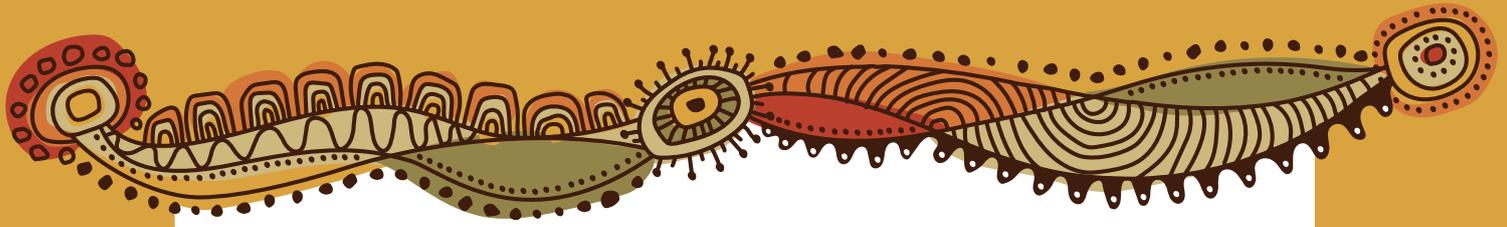




Aboriginal Procurement Policy & Aboriginal Participation in Construction Policy 2019 Review

December 2019



Our Objective – Growing NSW’s First Economy

The NSW Government values the economic, social and cultural contribution offered to NSW by the Aboriginal community. The Aboriginal Procurement Policy (APP) and the Aboriginal Participation in Construction (APIC) policy contribute to the NSW Government’s strategic economic policy of **Growing NSW’s First Economy**.

The NSW Government’s procurement capacity can be leveraged to support Aboriginal employment opportunities and the participation and growth of Aboriginal-owned businesses. The APP and APIC policy support the NSW Government Plan for Aboriginal Affairs, *OCHRE* (Opportunity, Choice, Healing, Responsibility, Empowerment), which is a key deliverable under the **Aboriginal Economic Development Framework**.

OCHRE aims to support strong Aboriginal communities in which Aboriginal people actively influence and fully participate in economic, social and cultural life. It recognises that the NSW Government and business community have a key role to play in broadening opportunities for Aboriginal people to deliver positive socio-economic outcomes.

The NSW Government will continue to work meaningfully in partnership with businesses to build a sector that is viable and competitive, and achieves beneficial outcomes for Aboriginal peoples and the broader community.



Contents

01



Executive Summary	02
Key recommendations	02
About this report	05
Consultation	05
What we did	06
What we heard	06
Themes common to both policies	08
Defining an Aboriginal-owned business	08
Naming the policies	11
Prequalification requirements	12
Aboriginal Procurement Policy	14
Policy summary	14
Requirements and Targets	16
Monitoring and Reporting	17
Engagement	19
Tools and Support	20
Aboriginal Participation in Construction Policy	22
About the policy	22
Requirements and Targets	24
Monitoring and Reporting	25
Engagement	27
Tools and Support	29
Appendix A: Jurisdiction Review	31
Appendix B: Addressable & non-addressable spend categories	33

Executive Summary

In 2019, a review of the Aboriginal Procurement Policy (APP) and Aboriginal Participation in Construction (APIC) policy was conducted.

This review undertook extensive consultation with Aboriginal-owned businesses, non-Aboriginal-owned businesses, the broader community, and NSW Government agencies. This allowed research to include the widest possible range of perspectives and opinions on how to better include Aboriginal-owned businesses in the NSW Government supply chain and help these businesses build capacity and capability.

The consultation process generated a wealth of ideas, perspectives, research findings and options. This paper is a summary of the responses, shaped into the recurring themes that emerged. It synthesises the ideas and perspectives brought to the table through meetings, conversation, forums, public consultation and written submissions.

This paper provides recommendations for a way forward and establishes policy priorities to help us achieve our objective of growing NSW's First Economy.

