

# HOW COMPLIANCE IMPERATIVES STIFLE THE IMPACT OF SOCIAL PROCUREMENT

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Indigenous procurement policies (IPPs) have exceeded their mandated targets in the construction industry and thus been promoted as an effective social procurement initiative to increase Indigenous peoples' participation in the economy. However, it is unclear if Indigenous procurement policies generate social value for Indigenous businesses and communities. Addressing the lack of knowledge in this area, this empirical paper presents the results of 18 interviews with Indigenous contractors to document the impact Indigenous procurement policies have on the businesses they are meant to benefit. The results indicate that IPPs can create social value. However, contractors may suffer from being used by larger companies to 'tick the box' and comply with the requirements of IPPs, without being invited to compete for ongoing work packages or employment on the live project. It is concluded that, if IPPs are to create sustainable social value, greater commitment may be needed by industry and policymakers to realise the opportunities these policies create. This research has implications for IPPs, social value theory and practice. These implications include theoretical and practical insights on what to avoid in order to maximise the impact of Indigenous and other social procurement strategies more broadly, as economies recover from COVID-19.

Keywords: compliance; Indigenous procurement; social procurement; social value

## INTRODUCTION

Internationally, Indigenous procurement policies (IPPs) have gained popularity as a social procurement strategy as colonised nations look to address historical treatment of Indigenous peoples or fulfil treaty obligations (Panezi 2020). The construction industry is one of the largest contributors to the performance of policies like Australia's Commonwealth Indigenous procurement policy (CIPP) given the significant infrastructure investment commitments made by Australian governments before, and in response to, the COVID-19 pandemic (Denny-Smith *et al.*, 2021).

IPPs work by setting contract targets that government agencies must reach. For instance, the CIPP establishes annual targets for the volume and value of contracts to be awarded to Indigenous enterprises by government agencies (NIAA 2020a). And thus far, the CIPP has been successful in exceeding its targets in each year since the policy was introduced, with over \$3.5 billion and 24,470 contracts awarded to Indigenous enterprises, of which the construction industry is one of the largest contributors (NIAA 2020b). However, a review by Australia's Auditor General

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(2020) raised significant concerns about the CIPP's implementation and compliance; there are therefore questions over the policy's effectiveness at creating social value for Indigenous Australians. Indeed, Indigenous policy in Australia is often embellished to exaggerate its successes (Bargallie 2020), adding weight to concerns about the lack of understanding of the impact of construction procurement on the intended outcomes of social procurement policy.

Considering the above concerns, this empirical paper aims to critically evaluate how IPPs impact Indigenous contractors and workers in the Australian construction industry. This research is especially important in the context of the issues raised above and the long history of socioeconomic inequities experienced by Indigenous Australians since colonisation in 1788. It is also especially timely given recent calls that "there needs to be specific analysis for [the] effectiveness of social procurement for Indigenous peoples" (Panezi 2020: 245). Specifically, this paper answers the following research question: How do IPPs promote or inhibit the creation of social value in the construction industry? To answer this, the following section critically reviews social procurement and social value in relation to Indigenous peoples and the construction industry. The method used to explore the research question is then discussed. Results indicate that IPPs can create social value, but this can be negated by compliance imperatives, where contractors 'tick the box' to superficially meet contract requirements and leads to negative social value being created. It is concluded that improving IPPs could involve greater collaboration between contractors and Indigenous suppliers to minimise the incidence of tokenistic engagement with Indigenous suppliers and employees, which could create greater social value.

### **Social Procurement and Social Value**

In construction, social procurement requires contractors tendering on public projects to demonstrate the social value they create, which typically refers to the economic, social and cultural impacts of a construction project on the community in which it is built (Raider *et al.*, 2019). In Australia, policies like the CIPP seek to create social value in the form of financial independence and economic development for Indigenous Australians, who have historically been excluded from participating in business and experience significant socioeconomic inequities compared to non-Indigenous Australians.

Although social procurement is not a new phenomenon, interest in construction social procurement is relatively recent, and social procurement is still creating new roles in the industry which are not yet fully developed and explored (Troje and Andersson 2021). Therefore, a critical evaluation of social value in the context of social procurement policy in construction may extend knowledge in this area and lead to improved practice, creating better social and economic outcomes for the marginalised populations that social procurement is meant to benefit.

