



THE UNIVERSITY OF  
MELBOURNE

**Public Procurement  
and Labour Standards**  
Improving the Victorian  
Fair Jobs Code and  
Lessons for the Secure  
Australian Jobs Code

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Centre for Employment and Labour Relations Law and  
Social and Sustainable Procurement Program



# Summary

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## Key Points

This policy brief makes the following key points:

- (a) There is significant support within Australia and internationally for more extensive and strategic use of public procurement to reinforce respect for labour and human rights standards;
- (b) The Commonwealth Government has plans to develop a **Secure Australian Jobs Code** to support secure employment;
- (c) The State of Victoria's recently introduced **Fair Jobs Code (FJC)** is currently the most comprehensive public procurement policy addressing labour standards in government suppliers and their supply chains in Australia;
- (d) The FJC represents a clear policy statement of commitment to use government spending power to support both respect for compliance with minimum standards and the adoption of good 'above the law' workplace and employment practices consistent with government policy;
- (e) Nevertheless, there are several areas where the FJC could be improved. As well as informing improvements to the FJC, this evaluation of the FJC, and the improvements identified, should inform the development of a federal Australian Secure Jobs Code.

## Recommendations

It is recommended that the Victorian Government consider the following modifications and amendments to the Fair Jobs Code:

1. **lower the threshold for the Pre-Assessment Certificates to \$1 million for all contracts and sub-contracting, and revise the threshold for FJC Plans to include the amount of aggregated contracts held by suppliers and grant recipients**
2. **that the eligibility criteria for Pre-Assessment Certificates are revised to include consideration of administrative sanctions, and that consideration is given to introducing mandatory criteria**
3. **that the requirements for Fair Jobs Plans be amended to include negotiation of specific performance criteria relating to the commitments in each Fair Jobs Plan**
4. **the introduction of 4 key improvements to the implementation of the FJC:**
  - **improve transparency, including a public register of FJC Plans developed by suppliers and grant recipients awarded contracts under the Code;**
  - **establishment of a Social Procurement Commissioner with responsibility for oversight, monitoring and enforcement of the FJC, and appropriate resourcing;**
  - **implement a capacity development plan for procurement officers in Agencies with respect to the Fair Jobs Code;**
  - **involve industry and trade union representatives in the process for consideration of Pre-Assessment Certificates and approval of Fair Jobs Code plans, and explicitly recognise trade unions as having standing to make complaints about FJC non-compliance.**

We also recommend that the Commonwealth Government take these findings into account when framing the proposed Secure Australian Jobs Code.

# Public Procurement and Labour Standards

## Improving the Victorian Fair Jobs Code and Lessons for the Secure Australian Jobs Code

### 1. Introduction

Government purchasing in Australia is a substantial driver of the economy, with the Federal Government alone publishing 92,303 contracts in the previous financial year with a combined value of \$80.8 billion, 94 per cent of which were awarded to Australian businesses. When organisations (including governments) leverage their purchasing power to generate social value above and beyond the dollar value of their purchases, this is broadly understood as social procurement. Governments strategically use procurement to:

- support broader public policy objectives (e.g., economic parity for Aboriginal Australians);
- influence the private sector to prioritise social value creation;
- diversify supply chains to, among other things, drive competition, promote innovation, and provide all suppliers with a full and fair opportunity to compete; and
- secure compliance with labour and environmental laws, and to promote best practice.

There is significant support within Australia and internationally for more extensive and strategic use of procurement to reinforce respect for labour and human rights standards.

As it currently stands, Australia's procurement system does not adequately support good quality

jobs – i.e., jobs which are safe, secure and provide decent wages and other employment conditions. It also risks incentivising non-compliance with statutory employment requirements, insecure work and irresponsible supply chain practices where contracts are awarded on the basis of lowest cost.

Prior to the 2022 federal election, as part of its Secure Australian Jobs Plan, the Australian Labor Party promised to introduce a **Secure Australian Jobs Code**:

*to ensure that taxpayers' money being spent through government contracts is being used to support secure employment for Australian workers.*

The policy states that the Code will establish guidelines governing the fair treatment of workers, including job security, and fair and reasonable wages and conditions, among other goals. The Albanese Government is yet to introduce the Code. However, in November 2022, the Victorian Government announced the commencement of its Fair Jobs Code, fulfilling a commitment it made before the 2018 Victorian election.