Key recommendations

Status	Recommendation
Simplify and align	
New	Combine the APP and APIC policy into a single NSW Aboriginal Procurement Policy.
New	Simplify policy, requirements and reporting.
New	Align with Commonwealth Indigenous Procurement Policy (IPP) where relevant.
Retain	Retain 'Aboriginal' as the key policy naming convention.
Amend	Agencies to include construction projects in the annual Aboriginal Participation Strategy.
3% Contract target – goods and services	
Retain	Clusters to award three per cent of goods and services contracts to Aboriginal-owned businesses by 2021 year-end.
New	Clusters and NSW Treasury to agree an annual target for goods and services contracts to be awarded to Aboriginal-owned business per year, based on three per cent of the cluster's average number of contracts for the past three financial years.
New	Clusters may count the head contractor's sub-contracts with Aboriginal-owned businesses toward their contract target.
1% Spend target – all addressable spend	
New	Clusters to direct one per cent of <i>addressable</i> ¹ procurement spend toward Aboriginal-owned businesses by end 2021. This target will include both construction, and goods and services procurement spend.

¹ Addressable spend is categories of spend where there are Aboriginal-owned businesses available to supply to NSW Government. See appendix B for full definition of addressable spend.

Status	Recommendation
New	Clusters and NSW Treasury will agree an annual target spend to be directed to Aboriginal-owned businesses, based on one per cent of the cluster's average addressable spend for the past three financial years.
1.5% Aboriginal participation on high value contracts	
New	For all 'high-value' contracts (goods and services, and construction) over \$7.5 million, clusters are required to direct at least 1.5 per cent of the contract value to Aboriginal participation, i.e. spend with Aboriginal-owned businesses (sub-contractors), employment of Aboriginal people or capacity building. This aligns with the approach and threshold in the Commonwealth IPP. Agencies will have discretion not to apply this requirement if opportunities for Aboriginal participation do not exist (e.g. purchase of equipment from overseas). However, agencies must include evidence in their procurement strategy or relevant documentation that supports the decision.
Amend	Raise the threshold at which construction contracts must include Aboriginal participation requirements from \$1 million to \$7.5 million.
Amend	Lower the threshold at which goods and services contracts must include Aboriginal participation requirements from \$10 million to \$7.5 million.
Remove	The requirement for suppliers to direct unspent Aboriginal participation funds to NSW Master Builders Association or Literacy for Life will be removed.
New	Unspent Aboriginal participation funds will be directed to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses. The NSW Government will publish information on the value of unspent funds directed to Training Services NSW and the programs supported.
3,000 FTE employment opportunities	
Retain	Support 3,000 FTE employment opportunities for Aboriginal people from construction, and goods and services contracts by the end of 2021.
Purchasing permissions	
Retain	Retain the recommendation that clusters should give first consideration to Aboriginal-owned businesses on prequalification schemes.
Retain	Retain the purchasing permission that allows clusters to directly negotiate with suitably qualified Aboriginal-owned businesses up to \$250,000.
Retain	Retain the purchasing permission that allows clusters to run a closed tender with Aboriginal-owned businesses on prequalification schemes up to \$1 million.
Registration bodies	
Retain	Retain the requirement for Aboriginal-owned businesses to be registered with the NSW Indigenous Chamber of Commerce (NSW ICC) or Supply Nation, except where engaging an Aboriginal not-for-profit (NFP) or non-government organisation (NGO). In these instances, agencies must make suitable enquiries to satisfy themselves the NFP or NGO is controlled by Aboriginal people or entities.
Remove	Remove the First Australians Chamber of Commerce and Industry (FACCI) as a registration organisation for Aboriginal-owned businesses, as they do not maintain a readily accessible, online list of suppliers.