Despite the interest in the potential social value created by construction procurement, it remains an underdeveloped concept, which Raider *et al.*'s (2019) critical literature review revealed is the result of competing notions of what social value is, and practical examples of how it is evaluated. This is in part because the social outcomes of construction procurement are often intangible, which presents difficulties for construction clients seeking to evaluate the social value they create. Construction stakeholders also have competing interests and therefore different expectations of social value which can reduce the legitimacy of social value reports (Watts *et al.*, 2019). Despite these significant limitations to understanding social value in

construction, recent scholars have begun trying to build up our understanding of how social value is created in the construction industry.

To address the above conflicts, Watts *et al.* (2019) developed a social value tool that they argue captures the more nuanced aspects of social value not captured in standard social value reporting tools. The tool measures the impact of construction employment on participants' non-financial wellbeing but does not capture other elements like economic development which are central to the CI Murtagh and Brook (2019) produced a matrix of critical success factors to create social value in construction procurement, but their research was targeted at contractors and commissioners and contains no insight on evaluating social value from the perspective of beneficiaries. In arguing that construction companies need to move beyond compliance driven 'tick-box' exercises to meet social value requirements, Daniel and Pasquire (2019) recommend adopting principles of lean production which include: meeting stakeholder expectations, reducing waste through process standardisation, and reducing cycle time and variability. While this appears to be a promising step given it supports recommendations to involve and consult stakeholders in social value measurement (Nicholls *et al.*, 2012), it remains highly conceptual and, to address this, Denny-Smith *et al.*'s (2021) research recommends that construction employers create 'work' and 'culture' benefits to create social value for employees in response to COVID-19. The above works are also not grounded in Indigenous epistemologies and to address this, reviewing Indigenous research that may contribute to conceptualising social value are beneficial.

### **Social Value and Indigenous Australians**

No social value research in an Indigenous context can occur in a vacuum of Indigenous epistemologies and acknowledging this, Wiradjuri scholar Williams' (2018) Ngaa-bi-nya Aboriginal and Torres Strait Islander evaluation framework was deployed in this study. Ngaa-bi-nya has four domains that must be supported by IPPs to create social value. In a construction context, the four Ngaa-bi-nya domains include: Landscape, whether the project and supply chain improved the socioeconomic position of local Indigenous people; Resources, the business and employment opportunities available to Indigenous people and associated financial and skill outcomes; Ways of working, how engaged the workforce and community is on a construction project; Learnings, the challenges and set-backs experienced on construction projects and how they were overcome.

For social value to be created in an Indigenous procurement policy context the Ngaa-bi-nya domains need to be supported on construction projects. Indigenous entrepreneurs are generally oriented towards social, cultural and economic outcomes for them and their communities (Evans and Williamson 2017), which could support all Ngaa-bi-nya domains as the outcomes are diffused through the community. Promoting the transformative potential of Indigenous procurement strategies to create social and economic value, Jawoyn and Wiradjuri business professional Kinsela-Christie (2019) argues the specific social value outcomes of Indigenous procurement include self-determination and empowerment (Landscape), more training and employment opportunities for Indigenous businesses and workers (Resources), business owners and workers becoming positive role models for younger generations to look up to (Ways of working), and reinvesting in communities to fund more strategic initiatives and create a multiplier effect of social value (Learnings). Pearson *et al.*'s (2020) critical review also found that Aboriginal community-controlled

organisations promote the social determinants of health and wellbeing by focusing on socioeconomic outcomes for their stakeholders, a notion aligning closely with the domains above. Thus, if implemented effectively, IPPs may support the Ngaa-bi-nya domains and create social value. The method to evaluate IPPs for social value using Ngaa-bi-nya is outlined below.

## **METHOD**

‘Research’ is one of the dirtiest words in Indigenous peoples’ vocabularies because it can be linked to colonial histories that extracted and claimed ownership over Indigenous knowledge (Smith 2012). Therefore, extensive consultation was undertaken with Indigenous stakeholders on appropriate methods to examine the social value created by IPPs that respect Indigenous epistemologies. All stakeholders agreed that focus groups were appropriate in this context before COVID-19 caused Australian universities to halt face-to-face research. Further consultation determined that interviews held remotely would meet the study's aims while ensuring the safety of participants.