The Fair Jobs Code is the most comprehensive procurement policy addressing labour standards in government suppliers and their supply chains in Australia (the ACT Secure Local Jobs Code, introduced in 2019, is another example).

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The Victorian Government is currently undertaking a consultation with a view to ‘strengthening’ the FJC.

In this policy brief, we assess and provide a preliminary evaluation of the Fair Jobs Code in light of previous studies of what makes an effective procurement policy requiring compliance with labour laws and promotion of good workplace practices. Our findings inform the current FJC consultations, and provide lessons for the Albanese Government, should it introduce a Secure Australian Jobs Code as promised.

## 2. Using Public Procurement to promote better labour standards

Linking labour and human rights standards to public procurement is a longstanding practice around the world. It extends the ideal of government as a role model for good labour and human rights practices to the state’s supply chains.

As noted above, there is significant support within Australia and internationally for more extensive and strategic use of procurement to reinforce respect for labour and human rights standards.

Reports from **numerous parliamentary inquiries over the last decade have recommended linking public procurement to improved labour standards**. For example, the Senate Standing Committee on Economics (March 2022) recommended that the Australian Government act as model procurer by ensuring that its procurement powers are being used to support businesses that engage in fair, equitable, ethical and sustainable practices (Recommendation 18).

Further, the Senate Select Committee on Job Security in its Second Interim Report: Insecurity in Publicly-funded Jobs (October 2021) recommended that the Australian Government introduce a social procurement framework in the Commonwealth Procurement Rules (CPRs) and require suppliers to ‘provide a demonstrable and independently verified track record of compliance with workplace laws’ including

relevant subcontractors (Recommendations 34-36).

In addition, there are a number of international ‘soft law’ standards and frameworks which recommend inclusion of labour and human rights criteria in government purchasing contracts (e.g., the United Nations Guiding Principles on Business and Human Rights (2011); OECD Recommendation on the Role of Government in Promoting Responsible Business Conduct (2022) (which is binding on member states).

Since 2018, under the Modern Slavery Act 2018 (Cth), the Federal Government has been required to report annually on measures it has taken to identify and address risks of modern slavery in its own operations and supply chains. This has prompted a focus on responsible public procurement at the federal level, and the adoption of a more strategic approach that is risk-based and seeks to ‘push’ standards down the supply chains of supplying businesses.

Procurement linkages with labour and human rights standards can be made at two key stages of the procurement lifecycle. First, during the tender process, eligibility for government contracts can be linked to supplier performance with respect to compliance with labour and human rights standards and ethical employment practices. Second, when agreeing on the terms of contracts with successful tenderers, the buyer can impose requirements on suppliers to achieve labour and human rights outcomes e.g., including compliance with labour laws and vetting of labour practices in supply chains.

Two key considerations arise in the effective design of these linkages. The first consideration is the nature of the labour and human rights standards which are included as eligibility and performance criteria. This is a question of how far a government wishes to go in imposing labour and human rights criteria through procurement contracts. A common approach is to simply require suppliers to demonstrate compliance with existing laws. However, in some cases governments may wish to place additional requirements on suppliers to demonstrate good employment and human rights practices which go beyond compliance with existing laws.

The second consideration is the nature of the governance framework for the implementation of

these linkages. In maximising the regulatory impact of labour and human rights linkages in public procurement, governments must ensure effective implementation of those linkages by two distinct sets of regulated actors and entities. The first of these is public procurement officers and agencies, and the second is the businesses looking to supply goods or services to the government and relevant intermediaries.

Procurement officers must be resourced and empowered to oversee the eligibility and performance criteria in the face of pressure to achieve value for money in terms of lowest price. Further, procurement staff must work with suppliers to assist them in addressing procurement criteria, and monitoring supplier compliance with those criteria. In some cases, these criteria will need to be enforced through sanctions being imposed against suppliers. Research suggests that procurement linkages are unlikely to work without taking a regulatory approach to these issues.

We now turn to consider the Victorian Jobs Code as a recent initiative by a government in Australia to address labour standards in its supply chains.

## 3. The Victorian Fair Jobs Code

### 3.1. Overview

The Fair Jobs Code (FJC) seeks to promote best practice labour standards and ethical supply chain management by imposing eligibility and performance requirements on suppliers wishing to be considered for certain Victorian Government procurement contracts (classified by dollar amount) and significant business expansion grants.