Status	Recommendation
Reporting	
Remove	Remove the agency requirement to disclose contracts with Aboriginal-owned businesses valued over \$50,000. Revert to the statutory requirement of disclosing contracts over \$150,000. Agencies may manually disclose additional contracts or provide data from contract management systems.
New	Implement a new reporting portal with higher functionality and ease of use.
New	Publish targets and cluster performance toward the targets.
New	Regularly audit a percentage of contracts, ranging from desktop to site audits. Require agency contract managers to sign an audit self-attestation. Conduct an independent random audit of five per cent of contracts annually (at a whole-of-government level).
Support and Guidance	
New	Provide more support and guidance to Aboriginal-owned businesses and agency staff to apply the policy, through both guidance documents and face-to-face sessions.
New	Agency procurement teams to simplify tender documentation and language where possible, to ensure requirements are understood.
New	Agencies must offer tender debriefs to Aboriginal-owned businesses, where reasonably requested.
New	Encourage agencies to set aside funding for third party tender writing support for Aboriginal-owned businesses.
New	Identify an agency-based policy 'champion' to support businesses and staff, with their team's email address published so businesses may make contact.
New	NSW Treasury to create a Community of Practice to support policy implementation.
New	NSW Treasury to implement a 'concierge' service to assist Aboriginal-owned businesses to be registered on prequalification schemes.
New	NSW Government agencies to increase collaboration with NSWICC and Supply Nation to help guide more Aboriginal-owned businesses onto prequalification schemes and build business capacity.
New	Hold networking opportunities for head contractors, Aboriginal-owned businesses and buyers, particularly in regional NSW, including 'meet the buyer' events.
New	Encourage head contractors to increase engagement with Aboriginal communities and businesses through open forums, roadshows and social media.
New	Agencies to encourage head contractors to engage early with Aboriginal-owned business and communities in the project planning stage, to scope availability and capacity of Aboriginal-owned business, as well as holding 'meet the buyer' sessions when looking for sub-contractors.
New	Publish links to known project pipelines, such as Infrastructure NSW's pipeline for construction projects across Government over \$50 million.
New	Publish information on the Procurement Board complaints process and details of the NSW Deputy Ombudsman (Aboriginal Programs) and their role in respect of monitoring the policy.

About this report

On 1 July 2018, the NSW Government released the revised Aboriginal Participation in Construction (APIC) policy and the new Aboriginal Procurement Policy (APP). Following the release of these policies, NSW Treasury has worked with Aboriginal businesses, government agencies and industry stakeholders to inform and implement the policies.

NSW Procurement committed to an annual review of both policies, seeking feedback, ideas and contributions to develop Aboriginal participation in the NSW Government supply chain.

This report presents a summary of the feedback NSW Procurement has gathered since the policy's implementation and throughout the consultation process. It forms part of the NSW Government Procurement Board's (the Board) responsibilities to administer, monitor and report on the APP and APIC policy, which includes publishing an annual review.

The scope of the review includes assessing compliance and implementation of the policies, their targets, requirements and stakeholder's understanding of the policies from their mandated start dates. This review has identified opportunities to improve the APP and APIC policies and their effectiveness to achieve the government's objectives.

Consultation

It was a priority to listen to the widest possible range of perspectives and opinions about the APP and APIC policy. Consultation with stakeholders included policy requirements, reporting, implementation, perceived depth of knowledge about the policies, and importantly, whether policies were driving change to the economic prosperity of the Aboriginal community – and if not, ways to improve.

So that we could hear the voices of as many people and businesses as possible, we:

- > Attended NSW Government events and workshops in regional NSW and Sydney metropolitan areas with Aboriginal and non-Aboriginal businesses and NSW government staff
- > Listened to questions, feedback and suggestions we heard from suppliers, potential suppliers and agency staff throughout the year in meetings, via email and in phone conversations
- > Held two evening policy forums at the National Centre for Indigenous Excellence in Redfern on 21 and 26 February 2019
- > Collected data from a survey sent to members of Supply Nation and the NSW Indigenous Chamber of Commerce members following the information session
- > Gathered businesses and government for a two-day in-depth policy review session at Darling Harbour on 10-11 April 2019



- > Hosted a public consultation on NSW Government's 'Have Your Say' website to seek input from as many members of the public as possible. This consultation opened on 4 July 2019 and closed on 28 July 2019. The public consultation attracted 191 responses to the survey and seven written submissions.

What we did

We approached a diverse range of stakeholders to seek input into the review, including Aboriginal and non-Aboriginal businesses that supply to government, Aboriginal-owned businesses that would like to supply to government, Aboriginal industry bodies and not-for-profit organisations, the Deputy Ombudsman (Aboriginal Programs), large suppliers to Government, and NSW Government agencies.

