

Social Procurement: A Guide for Victorian Local Government



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For further information about this guide, please contact:

The Councils Reforming Business program
Local Government Victoria
Department of Planning and Community Development
(03) 9651 7023
councilsreformingbusiness@dpcd.vic.gov.au

Alternatively, please visit the DPCD Local Government Victoria website at www.localgovernment.vic.gov.au

Contents

Introduction to social procurement in Victorian local government	6
What is social procurement?	
Why has this guide been developed?	
Who is this guide for?	
How to use this guide	
Setting the scene for social procurement	8
Context of social procurement in Victoria	
Victorian councils leading the way	
Positive impacts of social procurement	
Motivating factors for social procurement	
Procurement through social benefit suppliers	
Social benefits through direct employment	
Case study: Moonee Valley City Council creates employment for youths in the local area	
Overcoming barriers to social procurement	
Approaches to social procurement	15
Promotion – recognising the positive impact of strategic purchasing	
Purchasing – buying to achieve social impact	
Procurement – varying approaches to contracting	
Overview of social procurement approaches	
Case study: the Public Tenant Employment Program helps to create local employment	
Case study: Yarra City Council awards its street cleaning contract to social enterprise	
Case study: rethinking council meal provisions through Community Chef and Regional Kitchen	
Undertaking social procurement	24
Planning for social procurement initiatives	
What steps can councils take before undertaking social procurement?	
Enacting social procurement	
Social clauses in tenders and contracts	
Managing and evaluating social procurement	
Case study: public housing residents undertake local security and concierge services	

Legal considerations of social procurement	29
Public procurement principles in local government	
Legal considerations	
Victorian Government Solicitor's Office key considerations	
Legal considerations and the promotion approach	
Legal considerations and the purchasing approach	
Legal considerations and the procurement approach	
Ministerial approval	
Case study: ministerial exemption awarded for training package to assist disadvantaged youths	
Case study: ministerial exemption awarded for landscaping of Neighbourhood Renewal sites	
Common misconceptions of social procurement	37
Case study: Brisbane City Council's social procurement policy	
Developing a business case for social procurement	40
Business case development	
Cost-benefit analysis	
Potential benefits of social procurement	
Potential costs of social procurement	
Case study: waste transfer station management outsourced to social enterprise	
Risks of social procurement	
Case study: VicUrban adds community benefit and economic vitality clause to tenders	
Further information and resources	46
Organisations operating in this space	
Types of social enterprises	
Sample social procurement clauses	
Department of Human Services housing contract	
VicUrban community benefit and economic vitality requirement	
Complete Victorian Government Solicitor's Office advice	
Summary one: sample clauses	
Summary two: legal considerations	



Introduction to social procurement in Victorian local government

Procurement is increasingly seen by a number of leading organisations as a vital tool in achieving strategic objectives. The key role procurement plays in delivering community and councils objectives is now also being recognised by local government through a growing focus on improving council procurement practices.

For Victorian councils, their strategic objectives are clearly defined in their respective Council Plans with complementary triple-bottom line objectives around economic, environmental and social outcomes. The opportunity for councils to use procurement to deliver these objectives has been increasingly recognised in the areas of economic and environmental management.

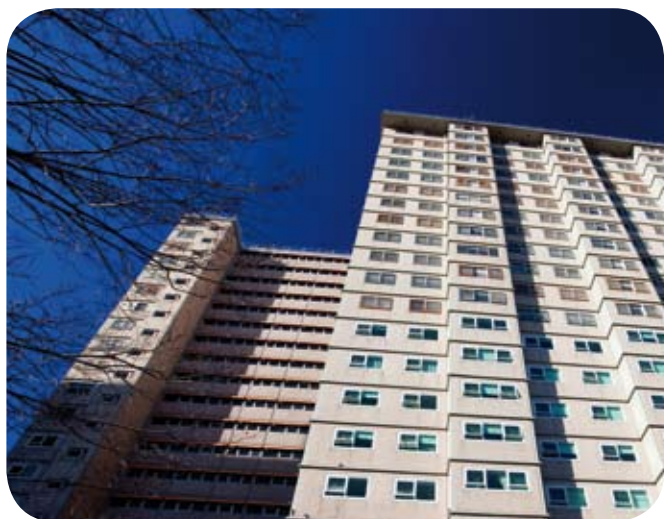
Examples include:

- strategic use of localised supply chains to encourage local economic development
- minimising council's environmental footprint by purchasing goods and services with less harmful impacts on the environment
- making strategic decisions to collaborate with other councils and agencies to aggregate purchasing in order to achieve value for money.

However, the third element of the triple-bottom line approach to procurement – achieving social objectives – is often underdeveloped. Social procurement offers councils the missing link and allows procurement to better contribute to generating positive social impacts as part of broader council objectives.

What is social procurement?

Social procurement involves using procurement processes and purchasing power to generate positive social outcomes in addition to the delivery of efficient goods, services and works. For local government, social procurement builds on initiatives already undertaken by the sector in enhancing sustainable and strategic procurement practice, enabling procurement to effectively contribute to building stronger communities and meeting the social objectives of councils.



Social procurement can assist councils to:

- address complex local challenges facing Victorian communities
- ensure their procurement practices are sustainable and strategically aligned with council objectives
- build and maintain strong communities by generating local employment (particularly among disadvantaged residents), promoting social inclusion and strengthening the local economy
- strengthen partnerships with a diverse range of community and government stakeholders
- demonstrate leadership across the wider community and local government sector
- achieve greater value for money for their communities.

Why has this guide been developed?

This guide has been developed to support Victorian councils in their desire to deliver stronger social outcomes through procurement. It is closely aligned with *Social Procurement in Australia*, an overarching national paper commissioned by the Centre for Social Impact.

The guide forms part of the Procurement Excellence program that is being led by Local Government Victoria (LGV) through the Councils Reforming Business (CRB) program, supporting the development of good practice procurement across the Victorian local government sector, and is designed to boost council procurement capabilities through the development of procurement roadmaps, individually tailored to each Victorian council. The program also helps councils identify and deliver triple-bottom line objectives through a suite of excellence tools, the Local Government Procurement eHub and guidance and support.

A growing number of local councils are developing exciting initiatives focused on social and community innovation. Building on the experience of local government and other public entities in Victoria who are already embracing social procurement, this practical guide examines the various elements and processes of effective social procurement. The guide aims to:

- build on current policy and procedures
- identify social procurement opportunities
- highlight associated benefits
- offer legal guidance
- provide case studies and sample contract language
- assist councils in building a business case for social procurement
- generate greater levels of discussion and debate about the role of social procurement in local government.

Who is this guide for?

This guide has been developed for Victorian councils wanting to use their purchasing power to create positive social outcomes for their communities. This guide is designed to:

- assist councils that are interested in exploring social procurement but are relatively new to the concept
- provide greater guidance to councils already undertaking social procurement
- support council officers who are championing social procurement within their workplaces
- offer an opportunity for councils to effectively incorporate social procurement into their procurement roadmap process as part of the Procurement Excellence program.

How to use this guide

The guide offers general information on the steps and processes required to effectively engage with social procurement. However, it is recommended that independent legal advice is sought for particular application to individual council operations.

The guide has been developed in wide consultation with council executive teams and managers, procurement officers and specialists, community development professionals, the Victorian Government Solicitor's Office and other stakeholders.



Setting the scene for social procurement

Context of social procurement in Victoria

Local government is committed to achieving social policy outcomes, through either direct service provision or funding local community organisations to deliver services to those most in need.

Local government is at the forefront of some of the most significant challenges facing communities, such as:

- economically disadvantaged constituents
- Indigenous disadvantage
- socially excluded community members
- municipalities with limited employment opportunities
- small-scale community businesses in need of support
- high unemployment rates
- a weak, stressed or declining local economy
- poverty or homelessness
- drug use or crime.

Councils are working closely with other levels of government and community agencies to assist in addressing and alleviating such problems, but are often required to deal with the local impact and consequences of these problems. Social procurement offers an innovative response to these complex, multi-causal and often long-standing community issues, by ensuring multiple outcomes are achieved through procurement practices.

Each year, Victorian councils spend around \$3 billion procuring goods and services in a wide variety of expenditure areas. Social procurement recognises the collective buying power of Victoria's 79 councils and encourages councils to consider what could be achieved if even a small percentage of council spending was focused on 'value adding', so that the purchase of goods and services also had positive social outcomes. For example, waste management need not solely be centred around a contract to collect bins and manage waste. It could also simultaneously generate local

employment, increase community recycling options, educate the community about waste minimisation, reduce landfill and contribute to building the local economy. The act of strategic procurement can lead to multiple positive social outcomes for the municipality.

Victorian councils leading the way

Increasingly, Victorian councils are examining how their procurement processes can be applied strategically to address particular issues in their communities and have already engaged in some of the most innovative community initiatives in Australia. Many of these have involved exploring how their purchasing power and local resources can be used to create positive changes in local communities and save money in the long term. In recognising the potential that exists in local government for innovative, grass-roots responses to pressing social issues, councils have:

- developed joint ventures with not-for-profit organisations
- worked with businesses in their local communities to achieve social outcomes
- developed effective partnerships with other councils and the State and Federal Government.

Councils that have already begun changing their procurement practices may find building social impacts into their procurement approaches a natural extension of their current activity. Building links to leading organisations that support local government procurement can help navigate and integrate social procurement agendas more comprehensively, resulting in broader sustainable procurement agendas.

Turn to page 46 for further information on these organisations.

There are a number of different examples across Victoria where councils have socially procured with a diverse range of procurement processes and strategies. Examples of social procurement opportunities that have been explored include councils:

- designing tools, such as method statements, to aid staff and suppliers in articulating how social impacts are to be delivered
- building the capacity of social enterprises in their municipality
- developing and trialling social clauses in tenders and contracts
- working with external agencies to assist in the development of socially inclusive economies and service innovation in the communities of Central Activities Districts, activity centres and neighbourhood and community renewal sites
- purchasing from social benefit suppliers
- directly employing unemployed and disadvantaged members of the community in council roles.



Positive impacts of social procurement

A range of positive social impacts achievable through social procurement are highlighted in the table below.

Benefits of social procurement

Benefit	Impact
Local sustainability	<ul style="list-style-type: none">• Strengthening the local economy and ensuring its financial and environmental sustainability
Social inclusion	<ul style="list-style-type: none">• Promoting openness and equal opportunity for disadvantaged and vulnerable community groups• Building social capital in the community
Employment and training	<ul style="list-style-type: none">• Creating local employment opportunities through clauses and specifications in council contracts• Developing practical training to build long-term employment opportunities
Diversity and equality	<ul style="list-style-type: none">• Ensuring all businesses have the same opportunity to tender for council contracts• Ensuring that the supply markets around essential and key services for council remains diverse and vibrant• Ensuring that local suppliers such as small to medium-sized enterprises (SMEs), social enterprises and Indigenous businesses are well-positioned to prosper in the local economy
Service innovation	<ul style="list-style-type: none">• Fostering a new social economy, addressing service gaps by piloting joint ventures between councils and external partners
Fair trade	<ul style="list-style-type: none">• Purchasing ethical and fair trade goods to support equitable local, national and international trade• Ensuring council supply chains adhere to local, national and international labour standards.



Motivating factors for social procurement

The decision within council to engage with social procurement may originate in a number of ways. For example, if:

- council has scope for the inclusion of social benefits when issuing a tender
- a current contract is soon to expire, allowing a revision of service delivery and contracting arrangements
- particular social issues in a community are not being addressed using traditional approaches.

There are four key motivating factors that may act as a catalyst for social procurement by local government. The importance of each of these motivating factors is dependent on individual councils and their scope to harness an innovative culture.

Factors motivating social procurement

Factor	Explanation
Context	<ul style="list-style-type: none">• The economic, social, cultural and political context of a council and its residents will influence both the determination to engage with social procurement and the approach that is chosen
Catalyst	<ul style="list-style-type: none">• Often the decision to engage with social procurement involves an event or activity that drives councils into seeking new ways to strategically use their purchasing power• The catalyst that motivates a council to explore social procurement can shape how the engagement evolves over time
Champions	<ul style="list-style-type: none">• Often social procurement processes are initiated by people or teams who have a vision about how social benefits could be incorporated into purchasing practices. In most examples of social procurement there is a common theme of the role played by individuals within councils – the champions who initiate and provide the drive to make the change• The role of champions, particularly in leadership positions, in shaping the approach to social procurement, cannot be underestimated
Culture	<ul style="list-style-type: none">• Social procurement is often tied to social innovation. Enacting social procurement requires certain organisational cultures, high levels of engagement across the units of council, leadership that enables and supports innovation, and a ‘can-do’ attitude across council• While cultural factors are often downplayed, in reality they have a profound influence on whether councils pursue social procurement and how this engagement is developed over time.

Procurement through social benefit suppliers

Incorporating social benefit into a council's procurement framework can involve requesting that suppliers deliver social impacts as part of a contract. It can also involve ensuring that a diversity of suppliers are able to respond to the tender process, including those who, through their organisational purpose or by the nature of their structure, have a specialised focus on delivering social impacts. These suppliers could be termed 'social benefit suppliers'.

Social benefit suppliers are organisations and businesses whose mission is centred on a social purpose, and/or owned by groups or people who are considered disadvantaged. By virtue of their ownership structure, social benefit suppliers channel economic and social resources into marginalised communities.

