Attachment C

Dashboard Impact Analysis: Exemption from Public Tenders Threshold under the *National Land Transport Act 2014* (OIA26-12047)

Department of Infrastructure, Transport, Regional Development, Communications, Sport and the Arts

The proposed policy approach and policy problem addressing

Proposed approach

The proposal is to remake the legislative instrument, the National Land Transport (Public Tender Exemption Limit) Determination 2014 (No. 1) (the Determination), made under the *National Land Transport Act 2014* (NLT Act), ahead of its sunset date on 1 April 2027 and increase the tender exemption threshold from **$100,000 to $250,000**.

The objective of the Determination is to apply public tender requirements proportionate to the scale, value and risk of infrastructure projects. The Determination aims to reduce the administrative burden of seeking bids for low value work that the construction industry considers minor in nature, with the costs and burden of conducting an open tender process likely to outweigh the competitive benefits. The current Determination was made in 2014 and prescribes an amount of $100,000 below which work on a funded project can be exempted from public tender requirements.

The proposal involves re-making the Determination and increasing the threshold to $250,000. Its remaking maintains the policy intent of reducing the administrative burden for low value works that the construction industry considers minor in nature and the threshold increase to $250,000 aligns with some state and territory (state) procurement thresholds, reducing their regulatory burden.

Risks associated with increasing the threshold will be mitigated through Australian Government and state safeguards on transparency, probity and value-for-money outcomes.

The objectives of the proposed approach are to:

- provide greater flexibility for low value works where a public tender process may not provide competitive benefit;
- ensure that the procurement process aligns to the risk and value of the procurement, leading to better value for money as suppliers are not building in high tendering costs for low value procurements;
- maintain appropriate tender requirements for higher value procurements;
- support timely delivery of funded land transport projects; and
- ensure the Determination remains fit for purpose over its expected lifespan.

Policy problem

Under the NLT Act, states receiving Australian Government funding for investment projects are required to call for public tenders for all work on the project (s. 24). The NLT Act allows for work on a funded project to be exempt from public tender requirements if it is less than an amount determined by the Minister (s. 24(1)(c)(vi)). This acknowledges that for low value work, the costs of conducting a public tender process are likely to outweigh the benefits. The current Determination prescribes an amount of $100,000 (the threshold) below which work on a funded infrastructure project is exempt from public tender requirements under the NLT Act.

The threshold was established in 2014 and has not been updated. As such, the current threshold:

- applies to a declining number of procurement activities due to increasing infrastructure procurement and delivery costs;
- can require open tender processes for relatively low value works where states' own procurement frameworks do not require these processes; and
- may delay project delivery where procurement activities are low value.

The proposal aims to address these issues by remaking the Determination and increasing the threshold to $250,000. The proposal draws on consultation undertaken with state government agencies and relevant Australian Government departments.

Consultation identified strong support for replacing the Determination and increasing the threshold. No stakeholder supported allowing the Determination to lapse and all respondents supported a threshold higher than the current $100,000 threshold.

In relation to maintaining the Determination, consultation indicated the Determination continues to be important for low value works. In these circumstances, the Determination is required as there is limited benefit of conducting competitive tenders.

In relation to the threshold amount, consultation indicated that the $100,000 threshold, set in 2014, has been eroded in value by increasing infrastructure procurement and delivery costs. Several states currently apply tender exemption thresholds of $250,000 for low value, low risk works.

Australian Government

Summary of impacts and methodology

Impacts

The following assessment of benefits, costs and net impact is qualitative as no reliable national dataset exists on the value of procurement transactions that would be affected by a threshold increase from $100,000 to $250,000. The analysis is therefore based on consultation evidence and states' experience administering the Determination.

Option	Benefits	Other costs	Net impact	Regulatory burden
Status quo: Allow the Determination to sunset	Removes the need for compliance with the 2014 Determination and eliminates any procurement exemptions based on a prescribed threshold.	More works funded under the NLT Act would be subject to public tender requirements, increasing the regulatory burden, costs and project delays from public tender processes (unless another exemption applies). It would be inconsistent with stakeholder feedback that the Determination continues to serve a useful purpose. No stakeholder supported this option. Potentially increases the costs of low value works as suppliers build in high tendering costs for low value procurements.	Does not address stakeholder feedback and removes an established mechanism for proportionate procurement arrangements.	**Baseline** Compared to existing settings (2014 Determination), there will be an increase in regulatory burden from conducting open tenders for work currently exempted (under the $100,000 threshold).