We studied statistics from various sources regarding Aboriginal population density, levels of educational achievement, employment data and other relevant demographics. These data provided an 'up-to-date' view of the state of the community and where best we may focus activity. We then gathered data from relevant NSW Government contracts to assess how readily the policies were being applied, project location, monetary value of engagements and the progress of clusters toward the targets of the APP and APIC policies.

We reviewed Aboriginal procurement policies throughout all Australian states and territories, and Canada to compare their approaches, targets, reporting mechanisms and successes in achieving their objectives. This analysis will help us reach a 'best practice' approach to increasing the engagement of Aboriginal business and employees in the NSW government supply chain.

The cross-jurisdictional review told us most Australian states and territories have Aboriginal participation policies in place, with varied targets and requirements. (See Appendix A for details).

What we heard

Workshops and forums

We invited businesses that are members of Supply Nation and the NSW ICC – the two approved bodies to verify Aboriginal-owned businesses under the APP and APIC policy – to attend two policy information sessions at Redfern in February 2019, preceded by a forum to gather feedback.

In April 2019, we invited those businesses that attended the Redfern sessions to participate in a policy review workshop in Sydney.

NSW Procurement has also attended information sessions, briefings and supplier sessions across NSW over the past 12 months.

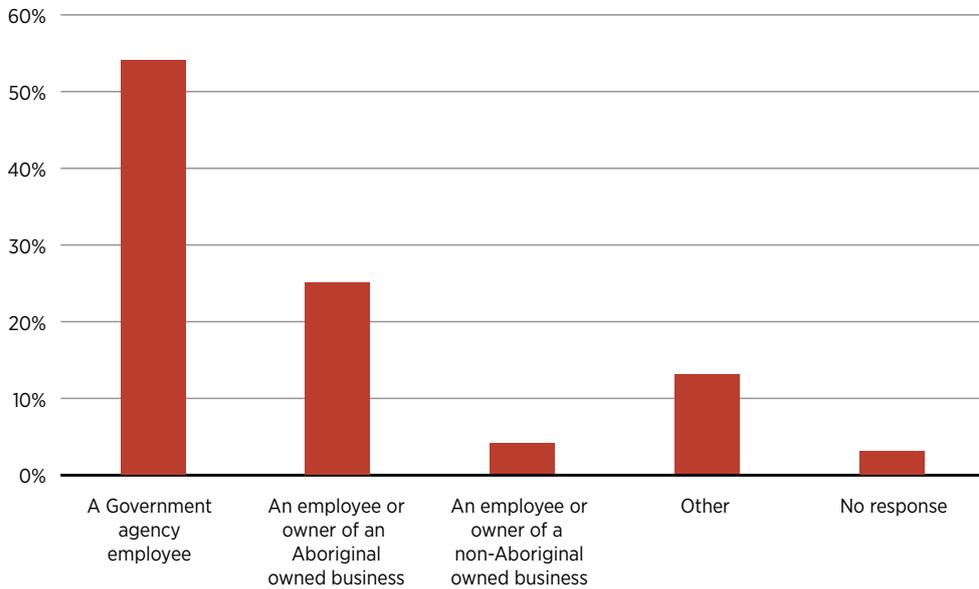
In keeping with the discovery themes of the 2018 Aboriginal Participation in Construction policy review, we have grouped the feedback that we received – and possible solutions – into four themes:

- > requirements and targets
- > monitoring and reporting
- > engagement
- > tools and support.

Suppliers and industry representatives were assigned groups to focus on a particular theme and asked to nominate areas they felt had the highest priority for change. All attendees were then offered the opportunity to vote on the priorities.

The government agency session had a similar format, focusing on refining the suggestions and providing possible solutions. Agency members were also asked to vote on their priorities, with some new ideas being suggested at that session.

SURVEY RESPONDENTS



On 4 July 2019, NSW Procurement launched a public consultation on the NSW government website *Have Your Say*, with the intention of getting broader feedback on policy targets, objectives, requirements and support.

The consultation invited feedback, either via written submission or via three surveys:

- > general Aboriginal procurement survey
- > APP survey
- > APIC policy survey.

We received seven written submissions and 198 responses on the public consultation survey, which included 84 general survey responses, 68 APP survey responses and 46 APIC policy survey responses. The following sections provide an overview of the responses and recommendations.