The Code sets standards that suppliers and businesses contracting with Victorian Government must meet:

- **Standard 1: Comply with all applicable employment, industrial relations and workplace health and safety obligations**
- **Standard 2: Promote secure employment and job security**
- **Standard 3: Foster cooperative and constructive relationships between employers, employees and their representatives**
- **Standard 4: Foster workplace equity and diversity**
- **Standard 5: Promote supply chain compliance**

All suppliers and businesses wishing to bid for 'threshold procurement contracts' are required to:

- hold a *Pre-Assessment Certificate* which includes assessment of compliance with Standard 1;
- in addition, for high value contracts and significant business expansion grants, address Standards 2 - 5 in a *Fair Jobs Code Plan*.

*Pre-Assessment Certificates* are therefore a pre-condition for suppliers seeking consideration for all types of procurement contracts and significant business expansion grants covered by the FJC.

Implementation of the FJC, including issuing of Certificates and assessment of FJC Plans, is carried out by the 'Fair Jobs Code Unit' (FJC Unit) established within the Victorian Department of Jobs, Industry and Regions.

### 3.2. Applicable contracts/grants and entities

**Contracts and grants.** The FJC applies to two types of contracts and one type of business grant, specifically:

1. *Threshold procurement contracts*  
i.e., contracts between a supplier and a Victorian Government agency with a value of \$3 million or more (exclusive of GST)
2. *High value procurement contracts*

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The Fair Jobs Code (FJC) seeks to promote best practice labour standards and ethical supply chain management.

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i.e., contracts between a supplier and a Victorian Government agency with a value of \$20 million or more (exclusive of GST)

3. *Significant business expansion grants* i.e., grants from a Victorian Government agency with a value of \$500,000 or more (exclusive of GST) and where the key milestones under the grant agreement specify that the business will deliver new jobs.

**Entities.** The FJC applies to all *Victorian Government agencies* i.e., a department or public body within the meaning of the *Financial Management Act 1994 (Vic)*.

The Code also applies equally to all relevant suppliers and businesses seeking consideration for threshold and high value procurement contracts and significant business expansion grants, respectively.

**Exceptions.** Under specific circumstances, the FJC authorises agencies to enter into procurement contracts and provide significant business grants to suppliers without a Pre-Assessment Certificate.

Agencies can enter procurement contracts (both threshold and high value) with suppliers which do not hold a Pre-Assessment Certificate under the following conditions:

1. Where a procurement is for emergency goods, services or works to protect essential security interests, or avoid the loss of critical services or prevent critical services from being disrupted;
2. Where a procurement is for services or works required to prevent an imminent risk to health and safety or to avoid life-threatening situations;
3. If the Minister is satisfied that the procurement is critical to the State's interest;
4. If the Minister is satisfied that there is no other supplier that holds a Pre-Assessment Certificate considered suitable to meet the requirements of the procurement.

Additionally, Victorian Government agencies may provide a significant business expansion grant to a business which does not hold a Pre-Assessment Certificate in circumstances where the grant is for

a project or activity or supports a policy that contributes to the State's economic interests.

### 3.3. Pre-Assessment Certificates

Pre-Assessment Certificates function as a vetting process to minimise the risk of the Victorian Government engaging with suppliers and businesses with poor labour standards and unethical supply chains. They are issued by the FJC Unit. The Certificates are valid for two years from the date of issue (unless revoked by the FJC Unit or surrendered) and are subject to ongoing disclosure requirements under the Code.

The FJC does not expressly state what criteria suppliers or businesses must meet to obtain a Pre-Assessment Certificate. However, Cl. 5.5 of the Code sets out the considerations that the Fair Jobs Unit will consider when assessing an application for a Certificate.

5.5 In conducting an assessment, the FJC Unit will take into account the following assessment criteria:

- the underlying seriousness of the conduct reflected in any adverse ruling or enforceable undertaking concerning the supplier or business, including whether, in the past three years, it has:
  - committed an offence against the law of the State or another jurisdiction; or
  - engaged in conduct that took advantage of, treated unfairly or otherwise harmed its workers;
- whether any conduct reflected in an adverse ruling or an enforceable undertaking was isolated or systemic
- whether the supplier or business disclosed any adverse rulings or enforceable undertakings to the FJC Unit and/or a Victorian Government agency during the application process or term of a threshold or high-value procurement contract or significant business expansion grant;
- whether the supplier or business has taken steps to rectify any conduct reflected in any adverse rulings or enforceable undertakings;
- whether the supplier or business has taken steps to ensure that it does not reoccur, including changing systems, staff training, business models or compliance efforts;
- any information provided to the FJC Unit by:
  - the supplier or business;
  - victims or persons directly affected by the conduct;
  - regulators involved in investigating or taking action in relation to any adverse ruling or enforceable undertaking; or
  - Victorian Government agencies that have engaged with the supplier or business



