



Small
Business
Commissioner

Our reference: BN-01747-2025

Mr Tony Chappel
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NSW Environmental Protection Authority
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Dear Mr Chappel

Thank you for the opportunity to provide feedback to the NSW Environment Protection Authority (EPA) on the *Sustainable Construction Protection of the Environment Policy (PEP)*. The NSW Small Business Commission (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution across NSW.

The Commission notes that the proposed PEP will require NSW Government agencies (Agencies) to document and report on their efforts to reduce upfront carbon emissions and increase the use of recycled materials in public infrastructure projects, such as hospitals, schools and roads. The policy is proposed to apply to public infrastructure projects undertaken by, or on behalf of, a NSW Government agency with an estimated development cost of \$50 million, and over \$100 million for all other public infrastructure projects. The Commission understands the policy is framed as a first step towards standardised reporting, benchmarking and building a dataset to inform future policy settings, with possible mandatory performance targets in future iterations, particularly once baseline data is established.

The Commission understands small businesses are not required to report under the PEP. However, as supply chain participants, small businesses are likely be asked to provide information to help agencies or contractors to meet any reporting requirements or other obligations.

While the intention of the PEP is not for agencies to shift their obligations onto small businesses in their supply chains, small businesses will play a key role in supporting compliance where they are a subcontractor and directly involved in the delivery of a major infrastructure project.

When designing policy, it is important to adopt an evidence-based approach to ensure that compliance requirements do not impose disproportionately higher burdens on small businesses compared to larger businesses. The Commission recently published a report, '[Rightsizing regulation](#)' that examined the experiences of small business with regulatory policymaking. The review found that small businesses face significant barriers to participating in consultation processes for various reasons. Only 10 per cent of surveyed respondents indicated they had engaged in a government consultation or review, and just 16 per cent felt that regulations were designed with input from their industry. These findings highlight the need for additional efforts to effectively engage small businesses and address specific needs they may have.

Small business perspectives

In March 2025, the Commission surveyed small business owners to assess their perspectives on the proposed Sustainable Construction PEP, receiving 131 responses.¹ One in three businesses (36 per cent) reported working on public infrastructure projects, either frequently (15 per cent), occasionally (12 per cent) or rarely (9 per cent).

Among this cohort, the Commission observed a low level of awareness with seven in ten businesses (73 per cent) not aware of the proposed reporting requirements under the PEP, intended to be introduced in mid-2025.

Only a small portion of businesses currently working on public infrastructure projects (5 per cent) reported existing obligations to disclose the amount of embodied emissions attributable to a development under the *State Environmental Planning Policy (Sustainable Buildings) 2022*, which has been in effect since 1 October 2023. Those businesses characterised the reporting requirements as either extremely or moderately complex, citing unclear guidelines and the need for expert advice. Notably, no respondent characterised the reporting requirements as neutral, somewhat straightforward, or straightforward.

Free-text responses suggest that while many small businesses are supportive of sustainability goals, additional compliance requirements would be difficult to navigate without clear technical guidance and transitional support. Additionally, there is strong sentiment the implementation of the new requirements could lead to issues like greenwashing, undermining genuine environmental efforts and eroding public trust in sustainability initiatives. Respondents were sceptical about the effectiveness of the requirements under the PEP and are concerned about the practicalities of their application at multiple stages of the project lifecycle.

Anticipated benefits and concerns from small businesses

The Commission notes that in principle, many small businesses expressed support for the environmental policy objectives and already incorporate recycled or low-carbon materials into their work. For example, free-text responses emphasised recycling efforts in industries like asphalt where materials are regularly recycled back into new mixes. They also highlighted their recycling practices and a preference for using recycled materials when available.

When asked to outline what benefits small business owners anticipated from the proposed Sustainable Construction PEP, they cited:

- increased demand for recycling and waste management services (13 per cent)
- competitive advantage for businesses that offer low-carbon solutions (10 per cent)
- more opportunities for sustainable product suppliers, standardisation of sustainability practices across the industry and incentives for innovation in sustainable construction (8 per cent).