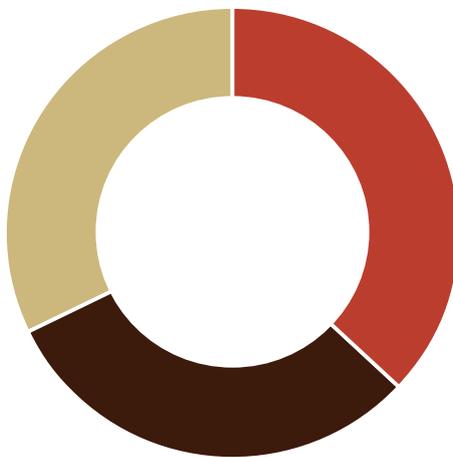
Themes common to both policies

Defining an Aboriginal-owned business

An Aboriginal-owned business is defined by the 2018 APP and APIC policy as a business that is at least 50 per cent Aboriginal-owned and is registered with NSW Indigenous Chamber of Commerce (NSWICC), Supply Nation or the First Australians Chamber of Commerce and Industry (FACCI). NSW ICC and Supply Nation have rigorous mechanisms to ascertain the Aboriginality of business owners and the structure of the business. They also undertake ongoing audits of business ownership.

SURVEY RESULTS: REGISTRATION BODIES

Is there enough choice in registering an Aboriginal owned business?



- Yes, there is enough choice **37%**
- No, more choice is needed **31%**
- No response **32%**

We asked if the above bodies provided enough choice for registration/listing of Aboriginal-owned businesses.

The response was divided, with 37 per cent answering that yes, there was enough choice; however, 31 per cent of respondents would prefer more choice and autonomy in finding and identifying Aboriginal suppliers. Thirty two per cent of survey respondents declined to answer this question.

'Not enough choice for people at different stages of their business journey. There are various measures of a definition of an 'Aboriginal-owned business' across these noted registering organisations and commonly misunderstood are the technical elements of these. Registration can also be a barrier to participation and growth to a range of businesses.'

– Written submission, Public Consultation.

'The NSW Small Business Commissioner has received firsthand accounts of small businesses being disadvantaged by 'black cladding' and losing millions of dollars while working on NSW Government construction projects...To safeguard against the potential risk of 'black cladding', NSW Government agencies must ensure their procurement, project and contract management processes are robust enough, not only to support the original intent behind the policies, but to protect the broader building and construction industry, which experiences one of the highest insolvency rates in NSW.'

– Written submission, NSW Small Business Commissioner.

Common feedback themes were as follows:

- > A number of stakeholders commented that a business should not need to be registered if it is majority-owned by members of an Aboriginal Land Council, or if owned by a Local Aboriginal Land Council it should not need to be registered. This is because to be a member of an Aboriginal Land Council an individual must be Aboriginal (as defined in the Aboriginal Land Rights Act).
- > Some respondents would like to see Registered Native Title Body Corporates and Local Aboriginal Land Councils as bodies able to confirm Aboriginal ownership of businesses for procurement under the APP and APIC policy.
- > Participants suggested that government buyers should be able to use businesses not registered with NSW ICC or Supply Nation and be able to ascertain Aboriginal ownership independently, as most Aboriginal people have a letter or acknowledgements of Aboriginality. These respondents considered that government buyers should ask for these documents for proof as they are commonly used for school enrolments, applying for Aboriginal housing or Centrelink, etc.
- > It was also noted that some businesses may not want to register with Supply Nation or NSW ICC as these organisations can be expensive to a small business/sole trader. Also, the business may not want to have to provide financial documents to a third party or the owners, or the business may not agree with the organisation's values, etc.
- > Some participants would like businesses registered with the Office of the Registrar of Indigenous Corporations (ORIC) to be eligible as Aboriginality has to be proven to register.
- > We were also encouraged to compile the Supply Nation and NSW ICC membership lists to create one government register, and to allow buyers to self-satisfy the Aboriginality of businesses if they are not listed with either organisation. Other suggestions included identifying in government prequalification lists whether a business is Aboriginal-owned.