Option	Benefits	Other costs	Net impact	Regulatory burden
Proposed: Increase threshold to $250,000	Better reflects increased infrastructure delivery costs since 2014, preserving the policy intent that the exemption applies only to low value works. This reduces the regulatory burden, simplifies procurement processes, and supports timely project delivery. Aligns with some state thresholds, reducing their regulatory burden. This threshold also accounts for likely increases in construction and delivery costs over the next ten years until the Determination's next sunset date of 1 April 2037.	Very limited reduction in competitive tendering for procurements valued between $100,000 and $250,000. However, risks relating to transparency, probity and competition remain relatively limited as the threshold remains only for low value works.	Provides the best balance between reducing regulatory burden and maintaining appropriate procurement safeguards.	**-$3,501,405 over ten years** **Substantial decrease in regulatory burden from the baseline.** Substantial reduction in regulatory burden for governments and procurement costs for tender bidders relating to tendering activity. The higher $250,000 threshold captures more low value work resulting in substantial savings in the in regulatory burden and supplier tender preparation activity. (Please see the methodology section for calculations)
Alternative: Retain current threshold of $100,000	Reduction in regulatory burden from the status quo.	Threshold has not been updated since 2014 and applies to a declining number of procurements due to inflation increasing construction costs. Consultation found no stakeholder support for retaining the current threshold.	Maintains existing safeguards but does not address the identified policy problem.	**-$961,170 over ten years** **Moderate decrease in regulatory burden from baseline.** Compared to the baseline, this option results in a decrease in governments' regulatory burden and supplier tender costs. Given the current $100,000 threshold, this option would result in a gradual increase in compliance costs over 10 years as costs increase and an increasingly smaller number of projects fall under the threshold. (Please see the methodology section for calculations)

Methodology

Assumptions

- One of the states consulted advised that it submitted 13 low value work exemption applications over the last three years (about 4.3 per year) for works under $100,000.
- 4.3 applications per state per year x 8 states = 34.4 applications across all states per year.
    - 34.4 applications is rounded to ~30 applications nationally of the $100,000 threshold exemption per year.
- It is estimated that an average of 3 suppliers submit tender bids at $100,000 threshold.
- It is estimated that an average of 5 suppliers submit tender bids at $250,000 threshold.
- Labour rate = $91.54/hour based on the Office of Impact Assessment's Regulatory Burden Measurement Framework.

Government administrative effort (Administrative costs)

- 30 applications nationally of the $100,000 threshold exemption per year.
- 30 applications nationally at the $100,000 level = 75 applications nationally of the $250,000 threshold exemption per year.

If there was no low value work exemption, all applications would be subject to tender requirements. We assume this involves:

- 10 hours of state officer time to conduct a tender including preparation of tender documents and assessing tender bids.
- 1 hour of Australian Government officer time to process advice on the status of the procurement.

Therefore:

- Labour cost for conducting a tender for low value work = 11 hours x $91.54/hour = $1,006.94
- Annual administrative cost for conducting tenders for low value work **($100,000 threshold)** = $1,006.94 x 30 applications = **$30,208.20**
- Annual administrative cost for conducting tenders for low value work **($250,000 threshold)** = $1,006.94 x 75 applications = **$75,520.50**

Supplier tender preparation costs (Tendering costs)

- It is estimated that each supplier takes 8 hours to prepare and submit a tender bid.

If there was no low value work exemption, suppliers would face costs relating to preparing and submitting bids for each low value work open tender.

- Labour cost to suppliers ($100,000 threshold) = 3 suppliers x 8 hours x $91.54/hour = $2,196.96
- Labour cost to suppliers ($250,000 threshold) = 5 suppliers x 8 hours x $91.54/hour = $3,661.60

- Annual cost to suppliers of submitting low value work tender bids **($100,000 threshold)** = $2,196.96 x 30 applications = **$65,908.80**
- Annual cost to suppliers of submitting low value work tender bids **($250,000 threshold)** = $3,661.60 x 75 applications = **$274,620.00**

Regulatory burden

<u>Annual regulatory burden</u>

- Total annual **($100,000 threshold)**
  = $30,208.20 (Administrative costs) + $65,908.80 (Tendering costs) = **$96,117.00 per year**

- Total **($250,000 threshold)**
  = $75,520.50 (Administrative costs) + $274,620.00 (Tendering costs) = **$350,140.50 per year**

<u>Ten-year regulatory burden</u>

- Total **($100,000 threshold)**
  = $96,117.00 per year x 10 years = **$961,170.00 over 10 years**

- Total **($250,000 threshold)**
  = $350,140.50 per year x 10 years = **$3,501,405.00 over 10 years**

Preferred option

Re-make the Determination and increase the threshold to **$250,000**. This option best balances efficiency, proportionality and reduced administrative burden with the need to maintain competition, transparency and value-for-money outcomes under the NLT Act.