Social benefit suppliers may include:

- Indigenous businesses
- Social enterprises, such as disability firms, social firms and those that generate employment and deliver other local social impacts.

By providing goods and services through social benefit suppliers, councils can directly or indirectly achieve a broad range of social outcomes. Ensuring that council procurement processes are flexible enough to allow social benefit suppliers to effectively compete for council contracts is central to unlocking their potential.



Indigenous business

The Council of Australian Governments – a partnership between all levels of government – has agreed to work with Indigenous communities to close the gap in Indigenous disadvantage. According to the Koori Business Network, Indigenous Victorians face a disproportionate number of barriers to establishing and growing a business. Challenges encountered may include cultural conflicts, difficulty accessing finance, discrimination, exclusion from the economy, isolation, lack of basic business skills and lack of business networks.

Business ownership is central to achieving economic security, and in turn, is an essential aspect in reducing disadvantage. The Australian Indigenous Minority Supplier Council (AIMSC) certifies that Indigenous businesses are:

- at least 51% owned by Indigenous Australians
- managed by an Indigenous Australian
- controlled by an Indigenous Australian/s
- for profit
- trading as a business.

Supporting Indigenous businesses lessens the barriers to economic viability experienced by the Indigenous community.

Social enterprise

Social enterprises use traditional business principles and market-based strategies to deliver both business outcomes and targeted social or community benefits. They take a number of different forms – large enterprises, small businesses and not-for-profit organisations. Both not-for-profit and traditional businesses can operate as social enterprises with the aim of meeting financial targets and social outputs.

Social enterprises are increasing in number and capacity and are an important addition to the supply market. As well as providing necessary goods and services they can deliver diverse positive social outcomes, such as employment and training for the disadvantaged, or fundraising for other charitable activities and community projects. Social enterprises may not always be easy to identify because they can adopt a number of structures. However, it is their reasons for existence and the way profits are distributed that is of importance in defining them as social enterprises.

As described by Social Traders Ltd, social enterprises have three key features:

- a social purpose that is core to its focus, business and structure
- the key activity and income source is trading, with a significant proportion of income coming from enterprising and business activities (as opposed to grants and philanthropy)
- a profit distribution that aligns with and supports the social purpose.

In the field of social enterprise, a range of naturally occurring ‘types’ emerge from common approaches, ideals and social purposes such as community enterprises and Australian disability enterprises.

Turn to page 48 for further details on the unique characteristics of each type of social enterprise.

Social benefits through direct employment

Some Victorian councils are complementing their social procurement work with innovative approaches to employment. By directly employing the long-term unemployed into the council workforce, councils are demonstrating leadership in the community and offering organisations considering social procurement an example of ways to attain positive social outcomes for the community.

Often councils that have achieved social benefits through direct employment have done so in partnership with external organisations that assisted in identifying and supporting the employment of those from a diverse range of circumstances and backgrounds.

CASE STUDY

Moonee Valley City Council creates employment for youths in the local area

Through a partnership with a number of organisations, the Moonee Valley City Council (MVCC) has developed the Sustainable Employment and Economic Development (SEED) project to provide support for young people in the municipality through training and employment opportunities.

Opportunity

With high levels of unemployment in the high-rise public housing estate within the municipality, MVCC seized the opportunity to create employment positions within its council for young African residents aged 16-25.

Innovation

Commencing in March 2009, the SEED project was managed by MVCC but primarily funded by the Department of Innovation, Industry and Regional Development. The project also received funding from the Victoria Police and the Victorian Multicultural Commission (VMC). MVCC also partnered with numerous other community organisations, including the YMCA, who dedicated staff from its Bridge Project to work alongside council staff to share their expertise.

Outcome

MVCC provided eight positions within council, which grew to 14 as the project progressed. By February 2010, 20 youths from the local area had been placed into employment. The initial investment by MVCC resulted in a broader group of local employers also employing young African housing estate residents in their respective organisations. As a result, the SEED project is now integrated in the MVCC's Economic Strategy. The second SEED project was funded in early 2010 by DIIRD, aiming to assist another 20 youths primarily from public housing estates within the municipality experiencing social disadvantage and difficulty accessing employment.

Overcoming barriers to social procurement

Notable social outcomes have been achieved in Victoria through targeted local government procurement, as can be seen in the case studies that follow. However, social procurement periodically encounters some hesitancy from the wider local government sector. Appreciating that local government already has robust procurement processes in place, this document underscores the complementary and adaptable nature of social procurement and demonstrates that small steps can be an ideal place to start.

Social procurement does not require councils to compromise on either the quality or the value for money of the goods and services procured. Rather, it seeks to 'value add' so that purchases lead to social outcomes, in addition to the efficient provision of goods and services. Successful implementation of social procurement occurs when a council's purchasing decisions are aligned with its broader aims, such as Council Plans, goals and objectives, and strategic links are created between formerly discreet procurement processes.

The emerging trend of social procurement offers councils an opportunity to demonstrate leadership in developing Victoria's businesses and industries as responsible and sustainable suppliers of local goods and services. Social procurement is not a radical initiative and works effectively within current policy guidelines and regulations.



Approaches to social procurement

There are a number of approaches to social procurement that can be implemented across local government. It is not an 'all or nothing' process; some approaches are small-scale and can be implemented almost immediately, while others may require a greater degree of planning.

The most common misperception of social procurement is that it is solely based on varying contracts to allow social impacts be delivered alongside the provision of goods and services. While social procurement certainly can involve altering contracts, there are many other ways to engage with social procurement.

Three possible approaches to social procurement include: promotion, purchasing and procurement.

The figure on the next page demonstrates the spectrum of approaches to social procurement. Councils can start engaging with social procurement at any point of the spectrum, depending on their individual motivations and circumstances.

1. Promotion

2. Purchasing

3. Procurement

Approaches to social procurement

Promotion

Awareness raising

Raising awareness of social objectives and how purchasing can be engaged to meet these objectives.

Encouraging/championing

Promoting purchasing as a strategy to achieve social objectives both within council and in the community.

Capacity building

Programs aimed at developing capacity in the local community in order that social enterprises and other entities pursuing social objectives can eventually compete for council contracts. This can be done through funding, resourcing, networking and/or capacity building activities.

Purchasing

One-off direct purchase

Direct purchase of goods and services that also deliver a social impact, but where the purchase is not recurrent.

Ongoing single purchasing relationship

Purchase from a supplier who delivers both goods and services and social impact. For example, a catering purchase that is regular but is not formally recurrent.

Procurement

Direct subcontracting

Engaging with suppliers to subcontract parts of the work to entities that can deliver social impacts.

Employment requirements

Requiring that local or disadvantaged residents are employed by a contractor or in partnership with other organisations

Social clauses

Inclusion of specific clauses within the contract that mandate the achievement of social objectives alongside the delivery of good and services.

Purchasing agreements and partnerships

Creation of purchasing agreements and partnerships, for example, a MOU for recurrent purchases from suppliers who can deliver both goods and services and positive social impacts, which are below procurement thresholds or which seek approval from the Victorian State Government Minister if they exceed the threshold.

1. Promotion: recognising the positive impact of strategic purchasing

This approach encourages the creation of links between purchasing decisions and social impacts in the following ways:

- **Awareness raising**

Raising awareness of the potential social impact of purchases can shift thinking and practices within council during the promotion phase. Raising awareness and modelling this through leadership in council purchases is an important way to promote broader changes in communities and across local businesses.

For example, many councils have already introduced fair trade tea and coffee into their workplaces to highlight how purchase choices can impact people and communities around the world.

Additionally, councils could identify local suppliers who may be of interest and compile a directory of local social benefit suppliers.

- **Encouraging and championing**

In the promotion phase, it is important that councils encourage innovation and promote the value of social procurement within their organisations.

As with any innovative activity, social procurement requires active and passionate champions who are willing to challenge established practices within council in order to explore new practices.

- **Capacity building**

Promoting social procurement may include developing programs to build the capacity of local businesses (social enterprises and other entities) to compete for council contracts, often through economic development or community grants programs. To ensure the supply market remains diverse, it is reasonable for councils to assist business entities to compete on an equal footing by:

- encouraging social benefit suppliers and other SMEs to work in consortia or to partner with larger suppliers to respond to tenders
- encouraging mainstream, commercial suppliers to subcontract work to local social benefit suppliers
- linking with intermediary bodies to build the capacity of social benefit suppliers to compete for contracts over time
- acting as a facilitator and catalyst for change, by encouraging other government and non-government agencies to engage in social procurement activities.

2. Purchasing: buying to achieve social impact

This approach centres around directly purchasing goods and services that also deliver a social impact.

A natural extension to the promotion approach, purchasing is usually carried out on a small scale to begin with. Purchasing strategies may include:

- **One-off direct purchase**

For example, a council may engage an enterprise that trains and employs newly arrived migrants and refugees to organise and cater for a local festival.

- **Ongoing purchasing relationship**

For example, a council may regularly purchase its notebook supplies from a social benefit supplier without a formally binding or recurrent contract in place.

Finding opportunities within local government for the direct purchasing of goods and services that also generate social impacts is central to developing a council's social procurement practice. It demonstrates councils commitment to using its purchasing power to build stronger communities and improve the quality of life within its municipality. It also provides the opportunity for social benefit suppliers to demonstrate their capacity to deliver quality goods and services to the community, which is an important part of their business development.

3. Procurement: varying approaches to contracting

This approach involves tailoring council tenders and contracts, or creating partnerships and joint agreements, to ensure that social impacts are incorporated when purchasing goods and services.

There are a number of ways in which councils can ensure that their procurement processes maximise opportunities to generate social impact, including:

- **Direct subcontracting**

This involves encouraging potential contractors to subcontract part of the required work to social enterprises or other entities that can deliver a positive social impact. Direct subcontracting may be included as a requirement of the tender, a preferred deliverable, which is considered in the evaluation of the tender, or it may be negotiated as part of the contract.

- **Employment requirements**

Requiring the employment of local or disadvantaged residents by the contractor directly or in partnership with another organisation, such as a group training provider, is one way for councils to encourage social impact.

- **Social clauses**

This involves the inclusion of specific clauses in contracts that mandate particular social outcomes regardless of the supplier. Although social clauses require careful planning, support and monitoring, they can result in highly impressive outcomes.

- **Purchasing agreements and partnerships formed through a joint venture or Memorandum of Understanding (MOU)**

A council may develop a partnership supported by a joint venture arrangement or a MOU for recurrent purchases from a social enterprise that either fall below the thresholds which mandate a tender process, or require ministerial approval for such purchases to proceed without a public tender.

Please note, MOUs are not legally binding; they are an expression of common understandings about intended arrangements. If a more binding approach is required it is recommended that a formal contract is used.

There are a number of examples of councils and other public bodies that have successfully applied for various ministerial approvals in the course of enacting social procurement practice. Approvals are at the discretion of the relevant State Government Ministers and there is no guarantee that such approvals will be granted. However, it can be helpful to understand the grounds on which such approvals have been granted in the past.

Overview of social procurement approaches

The three approaches that have been explored – promotion, purchasing and procurement – have both direct and indirect social impacts. For example, a social clause in a contract specifying that a supplier must employ a certain number of housing estate residents throughout the duration of the contract has a direct impact on reducing unemployment in that community. An indirect impact, such as increasing the awareness of staff about why and where they can purchase quality fair trade products, is harder to directly measure and attribute to a tangible outcome, but is extremely valuable nonetheless. It may also eventually lead to more direct results.

Approaches to social procurement

	Promotion	Purchasing	Procurement
Purpose	<ul style="list-style-type: none"> • Build awareness of social procurement among councils, suppliers and communities • Build the engagement and capacity of a diverse supplier base, particularly focusing on social benefit suppliers 	<ul style="list-style-type: none"> • Find opportunities to purchase from social benefit suppliers when the spend is below tender thresholds • Build supplier capacity and test social procurement practices 	<ul style="list-style-type: none"> • Vary contracts so that social impacts are incorporated for the delivery of goods and services • Engage all suppliers in social procurement practices where appropriate
Mechanisms	<ul style="list-style-type: none"> • Develop directories and databases of social benefit suppliers 	<ul style="list-style-type: none"> • Ensure purchasing officers are aware of social benefit suppliers and consider them when purchasing opportunities arise 	<ul style="list-style-type: none"> • Engage commercial suppliers to explore possibilities for subcontracting to social benefit suppliers

Mechanisms

- Conduct internal council social procurement training (particularly for purchasing officers)
 - Conduct council tours of social benefit suppliers
 - Organise supplier information sessions about procurement processes, aimed particularly at social benefit suppliers
 - Encourage suppliers to consider social impacts
- Conduct a spend analysis to identify opportunities for social benefit purchases. This involves looking at category spends across council, finding categories with spends under the tender threshold and exploring local suppliers who could add a social benefit to these spend areas
- Clarify ministerial exemption processes for purchases that exceed the tender threshold
 - Develop suitable social clauses and weightings for contracts to articulate desired social benefits
 - Design tools, such as method statements, to allow suppliers to clearly articulate how they will deliver social impacts
 - Develop MOU processes for larger purchasing or joint venture processes

Key questions to consider

- How do we find out about local social benefit suppliers?
 - Are there directories available or could we produce one?
 - Can we link with networks and intermediaries who are working with social benefit suppliers in our area?
 - Do we understand what capacities are needed for social benefit suppliers to become council suppliers?
 - How can we develop a greater understanding of how social benefit suppliers engage with councils and their procurement processes?
- What is council currently spending and on what?
 - What opportunities may exist for introducing one-off or recurrent purchases that generate a social impact?
 - What is the state of council's current supplier market? Is the supplier market diverse and well-placed to potentially bid for council contracts?
 - How is council working to address complex local problems, or harness opportunities for social innovation through its purchasing power?
- Which other councils are incorporating social procurement into their procurement practice?
 - How have they done this and what have they learnt?
 - What opportunities exist for working in partnership or in joint ventures with other organisations or councils to address local issues?
 - Are there particular contracts coming up for re-tender that could present opportunities for engaging in social procurement?
 - Are there particular areas of contracting that would be suitable for social procurement?