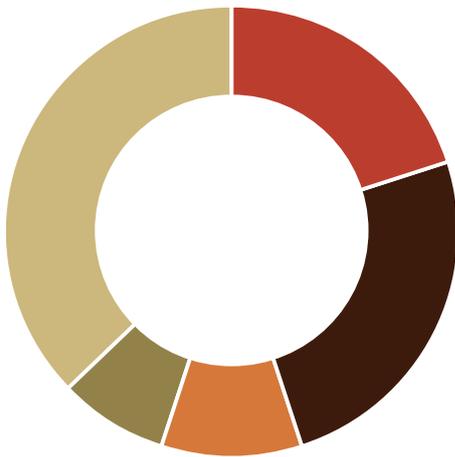
The table below demonstrates current and suggested avenues of verifying Aboriginal ownership:

Organisation	Registration	Audit and ongoing verification	Stakeholder support
NSW ICC	Registered	Quarterly	Aboriginal Affairs, Procurement Board, Procurement Leadership Group and Ombudsman supportive
Supply Nation	Registered and Certified	Monthly, quarterly and annually	Aboriginal Affairs, Procurement Board, Procurement Leadership Group and Ombudsman supportive
ORIC	Registered under the requirements of the Corporations (Aboriginal and Torres Strait Islander) Act 2006, majority Aboriginal ownership required	Businesses must provide an annual report to ORIC and advise changes of membership accordingly.	Some NSW Government staff and Aboriginal businesses expressed interest in this option.
NSW Aboriginal Land Council and Local Aboriginal Land Councils (LALC)	Businesses need to be owned by the LALC or a person that is a member of that LALC.	Businesses are known to the LALC who can advise business ownership.	Community support
First Australians Chamber of Commerce and Industry (FACCI)	Not available	Not available	No information regarding registration processes, businesses registered or audit processes available.

Naming the policies

When the APP and APIC policies were first introduced, they were termed the 'Aboriginal Procurement Policy' and the 'Aboriginal Participation in Construction' policy. The term 'Aboriginal' was used to include both people who identify as an Aboriginal person and those of Torres Strait Islander descent, consistent with other NSW Government policy. As part of the consultation process, we asked what respondents would prefer the policy be called, to ensure that the name is respectful, inclusive and appropriate.

**SURVEY RESPONSES:
PREFERRED POLICY NAME**



- Indigenous **20%**
- First Peoples **8%**
- Aboriginal **25%**
- No response **37%**
- First Nations **10%**

'While there is merit in using the term First Nations, for consistency with current legislation (i.e. the Aboriginal Land Rights Act) the policy should be the Aboriginal Procurement Policy.'

- Survey response, public consultation.

'To me it's always Aboriginal in the NSW context because that's what most of us grew up with and identify with.'

- Survey response, public consultation.

'I believe the term "Indigenous" is used in federal government policy. Consistency in the terms used is required. Regardless of the name chosen, it needs to be consistent across jurisdictions.'

- Survey response, public consultation.

Most participants agreed with the current policy name; however, some responses indicated that the term 'Indigenous' should be used to be consistent with the Commonwealth Indigenous Procurement Policy (IPP).

While other respondents indicated that the name of the policy was inconsequential, 'Aboriginal' will be retained as the naming convention throughout the policies as that is the preferred term for NSW. What *does* matter is that government acts, implements the policies comprehensively and achieves the outcomes that the policies have set out to achieve.

'... as an Aboriginal person, I can confirm that all terms are somewhat divisive. Given there is no "one" term of reference that our community agrees on, "Indigenous" at least brings the nomenclature into line with the federal policies.'

- Survey response, public consultation.

Prequalification requirements

Prequalification schemes help agencies find suppliers prequalified to work with government. Both the APP and APIC policy require businesses to be on a relevant prequalification scheme for particular goods and services up to certain values. Each scheme is managed by a set of guidelines and criteria that assists in managing risk for government – as risk increases, so does the level of assessment criteria. Some schemes are optional for buyers to use, others are mandatory across government.

For government buyers, the benefits of schemes are:

- > access to a wide range of prequalified, expert resources that can assist in providing particular goods or services
- > streamlined competitive tendering processes by accessing prequalified suppliers with a demonstrated track record
- > enhanced probity standards through third-party assessment and selection of suppliers.