The risk of corruption and criminal conduct from this change is low, as $250,000 remains relatively low for the construction sector, and projects remain subject to the existing legislative and governance arrangements. These include the NLT Act, the Federation Funding Agreement Schedule on Land Transport Infrastructure Projects (FFAS) and its associated Notes on Administration (NoA), and the *Public Governance, Performance and Accountability Act 2013* and similar state Acts. The Department of Employment and Workplace Relations shares this view.

Economic and social impacts

Status quo (allow the Determination to sunset)	Proposed option ($250,000 threshold)
Assessment of existing economic impacts on: • **People** – Limited direct impact on individuals. Administrative requirements associated with low value procurements can delay the delivery of transport infrastructure projects and the associated community benefits. • **Businesses** – Suppliers incur costs preparing tender responses for lower value procurements, even where the procurement is low risk, highly specialised or where limited market competition exists. Small businesses, regional businesses and specialist service providers may face disproportionate compliance costs relative to contract value. • **Others** – N/A **Stakeholder views:** No states supported the status quo of allowing the Determination to sunset.	**Economic and social impacts on:** • **People** – Potential for more timely project delivery and earlier realisation of transport infrastructure benefits through more proportionate procurement arrangements for low value works. • **Businesses** – Reduced costs associated with preparing tender responses for low value procurements. Greater flexibility may support participation by local, regional, specialist and First Nations businesses where direct engagement is appropriate and value for money can be demonstrated. • **Others** – Reduced administrative burden for state governments and the Australian Government through streamlined procurement processes for low value works. Increased flexibility may be particularly beneficial in regional and remote areas where competitive markets are limited. **Stakeholder views:** States considered that a higher threshold would better align with inflation and increases in construction and procurement costs. Consultation demonstrated broad support for increasing the threshold, with most states supporting a threshold of $250,000, which would align with their thresholds and decrease the regulatory burden.

Regulatory burden

Status quo (allow the Determination to sunset)	Proposed option ($250,000 threshold)
Assessment of any existing compliance and/or delay costs facing: • **People** - No material direct compliance burden. • **Businesses** – Costs associated with preparing tender documentation and participating in procurement processes for lower value procurements. These costs can be significant relative to contract value for small procurements. • **Others** – State governments and the Australian Government incur regulatory burden preparing, assessing and approving open tenders for low value works. **Stakeholder views:** No states supported the status quo of allowing the Determination to sunset as it would increase the overall regulatory burden.	**Change in the regulatory burden for:** • **People** – No material direct compliance burden • **Businesses** – Reduction in regulatory burden through fewer tender processes and lower costs associated with preparing bids for procurements between $0 and $250,000. Based on indicative assumptions, the proposal is estimated to generate an average annual regulatory saving of approximately $274,620 per year relating to supplier tender preparation costs. • **Others** – Reduction in regulatory burden for the Australian Government and state governments relating to seeking, preparing and assessing tenders for low value works. The proposal is deregulatory in nature because it reduces compliance activity with an average annual regulatory saving of approximately $75,520.50 per year relating to government administration. **Stakeholder views:** Consultations identified reducing the regulatory burden in terms of administrative and supplier tending costs as key benefits of a higher threshold.

Other considerations and implementation

What success looks like

- Reduced regulatory burden for states and the Australian Government associated with low value procurement activities in infrastructure project delivery and reduced costs for business for low value procurements.
- Improved timeliness of project delivery for work below the threshold.

Implementation approach

The proposal would be implemented by remaking the National Land Transport (Public Tender Exemption Limit) Determination 2014 (No. 1), made under the *National Land Transport Act 2014* (NLT Act), ahead of its sunset date on 1 April 2027, with a new tender exemption threshold of **$250,000**.

Planned evaluation

Consistent with section 50 of the *Legislation Act*, legislative instruments registered after 1 January 2005 are automatically repealed on 1 April or 1 October on or immediately following the tenth anniversary of their registration. A formal review of the operation of a new 2026 Determination will be undertaken before the instrument's sunset date.

Statement of Sufficiency

I confirm that this Dashboard Impact Analysis (IA) prepared for **Exemption from Public Tenders Threshold under the *National Land Transport Act 2014*** meets the requirements set out in the *Australian Government Impact Analysis Framework.*

I confirm that the level of analysis is proportionate to the policy issue being considered.

I note the Dashboard IA provides analysis of the impacts of the proposal using the 7 IA questions and:

- a high-level summary of costs and benefits and an estimate in the change in the regulatory burden, of the policy options under consideration
- high-level analysis of the policy option against the government's key strategic priorities
- a summary of relevant distributional effects and evidence of key stakeholder feedback incorporated into the policy design
- other details required to understand and assess the proposal.

Endorsed by
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