Interview questions were based on the above literature review, which were cross-checked for validity with Denny-Smith et al.'s (2021) findings about employment characteristics that create social value in construction and structured around the Ngaa-bi-nya framework. Interviews were held remotely via Microsoft Teams and participants were recruited by advertising the study at the end of a survey asking Indigenous businesses about the impacts of IPPs. Of 150 completed surveys, 18 interviews were organised and conducted with senior management and owners of Indigenous businesses. Only qualitative data are reported here for brevity and because the qualitative data gives significant insight into how IPPs operate. The qualitative data reported in this paper includes the text entries of survey respondents and interview data.

The semi-structured interview guide contained seven questions and interviews lasted for 30 minutes. Semi-structure interviews were used for flexibility in case unexpected themes arose during interviews. Data were thematically analysed using structural codes based on Ngaa-bi-nya and to ensure rigour, this involved several stages such as immersion in the data and structural coding (Saldana 2021) based on Ngaa-bi-nya. A structural qualitative analytical approach based on Ngaa-bi-nya is appropriate in this research because qualitative analysis does not occur in an epistemological vacuum (Braun and Clarke 2006). Analysing and reporting data using codes and themes distilled from Indigenous and social procurement scholarship was beneficial to manage the researcher's subjectivity, thus ensuring data validity (Hennink 2014). Ethics approval was obtained from an Australian university before data collection began, and a condition of ethical approval included asking interviewees if they wanted to waive their right to not be identified, which was recorded on signed consent forms.

## **RESULTS**

This section presents the results of qualitative data collected in the study. Results are presented under the four Ngaa-bi-nya domains as Ngaa-bi-nya provides conceptual guidance for the study and to further manage the researcher's positionality as a non-Indigenous person.

## **Landscape**

Generally, participants reported that IPPs can create more opportunities for Indigenous business owners to create social value for staff and communities. Supporting scholarship that argues Indigenous businesses focus on broader social and cultural outcomes instead of strictly financial ones (Evans and Williamson 2017), participants had set their own "policies for Indigenous participation (employment, training, giving back to community) and Indigenous B2B (business-to-business) relations prior to the IPP" (Survey respondent). Supporting research that found an association between positive experiences of the commercial relationship for Indigenous Australian businesses and the value of networks and growth opportunities (Jarrett 2019), other respondents wrote of the impact that IPPs are having on Indigenous supply chains and entrepreneurial success, where IPPs have helped companies "'get work' in government sectors" and "create more Aboriginal businesses (and associated supply chains and opportunities for Indigenous people)" (Survey respondent), creating opportunities for Indigenous businesses to multiply the social value they create.

## **Resources**

As above, the results indicate that IPPs may produce an environment that multiplies opportunities to create business and employment opportunities (Resources) for Indigenous people. As Mike (business owner) explained when describing how his business expanded its services to take advantage of greater opportunities because of IPPs: "(diversifying the business function) opened up a door where we could engage unskilled labour as well as skilled labour, which means...we can have a higher rate than 15% indigenous content" and create more employment outcomes for Indigenous staff.

Similar to Lee *et al.* (2019: 1513), who argue that "new kinds of resources and relationships...can serve as the basis for regional development action", business owners also emphasised how the opportunities created by the policies are driving their own business development: "We wouldn't have that access (to larger construction contracts). So, we'd be working...in steel and in construction, but we certainly wouldn't be engaged with (a) tier one construction company" (Ashley, business owner). Indeed, Ashley's comments demonstrate how Indigenous business owners adopt a business-led approach to their company's capacity development (Spencer *et al.*, 2017), by taking on risk to forge new partnerships and opportunities on larger projects. Others explained how IPPs create more opportunities for Indigenous businesses to employ more Indigenous staff and invest in their professional development: "we put on an apprentice (straight away after winning an IPP contract)" (Tim, business owner). IPPs can thus create more employment opportunities for Indigenous Australians because they create more business opportunities for Indigenous businesses, multiplying businesses' existing efforts to create social value.

## **Ways of Working**

To support Indigenous Ways of working, IPPs, and the contractors who must deliver on their obligations, must engage Indigenous workforces and communities. But participants described assumptions on construction sites that can be harmful to the identity and wellbeing of Indigenous staff: "So (Employee) who's our Indigenous foreman...one of the site managers...goes 'oh (Company) ay. S'posed (sic) to be an Indigenous business but...don't employ any Indigenous people' and (Employee) just happened to be the one who is an Indigenous foreman" (regional manager). To

counter this, Indigenous businesses find themselves "actively discouraging the view that the IBPP is another handout path" (Survey respondent). Instances like this detract from the positive value that IPPs are creating because it leads to feelings of stigma and embarrassment for the staff who are affected by it. Such occurrences are antithetical to the intentions of IPPs and suggest a need for an ongoing cultural shift in parts of the industry.

