NT economy of the NT Government spend with Territory Enterprises

Since my previous Annual Report I have had discussions with staff from the Economic Reform group of the Department of Industry, Tourism and Trade.

The Economic Reform group have provided me with economic multipliers for various industry categories which show how much additional spending is generated for the NT economy for each dollar spent within a specific industry.

I am advised that due to data availability and cost this information is only available for broad industry categories, and it therefore cannot be accurately produced for specific goods or services.

I still believe that the economic multiplier value and impact on the NT economy of spending by the NT Government with Territory Enterprises would be useful for both industry and government to know, and would assist in an improved understanding of the importance of the Buy Local Plan.

8.16. Defensible Decision Making

Adequate documentation of defensible decision making is still not as good as it needs to be. I continue to see instances of poorly constructed procurement files which do not contain the necessary evidence to support the procurement outcome reached.

A lack of defensible decision making undermines confidence that the procurement outcome was reached through proper due process, and therefore that optimal Value for Territory has been delivered.

The Procurement Rules were updated effective from 1 July 2020 to assist in this regard, and there is also a review of guidance documentation issued to procurement staff currently underway.

Given the structure of the proposed Value for Territory Assessment Framework I am confident that its eventual implementation will enable procurement staff to make and properly document defensible decisions much more simply than they can do now.

In the meantime however I remind agencies and procurement staff that continued focus is needed to ensure that awareness of the importance of adequate and relevant record keeping remains a priority for them.

8.17. Territory Enterprise

The definition of a Territory Enterprise is as follows:

A Territory Enterprise is an enterprise operating in the Northern Territory, with a significant permanent presence in the NT and employing NT residents.

This definition continues to mean different things to different people and it is still difficult to get two parties to agree on whether a specific example is or is not a Territory Enterprise. Notwithstanding this confusion I still remain unable to come up with a better definition.

Recently I have been concerned that the classification of tenderers as a Territory Enterprise may have been made in order to make it easier to award a contract to a business that is perhaps not a Territory Enterprise as contemplated by the definition. This behaviour may be a breach of the Procurement Rules and will be reported and actioned by my office when it is identified.

The proper identification of a Territory Enterprise is also important in respect to the statistics recorded by the government (see [Section 7.1](#)). Any misrepresentation or misreporting of this information can have a significant impact on both agency and whole of government reported statistics in the case of large value procurement activities.

I urge agencies to ensure that procurement staff are both encouraged and supported to correctly classify the Territory Enterprise status of a business.

8.18. Pre Tender Market Assessment

Examples of poorly researched and constructed procurement planning where one or more of the five key procurement principles are not considered still occurs.

This is most obvious in situations when procurement planning tends to default to a known supplier (either within or outside the NT) without consideration of other potential providers or products available in the NT.

The impact of COVID-19 has had a positive impact on improving this due to unavailability of supply, extended delivery time frames, and willingness to accept alternative products. The lesson to be learnt from the COVID-19 experience is that often there are suitable alternative products available, it may just take some time and effort to identify them. The key principles that must be applied to every procurement activity, require that this time and effort is applied.

Proper and well considered market assessment has to be undertaken for all procurement activities in order to optimise Value for Territory outcomes.

8.19. Improved Consistency in Scoring of Past Performance, Timeliness and Capacity

Inconsistent scoring of the Past Performance, Timeliness and Capacity criteria between individual tenderers within a procurement, and between different procurement activities within an agency, continues to occur.

The introduction of the Value for Territory Assessment Framework is government's response to addressing these issues.

I look forward to seeing how these will be addressed in the VFTAF, along with its timely implementation.

In the meantime I urge agencies to ensure tender assessment panels remain focused on ensuring well documented and consistent scoring under the existing framework.

8.20. Referee Checking

Inconsistent checking of referees by agency staff continues to concern some tenderers, as it undermines their confidence in the equity and transparency of the procurement process.

This matter was raised by me in my previous Annual Report, and was subsequently considered by the Buy Local Sub Committee.

The Sub Committee referred the matter to the NT Governments Procurement Reference Group for its views, and received some preliminary feedback.

The Sub Committee has now been advised that the matter will be addressed and rolled out through the Value for Territory Assessment Framework.