The reference to enforceable undertakings includes those entered into with the Fair Work Ombudsman, WorkSafe Victoria and Wage Inspectorate Victoria, as well as by the courts. If necessary, the FJC Unit may request that the applicant provide further information before deciding whether to issue or decline to issue a Certificate.

### 3.4. Fair Jobs Code Plans

FJC Plans are required from businesses and suppliers as part of an agency's procurement or grant processes for high value procurement contracts and significant business expansion grants, respectively.<sup>1</sup> However, if a supplier is already required to submit a plan under the Instructions for Public Construction Procurement in Victoria,<sup>2</sup> they must instead submit an 'FJC Plan Addendum'.

FJC Plans require suppliers and businesses to provide information about their 'commitment' to Standards 1 to 5 of the FJC, including information in relation to:

1. policies and procedures in place to ensure compliance with applicable laws (e.g., the Fair Work Act 2009 (Cth) and occupational health and safety laws);
2. promotion of secure employment and job security, including:
  - a. the number of people engaged and the estimated duration of the engagement and how these people will be sourced or engaged;
  - b. strategies to give preference to ongoing forms of employment over casual, fixed term or labour hire arrangements; and
  - c. the rationale for using casual, fixed-term and/or labour hire arrangements (if applicable).
3. where workers have chosen to be represented by an industrial organisation/association or employee representative organisation, details of how the supplier/business will:

- a. allow the worker to actively participate or be represented by the organisation;
  - b. make reasonable allowances for workers and bargaining representatives to engage in enterprise agreement negotiations;
  - c. have processes in place to consult with workers and their representatives about major workplace changes; and
  - d. facilitate communication between workers and their representatives.<sup>3</sup>
4. Policies and procedures to ensure compliance with anti-discrimination and equal opportunity laws and demonstrate commitment to equity and diversity when employing and managing staff.
5. Whether the supplier/business contemplates engaging sub-contractors, including the number and value of those contracts, and the steps that will be taken to ensure compliance with relevant laws, including how the supplier/business will monitor subcontractors' ongoing compliance for the duration of the contract. Subcontractors proposed to be engaged under a subcontract valued at \$10 million or more are required to hold a Pre-assessment Certificate.

The FJC Guidelines for Agencies and Departments assign agencies with several responsibilities in relation to contracts where FJC Plans are required. These include:

- incorporating FJC Model Clauses into tender documentation;
- reviewing and verifying FJC Plans;
- ensuring significant contractors of \$10 million or more have a Certificate;
- incorporating FJC Model Clauses into contracts; and
- monitoring the Implementation of FJC Plans.

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<sup>1</sup> Fair Jobs Code [5.15]

<sup>2</sup> *Project Development and Construction Management Act 1994* (Vic) Pt 4.

<sup>3</sup> Fair Jobs Code Plan Template.

Under the FJC Model Contract Clauses, the supplier must warrant that it holds a Pre-Assessment Certificate, and that it will comply with its FJC Plan. The Model Clauses provide that revocation of a supplier's Certificate during the term of a contract will constitute a breach of the contract. Significantly, the FJC Guidelines state that an agency may determine the consequences if a supplier's Certificate is revoked during the term of a contract.

### 3.5. Governance and Code Implementation

The Minister for Innovation and Industry has ultimate responsibility for the oversight and delivery of the Code, including decisions regarding exceptions to its application,<sup>4</sup> and issuing the relevant guidelines for agencies, suppliers and businesses. The Minister is supported by the Department of Jobs, Skills Industries and Regions (DJSIR) in carrying out the administration and delivery of the Code, and the Local Jobs First Commissioner in relation to promotion and facilitation of compliance with the Code.

As noted above, DJSIR has established the FJC Unit which carries out a range of functions under the Code.<sup>5</sup> In addition to assessing applications for Certificates and FJC Plans and maintaining a register of Certificates, the Unit's functions include preparing guidance material, model clauses, templates and other information to assist agencies, suppliers and businesses in implementing the Code. The Unit is also responsible for monitoring, evaluating, and reporting on Code outcomes. It is unclear how the Unit is resourced to carry out these functions.