For suppliers, the benefits of becoming prequalified are:

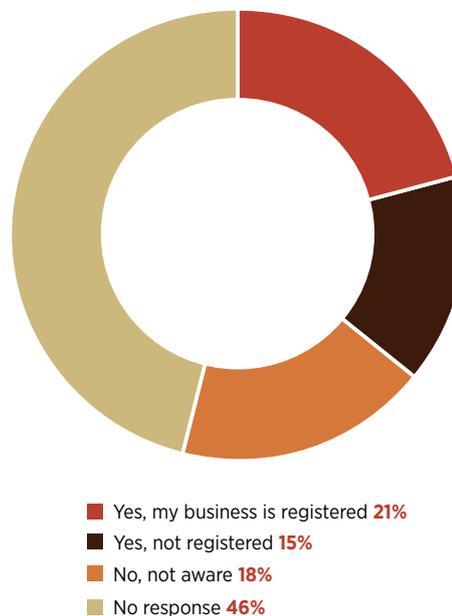
- > a significant reduction in red tape and cost in doing business with government
- > simplified scheme terms and conditions
- > a self-service, online application process
- > apply for business opportunities by regions and categories, where available.

There are a comparatively low number of Aboriginal-owned businesses on NSW Government prequalification schemes.

The NSW Government wants to work with Aboriginal-owned businesses to become prequalified, so it's easier for our agencies to buy from them.

SURVEY RESPONSES: PREQUALIFICATION SCHEMES

Are you aware of or registered on a prequalification scheme?



We asked whether respondents were aware of the schemes, already registered or didn't know of the schemes. Twenty one per cent of respondents are aware of schemes and registered on one, 15 per cent are aware of the schemes but not registered and 18 per cent of respondents were not aware of prequalification schemes. Forty six per cent of participants did not respond to this question.

'Using the pre-qualification scheme doesn't make the process easier or better for Aboriginal businesses. You're asking procurement officers and buyers to carry out procurement exactly the same way. With a massive pre-qualified list of suppliers, how are they to easily identify an Aboriginal business? They can't and they won't.'
– Survey response, Public Consultation.

'Some Aboriginal businesses won't register because they're worried about how many requests for quotes they'll get (especially when Aboriginal businesses are supposed to be the first point of contact) and how big those quotes will be for. They don't want to disappoint anyone by not responding or setting a bad precedent by being too slow if they get too many requests or saying they're not capable of handling certain work. Too much unknown for them to put themselves out there as a small, but capable business... Some schemes don't have a column or identifier for Aboriginal businesses, even though there's at least one on the scheme, while there is a column for SMEs. How can anyone follow the policy if the schemes don't even identify the Aboriginal suppliers?'

– Survey response, Public Consultation.

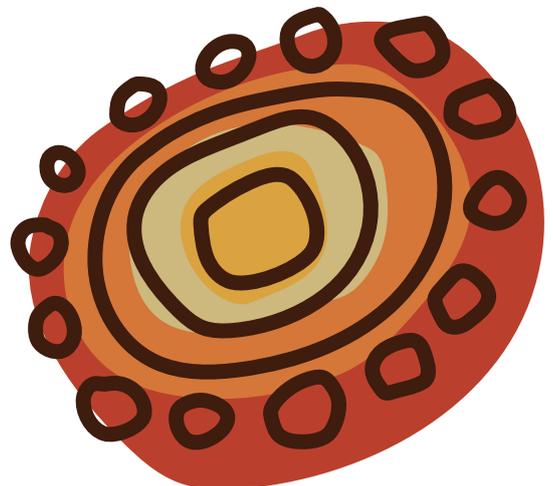
Some of the feedback we received about prequalification schemes:

- > It is difficult for small and emerging businesses to meet prequalification requirements
- > Businesses are concerned they won't have the capacity to meet demand if they register for prequalification schemes
- > There is no Aboriginal identifier on some schemes so there is no benefit in registering
- > Greater assistance and guidance on applying for and using the schemes is required
- > Businesses rarely get business, even if they are registered
- > It appears that a business needs to be able to deliver all of the items listed on the schemes, not just some requirements, which is unrealistic

- > There is little information communicated to businesses about needing to be on a scheme, as this is not required in other states. Businesses may not realise how important this is
- > It is not cost-effective to put resources into prequalifying
- > It is easier to get work from the private sector
- > Prequalification is useful, however a central list of Aboriginal suppliers would be helpful
- > Prequalification schemes are underutilised and flawed.