CASE STUDY

The Public Tenant Employment program helps to create local employment

With the inclusion of social clauses in contracts, the Department of Human Services has awarded contracts on the condition that positive social impacts are delivered to the community.

Opportunity

The Department of Human Services (DHS) Housing Division provides public and social housing for those most in need in the community, delivering an integrated service that offers stable housing along with the opportunity and support for residents to thrive in the local community.

The DHS Housing Division adds social clauses into many of its contracts, stating that contractors employ a certain number of public housing tenants (with numbers of tenant employees varying according to the size of the contract) as a key deliverable. This clause covers a range of contracts, from basic services such as cleaning, landscaping and security, to more complex services such as construction.

The Public Tenant Employment program

The social clauses are supported by the Public Tenant Employment program (PTEP), a State Government funded program that assists contractors through the provision of recruitment services, including sourcing tenant recruits and ensuring that all necessary checks and qualifying certifications have been undertaken.

Benefits in procurement contracts

The benefits of the PTEP and the inclusion of the social clauses in procurement contracts include:

- providing tenants with a pathway out of poverty
- lowering the turnover of tenants due to stable employment
- providing tenants with training opportunities they would not have otherwise received.

The PTEP represents a cost effective strategy for DHS, having led to almost 650 jobs and over 1300 training opportunities for public housing tenants over the past five years.

Overcoming barriers to social clauses

Incorporating the social clauses into contract deliverables was not a simple task. A number of barriers had to be overcome, such as:

- addressing the assumptions underlying the opposition to the clauses, including perceptions about public housing tenants and potential negative reactions from contractors
- addressing perceived legal and structural barriers
- anticipating potential legal challenges before they were made
- ensuring that the clauses were compliant with National Competition Policy
- ensuring that all relevant stakeholders were consulted and kept informed of developments in relation to the clauses, including unions and other job network providers.

Turn to page number 52 to view a sample clause from the DHS housing contract.

CASE STUDY

Yarra City Council awards its street cleaning contract to social enterprise

Yarra City Council partnered with the Brotherhood of St Laurence to support its municipality through the delivery of a contract that included positive social impacts as key deliverables.

Opportunity

The City of Yarra is home to a diverse range of people, including large numbers of recently arrived migrants and refugees. Within the municipality there are a number of high-rise public housing estates which have historically been the subject of complex social issues, including high unemployment rates. In addition to pressing social issues, a number of issues within the council also needed to be addressed, including an:

- ageing workforce in the council depot
- inadequate recruitment strategy
- unsatisfactory street cleaning contract which was close to expiry.

Innovation

Council saw an opportunity to determine if there were any connections between the high unemployment rates, an ageing workforce and the contract expiry.

The organisation contracted to deliver the existing street cleaning service chose to focus on delivering the existing contract, presenting an opportunity to create a variation to the existing contract and explore other possibilities.

For a number of years the Brotherhood of St Laurence (BSL) had run social enterprises in the City of Yarra creating employment opportunities for unemployed public housing tenants and demonstrating that social enterprises have the ability to deliver quality employment and service delivery outcomes. The BSL's models focused on employing and training participants over 12 months and then supporting them to obtain mainstream employment. Yarra City Council found merit in the idea of supporting the community through the delivery of a contract that included positive social impacts as a key deliverable. Together the two organisations embarked on a joint venture to develop an innovative solution.

It was decided to trial the engagement of unemployed residents from high-rise public housing estates to deliver the street cleaning contract in the suburbs of North Fitzroy and North Carlton. The creation of a pathway for their longer term employment was an added positive social outcome.

Legalities

It was necessary to negotiate the contract and monetary value with the existing supplier to cover particular localities and activities. The suburbs of North Fitzroy and North Carlton were excluded from the existing street cleaning contract and awarded to the BSL. An application for an exemption from the Minister for Local Government was required as the financial threshold of \$100,000 was exceeded. An exemption was granted and the BSL was awarded a contract to provide the following street cleaning services in the North Fitzroy and North Carlton areas:

- collecting laneway waste
- spraying weeds
- cleaning footpaths
- removing graffiti
- removing bill posters
- collecting hard waste
- general beautification.

Key results

The BSL assembled a team of seven long-term unemployed residents and residents with a refugee background to take part in the contract delivery to ensure the venture achieved positive social impacts in the municipality.

The outcomes and benefits of the BSL procurement were both social and economic, including:

- procuring a high quality street cleaning service
- recruiting a number of the trainees into the council depot workforce and into positions that were previously difficult to fill, in areas such as graffiti removal and weed control
- addressing issues relating to an ageing workforce
- diversifying the council workforce, leading to positive impacts on the organisational culture
- establishing a pathway to employment for approximately 17 people from the high-rise public housing estates, who are now working at the council depot
- enabling a long-term cost saving for Yarra City Council
- contributing to a more diverse local supply market which was once monopolised.



CASE STUDY

Rethinking council meal provision through Community Chef and Regional Kitchen

The Community Chef initiative is a social enterprise that has been created as a joint venture by 20 Victorian councils in collaboration with both State and Federal Governments.

Opportunity

The Community Chef initiative began in response to concerns from a number of councils across Victoria regarding the supply, quality and price of meals for the Home and Community Care (HACC) program, of which almost 90% are supplied by Victorian local government. Prior to the Community Chef initiative, councils individually contracted the supply of the meals through tenders, most often to commercial providers or in six cases, from their own kitchens, which were expensive to maintain and upgrade.

In 2004 a number of councils came together to explore ways to ensure a guaranteed supply of quality, nutritious meals at affordable prices for an increasing number of elderly and disabled community members. It was collectively acknowledged that any alternate meal program would need to cater to a diverse population with various religious, ethnic and dietary requirements.

Innovation

The 2004 discussions resulted in one of the most innovative initiatives in Australian local government – the development of two local government owned companies Community Chef and Regional Kitchen.

Community Chef is the production company, established to provide high quality, fresh and culturally appropriate meals that offer a wide range of choice. Regional Kitchen is the land and building company, which designed and built the state-of-the-art kitchen facilities to be leased to Community Chef.

Key social outcomes to be generated by this procurement initiative include:

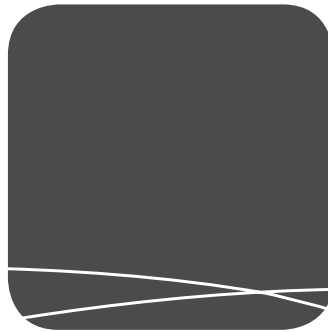
- a portion of profits from the venture to be used to undertake research and contribute to policy development around food, health and the wellbeing of elderly and disabled community members
- creation of employment and trainee opportunities
- use of advanced production methods to ensure energy efficiency and waste minimisation.

Legalities

There are 20 Victorian councils involved as joint venture partners and shareholders in one or both of these companies. A shareholding entitles councils to a 10-year contract for the provision of meals, which may be reviewed by councils every three years. Participating councils also receive a shareholder dividend which assists in offsetting overall meal provision costs. A ministerial exemption from the provisions of tendering requirements Local Government Act 1989 (s186) has been provided for all of the council shareholders along with approval to join a company with the power to borrow (s193).

Results

The Community Chef Regional Meals Kitchen was officially opened in Altona in August 2010. The first delivery of meals is expected in December 2010. The kitchen will initially cook around 2,032 meals per day, rising to 4,706 meals per day in 2011-12.



Undertaking social procurement

When discussing social procurement there is often a focus on the end point; that is, the social impacts delivered, such as the number of jobs created or the amount of money spent in the local economy. While the social impacts may be the reason councils decide to participate in social procurement, preparatory work is equally important in the early stages of any social procurement approach. This requires an understanding of the overall process of initiating social procurement – from planning, implementing and managing the process, through to evaluating the impacts once a contract is in place.

The following pages outline key aspects of planning, enacting and managing the social procurement process.

Planning for social procurement initiatives

Planning for social procurement is most successful when the social impacts being sought are integrated with the council procurement process from the outset.

Social impacts should be analysed as part of a business plan and be clearly articulated in tender specifications and any other processes leading up to an Expression of Interest (EOI) or Request for Tender (RFT).

Council procurement policies and procedures dictating efficient and effective procurement practice are likely to include the following planning requirements:

- identifying and assessing the need for purchases developing a business case for the procurement activity
- designing specifications for the goods, services or works
- defining the procurement approach
- assessing the supplier market.

Turn to page 40 for further information on business case development.

These practices are no different when undertaking social procurement. When planning for any of the social procurement approaches, councils must align the social procurement approach with Council Plans and council procurement policies.

What steps can councils take before undertaking social procurement?

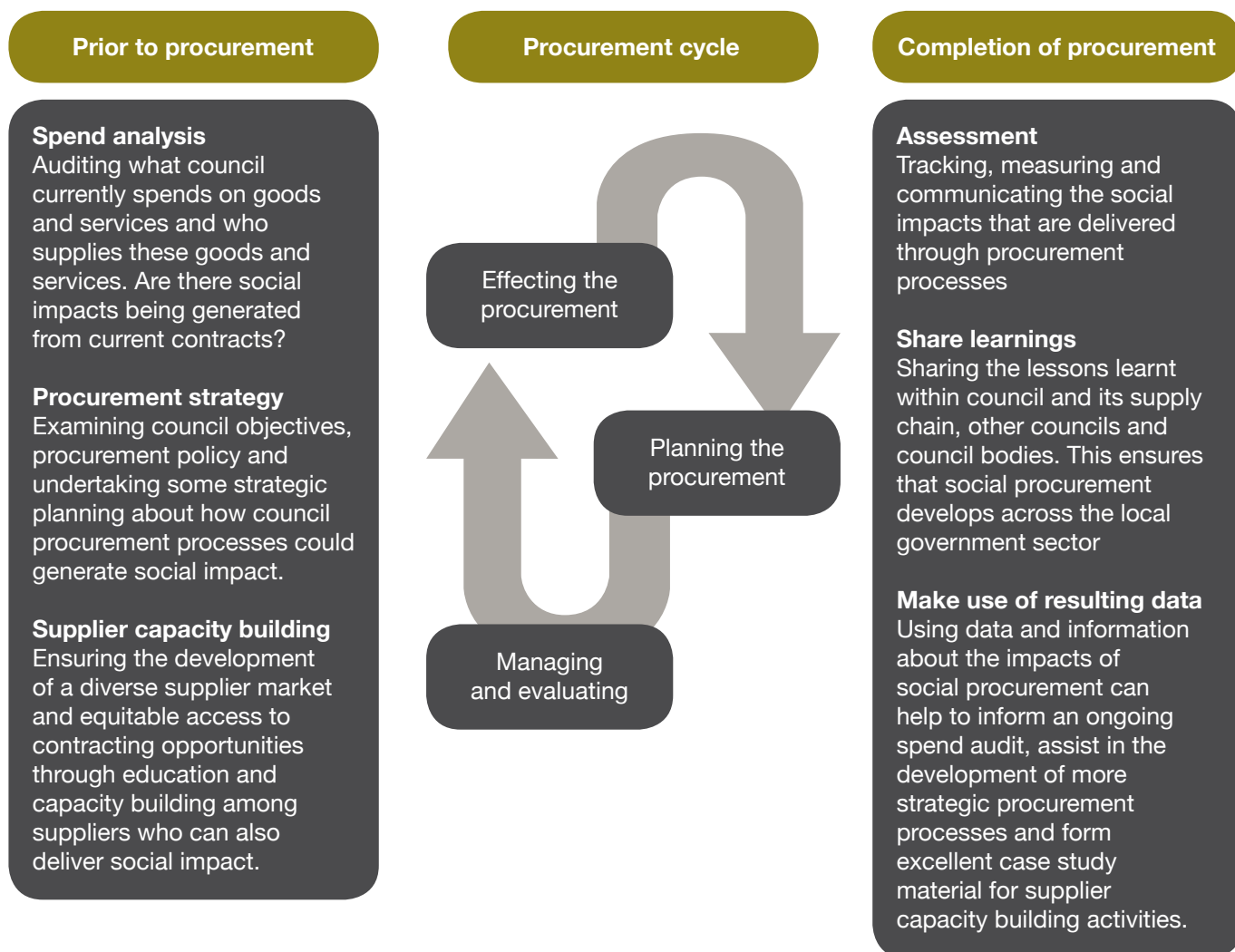
There are a number of tasks a council could undertake to ensure it is well prepared for social procurement, including:

- undertake spend analysis to ascertain how its current purchasing and procurement practice aligns with its social and community objectives
- identify and document potential local suppliers who could deliver social benefits to council in addition to delivering goods and services
- create an enabling policy framework for enacting social procurement.

Turn to page 29 for further information on creating policy frameworks.

The figure below provides an overview of some key activities councils can undertake prior to and following the introduction of social procurement processes, and broadly outlines the procurement cycle itself.