I look forward to seeing how this will be addressed in the VFTAF, along with its timely implementation.

8.21. Past Experience

Inconsistencies around the weight given to previous NT Government experience when compared to non NT Government experience still remain.

This matter was raised by me in my previous Annual Report, and was subsequently considered by the Buy Local Sub Committee.

The Sub Committee referred the matter to the NT Governments Procurement Reference Group for its views, and received some preliminary feedback.

The Sub Committee has now been advised that the matter will be addressed and rolled out through the Value for Territory Assessment Framework.

I look forward to seeing how this will be addressed in the VFTAF, along with its timely implementation.

8.22. Contractor Performance Reporting

8.22.1. Compliance with Procurement Rule 28

My review of Value for Territory Audit Reports this year indicated that instances of non-compliance in the application of procurement rules relating to contractor performance reporting remains a challenge for most agencies.

My concerns led me to initiate a rolling review of all agency's compliance with Procurement Rule 28 – Performance Reporting. The first stage of this review focused on the same procurement activities of the nine agencies selected by me for review of Procurement Rule 26. Procurement transactions of additional agencies will be selected over the coming year, with a view to completing a review of all agencies compliance with Procurement Rule 28 over the forthcoming year.

The results of the reviews of the nine selected agencies led me to the conclusion that of these nine agencies, only one could demonstrate satisfactory compliance with the Performance Reporting rules. This low compliance rate is of concern to me.

Poor contract performance reporting contributes to inaccurate perceptions of suppliers' abilities, poor delivery outcomes and inaccurate assessment of past performance in future tender assessments. It also does not provide the contractor with appropriate and measured feedback to enable them to improve performance. These outcomes do not support delivery of optimal Value for Territory.

8.22.2. Access to Contractor Performance information

Procurement Rule 28.4 provides that agencies *"... must retain performance reports commensurate to the value and risk of the contract and on request, provide a copy of the performance reports to other agencies to assist in assessments."*

I do not understand why an agency should provide this information to another agency on request. This seems to me to be an unnecessary waste of resources in requiring two agencies to engage with each other to exchange information which could be readily accessed from a centralised database.

I believe the current process may also be an impediment to some procurement staff going to the effort to obtain this information when assessing tenders.

I recommend that the government introduce a whole of government database system to provide for storage of, and access to, contractor performance reports produced by all government agencies. Such a system would allow a single source of reference for all previous performance data on every business with which the NT Government has had past dealings.

8.23. Use of Alternative Procurement methods

Procurement Rule 12.5 requires an agency to use a preferred procurement method unless otherwise approved by the Delegate.

Preferred procurement methods vary as follows depending on the Tier level of the proposed procurement:

- Tier 1 (up to \$14,999) Quotation (minimum of 1);
- Tier 2 (\$15,000 to \$99,999) Quotation (minimum of 3); and
- Tiers 3-5 (\$100,000 and above) Public Tender.

Section 6.2 of the Procurement Rules allow an agency Delegate to authorise the issue of a Certificate of Exemption to use an alternative or restricted procurement method where it can be demonstrated that it will result in improved Value for Territory, or is in the best interest of government and industry.

Table 6.2 of the Procurement Rules set out the reasons when a certificate of exemption may be issued by an agency.

There are instances where the strict application of preferred procurement methods does not deliver best Value for Territory or are in the best interest of government and industry. The use of agency issued Certificates of Exemption is the mechanism whereby these situations can be managed for specific procurements.

Clauses 6.2 a) and 6.2.1 of Section 6.2 of the Procurement Rules appear to me to be ambiguous in respect to their application. I know of at least one agency that also finds these provisions ambiguous, and as such they have been unable to issue Certificates of Exemption in specific instances where they felt it was warranted.

Section 6.2 of the Procurement Rules is an important element of the procurement framework, and any ambiguity should be removed. It should also be kept in mind that Section 6.2 should not be a mechanism for agencies to step away from preferred procurement methods for the sake of convenience.

I recommend that Section 6.2 of the Procurement Rules be reviewed to remove any ambiguity and ensure that it is structured in such a way that it is fit for purpose for agencies to use, and that its application will always result in improved Value for Territory and it is in the best interest of government and industry.