Small business owners were also asked to outline any concerns they may have in relation to the proposed policy. Some common concerns raised by survey respondents included:

¹ To increase accuracy and relevance of survey results, only small businesses with 20 or less employees from the construction, wholesale trade, professional services and electricity, gas, water and waste services ANZSIC industry groups were required to answer survey questions relating to the NSW Environment Protection Authority Sustainable Construction PEP. The survey should be viewed as exploratory in nature.

Increased compliance costs for measuring, reporting and certifying

Respondents (52 per cent) frequently highlighted concerns about increased compliance and financial costs. Small businesses were particularly sensitive to added overhead costs, particularly when reporting requirements required system changes, process adjustments, or the use of external consultants. There was particular concern that these costs would be difficult to absorb or pass on under existing contract structures.

Increased project delays

Small businesses (42 per cent) anticipate that compliance with the PEP could result in longer project timelines, particularly during the transition phase. Respondents noted that delays could occur due to the time required to understand and implement new reporting obligations, as well as challenges in sourcing approved materials or obtaining timely approvals and certifications. Potential duplication of effort was also mentioned as a risk, given the policy may overlap with existing requirements for reporting embodied carbon.

Losing procurement opportunities to larger companies that can meet compliance more easily

Respondents (39 per cent) were concerned that larger businesses with greater internal resources and dedicated compliance teams would be better placed to meet the reporting requirements under the PEP. This may limit small business participation in public procurement processes and reduce the diversity of suppliers engaged on public projects. This is particularly relevant where government procurement frameworks favour low-risk suppliers who can demonstrate readiness to comply with evolving sustainability policies.

Complexity of reporting requirements for upfront carbon and recycled materials

The technical complexity of the proposed reporting requirements was raised as a significant concern. Several respondents (39 per cent) indicated that guidance on calculating and reporting embodied carbon and recycled content was not sufficiently clear and that compliance may require expertise that small businesses do not currently possess in-house.

Difficulty sourcing recycled materials that meet agencies' requirements

Respondents (30 per cent) highlighted barriers to sourcing recycled materials that meet the specific requirements set by agencies, particularly in regional and remote areas. Some also noted that inconsistent demand from public projects discourages investment in the development and supply of compliant materials, exacerbating supply chain challenges.

Cost pressures in construction exceed those in all other industries, placing significant strain on small businesses. Many find it difficult to raise prices to cover rising expenses and profit margins are diminishing, particularly where there are no cheaper alternatives, contributing to solvency issues. Feedback to the Commission has indicated that excessive regulation is increasing the cost of doing business, forcing small businesses to exit the industry. This is reflected in [ASIC Insolvency statistics](#) indicating construction industry insolvencies in NSW are up 16 per cent year-on-year. Caution should be exercised when considering any new requirements relating to the construction sector within this broader context.

Best practice regulation

Neither the [Impact Statement Report for the PEP](#) nor the [Final Report of the Centre for International Economics](#) has elaborated on the extent to which the proposed reporting requirements may result in additional compliance and financial costs for small businesses operating as supply chain participants. While the existence of such costs is acknowledged for infrastructure providers, the cost analysis does

not clearly provide evidence of consideration of downstream compliance costs for smaller suppliers. Further detailed economic analysis should be undertaken to properly understand the impacts of these reporting requirements, especially for those small businesses who are unable to absorb these costs as effectively as larger entities.

The Commission strongly encourages consistent and proactive engagement with small business stakeholders and their representatives on the practical implications of the proposed reporting framework for carbon impacts and recycled materials use. The Commission strongly supports compliance with the NSW Government's Guide to Better Regulation ([TPP 19-01](#)) when assessing policy proposals and notes this includes specific consideration of small business impacts.

Thank you for the opportunity to make a submission. If you require further information, please contact my Executive Officer Megan Bennett, at either commission@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Mark Frost
Acting Commissioner
NSW Small Business Commission

Date: 31/03/25