The process of undertaking social procurement



Enacting social procurement

Councils need to ensure that the following tasks are addressed to bring the social procurement process to life:

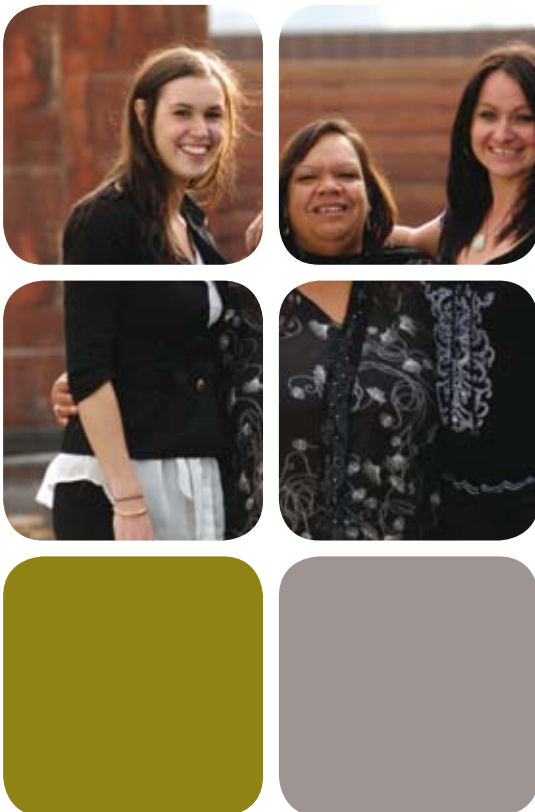
- understand the legal requirements of social procurement

Turn to page 29 for further guidance.

- develop a risk management strategy

Turn to page 43 for various risk management strategies.

- ensure that the appropriate procurement procedures are followed through the process
- set achievable goals and objectives.



Social clauses in tenders and contracts

Contract should include key deliverables in the form of a social clause.

As there are no standard social clauses or templates that can be inserted into any given contract, social clauses will depend on what is sought in individual contracts and how they will be weighted or evaluated in relation to the overall deliverables.

A social clause should detail social impacts sought by council in a clear, open and achievable manner to allow potential suppliers to address their capacity to deliver impacts in their tender bid.

Social clauses are not aspirational goals; they need to be appropriate to purchasing objectives and measurable deliverables, just as the provision of goods or services are core to the contract.

Social clauses should include:

- reference to measurable performance indicators
- how the impacts will be monitored by the council (includes reporting requirements)
- what management processes are in place to evaluate the contractor's performance in relation to achieving the agreed impacts.

It is common to include a method statement in tender documents containing social clauses; that is, a section that the potential supplier completes, outlining what social impacts will be achieved and how they will be achieved.

The two ways that social clauses may be incorporated into a contract are:

- the contract specifies targets directly – for example, a predetermined number or percentage of long-term unemployed to be employed
- the tender document requires the contractors themselves to outline and set the targets of what social impacts can be delivered if their bid is ultimately successful.

Both of these approaches have benefits and risks associated with them:

Risk and benefits to social clauses

Approach	Benefit	Risk
Council specifies achievable social impacts	<ul style="list-style-type: none"> • Clarity of social outcome • Measurable indicator of success built into contractual agreements 	<ul style="list-style-type: none"> • May present challenges for certain potential suppliers • May limit the types or numbers of bids received
Supplier specifies achievable social impacts	<ul style="list-style-type: none"> • Encourages potential suppliers to aim high in their determination of what social impacts they can deliver 	<ul style="list-style-type: none"> • Tenders may contain rather conservative estimates of impacts to ensure they are within cost estimates and that any impacts declared are easily deliverable

Managing and evaluating social procurement

Determining if particular positive social impacts sought through social procurement have been met is critical to the success of the initiative. Ensuring that methods and mechanisms are in place for measuring both the service deliverables and the social impact dimensions of the process (particularly if this involves purchases or contracts), will assist in managing the social procurement activity. There are a growing number of readily available social impact measurement tools that can be used to easily evaluate social processes.

There are a number of scenarios where social impacts prove difficult to measure and monitor. For example, it is easy to determine whether the number of new employees meets contractual obligations, but other social impacts such as community pride or wellbeing are less quantifiable.

Thorough evaluation of the social procurement process enables councils to learn from and refine different approaches, which can then be shared with other councils seeking to establish similar social procurement processes.

Organisations such as the Centre for Social Impact, the New Economic Foundation, the Social Return on Investment Network and REDF offer a array of tools, resources and assistance to organisations after social impact measurement tools.



CASE STUDY

Public housing residents undertake local security and concierge services

Through innovative thinking and a partnership with the Brotherhood of St Laurence, the Department of Human Services created an opportunity to increase employment rates within the City of Yarra and increase the safety of local residents.

Setting

The high-rise public housing estates in Fitzroy and Collingwood have been linked to complex social issues, such as long-term unemployment rates. Security and concierge services previously contracted out by the Department of Human Services (DHS) for these estates were unable to effectively address the key concerns of residents – the rising rates of crime and violence around the estates. Without effective engagement with residents, the resources, energy and effort that had been invested into addressing the issues were not improving the situation. The biggest challenge lay in creating jobs and opening employment pathways for the public housing estate residents.

Innovation

An opportunity was identified to link the public housing estate residents with potential procurement solutions. DHS, through the Neighbourhood Renewal initiative, worked in partnership with the Brotherhood of St Laurence (BSL) in a joint venture to develop the Community Contact Service – a social enterprise to provide concierge services at the base of seven high-rise housing estates in Collingwood and Fitzroy. The Community Contact Service was established to:

- provide information and support services for tenants
- control building access
- offer liaison services with DHS and other service providers to ensure that the estates are safe, clean and functional.

The Community Contact Service was also developed as an intermediate labour market program, providing public housing tenants with 12 months of supported employment and training followed by support to find further employment at the end of their traineeship.

Key social deliverables

The outcomes and benefits of the Community Contact Service contract included:

- increased employment and training opportunities for tenants
- improved physical environment and sense of safety in the estates
- decreased turnover of residents and greater levels of social capital
- greater resident pride in the community
- increased tenant income and greater spending power.

Results

The Community Contact Service has grown substantially and now provides approximately 20 jobs each year for public housing tenants, with 80% of these employees transitioning to mainstream employment positions after 12 months.

Although it was developed through a partnership, after an initial period of development and refinement the model was taken to market to compete for tenders in a competitive environment. The BSL has successfully tendered for these services and is now delivering Community Contact Services in high-rise public housing estates in Fitzroy, Collingwood and Richmond.



Legal consideration of social procurement

Councils need to ensure that they understand and comply with all relevant legal and regulatory frameworks when they engage with social procurement.

One of the biggest obstacles to increasing and broadening the use of social procurement in councils is the misinterpretation of the legal considerations. It is important to note that social procurement is in keeping with broader procurement strategies and does not imply excessive risk or operate outside legislative structures.

This section presents an overview of the relevant legislative and policy frameworks. It does not constitute a comprehensive analysis or thoroughly address all relevant legislation. It is recommended that councils always seek professional legal advice about their social procurement initiatives.



Public procurement principles in local government

Public procurement processes are based on a number of basic principles. It is important to note that social procurement follows the same procurement principles:

- **best value:** the benefits of the purchase is weighted against the costs necessary for the optimum result for the local community. This principle does not imply that the cheapest option is the best value
- **open and fair competition:** all suppliers are treated fairly, in an open and transparent manner and have access to the same information
- **accountability:** there is consistency in the approach to procurement across the whole organisation through coherent frameworks, policies and procedures
- **risk management:** strategies for managing risks associated with all procurement processes are in place and consistent
- **probity and transparency:** public procurement processes must be conducted in a fair, honest and open manner, with the highest levels of integrity and in the public interest.

Legal considerations

Legislation does not restrict what is procured; rather, that is for individual councils to decide in alignment with their plans, strategic goals and objectives.

The key legislative framework that regulates the process of all local government procurement in Victoria is the *Local Government Act 1989* (Vic) (the Act). The Act and the procurement policies of individual councils are the primary reference point for how all procurement, including social procurement, should be performed.

A full copy of the Act can be found at www.localgovernment.vic.gov.au

The Act operates alongside trade practice law, and councils must be mindful of their compliance with both areas of law. In some circumstances, it may be possible to meet the requirements of the Act but breach trade practice law. As is true with most procurement practice, the *Trade Practices Act 1974* is unlikely to apply unless procurement activities significantly lessen competition.

Victorian Government Solicitor's Office key considerations

According to the Victorian Government Solicitor's Office, key legal consideration of any council planning to undertake social procurement are as follows:

Legal requirements summary

Local Government Act 1989 (Vic) and general procurement requirements

To undertake social procurement, local government must comply with all legal requirements relating to procurement and in addition should ensure that:

1. Procurement policy allows for social procurement: the procurement policy of the council should specifically provide for the inclusion of social benefit considerations in procurements
2. Request for tender refers to social benefit considerations: the request for tender (or other tendering instrument) for a particular procurement should clearly state that social benefits will or may be considered, with details about the kinds of benefits that will or may be considered
3. Basis for selection fits into objectives of council: if social benefits form part of the basis for selection of a particular service provider, the benefits should be clearly articulated in terms of benefit to the community and financial benefit in a manner that demonstrates the contribution of the benefit to the council's objectives under the Act section 3C.

This will address the relevant requirements of the Act and minimise the risk of challenges to the procurement process under common law.

Trade practices law considerations

Compliance with trade practices law should be monitored by the local government in relation to all procurement. Provided that the activity is "the carrying out of a function of government in the interests of the community" the activity will not be considered to be trade and the trade practices law will not apply. This will be the case for most local government procurement. However, some activities of local government may be considered to be "trade". Examples include operating a swimming pool or gymnasium that people must pay to use, child care services, building surveyors and recycling centres.

As a general indicator, a more detailed assessment of whether the trade practices law applies should be undertaken if the community is being charged a fee for the activity or service to which the procurement relates. A detailed assessment should also be undertaken if councils are working together to substantially increase their purchasing power for particular services.

More information

The full legal opinion of the Victorian Government Solicitor’s Office on social procurement can be found in the Further Information and Resources section, starting page 54. Summary 2 of this section provides further detail on the law behind the above recommendations. However, this is general information only and not legal advice. For particular application to your operations, it is recommended that you seek independent legal advice.

There are two particular sections of the Act that should be noted if councils wish to pursue social procurement initiatives. Research has found that these two sections are often quoted as representing barriers to implementing social procurement when in actual fact they do not.

The Act and social procurement

Relevant sections of the Act	Implications or actions for councils wishing to pursue social procurement initiatives
<p>Compulsory Tendering Thresholds under section 186 (5) (c): Councils can determine their own policies for procurement of goods and services below the threshold values outlined in the Act, but must undertake a competitive process for procuring goods, services and works above these specified amounts unless they obtain approval from the Minister for Local Government for an alternative arrangement.</p>	<ul style="list-style-type: none"> • All procurement processes that exceed the specified amounts must be subject to a public tender, except as allowed in specific circumstances under the Act, or unless an exemption is obtained from the Victorian Minister for Local Government • The specified amounts refer to the value across the whole term of the contract plus any options for extending the contract • Any procurement under the threshold still needs to comply with the council’s own policy and procedures • Ministerial approvals for social procurement are granted at the discretion of the Minister for Local Government and there is no guarantee that an application for exemption on the basis of social procurement will be approved.
<p>Section 186 (4) and Best Value Principles, Division 3 of Part 9 of the Act: There is no policy or procedure in place that requires a council to accept the lowest tender. Procurement is subject to the Best Value Principles (BVPs) which set out how local government determines the most effective means of providing services to its communities. This applies to the whole process of delivering services to communities, therefore the principles also inform procurement of goods, services and works.</p>	<ul style="list-style-type: none"> • Councils are not obliged to accept the lowest tender and need to determine what constitutes ‘best value’ according to the principles outlined in the Act • Councils are required to take into account issues of quality, cost, the needs of their community, the accessibility of the service and other factors relevant to both the overall objectives that the Act sets out for local government, and their own plans and objectives • Though in some cases engaging in social procurement could be more costly in dollar terms, it may be the case that social procurement options represent more effective means of providing some services to communities • Ensuring that procurement processes deliver social impacts for communities may be well aligned with objectives and this should be considered by councils in light of their own planning processes, procurement policies and their overall objectives under the Act.

Legal considerations and the promotion approach

The key consideration in the promotion approach to social procurement is to ensure that the actual procurement process remains subject to open and fair competition. In particular, there can be no preference shown to specific suppliers and all due process in the procurement cycle must be followed.

The easiest way to ensure that the promotion approach to social procurement respects probity and competition principles is to avoid any connections between promotion and any particular council contract.

Particular legal considerations for each of the promotion approaches are outlined in the following table.

Promotion approach and legal considerations

Approach	Legal considerations
Awareness raising Raising awareness of social objectives and how purchasing can be engaged to meet these objectives	<ul style="list-style-type: none">• Care must be taken to ensure that awareness raising does not imply special preferences for suppliers, such as social benefit suppliers• Awareness raising should be general rather than specifically related to particular contracts• Awareness raising should actively engage in discussion of how social procurement can represent value for money, that it is subject to all the procurement regulations and aligns with procurement principles
Encouraging and championing Promoting purchasing as a strategy to achieve social objectives both within council and in the community	<ul style="list-style-type: none">• Championing social procurement approaches should not be linked to specific contracts• Care should be taken to separate championing and encouragement from the decision making processes
Capacity building Programs aimed at developing capacity in the local community to allow social enterprises and other entities pursuing social objectives to compete for council business and contracts. This can be done through funding, resourcing, networking and capacity building activities.	<ul style="list-style-type: none">• Capacity building approaches should be separated from any particular contract• Care should be taken to ensure and clearly articulate that capacity building approaches are conducted in the public interest of building diverse supplier markets• All capacity building approaches should align with and potentially be articulated through council procurement policies.