The [FJC website](#) sets out a range of information for both purchasers and suppliers, including the Code and the Fair Jobs Code Procurement Guidelines for Departments and Agencies. The website also includes FJC Model Contract Clauses for use by agencies. There are also Fair Jobs Code Guidelines for Suppliers and Businesses, as well as separate Guidelines for suppliers and businesses in relation to the FJC Pre-Assessment Certificate and the FJC Plan.

Departments and Agencies conducting procurement are given primary responsibility for implementation of the Code, subject to the overall governance framework set out above. There are four requirements for Agencies to incorporate in their procurement processes, the first two being the Pre-Assessment Certificate and the FJC Plan. In addition, Agencies are required to include specified FJC Model Clauses in tender documents and contracts.

Agencies are also required to report on their implementation of the Code, including:

- a. attesting annually to the FJC Unit that the Agency is compliant with this Code, and to report more widely on Code activities; and
- b. upon request, providing information to the FJC Unit for reporting and education purposes.

**Monitoring, Reporting and Disclosure.** In addition to annual reporting requirements, the Guidelines for Departments and Agencies state that Agencies have ongoing monitoring responsibilities with respect to contractual obligations and compliance with the Code.

Verifying the validity of each Suppliers' Certificate should form part of the Agency's general monitoring of the performance of the Supplier and their adherence to contractual obligations.

The Code also requires that Suppliers must cooperate with reasonable requests to provide information made by the Agency, FJC Unit or Local Jobs First Commissioner. Agencies are responsible 'for facilitating cooperation to enable responses to enquiries to be received in a timely manner.'

Certificate holders are required to notify the FJC Unit and contracting agency of any adverse rulings or enforceable undertakings against the supplier or business itself after the issue of the Certificate. Certificate holders are also obligated to cooperate with the FJC Unit, the contracting Agency, and/or the Local Jobs First Commissioner

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<sup>5</sup> Fair Jobs Code [9.2].



in supplying any information required by them in relation to compliance with the Code. This includes information for the purposes of an audit and/or review.<sup>6</sup>

Suppliers who have been required to make an FJC Plan must provide reports during the duration of the contract demonstrating the Supplier's progress toward implementing the Plan, at times determined by the Agency.

**Enforcement.** The FJC Unit may revoke a supplier's Certificate if it considers the supplier no longer meets the assessment criteria or no longer satisfies the requirements of Standard 1 of the Code.<sup>7</sup>

If a Certificate is revoked, and the supplier has an active contract or grant agreement with a Victorian Government agency, the supplier must notify that agency within 10 business days of the revocation. The agency may determine whether to seek contractual remedies against the supplier.

If a Certificate is revoked, it will not preclude a supplier from re-applying for a new Certificate in the future on its merits.

Suppliers who have had their Certificate revoked may seek internal merits review of that decision.

**Complaints.** The Code makes provision for a complaints process in relation to both failure to comply with the Code and conduct of the FJC Unit.

A complaint may be made if a supplier or business holding a Pre-Assessment Certificate has failed to comply with the Code. Several parties (or their representatives) are given standing to make complaints:

- a worker or former worker employed or engaged by a supplier or business;
- a regulator or decision-maker who has made an adverse finding relating to the supplier or business;
- a party to any dispute which resulted in an adverse finding relating to the supplier or business;
- a Victorian Government agency that has engaged with the supplier or business in the past three years in relation to the supply of goods, services or construction works or the provision of grants.

The FJC Unit is required to maintain a public register of complaints and breaches of the Code.

#### 4. Improving the Fair Jobs Code and lessons for the Secure Australian Jobs Code

The FJC is a reasonably comprehensive use of public procurement to regulate labour standards among certain suppliers to the Victorian Government and their supply chains. It represents a clear policy statement of commitment to use spending power to support both respect for compliance with minimum standards and the adoption of good 'above the law' workplace and employment practices consistent with government policy.

The policy is complemented by a detailed Code and supporting Guidelines for agencies, suppliers, and business, along with various tools and templates.

The Code is also supported by a regulatory framework, including the FJC Unit, a public register of Certificates, reporting and complaints

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There are areas where the FJC could be improved. As well as informing improvements to the FJC ... the reforms identified ... should inform the development of a federal Australian Secure Jobs Code.