Despite negative instances like the above, other participants described how the policies can lead to more positive engagement, and better relationships, between Indigenous and non-Indigenous Australia. For example, as one respondent wrote: "There has been a good two-way learning on projects that we have been part of and clients have valued the learning experience" (Survey respondent). The two-way learning is a significant experience for non-Indigenous staff, who can gain a greater appreciation for Indigenous Australians and culture, as one senior manager at an Indigenous construction company explained when cultural events are celebrated: "And then coming to work for an Indigenous business, it's a bloody eye opener... we've done cultural walks and bits and pieces...I've...taken our kids, the very next weekend." Overall, IPPs can support Indigenous Ways of working because they allow Indigenous construction companies to promote Indigenous culture in their operations. This has a spread effect, where non-Indigenous companies and workers gain a greater appreciation for the history and diversity of Indigenous culture in Australia, empirically supporting research that argues Indigenous businesses create a sense of cultural pride and identity in their workplaces (Burton and Tomkinson 2015).

### **Learnings**

When given the chance to reflect on their Learnings from IPPs, the qualitative responses were mixed. For example, while some participants were "glad that Government agencies have to employ a percentage of Aboriginal businesses so small businesses like mine can gain contracts" (Survey respondent), others had experienced significant challenges in the construction industry that are important to be raised.

A pressing concern common to all participants was the practice of 'black cladding'. Black cladding occurs when a larger non-Indigenous contractor forms a joint venture company with an Indigenous shareholder to take advantage of government procurement opportunities. While the Indigenous partner owns at least 50 per cent of the company, to qualify as an Indigenous business, they retain little to no control over the business' operations and strategy, while the business employs little to no Indigenous people (Mundine 2016). Black cladding can undermine the social value created by IPPs by taking away opportunities from Indigenous businesses whose focus is employing Indigenous staff: "The goodness of the IPP is being diluted by many black clad businesses and therefore margins are tightening and the ability to give back is also lessening" (Survey respondent). Black cladding may be a significant setback to the ability of IPPs to create social value because it takes money away from businesses that genuinely want to create social outcomes for their staff and communities: "They've (black clad businesses) got no Indigenous staff. They're not hiring (Indigenous staff). They're not doing the hard...I'm not saying I'm perfect, but...I'm definitely chasing and hiring Indigenous staff" (Business owner).

The most significant setback to creating social value in an Indigenous procurement policy context comes from the compliance imperatives that motivate contractors to 'tick the box' and meet participation requirements, as the following section explains.

### ***'Tick-the-Box': Compliance Imperatives Negate Social Value***

Delivering social value on construction projects is predominantly seen as a 'tick-box' exercise as contractors aim to comply with client requirements rather than being genuinely motivated to positively impact their communities (Daniel and Pasquire 2019). For example, a contractor's past compliance with Indigenous participation targets is considered in future Commonwealth tender evaluations under the CIPP (NIAA 2020a). The qualitative results indicate that this may lead to perverse behaviour by contractors seeking simple ways to meet contract requirements rather than promoting the aims of the policies, economic development and financial independence. 'Ticking the box', therefore, involves contractors hiring short-term Indigenous labour from labour-hire or traffic control companies. This creates 'token jobs' where Indigenous workers are brought to site and not given anything meaningful to do. As Leach *et al.* (2010) note, poor quality jobs can be detrimental to the physical, social and mental wellbeing of workers, and token jobs do not therefore create any social value. Instead, token jobs to meet compliance imperatives create negative social value and leave Indigenous workers with a sense of worthlessness, as recounted by participants: "They (a contractor) wanted...half a dozen Indigenous employees. So, we sent half a dozen good guys that wanted to work...And were left sitting under a tree all day...So this was their...token indigenous people" (Business owner).

Compliance imperatives mean that contractors place demands on Indigenous businesses at short notice, leaving them little time to meet demands placed on them by head contractors. This can contribute to perceptions that Indigenous businesses are not as capable when they are unable to meet these demands or when Indigenous workers are left sitting idly on site to 'make up the numbers'. Developing Loosemore *et al.* (2020), who found that new social procurement policy requirements are creating a mistrusting and unsustainable compliance-based environment which could emphasise the inequities experienced by the people they are meant to benefit, these compliance imperatives can create a sense of cynicism about the commitment of policymakers and contractors to make a difference in Indigenous communities: "we're kind of on a tick and flip kind of thing" (Business owner).