Legal considerations and the purchasing approach

All councils have policies and procedures regarding how purchases under the tender threshold should be managed. These policies and procedures also apply to purchases that are made under the umbrella of social procurement, including purchases from social benefit suppliers.

If the purchase exceeds the tender threshold, a public tender process or an exemption from the Victorian Minister for Local Government is required prior to the purchase proceeding.

Purchasing approach and legal considerations

Approach

One-off direct purchase

Direct purchase of goods and services that also delivers a positive social impact, but is not recurrent

Ongoing single purchasing relationship

Recurring purchases from a supplier who delivers goods, services and positive social impact, not formally recurrent.

Legal considerations

- One-off purchasing should be consistent with any other one-off council purchase, with relevant procedures followed as outlined by procurement and purchasing policies
- Ongoing single purchasing should be in line with procurement and purchasing policies.



Legal considerations and the procurement approach

Care must be taken to ensure that the legal frameworks applying to mainstream procurement processes are equally applied in social procurement processes. It may be helpful to examine how other innovative approaches to procurement have addressed legal and administrative concerns.

Procurement approach and legal considerations

Approach	Legal considerations
Purchasing agreements and partnerships An agreement (for example, a MOU) for recurrent purchases from suppliers who deliver goods, services and social impacts, that are below procurement thresholds or which seek ministerial exemptions if they exceed the threshold	<ul style="list-style-type: none">• A MOU should comply with procurement policies• If the purchases exceed the tender threshold levels, all relevant exemptions should be applied for and obtained prior to the MOU being signed or the purchases made• The processes and rationales for the MOU should be documented and enacted in a transparent manner to ensure both probity requirements and Best Value Principles are articulated and justified• All relevant risks should be considered and documented, and these should be managed throughout the process.
Direct subcontracting and employment requirements Engaging with suppliers to subcontract parts of the work to social benefit suppliers	<ul style="list-style-type: none">• Mandatory clauses could be developed or it may be a voluntary action on the part of the supplier through the tender process• Any requirements or considerations for direct subcontracting and employment requirements need to be included in the tender documents and specifications prior to the contract being awarded, or they should be processed appropriately as a contract variation if the contract has already been awarded• Processes for how suppliers can engage with social benefit suppliers can be outlined in the tender documents or potential suppliers can be asked to complete a method statement outlining how they will engage and subcontract to social enterprise suppliers.
Aggregating contracts Combining parts of contracts for the purpose of delivering greater levels of social impact	<ul style="list-style-type: none">• In the planning stage of procurement processes, a contract can easily be aggregated to increase the positive social impact generated• Issues of probity, transparency and best value need to be considered, documented and justified in the process• Ministerial exemptions will need to be applied for and granted if the value of the aggregated contract exceeds the tender threshold amount.
Social clauses Inclusion of specific clauses within the contract that mandate the achievement of social objectives alongside the delivery of goods and services.	<ul style="list-style-type: none">• The social clause needs to be articulated in the tender documents to ensure that all applicants are aware of and understand the requirements, including key deliverables, monitoring requirements, weightings and consequences for non-compliance• A pre-tender briefing may be necessary to explain the detail of the social clauses, particularly if they refer to complex matters with which mainstream suppliers may not be familiar• Sufficient risk management strategies should be in place• Social clauses should be framed as measurable deliverables rather than aspirational goals• It is encouraged that social clauses be assessed and approved by council legal advisors prior to inclusion in a tender document.

Ministerial Approval *Local Government Act 1989* section 186 (5)(c)

Exemption from Open Tender Requirements

Councils undertaking social procurement processes, where it would not serve the community's interest to engage in an open tender, can apply to the Victorian Minister for Local Government for an approval which exempts them from open tender on a case by case basis.

Examples where such approvals were granted by the Victorian Minister for Local Government are outlined below.

CASE STUDY

Ministerial exemption awarded for training package to assist disadvantaged youths

Banyule City Council successfully obtained approval from the Minister for Local Government to enter into a contract for construction with Mission Australia without first conducting a public tender.

Banyule City Council secured Commonwealth funding of \$400,000 through the "Jobs Fund – National Bike Path Projects" to construct two bike paths within the municipality. The application submitted, "Pathways to Brighter Futures", was premised on a partnership arrangement with Mission Australia. Under this partnership arrangement, Mission Australia would act as a contractor to deliver the project as a construction, employment and training package for disadvantaged people in the local community.

By contracting Mission Australia, Banyule City Council addressed long term unemployment within the municipality. As a priority Mission Australia created new positions and filled these by targeting unskilled people aged 16-25 years from the identified suburbs of West Heidelberg and Watsonia. Mission Australia also employed some participants through a group training scheme with Kangan Batman TAFE providing both on and off the job training in Certificate II and III Horticultural (Landscaping).

CASE STUDY

Ministerial exemption awarded for landscaping of Neighbourhood Renewal sites

Neighbourhood Renewal (NR), an initiative of the Department of Human Services (DHS), sought an exemption within Departmental Tendering Provisions so that a single tender could be obtained from established and approved community enterprises for particular works in NR areas.

The exemption was sought for what are known as 'immediate improvements', such as landscaping and fencing, in the 19 NR sites across Victoria. It was expected that the quote arrangement still met probity requirements of providing value for money and delivering commercial quality works.

The exemption allowed for the following positive social outcomes to be achieved:

- \$3 million of works have been purchased from social enterprise each year
- over 50 new jobs have been created each year
- substantial improvements to the visual and physical amenity of NR sites.

Adopting any new and innovative procurement approach will require discussion and perhaps some specialist legal advice. Social procurement approaches are no different.

For councils interested in social procurement, a key task will be ensuring that there is compliance with relevant legal and policy frameworks. The earlier legal issues are discussed and addressed in the social procurement process, the more likely it is they will be successfully implemented.

The Municipal Association of Victoria (MAV), through MAV Procurement, has developed a Model Procurement Policy for councils, which can be accessed at www.mav.asn.au. The resource contains a number of sections that will be of interest to councils who are considering exploring any approach to social procurement.





Common misconceptions of social procurement

While many Victorian councils are already experiencing great success with social procurement, common misconceptions remain about the nature and principles of social procurement processes. A number of these are addressed below.

MYTH: **The principles of social procurement differ from common public procurement principles**

FACT: Social procurement aligns with all of the principles of procurement outlined in the Victorian Local Government Procurement Strategy and the Local Government Procurement Best Practice Guidelines, produced by Local Government Victoria. Social procurement does not counter or challenge any of the basic principles of public procurement, including:

- value for money
- open and fair competition
- accountability
- risk management
- probity and transparency.

MYTH: **Social procurement contravenes the ‘best value’ principle**

FACT: Social procurement encourages the best overall result for the money spent. In some cases it may appear to be an expensive option based on the provision of a good or service alone. It is important to assess the meaning of ‘best value’ when purchasing, as the overall benefits can outweigh the costs if both benefits and costs are assessed in more than monetary terms. The optimum outcome for the local community should be considered when contemplating value for money.

MYTH: Social outcomes can be delivered only through social enterprises

FACT: Although social enterprises are central to developing a broad, diverse and flexible supplier market, generating social impacts does not only occur through social enterprises.

Currently, the playing field in competitive tender processes is not even, and social enterprises, along with many SMEs, Indigenous businesses, ethnic and minority businesses and volunteer organisations are not well-represented among local government suppliers. Developing the local government supply market to ensure that a greater diversity of suppliers can bid for contracts is not anti-competitive, but pro-competitive, ensuring that the supply market remains dynamic, diverse and more competitive in the long term.

MYTH: Social procurement requires creating special preferences for social benefit suppliers

FACT: Social procurement does not give unfair advantage to any sector or supplier in the procurement process. Providing social benefit suppliers with the opportunity to participate in an open and fair process is not the same as giving preference to social enterprises. Social procurement is possible through the engagement of all types of businesses, not just the not-for-profit sector.

MYTH: Councils must compromise on quality of goods and services procured through these avenues

FACT: Councils exploring social procurement do not compromise on the quality of the goods and services sought. Rather, social procurement operates within established council procurement processes which ensure quality purchasing.

MYTH: Social procurement requires changing all procurement arrangements or adding social clauses to every council contract

FACT: Social procurement does not undermine the commercial principles or values that underpin procurement. Rather, social procurement ensures that where appropriate, contracts include positive social impact objectives that are relevant to the content of the contract, the context of the work and the overall objectives of the council.

MYTH: Social procurement occurs 'under the radar'

FACT: Although it may be considered as operating outside of standard procurement procedures, this is not the case. Social procurement operates within regulatory frameworks.

Currently social procurement occurs most frequently in purchases under the tender threshold amounts. There are a growing number of examples and case studies of social procurement that have been scrutinised and subjected to formal legal review. The case studies that are contained in this document are testament to the fact that social procurement is both legal and rewarding.

CASE STUDY

Brisbane City Council's social procurement policy

The Brisbane City Council is committed to supporting social procurement through the development of a social procurement policy.

Opportunity

Brisbane City Council is committed to promoting, developing and using the services of social enterprises because of the positive social impacts they provide. This commitment has resulted in an innovative social procurement policy framework which recognises that social enterprises often do not have the capacity to compete for commercial contracts, essentially excluding them from becoming council suppliers.

The council is constantly reviewing and developing policies and processes to ensure that social enterprises become part of a diverse and dynamic supplier market and that positive social impacts form part of the key deliverables in the council's procurement practices.

Innovation

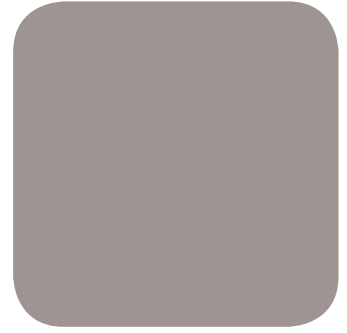
Brisbane City Council has developed a number of approaches within its social procurement framework to help build the capacity of social enterprises to participate in competitive procurement and eventually compete for commercial tenders for contracts, including the development of an internal list of social enterprise suppliers within its supplier database. Anyone in the organisation purchasing goods or services is encouraged to consider purchasing from one of the social enterprises listed.

Most procurement from social enterprises takes place within council's standard procurement processes; however one model council utilises is to disaggregate some of its larger contracts by taking out smaller parts which have then been offered to new and emerging social enterprises. This is seen as an important step in developing start up social enterprises and to expose their business to realities of delivering on contracts, and in doing so build their capacity to compete in the open market. In addition to its direct social impact the approach ensures that the local supplier market remains diverse.

Another way council utilises its social procurement framework is to provide existing social enterprises with the opportunity to compete against other social enterprises or collaborate with other businesses in a 'social tender' that offers larger contracts to social enterprises only. The aim is that the social enterprise has sufficient capability and capacity to tender for mainstream contracts alongside other commercial suppliers – while continuing to deliver positive social impacts.

Legalities and policy

Brisbane City Council has developed a specific policy for social procurement, including an approved process for social tendering. In certain circumstances some exemptions for compulsory open tendering have been developed when the contract value exceeds the thresholds outlined in their procurement regulations. Highly developed policies and plans for engaging with social enterprises through its supply chain are in place. The approaches implemented by Brisbane City Council offer a clear pathway for social enterprises wishing to become council suppliers and build their capacity to eventually compete in an open market for council contracts.



Developing a business case for social procurement

Business case development

Councils may find it helpful or necessary to develop a business case for social procurement, examining the particular issues and opportunities it offers the council and community.

A business case can help councils to align their community and social objectives with their procurement practices and to ensure that their purchases achieve best value and are sustainable. It can also help to build the support of senior management, policy drivers and procurement professionals within local government which is essential to the success of social procurement.

As it is a relatively new concept in Australian councils, there is no consolidated evidence base that can be easily built upon, though there are many well-developed examples in the United Kingdom, Canada and the United States.

Councils that develop social procurement practices and policies are pioneers at the leading edge of the local government sector in Australia. As such, it is extremely important for the sector to develop case studies, share ideas and have discussions about social procurement models.

When developing social procurement initiatives and activities, it is important for councils to be consistent with their views of Corporate Social Responsibility (CSR). In a snapshot, CSR is the process that guides an array of organisational activities, such as procurement, in protecting and promoting labour standards, human rights and environmental standards. CSR assists in setting boundaries around compliance with legal requirements.

Presented below are general ideas about what could be included in a business case for social procurement, and in particular, what could be considered in a cost-benefit analysis and assessment of risks. A business case for social procurement should address the following:

- what is social procurement?
- how does social procurement solve particular issues or create opportunities for council?
- what are the alternatives to social procurement?
- what will happen if social procurement is not incorporated into procurement practices?
- how much will the social procurement activity cost (money, people and time) to explore and implement?
- what is the cost-benefit analysis and what assumptions are built into this analysis?
- what are the risks of adopting social procurement?