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<sup>6</sup> Fair Jobs Code [7].

<sup>7</sup> FJC Pre-Assessment Certificate Guidelines for and Suppliers and Businesses [18].

mechanisms, and a register of complaints and breaches.

These are all desirable elements of a procurement policy with linkages to labour standards and rights and should be taken into account by the Commonwealth in its development of an Australian Secure Jobs Code.

Nevertheless, there are areas where the FJC could be improved. We set these out below. As well as informing improvements to the FJC, we suggest that both the above summary of the FJC, and the reforms identified below, should inform the development of the Secure Australian Jobs Code.

#### 4.1. Thresholds

The Threshold Procurement Contract and High Value Procurement dollar amounts are relatively high, excluding many agencies and suppliers from the application of the Code. By way of comparison, under the ACT Secure Local Jobs Code, all procurements must have a Secure Local Jobs Code Certificate, and the threshold for development of a Labour Relations, Training and Workplace Equity Plan is \$25,000 or \$200,000 depending on the nature of the procurement.

It is questionable whether there needs to be a threshold for Pre-Assessment Certificates. Arguably, all contractors and sub-contractors benefiting from public expenditure should be required to meet the criteria for a Certificate. The Victorian Government has recently proposed that the threshold be reduced from \$3 million to \$1 million for all contracts and sub-contracting.

Further, in setting the thresholds, the FJC does not appear to take account of circumstances in which multiple contracts and grants are held by the same supplier across different departments and agencies. If these contracts were aggregated, it is likely that more suppliers and businesses would have to prepare FJC Plans, increasing the impact of the Code.

**We recommend lowering the threshold for the Pre-Assessment Certificates to \$1 million for all contracts and sub-contracting, and revise the threshold for FJC Plans to include the aggregated amount of contracts held by suppliers and grant recipients.**

#### 4.2. Eligibility criteria

The criteria for receiving a Pre-assessment Certificate focus on whether or not a business has been subject to an 'adverse ruling' or an 'enforceable undertaking'. This does not take account of the many instances where non-compliance does not result in formal legal proceedings or an enforceable undertaking.

Moreover, the 'adverse ruling' definition does not appear to capture other sanctions for non-compliance such as Compliance Notices issued by the Fair Work Ombudsman. The FWO has significantly increased its use of Compliance Notices to sanction contraventions of the *Fair Work Act 2009* (Cth) over the last two years.

It is also surprising that some instances of non-compliance are not a mandatory consideration in granting the certificate, such as conviction under the *Wage Theft Act 2020* (Vic), or adverse rulings in more egregious cases such as those involving child labour.

**We recommend that the eligibility criteria for Pre-Assessment Certificates are revised to include administrative sanctions as well as 'adverse rulings', and that consideration is given to introducing mandatory criteria for more serious non-compliance.**

#### 4.3. Performance Criteria

As noted in **Section 3** above, after the award of high threshold contracts and grants, Agencies must include model clauses in contracts with

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suppliers and grant recipients that warrant the holding of a Certificate and require compliance with the supplier's Fair Jobs Plan.

This means that for contracts other than high threshold contracts, the FJC does not include labour-related performance criteria in contracts.

Another concern is that there is a high degree of flexibility in relation to the content of a Fair Jobs Plan. In relation to the requirement that suppliers address their commitment to practices beyond compliance with specified labour laws, it is unclear whether Plans include specific performance criteria regarding supplier plans to address these commitments. As Fair Jobs Plans are not made publicly available, it is not possible to verify the substance of commitments in the Plans submitted under the Code. It is also unclear what kind of supplier arrangements to verify sub-contractor compliance will satisfy the FJC Code.

**We recommend that the requirements for Fair Jobs Plans be amended to include negotiation of specific performance criteria relating to the commitments in each Fair Job Plan.**

#### **4.4. Accountability and Enforcement**

Effective implementation of social procurement policy objectives and criteria is crucial to the achievement of positive outcomes. This requires accountability on the part of both the government entities tasked with implementing procurement policy, as well as the external contractors who must deliver expected outcomes.

Although the FJC includes some accountability and enforcement mechanisms, past experience suggests that further steps are required for an effective public procurement regime.

For example, there is a lack of transparency regarding the identity of suppliers of high-value procurement contracts and recipients of significant business expansion grants. Further,

there is no transparency regarding the Fair Jobs Code Plans which these parties are required to develop.