## **DISCUSSION**

Adding a new dimension to recent research that argues social procurement policies are unlikely to be successful without an understanding of the industry's capacity to comply with prescriptive targets (Loosemore *et al.*, 2020), the findings above indicate that Indigenous construction businesses are capable of complying with Indigenous procurement policy requirements and are using them to multiply the social value they create. They do this by promoting better socioeconomic outcomes and more employment and business opportunities for Indigenous Australians, something that Raiden *et al.* (2019) argue is critical to creating social value in construction and supporting the Indigenous epistemologies that have underpinned this work.

Despite facilitating more opportunities to create social value, IPPs can negate social value by creating perverse behaviours by construction contractors. This may occur through two means: 1) black cladding that allows non-Indigenous companies to take most of the profits made through IPPs, and 2) compliance imperatives where superficial, tokenistic jobs are created to fill the numbers and meet contractual participation requirements. Indeed, the second observation supports new themes in construction research about the limitations of compliance-driven behaviour in creating

social value instead of focusing on local communities (Daniel and Pasquire 2019). It also highlights that the construction industry is still developing the ability to respond effectively to social procurement requirements (Loosemore *et al.*, 2020). According to Loosemore *et al.* (2020), the new relational skills required by social procurement policies like the CIPP are still being developed and principal contractors simply transfer risk down their supply chains, and these findings support that argument by showing that risk transfer results in tokenistic opportunities driven by compliance behaviour, which negates the social value that IPPs can potentially create. This research gives some evidence of the adverse effects that such behaviour can produce.

These findings have significant implications for policy development and construction management theory and practice. Regarding the under-researched area of social value theory, this research illustrates that social value may not be created for marginalised groups if social procurement is driven exclusively by compliance behaviour to meet contractual targets. Supporting Daniel and Pasquire's (2019) argument that social value should be incorporated with economic objectives in construction, the findings suggest that it is difficult to create social value as an 'add on' compliance requirement because this motivates the tokenistic behaviour described above. As Murtagh and Brooks (2019) argue, process and preparation, and social and local awareness are critical to creating social value through construction procurement, and policymakers and construction managers in Australia could learn from the UK's flexible approach to creating social value in the Public Services (Social Value) Act 2012, which allows public bodies to negotiate with contractors to decide on the social value that will be created and how it will be reported (Raiden *et al.*, 2019). For example, government procurement managers could negotiate with contractors to ensure that local Indigenous businesses and workers are not given menial packages of work. This could minimise the risk of offering poor quality jobs that create negative value and create more opportunities for local people to develop their skills. These adjustments to policy could lead to more opportunities for social value creation, thereby expanding the success of IPPs beyond simple contract targets to broader socioeconomic improvements through sustained and meaningful employment.

In discussing the utility of these results it is acknowledged that a qualitative sample of 150 completed surveys and 18 interviews may raise questions about the generalisability of the findings. However, in answering the research question How do IPPs promote or inhibit the creation of social value in the construction industry, reporting the qualitative results in this paper gives some insight into how social value is or is not created in an IPP context. Future research could further test these findings with larger samples, which may create opportunities for generalisation and potential theory development.

## **CONCLUSION**

This paper aimed to examine how IPPs are impacting the businesses and workers they are meant to benefit. Using an agile approach to carry out the research in the context of COVID-19, the 18 interviews reported in this paper illustrate that IPPs can create opportunities for some Indigenous businesses to multiply the social value they create, through more contracting opportunities which allow them to keep employing Indigenous staff and investing in local communities. Long-term, this could help address the significant socioeconomic inequities experienced by Indigenous Australians, however this is being negated by contractors' compliance-driven behaviour which creates tokenistic jobs and contract opportunities. For the



construction industry to contribute to addressing the longstanding marginalisation of Indigenous Australians it could improve its engagement with Indigenous communities and businesses. Strategies to do this include better processes and preparation for engaging Indigenous communities and businesses, and these changes could maximise the social value IPPs create and leading to socioeconomic improvements for Indigenous Australians and indeed, other marginalised groups targeted by social procurement strategies in Australia and internationally.

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