Cost-benefit analysis

If a business case is to be made for social procurement then it should be built upon the best value principles that take into account monetary costs as well as the optimum result for the community; the least expensive option does not always constitute best value.

Turn to page 30 for more information on best value principles.

Consideration of the costs and resources required should also take into account the current costs involved in addressing the social issue that is to be addressed by the social procurement approach, and the savings that will be delivered if social procurement is undertaken.

The costs of inaction, that is, if social procurement is not incorporated into procurement processes, should also be examined. This is particularly important in terms of defining the reduction in diversity in existing supplier markets and the increased costs of addressing complex social issues.

Potential costs and benefits of effecting social procurement are briefly outlined below. Actual costs will of course depend on the approach to social procurement that is adopted and the desired social impacts.



Potential benefits of social procurement

Potential benefits of undertaking social procurement include:

- positive impacts in the community, such as employment opportunities, reduced crime and vandalism, increased community wellbeing and increased social capital
- increased diversity of the local supplier market, such as the inclusion of suppliers who have not previously been able to compete for commercial contracts
- improvements in supplier quality and reduction in costs to council due to improved competition
- strengthened organisational partnerships with a diverse range of community and government stakeholders
- increased respect and recognition of leadership by the community and the local government sector
- contribution to the economic and social development of the local community.

Potential costs of social procurement

Potential costs of undertaking social procurement include:

- staff costs, such as the time and resources of council officers
- joint venture costs
- potential short term increased cost of procured services
- increased monitoring and evaluation costs
- capacity building costs, both internal and external
- legal costs that may arise in investigating social procurement opportunities.

CASE STUDY

Waste transfer station management outsourced to social enterprise

Darebin City Council awarded its Waste Transfer Station contract to Outlook Environmental after a competitive tender process.

Opportunity

Waste management is an area of growing interest, to both councils and social enterprises, given the impressive number of sustainable procurement deliverables that waste transfer stations are able to achieve.

Darebin City Council contracted Outlook Environmental, an award-winning social enterprise, to run its waste transfer station and resource recovery centre in Reservoir. The centre in Reservoir handles over 25,000 tonnes of waste per year and services 30,000 customers. It offers state-of-the-art waste disposal systems, along with recycling, reuse and reduce programs.

Results

This contract allowed Outlook Environmental to achieve its three primary social objectives in the City of Darebin:

- provide employment and vocational training for disadvantaged workers
- divert waste from landfill to resource recovery
- provide bargain-priced recycled goods to the community.

It is worth noting that Outlook Environmental did not win this contract through social procurement strategies. Rather, the contract was awarded after a commercial tender process.

What are other councils doing in this space?

- Knox City Council and Mornington Peninsula Shire Council have also awarded contracts to manage waste transfer stations to Outlook Environmental
- Greater Bendigo City Council has partnered with Future Employment Opportunities to operate the Eaglehawk Recycle Shop, which recycles 4,000 tonnes of a waste each year and creates 14 local jobs
- Wodonga City Council has established a Sort and Save recycling facility in partnership with Sustainability Victoria, Beechworth Prison and not-for-profit organisations Recovery GAME and Kallianna Enterprises. The Sort and Save facility provides employment and training opportunities for local people in an award-winning waste transfer station.



Risks of social procurement

The risks associated with social procurement vary according to the approach adopted by council. A number of risks are outlined below along with suggestions on actions that may reduce exposure to these risks.

Reducing risk to social procurement

Key risks of social procurement	Actions to reduce risks
Capacity building approaches lead to questions concerning competitive neutrality and probity	<ul style="list-style-type: none">• Capacity building approaches should not be developed with reference to any particular contract, should be open to all suppliers and be publicly advertised• Capacity building could be delivered by a third party, such as a social benefit supplier intermediary with input from council, to foster an 'arms-length' approach• Capacity building could be offered by a non-procurement related part of council, such as the community or economic development divisions with input from relevant professionals in the organisation.
A social impact supplier fails to deliver appropriate standards or quality	<ul style="list-style-type: none">• Include standards and quality requirements in specifications for both contracts and purchase orders• Agree upon a process for action by the council and supplier if quality is not appropriate• Regularly monitor standards and feedback• Develop contingency plans if concerns continue, particularly if the contract involves an essential service.
Agreed social impacts are not met by the contractor	<ul style="list-style-type: none">• Include expected social impacts in the specifications• Ask for a method statement from potential suppliers• Include expected reporting and monitoring in contracts.
Costs exceed agreed or expected amount	<ul style="list-style-type: none">• Clearly articulate costs in the procurement process• If the approach involves a joint venture with a community organisation or social enterprise, cost provisions may need to be made within the contract budget• Ensure clear communication regarding costs throughout the contract period, particularly in relation to new market areas and high impact contracts.
A social benefit supplier or other contractor becomes insolvent during a contract	<ul style="list-style-type: none">• Develop a clear understanding of the social benefit supplier's financial situation by undertaking due diligence prior to contracting• Consideration and consultation of adjustments to pay periods, invoicing timetables or other contract variations needed to ensure financial success of the contract should be discussed early in the procurement process.

A supplier is found to have inadequate occupational health and safety practices or other unsafe practices emerge over the course of the contract

- Social benefit suppliers may need some capacity building regarding standards and safety requirements needed for undertaking certain types of work
- Ensure communication lines are kept open – it is essential that feedback is part of the agreed monitoring process
- As social enterprises often work with people who have experienced some form of disadvantage or exclusion, there may be capacity building issues for staff that should be considered over the life of the contract.

Council is not able to find a supplier who is able to deliver both a quality service and a social impact.

- Develop a directory of potential suppliers who are able to deliver goods, services and social impacts as a precursor to drawing up the specifications for a purchase or contract
- Releasing an Expression of Interest to seek and gauge the interest of appropriate suppliers will allow councils to identify a range of suitable suppliers.



CASE STUDY

VicUrban adds community benefit and economic vitality clause to tenders

VicUrban is trialling a Community Benefits and Economic Vitality Clause in tenders for a flagship urban renewal project, with the inclusion of social clauses in contracts. These clauses encourage suppliers and contractors to support the communities in which they operate with more than just infrastructure.

Opportunity

VicUrban is the Victorian Government's land development agency, helping government to meet the challenges of population growth and increasing demand for housing by facilitating the delivery of high quality, affordable and sustainable dwellings.

VicUrban is currently undertaking major work in and around the suburb of Dandenong, including the \$290 million Revitalising Central Dandenong urban renewal initiative. As part of this work, VicUrban introduced a Community Benefit and Economic Vitality Clause into its tenders to encourage potential contractors and developers to consider how their work could benefit the Dandenong community and economy in ways that went beyond the provision of infrastructure.

Innovation

The Community and Economic Vitality Benefit Clause is still undergoing a period of testing, VicUrban is learning from its experiences in Dandenong.

The lessons from requesting positive social outcomes from outsourced major development contracts have highlighted the importance of monitoring and evaluating social impacts that are built into the contracts. In particular, it has proved important to ensure contractors and developers are aware that delivering social outcomes is a core part of the work, not an optional extra or an aspirational goal.

Results

VicUrban did not specify social impacts or outcomes for the contractors, but rather, asked contractors and developers to identify the envisaged outcomes, in terms of numbers of people employed or the overall spend with local suppliers and social enterprises. A prime challenge of this approach has been ensuring that the contractors and developers are clear about the requirements being monitored and evaluated and their contractual obligations. Also, ensuring that reporting of the impacts of commercial contractors is definitive, and aligned with predictions, remains a challenge.

Local outcomes have improved over time with each contract. VicUrban is constantly learning and improving its procurement process, so that the community benefit requirements will have significant impacts for future communities.

The process VicUrban has undertaken has led to the acknowledgment that corporate suppliers and the construction industry as a whole require a degree of education about the increasing importance of demonstrating community responsibilities within public procurement processes.

[View a Sample Community Benefit Requirement Clause of VicUrban on page 53](#)



Further information and resources

Organisations operating in this space

A number of Victorian organisations are helping councils to improve their procurement practices, including:

Local Government Victoria, Department of Planning and Community Development

Local Government Victoria (LGV) is part of the Department of Planning and Community Development and works co-operatively with Victoria's 79 local councils to ensure that Victorians enjoy responsive and accountable local government services.

Through partnerships with councils and local government associations, LGV encourages and supports best practice and continuous development in local governance and local government service delivery.

LGV has produced the Local Government Procurement Best Practice Guide to support councils in applying the provisions of the Local Government Act to their procurement process.

www.localgovernment.vic.gov.au

The Councils Reforming Business program, Local Government Victoria

Local Government Victoria (LGV), through the Councils Reforming Business (CRB) program, has introduced a range of procurement programs to assist councils to boost efficiency, increase capacity and cut red tape for businesses.

The Victorian Local Government Procurement Strategy commissioned by LGV in 2008 identified savings for local government of between \$180-350 million per year through increased council collaboration and improvement in procurement practices. It provided practical recommendations for councils to work together to reduce costs, improve processes and deliver savings to local communities through more efficient and collaborative approaches to procurement.

The CRB program's better practice procurement initiatives have included: Collaborative Procurement Project grants to encourage councils to work with each other on a range of procurement projects; the Procurement Professional Program, an accredited 12-month internationally-recognised training course for council procurement staff; the granting of council access to Victorian Government purchasing arrangements; and the Procurement Excellence program (PEP). The PEP is the latest initiative of CRB, working with all 79 councils across the state to develop individually-tailored Procurement Roadmaps, create a range of procurement tools and resources, boost council procurement capability and identify opportunities for council collaboration. Also comprising part of the PEP is the Local Government Procurement eHub, an innovative website that brings together all of the procurement information that councils need in the one place. Councils can access the range of procurement resources and expertise at www.lgprocurementehub.com. The CRB program has funded the development of this guide.

www.localgovernment.vic.gov.au

Sector Development, Local Government Victoria

Sector Development provides policy advice relating to the effectiveness of the local government sector and local-state government relations. It develops and implements projects and programs that enhance local government capacity in order to meet the needs of Victorian communities. Sector Development takes a whole-of-government approach in developing and encouraging appropriate local-state government relations to benefit communities and helps to address any interface issues.

www.localgovernment.vic.gov.au

Centre for Social Impact (CSI)

CSI is a unique partnership between the Business School of the University of New South Wales, the Asia Pacific Social Impact Leadership Centre of the Melbourne Business School, Swinburne University of Technology and the University of Western Australia.

CSI brings together the business, government, philanthropic and not-for-profit sectors in a collaborative effort to build community capacity and generate social innovation. It seeks to create beneficial social impact in Australia through teaching, research, measurement and the promotion of public debate.

www.csi.edu.au

Koori Business Network

Formed in 1999, the Koori Business Network (KBN) is part of Small Business Victoria, within the Department of Innovation, Industry and Regional Development. KBN works with Indigenous businesses and entrepreneurs to encourage business productivity and to facilitate the growth of Indigenous businesses participating in the Victoria economy.

Providing targeted support for Indigenous businesses and entrepreneurs is a key focus of the KBN and contributes to addressing some of the barriers Indigenous people experience in starting or growing a small business.

www.business.vic.gov.au/kooribusiness

Social Traders Ltd

Established in 2008, Social Traders Ltd is an independent social enterprise development company. It funds research and raises awareness of the potential of social enterprise to deliver innovative social outcomes for the community. It supports the development of viable social enterprises by improving access to finance and markets.

www.socialtraders.com.au

Municipal Association of Victoria (MAV)

The Municipal Association of Victoria's Procurement arm supports Victorian councils to achieve better procurement outcomes by facilitating group purchasing arrangements, providing training and support for local government procurement professionals, delivering national procurement programs and working with the Victorian Government to compile data, establish best practice and promote policy development.

www.mav.asn.au

ECO-Buy

A not-for-profit Centre of Excellence in environmental purchasing, ECO-Buy was established to encourage the purchasing of environmentally preferable products and services. ECO-Buy offers a one-stop-shop to support councils and organisations to 'green' their purchasing, providing a wide range of services and resources, from policy and strategy development and implementation to practical tools, templates and advice. To date, environmental sustainability in purchasing, or 'green purchasing', has gathered much momentum in the local government sector.

www.ecobuy.org.au

Procurement Australia

Established in 1985 to aggregate the buying power of local government entities in Victoria, Procurement Australia has quickly become a leader in its field. It works in partnership with both buyers and suppliers to ensure that best value collaborative purchasing arrangements are achieved.

www.procurementaustralia.com.au

Types of social enterprises

Social Traders Ltd has identified the key types of social enterprises as listed below.

1. Australian Disability Enterprises (ADE)

ADEs are businesses developed to employ those experiencing difficulties in finding or maintaining employment in mainstream businesses due to disability, or those who choose to work in an ADE. ADEs have a dual focus of providing employment for people with a disability and operating a commercial business. There are 415 ADEs that employ approximately 22,000 people with disability across Australia.

Typical operating environment

Varying substantially in size, ADEs mostly operate from factory outlets, while others provide work and training in the community or at the work sites of mainstream employers.

Examples include:

- packaging and assembly
- horticulture
- furniture manufacture
- hospitality
- printing and distribution services
- recycling and salvaging.

Victorian example

Back to Theatre: an enterprise creating contemporary theatre imagined from the minds and experiences of a unique ensemble of actors with disabilities.

2. Intermediate Labour Market Companies (ILMC)

ILMCs are businesses that create a bridge to the open labour market for individuals experiencing long-term unemployment and other significant disadvantage in the labour market.