In relation to monitoring and enforcement, the establishment of the FJC Unit is a positive development. However, the Unit has been given a wide range of responsibilities and its resourcing is unclear. Further, the compliance framework is diffused between the FJC Unit and contracting agencies, with the Local Jobs First Commissioner also having an oversight role.

Each department and agency has wide discretion in measurement and reporting, with these being largely a matter of internal public administration. It is unclear how much active support is being provided to procurement officers and what capacity development is being undertaken to ensure the FJC is properly implemented in agency procurement decisions.

Based on past practice, this is of some concern. A 2020 [ANAO report](#) on Indigenous participation targets under the major federal procurement projects found shortcomings in policy implementation and monitoring of those projects, along with failure by government purchasers to comply with mandatory minimum requirements (MMRs).

As suggested in the 2020 report, in addition to processes for eligibility evaluation, contractor selection and contract management must be supported by monitoring of compliance and enforcement of contractor non-compliance.

Another concern is that it is unclear whether the FJC Unit has sufficient resources to carry out its many functions under the Code. Further, there is currently no dedicated Victorian Government agency responsible for oversight and implementation of the FJC, or the Victorian Social Procurement Framework more generally. The Local Jobs First Commissioner is primarily concerned with the implementation of the Local

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Jobs First policy and is therefore unlikely to prioritise the FJC.

Existing FJC accountability mechanisms could be strengthened by establishing a Social Procurement Commissioner with a mandate to oversee the implementation of the Victorian social procurement policies, including the Fair Jobs Code, and having investigatory and enforcement powers.

Finally, enforcement and accountability would be enhanced if other stakeholders were involved in the implementation and enforcement process. Although the FJC complaints mechanism allows complainants to act through a 'representative', there is a lack of express recognition of civil society actors, especially trade unions. This can be contrasted with past examples of Victorian public procurement and labour standards programs, such as the Victorian Schools Contract Cleaning Program, which included industry and trade union representatives on the panel responsible for assessing contractor eligibility.

**We recommend 4 key improvements to the implementation and enforcement of the FJC:**

- **improve transparency, including a public register of Fair Jobs Code Plans developed by suppliers and grant recipients awarded contracts under the Code;**
- **establish a Social Procurement Commissioner with responsibility for oversight, monitoring and enforcement of the FJC, and appropriate resourcing;**
- **implement a capacity development plan for procurement officers in Agencies with respect to the Fair Jobs Code;**
- **involve industry and trade union representatives in the process for consideration of Pre-Assessment Certificates and approval of Fair Jobs Code plans, and explicitly recognise trade unions as having standing to make complaints about FJC non-compliance.**

## **5. Conclusion**

The Fair Jobs Code is a significant step forward in achieving greater accountability of Victorian government suppliers with respect to labour and human rights practices. However, the Code also has shortcomings which need to be addressed as soon as possible. It is important that these shortcomings be avoided by the Albanese Government in its drafting of the Secure Australian Jobs Code.

## Selected key references

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*Note: a variety of references are provided as hyperlinks throughout the policy brief. This references section provides a list of selected key sources.*

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# Centre for Employment and Labour Relations Law Policy Brief Series

The Centre for Employment and Labour Relations Law's policy brief series aims to distil academic research in the fields of employment, labour relations and equality law into policy analysis and clear recommendations, drawing on cutting-edge research by leading scholars at the CELRL, the University of Melbourne and other academic institutions around Australia, as well as from our wider international networks. The initial policy briefs were based on presentations to a symposium with the theme 'Labour Law Reform under the Albanese Government', hosted by the Centre on 12 August 2022. However, the series is intended to be an ongoing forum for clear and concise discussion of current policy issues as they emerge. The series is edited by Associate Professor Tess Hardy and Professor John Howe.

## The Social and Sustainable Procurement Program

As our government departments and agencies at federal, state and local levels are the largest purchaser of goods, services and construction projects in Australia, the potential for public expenditure to improve social and economic outcomes through social, sustainable and Indigenous procurement is extremely significant. This is evidenced by the role that social procurement is playing in stimulating economic and social recovery from the recent Australian bushfires and the COVID-19 pandemic.

The Social and Sustainable Procurement Program at the University of Melbourne is creating partnerships with government agencies, NGOs, and industry to improve the uptake and impact of social and sustainable procurement initiatives through interdisciplinary research and education, including the development of [Melbourne MicroCerts](#) in Social and Sustainable Procurement.

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