8.24. Conflicts of Interest

At times I receive requests from industry to review specific procurement activities where they feel that appropriate conflict of interest processes may not have been followed.

My reviews sometime disclose that appropriate processes have been followed, but this is not always the case. The process for identification and management of conflicts of interest varies between agencies.

The Auditor-General of the NT undertook a survey of agencies to assess the extent to which conflict of interest controls and processes are implemented and operating throughout the NT Government. Details of the survey are contained within the Auditor-Generals June 2020 report to the Legislative Assembly.

One of the conclusions reached by the Auditor-General was that of the 20 agencies that responded to the survey, 15 need to either improve or significantly improve their systems and processes for identifying and managing conflicts of interest.

I believe that there exists inconsistency and confusion within the ranks of NT Government staff as to what a conflict of interest is, when it needs to be declared, and how and who will manage it (if anyone). This confusion needs to be removed.

I support the Auditor-General's view that *"It would be prudent to consider developing and implementing a conflict of interest framework at an across-government level."*

A clear whole of government position will not only support improved defensible decision making from a procurement perspective, it will also help to protect government staff who have personal interests from acts of reprisal.

9. Conclusion

Measurement of the effectiveness of the Buy local Plan remains a challenge due to the lack of reliable whole of government spending data. Further, the lack of a definition of “effective” also impedes the ability to measure effectiveness.

The contracts awarded data shown in the table at [Section 7.1](#) highlights that while the number and total contracts awarded by the NT Government last financial year increased from the previous year, that in percentage terms the number and value of contract awards to Territory Enterprises both decreased. This data suggests that the primary objective of the Buy Local Plan, being; *“to ensure that the largest possible proportion of every dollar spent by the NTG is retained within and delivers benefits for the Territory economy and community”*, is not being delivered. It should however be noted that this data does not cover all NT Government procurement spending, and for reasons outlined in [Section 7.1](#), care needs to be exercised when drawing conclusions.

Anecdotally it appears to me that a change in culture within government to apply the principles outlined in the Buy Local Plan on a more consistent basis continues to slowly occur.

It also appears to me that a culture exists within some agencies whereby the agency and individuals are unwilling to accept responsibility for poor outcomes. This leads to a lot of time and energy being spent to justify reasons for poor decision making or blaming others, rather than accepting that something could/should have been done better, and ensuring it will be done better next time. This culture needs to change.

I encourage those within government to keep up the focus on further improvement as there are still too many instances brought to my attention where I do not believe the Buy Local principles have been properly applied.

The improved rates of overall compliance highlighted through the Value for Territory Assurance Program this year has been encouraging, however the poor compliance rates highlighted in my Procurement Rule 26 & 28 review undertaken in the latter part of the year undermines my confidence that as a whole the government is delivering the primary objective of the Buy local Plan, and optimal Value for Territory.

The views of industry about the effectiveness of the Buy local Plan remain mixed, with some industry participants being very cynical about the ability of government agencies to properly implement the intent of the Buy Local Plan through the current procurement process.

The timely implementation of the Value for Territory Assessment Framework is keenly awaited by industry, and it should go a long way to restoring industry confidence in the procurement process and the delivery of optimal Value for Territory.

Industry's current level of support for the VFTAF will only remain if it is delivered ahead of, or on time.

9.1. Effectiveness of the Buy Local Plan

The incomplete nature of procurement information continues to concern me, as mentioned in other areas of the report. If I am expected to make conclusions on the effectiveness of the Buy Local Plan I need accurate and reliable information.

I am therefore unable to form a view on whether the Buy Local Plan has delivered an increased amount of procurement outcomes to Territory Enterprises over the last year.

Until I have reliable information I will remain unable to form a view.

9.2. Delivery of Value for Territory

Delivery of Value for Territory procurement outcomes still remains challenging for some agencies and staff, although I acknowledge that I have seen specific instances of improvement.

There are still too many examples being brought to my attention where I consider that optimal Value for Territory has not been delivered. I again consider this year that maximisation of Value for Territory outcomes in individual procurement transactions remains inconsistent.

I hope that the introduction of the Value for Territory Assessment Framework will enable me to conclude otherwise in future, but further note that given its intended implementation time frame, it is unlikely it will be next year.



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