Typical operating environment

ILMCs typically provide participants with fixed-term jobs in real work settings where they receive high quality accredited training and personal support. Due to their focus on both commercial returns and pathways to work, they are best suited to labour intensive industries, and industries with quick skills acquisition, skill shortages, clear pathways to employment and high ratio of trainees to each skilled operator.

Victorian examples

- Fifteen: an upmarket restaurant in Melbourne CBD offering young people with difficult backgrounds an opportunity to train and be employed in a supportive environment.
- Boystown: an agency assisting people who are experiencing life challenges to improve their quality of life through work preparation, counselling, training and placement.
- Community Contact Service: run by the Brotherhood of St Laurence, this service provides employment and training opportunities to public housing tenants living in the Fitzroy, Collingwood and Richmond housing estates in inner Melbourne. It offers a concierge, information and recycling service in these three estates.

3. Social Firms

Social Firms are not-for-profit businesses with the specific mission of undertaking commercial work to create employment for people excluded in the labour market as a result of mental illness, disability or other disadvantage.

Typical operating environment

It is a supportive work environment that typically maintains an integrated workplace designed to meet the needs of people with a disability and employing between 25-50% of employees with a disability or disadvantage.

Victorian examples

- Social Firms Australia: a not-for-profit organisation committed to creating accessible, long-term employment for people with a mental illness, disability or other disadvantage.

4. Community Enterprises

Community Enterprises are developed by individuals or groups to address local issues or community needs.

Typical operating environment

Most Community Enterprises in Australia are incorporated as cooperatives. There are also a small number registered as unlisted public companies. They operate in a number of sectors from finance and retail to design and manufacturing.

Victorian examples

- The Roxy Theatre: a community-run theatre re-established in a theatre previously vacant for 30 years.
- Nundah Community Enterprise Cooperative: an enterprise providing training and sustainable employment in local park maintenance and catering for people with disabilities.
- Northcote Rental Housing Cooperative: a member-managed community housing cooperative.
- Yackandandah Community Development Company: a community enterprise that bought out a local petrol station.

5. Cooperative Social Enterprises (CSE)

CSEs are democratic, member-benefit businesses which are formed to meet defined social needs of its members. They provide a model for responding to a common need facing a group and strengthening communities through values and structures that foster self-help, self-responsibility and equality. There are over 2,000 CSEs operating in Australia.

Typical operating environment

Most CSEs are owned by and serve a single stakeholder group, such as parents (child care cooperatives), low income tenants (social housing cooperatives), the aged and infirm (meals on wheels cooperatives). Due to legislative support, most CSEs are found in Victoria and New South Wales and are prominent in the child care, social housing and Indigenous services sectors.

Victorian examples

- Ballarat Community Development Centre Cooperative Ltd: a not-for-profit cooperative that delivers services in the areas of employment, education and training along, with an extensive range of community and business services.
- Clifton Child Care Cooperative Ltd: a not-for-profit community-based child care centre that has been providing accredited, quality child care since 1977.
- Northcote Rental Housing Cooperative Ltd: a CSE empowering and developing the skills of its members to provide and maintain sustainable housing within Melbourne.
- Westgate Health Cooperative Ltd: a CSE providing a model for local, community owned, health services.

6. Fair Trade Social Enterprises (FTSE)

Businesses that exist to benefit producers and workers in developing countries by paying fair prices for products and commodities which they on-sell in developed countries.

Typical operating environment

Some FTSEs are established as wholesalers to retail and business outlets while others may operate as retailers themselves. By providing consumers and business with fair trade alternatives, they provide an important example to other traders of what is possible when the interests of people and planet are given prominence.

Victorian examples

- Oxfam stores: a international chain with foods and handicrafts sourced from individual workers, craft bodies and fair trade organisations.
- Rise Up Productions: a clothing company committed to producing clothes that meet strict ethical and environmental standards.
- Etiko: a retailer of fair trade sport and fashion products. The purchase of their products also helps fund community development, micro-credit and health care programs in countries around the world.
- Trading Circle: an initiative of the Good Shepherd Sisters that helps women trade out of poverty by assisting with the marketing of their products.

7. Community Development Finance Institutions (CDFI)

CDFIs are independent financial institutions that provide community finance products and services to individuals, organisations, enterprises and communities who are underserved by, or have difficulty securing finance from, mainstream financial institutions.

Typical operating environment

CDFIs take a range of forms, including Social Banks, Community Development Credit Unions, Community Investment Funds, Enterprise Loan Funds and Personal Finance Providers.

Victorian examples

- Fitzroy and Carlton Community Credit Cooperative: a CDFI committed to assisting lower income community members better manage their finances.
- Foresters Community Finance: a CDFI that assists organisations to build financial and social sustainability.

8. Charitable Business Ventures (CBV)

CBVs are run by not-for-profit organisations to raise income which is reinvested in their charitable purpose. Some align their product with their mission, while others raise income through business activities unrelated to their mission.

Typical operating environment

Some CBVs operate as divisions within charities, while others are separately incorporated as companies. They include smaller ventures, such as opportunity shops and community book stores, through to large trading companies.

Victorian examples

- Mod-style: a glass importing and wholesaling enterprise owned by the Brotherhood of St Laurence.
- St Luke's Innovative Resources: a CBV that retails therapeutic card sets, books and stickers used by human service workers in a range of professional contexts. It is owned by St Luke's Anglicare.
- The Smith Family's Nonwoven Manufacturing Plant: an enterprise that manufactures textile products for companies such as Bridgestone and Unilever.
- Opportunity Shops: thousands of op shops around Australia retailing recycled clothing and household goods.

Sample social procurement clauses

Department of Human Services housing contract

The Requirement

The employer is required to employ public tenants effective full time (EFT) for a period totalling the original contract period at the following rates:

- One effective full time employee where the contract exceeds \$300,000 including GST
- One additional effective full time employee for each further \$300,000 including GST, increase thereafter.

Effective Full Time Employment

Tenants employed must have same conditions and contracts that the contractor usually uses on the site.

- Tenants may be employed on this site for a period shorter than the original contract period provided enough tenants are employed on this site or elsewhere in order to achieve the total number of effective full time hours required.
- Tenants may be employed to work in any type of role.
- Tenants working for the contractor or via a related subcontractor on this site or sites other than Office of Housing may be counted towards meeting requirements.

Public Tenant Employment

PTEP was established to address the high level of unemployment of people living in public housing in Victoria through the inclusion of employment criteria in Office of Housing contracts.

Recruiting

The contractor may recruit from any source, but PTEP provides a free recruitment service. PTEP will advertise your PTEP vacancies and provide you with resumes of suitable applicants to select from.

Training/Induction

Usual OH&S and induction training shall be provided to ensure workers are competent for the tasks they are employed for. Traineeships and apprenticeships are good ways of providing employees with a free qualification. These attract subsidies and PTEP can assist you with this.

Monitoring and Reporting

At the commencement for each tenant employee complete the provided form Public Tenant Employee Registration Form and return it to PTEP.

Provide quarterly reports and a report at the contract completion using the provided form Public Tenant Employee Reporting Form

Provide a verbal report at each site meeting

On commencement of the project the following forms will be provided to builder.

Declaration: The Employer in making this tender submission:-

- Agrees to take all reasonable steps to comply with the Public Tenant Employment Program (PTEP) principles, and agrees to make every endeavour to employ persons who qualify for that program;
- Agrees that compliance with PTEP commitments will be monitored as part of overall performance management, and
- Acknowledges that failure to comply with a PTEP Statement will be centrally recorded by the Victorian Government and may be taken into account when considering subsequent tenders for VIPP purposes.

VicUrban community benefit and economic vitality requirement

1. Employment and Training

- 1.1 Describe the steps that will be taken to ensure that local apprentices, trainees, unemployed persons and residents of the City of Greater Dandenong will be engaged for the duration of each contract.
- 1.2 Describe how you will achieve compliance from sub-contractors necessary to meet the employment requirements.
- 1.3 Describe your policy with regard to training and new apprenticeships and identify and describe opportunities for increasing skills of employees.

2 Targeted Recruitment

- 2.1 Describe the steps that will be taken to ensure that all vacancies, including those with subcontractors, are notified to local agencies.
- 2.2 Describe the steps that will be taken to ensure that information on the numbers of vacancies filled by local people are recorded for monitoring and reporting purposes.
- 2.3 Describe the steps that will be taken to ensure that suitable apprentices / trainees are engaged.

3 Local Business

- 3.1 Describe activities that you will undertake to identify local SMEs and assess their capacity to deliver works, services or supplies that are required for the contract.
- 3.2 Describe any actions you will undertake to support or assist local SMEs to obtain contracts in relation to the Revitalising Central Dandenong initiative.

4 Social Enterprise

- 4.1 Describe any experience or evidence from other areas that has influenced your thinking on support for social enterprises.
- 4.2 Describe the support you will give to social enterprises, including development support, business support and funding.

Contractors are also required to complete information about how the above will be recorded, monitored and reported, including sub-contractor requirements. In addition contractors are required to name who will be responsible for ensuring that the Community Benefit requirements are met.

Finally, potential suppliers are required to list the predicted outcomes for each community benefit requirement.

Requirement	Unit of Measure	Predicted Outcome
Number of new recruits	No. of people	
Number of apprentices that will be recruited	No. of people	
Number of trainees that will be recruited.	No. of people	
Level of local content	No. of people	
Vacancies to be advertised	No. of vacancies	
Work opportunities for social enterprises	% of overall spend	
Work experience opportunity	No. of placements	
Local SMEs assessed as potential suppliers	% of overall spend	

Complete Victorian Government Solicitor's Office advice

Summary one Sample social clauses

The following are sample clauses that could be included in Part 2 (Special Tendering Conditions) of the standard Request for Tender template available on the Victorian Local Government Procurement eHub at www.procurementehub.com.

Sample clause one:

Optional social procurement considerations

For use when the council wishes to invite solutions from social traders but such solutions could be one of a number of solutions considered (including commercial solutions) and the council does not wish to be bound to select a solution that includes social benefits.

PART 2. SPECIAL TENDERING CONDITIONS

- 2.1 In evaluating the Tender Responses, Council may take into account the extent to which Tender Responses demonstrate solutions that will or may provide any or all of the following benefits:
- (a) promotion of the social, economic and environmental viability and sustainability of the municipal district;
 - (b) efficient and effective use of resources and provision of services in accordance with the Best Value Principles to best meet the needs of the local community;
 - (c) improvement of the overall quality of life of people in the local community;
 - (d) promotion of appropriate business and employment opportunities; and
 - (e) provision of services and facilities that are accessible and equitable.
- 2.2 Council is not obliged to select a Tenderer on the basis of the above considerations.

Sample clause two:

Mandatory social procurement considerations

For use when service delivery that includes social benefits of some kind is the preferred solution and the council does not wish to select a solution that does not incorporate social benefits.

PART 2. SPECIAL TENDERING CONDITIONS

- 2.1 In evaluating the Tender Responses, Council will take into account the extent to which Tender Responses demonstrate solutions that will or may provide any or all of the following benefits:
- (a) promotion of the social, economic and environmental viability and sustainability of the municipal district;
 - (b) efficient and effective use of resources and provision of services in accordance with the Best Value Principles to best meet the needs of the local community;
 - (c) improvement of the overall quality of life of people in the local community;
 - (d) promotion of appropriate business and employment opportunities; and
 - (e) provision of services and facilities that are accessible and equitable.
- 2.2 Tender Responses that do not demonstrate any of the above benefits are unlikely to be successful.

Summary two

Legal considerations

This section describes the legal framework that should be considered by local government when seeking to undertake social procurement activity. It is general information only and not legal advice. It is recommended that organisations wishing to undertake social procurement should seek independent legal advice.

Social procurement legal considerations

1. 'Social procurement' by local government means the procurement of goods and services by councils that seeks to contribute to the future sustainability of communities and to improving the quality of life of their constituents by procuring goods or services in a manner that seeks to strategically address particular social issues in the community.
2. Local government may legally conduct social procurement, provided the constraints in the following three areas of law are observed:
 - a. Legislation governing local government (Local Government Act 1989 (Vic) and subordinate and other related instruments);
 - b. Common law relating to procurement; and
 - c. Trade practices law.
3. The requirements in relation to each of these areas of law are described below.
 - (1) Local Government Act 1989 (Vic) and related instruments.
4. When conducting social procurement, local governments must comply with the general requirements relating to all procurements as set out in the Local Government Act 1989 (Vic) (LGA) and related instruments, unless an exception or exemption applies. Information on the requirements relating to all procurements is outlined in the Local Government Procurement Best Practice Guideline (Department of Planning and Community Development, August 2008).
5. When applied to social procurement, the key sections of the legislation are:
 - 5.1 Section 3C of the LGA, which provides:
3C Objectives of a Council
 - (1) The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decisions.
 - (2) In seeking to achieve its primary objective, a Council must have regard to the following facilitating objectives:
 - (a) to promote the social, economic and environmental viability and sustainability of the municipal district;
 - (b) to ensure that resources are use efficiently and effectively and services are provided in accordance with the Best Value Principles to best meet the needs of the local community;
 - (c) to improve the overall quality of life of people in the local community;
 - (d) to promote appropriate business and employment opportunities.
 - 5.2 Section 136(1) of the LGA, which provides:
136 Principles of sound financial management
 - (1) A Council must implement the principles of sound financial management.

5.3 Section 186 of the LGA, requires local governments to undertake a competitive process to test the market before entering into contracts for the purchase of goods or services with a value of \$150,000 or more or for the carrying out of works with a value of \$200,000 or more,¹ unless specified exceptions apply.

5.4 Section 186A of the LGA, requires local governments to prepare, approve and comply with a procurement policy and make the policy available on the council's website.

5.5 LGA Division 3 of Part 9, which sets out the Best Value Principles that the local governments must comply with in using resources. In particular, s 208B provides:

208B Best Value Principles

The Best Value Principles are:

- (a) all services provided by a Council must meet the quality and cost standards required by section 208D;
- (b) subject to sections 3C(2)(b) and 3C(2)(e), all services provided by a Council must be responsive to the needs of its community;
- (c) each service provided by a Council must be accessible to those members of the community for whom the service is intended;
- (d) a Council must achieve continuous improvement in the provision of services for its community;
- (e) a Council must develop a program of regular consultation with its community in relation to the services it provides;
- (f) a Council must report regularly to its community on its achievements in relation to the principles set out in paragraphs (a), (b), (c), (d) and (e).

Importance of articulating the social benefit

6. The obligations set out in the LGA as outlined above can all be met in undertaking social procurement provided that the benefits to the community are properly articulated, including in terms of financial benefit. The primary goal set out in section 3C(1) of achieving 'the best outcomes for the local community having regard to the long term and cumulative effects of decisions' could in many cases be quite directly achieved through social procurement. The critical component in ensuring that social procurement meets the council's obligations under the LGA is that the benefits to be obtained (or sought to be obtained) are clearly expressed in terms of the benefit to the community and the associated financial considerations that make the procurement financially sound.

Procurement policy of each council

7. It is important that each council's procurement policy (as required under section 186A of the LGA) allows for the types of broader considerations that are relevant in relation to social procurement. The Model Procurement Policy created by the Municipal Association of Victoria (June 2009) includes the type of flexibility of considerations that are appropriate in facilitating social procurement. Local governments should take care not to inadvertently constrain their capacity to broadly consider the potential benefits of a particular procurement by prescribing commercial considerations only.

1. Victorian Government Gazette G32 (7 August 2008).

Invalidity of non-complying contracts

8. The consequence for local governments of not complying with the requirements of the LGA and their own procurement policies is that resulting contracts may be declared void, which could expose the councils to claims from contractors if they suffer financial detriment as a result.

Exemptions from the public tender requirements

9. Section 186(5) of the LGA allows for a local government to enter into a contract without first having put the contract to public tender if the arrangements have been approved by the Minister (s 186(5)(c)) or if the type of contract has been exempted by the regulations (s 186(5)(d)). At the present time, only contracts relating to legal services have been exempted under the regulations.² Councils may consider making an application to the Minister under s 186(5)(c) if there are particular types of services that may justify a departure from the public tender requirements.

(2) Common law relating to procurement

10. The courts have found that, where a government entity presents certain terms to the market as the basis on which it will make a procurement decision, it must comply with those terms. If it does not, unsuccessful tenderers may be able to successfully challenge the resulting contract.³

11. To minimise this risk, local governments wishing to include social benefit considerations in their procurements must ensure that the inclusion, or potential inclusion, of these considerations is clearly allowed for under the local government's procurement policy and clearly articulated in the request for tender/quote documentation.

12. It is not a problem for local governments to include social benefit considerations, but it may be a problem if the prospective tenderers have not been told that these benefits may be considered.

(3) Trade practices law

13. This is a general description of the competition law framework in which local governments operate and the way trade practices law may apply to social procurement. Social procurement may involve a spectrum of procurement and contracting activities, when a council is engaging with a service provider or operating as a service provider, such as:

- requiring suppliers of goods or services to achieve social objectives as part of contract performance;
- engaging with contractors to encourage them to subcontract part of their obligations to social enterprises;
- contracting directly with social enterprises for the supply of goods or services to local councils, ratepayers or others;
- establishing joint ventures between local councils and social enterprises for the operation of facilities or the provision of services;
- offering tenders specifically amongst social enterprises; and
- two or more local councils undertaking any one or more of the above, to achieve enhanced social objectives through aggregation of their procurement requirements.

14. To determine how the trade practices law applies to any particular instance, local councils should seek independent legal advice. The following paragraphs provide general guidance only.

2. Local Government (General) Regulations 2004, Regulation 10.

3. *Hughes Aircraft Systems International v Air Services Australia* (1997) 76 FCR 151; *Cubic Transportation System Inc v State of New South Wales & 2 Ors* [2002] NSWSC 656

Federal and State implementation of trade practices law

15. Local government is subject to trade practices law through the Trade Practices Act 1974 (Cth) (TPA) and the application of the Competition Code under the Competition Policy Reform (Victoria) Act 1995 (CPR Act).
16. S 2BA of the TPA provides that Part IV of the TPA (which contains various prohibitions on anti-competitive conduct) applies to a local government body 'only to the extent that it carries on business, either directly or by an incorporated company in which it has a controlling interest. These incorporated entities could include joint ventures established by municipal councils.
17. The provisions of Part IV of the TPA, with some modifications, also form the Competition Code of Victoria. Under the CPR Act, the Competition Code also applies to municipal councils, as 'persons' carrying on business in Victoria, and as bodies corporate incorporated under a law of Victoria.
18. The CPR Act gave effect to National Competition Policy reforms, under which it was intended that government businesses should not enjoy any advantages when competing with other businesses, and that the TPA should apply to such government businesses.

Anti-competitive conduct under the TPA and Competition Code

19. Under the trade practices law in Part IV of the TPA and the Competition Code, a range of commercial conduct is prohibited – either entirely, or only where that conduct has the purpose or effect of or is likely to have the purpose or effect of substantially lessening competition.
20. In summary (and in very general terms) the prohibited conduct includes:
 - 20.1 Cartel conduct engaged in by parties at least two of whom are in competition with each other – price fixing, output restrictions, allocating customers, suppliers or territories, and bid rigging (ss 44ZZRF, 44ZZRG, 44ZZRJ and 44ZZRK of the TPA);
 - 20.2 Exclusionary provisions in contracts, arrangements or understandings between parties at least two of whom are in competition with each other where the provision has the purpose of preventing, restricting or limiting the supply or acquisition of goods or services to or from particular persons or classes of persons, by any or all of them (ss 45 and 4D);
 - 20.3 Contracts arrangements or understandings having a provision which has the purpose, is, or would be likely to have the effect of substantially lessening competition in a market (s 45);
 - 20.4 Misuse of market power, where a person or entity having a substantial degree of power in a market takes advantage of that power for the purpose of eliminating or damaging a competitor, preventing a person from entering a market or deterring a person from engaging in competitive conduct (for example, by predatory pricing) (s 46);
 - 20.5 Engaging in exclusive dealing including through third line forcing (supply on condition that the purchaser acquire goods or services from a third party, or refusal to supply because the purchaser will not agree to this condition) or by other restrictions on supply or resupply of goods or services (where these have the purpose or effect, or are likely to have the effect of substantially lessening competition in a market) (s 47);
 - 20.6 Resale price maintenance (s 48); and
 - 20.7 Mergers or acquisitions which have the effect or are likely to have the effect of substantially lessening competition in a market (s50).

21. 'Market', where relevant to these provisions, includes an area of close competition in relation to product (the range of goods or services that will satisfy a particular demand), area (the geographical area in which the goods or services are traded), functional level (wholesale, retail, supply or purchase) and time (the length of time over which substitution of goods or services might take place).
22. Breach of these provisions can involve criminal and civil penalties, and in the case of cartel offences, substantial fines. Municipal councils and their officers can be liable for their respective involvement in breaches of the provisions.
23. Since 1995, municipal councils have introduced compliance programs to ensure that they address trade practices law and other applicable provisions of the TPA and Fair Trading Act in their operations.
24. There are a number of activities undertaken by municipal councils which do not amount to 'carrying on a business'. The trade practices law also provides for exceptions to some prohibitions. However if you are intending to rely on any of these exceptions for a particular social procurement, you should seek legal advice to confirm that all of the requirements of the exception are met.

When is a municipal council carrying on a business?

25. Exceptions to this requirement are as follows:
 - 25.1 Specific exceptions in s 2C of the TPA – for example granting, refusing to grant, revoking, suspending or varying licences (whether or not subject to conditions) will not be 'carrying on a business'.
 - 25.2 Procurement of goods or services in relation to exclusively governmental activities conducted by a municipal council for which no charge is made to recipients or consumers will not be carrying on a business. In *Mid Density Development Pty Ltd v Rockdale Municipal Council* (1992) 39 FCR 579, Davies J held that the provision of a contracted out garbage collection service to its rate payers was not enough to constitute the Shire a trading corporation. He said, at page 585.

The carrying out of a function of government in the interests of the community is not a trading activity.
26. There are activities conducted by local government which will clearly be carrying on business – especially other general recurrent sale or purchasing activities, or the operation of facilities such as aquatic leisure centres and gyms, child care services or recycling centres where a commercial charge is made for use of the facilities or services.

Exceptions to specific provisions of the trade practices law

27. Exceptions are provided in relation to particular provisions of the trade practices law:
 - 27.1 In some instances, these exceptions are set out in the TPA or Competition Code - for example, there are exceptions to some cartel offences where cartel provisions are for the purposes of a joint venture for production and supply, and for price fixing where there is a collective acquisition of goods or services.
 - 27.2 S 51(1) of the TPA (and an equivalent provision in the Competition Code) provides a mechanism for a statutory exception where this is specifically authorised or approved under a State Act or Regulation. However, it is not sufficient for the conduct to be authorised or approved under that legislation in general terms. The relevant section of the legislation must specifically refer to the TPA, and must identify the conduct so authorised.

Issues relevant to selective tendering or collective acquisition

28. If social procurement takes the form of offering tenders specifically among selected tenderers, then it may be necessary to consider whether in the particular circumstances, including the relevant market for the goods or services, there is any risk that the trade practices law will not be complied with.
29. This may be an issue if there is joint tendering by a number of social organisations in relation to a single social procurement, or other collusive conduct (in relation to exclusionary provisions or price fixing). These risks are not unique to social procurement, and should be addressed already in local government compliance programs.
30. These risks could be amplified where the tendering involves collective acquisition by several municipal councils, depending upon the results of extending the geographical boundaries of the market as a result of the aggregated purchasing. While the substantial purposes of social procurement will be focussed on the social objectives identified in the relevant project, some provisions of the trade practices law may be breached where the relevant conduct has the effect or is likely to have the effect of substantially lessening competition in the relevant market.
31. An arrangement between a number of councils whereby it is agreed that all of them will use a nominated service provider (such as a social enterprise) and in preference to any other service provider (such as a commercial enterprise) regardless of price could well have the effect of substantially lessening competition. These risks are not unique to social procurement and compliance materials should already deal with the application of trade practices law to collective arrangements between municipal councils where they may be in competition with each other in relation to commercial activities.
32. Where local councils join together to exercise market power as consumers of particular services which they would not have individually. Whether that amounts to a breach of the TPA will depend on whether the activity constitutes price fixing, and how the supply side of the market is configured, including what potential there is for sellers of the services in question, for their part, to manipulate the market. In other words, it is necessary to look at whether the joint buying activities of councils have the effect of lessening competition in the context of the market.
33. An arrangement between a number of councils whereby it is agreed that all of them will use a nominated service provider (such as a social enterprise) and in preference to any other service provider (such as a commercial enterprise) regardless of price could well have the effect of substantially lessening competition.
34. Other provisions of Part IV may also apply, such as the prohibition on exclusionary agreements (s 45(2)(a)(i)), or the anti-price fixing provisions in s 44ZZRF (although the collective purchasing exemption may apply).

Issues relevant to joint ventures and other arrangements

35. Where municipal councils intend to pursue social procurement by partnerships or joint ventures with social organisations, rather than purchasing, then there may be other risks of breaching trade practices law particularly where these are exclusive arrangements with one or more social organisations to provide a service or operate a facility.

36. Joint supply or the services by competing social organisations may attract the prohibitions on exclusionary provisions. Where the municipal council has significant power in a local market for the acquisition or supply of the relevant services, the arrangements may need to be reviewed to ensure they do not have or are not likely to have the effect of substantially lessening competition in the relevant market, and do not amount to a misuse of market power by the municipal council.

Authorisations

37. The ACCC may grant authorisation to municipal councils and other persons with whom they wish to enter into social procurement activities where the conduct proposed breaches the trade practices law in Part IV of the TPA or the Competition Code. All conduct other than misuse of market power may be the subject of an authorisation.

38. Authorisation is granted after a comprehensive public consultation process, involving receipt of submissions, if the ACCC is satisfied that the public benefit from the arrangements or conduct outweighs the public detriment. 'Public benefit' is something that results in an increase in the welfare or wellbeing of society – which may be demonstrated in the objectives and anticipated outcomes of the social procurement concerned.

39. The ACCC encourages applicants to have preliminary discussion with them about the types of public benefit claims and detriments that might be considered by it. The application needs to be specific and the evidence in support comprehensive. It should include a detailed account of the relevant market(s) and the market share and behaviour of participants. Evidence (including expert evidence) is required to show how the conduct would affect the market, how it has been framed to minimise anti-competitive effect, the public benefits of the conduct and likely beneficiaries.

40. The ACCC issues a draft determination before issuing a final decision, stating whether it proposes to grant the authorisation and the reasons for its proposed decision.