'It would be beneficial to have a single broad NSW jurisdiction prequalification scheme that allows for First Nation businesses to also meet the additional prequalification requirements of varying Departments/ Agencies procurement'

– Public Consultation written submission

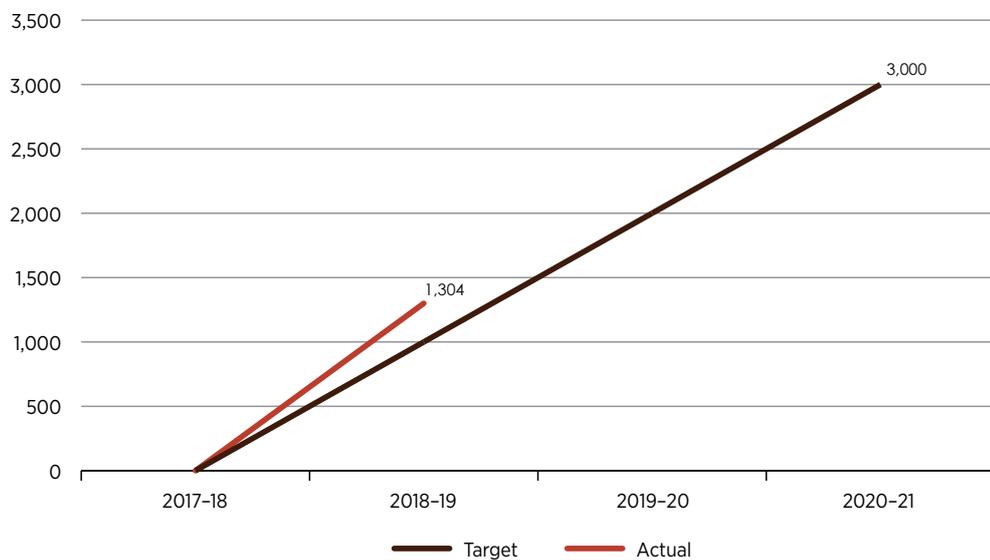


Aboriginal Procurement Policy

Policy summary

The APP was introduced on 1 July 2018 and covers the procurement of goods and services. In conjunction with the APIC policy, the APP aims to support an estimated 3,000 fulltime-equivalent employment opportunities for Aboriginal people through NSW Government procurement activities by 2021.

PROGRESS AGAINST EMPLOYMENT TARGET



Source data - agency reporting

The APP also aims for Aboriginal-owned businesses to be awarded at least three per cent of the total number of domestic contracts for goods and services issued by NSW Government agencies by 2021.

The APP gives agencies permission to directly negotiate with Aboriginal-owned businesses for procurements up to \$250,000.

The APP requires that contracts with Aboriginal-owned businesses valued over \$50,000 be disclosed through eTenders, rather than the \$150,000 threshold required by the *Government Information (Public Access) Act* (GIPA). The lower

threshold was introduced so that lower valued contracts could be counted against the contract award target. However, this has introduced more red tape for government.

The APP further requires agencies and suppliers to consider and report on Aboriginal participation for contracts over \$10 million, where opportunities exist.

In financial year 2018-19, contracts valued over \$10 million had a total value of \$9.6 billion. Of this, a total of \$16.9 million was directed toward Aboriginal participation (0.18%).

The following table demonstrates the NSW Government progress toward the contract target, including contract numbers for financial years prior to APP implementation.

Goods and Services Procurement	FY 2016-17	FY 2017-18	FY 2018-19
			Policy start
Total contracts	6,419	4,111	6,055
Actual awarded to Aboriginal-owned businesses	15	18	26
% of total contracts	0.23%	0.44%	0.43%

Source - e-tenders data

Key finding: Contract awards are significantly lower than the policy target

While the government is on track to meet the target of supporting 3,000 FTE employment opportunities by the end of 2021, the percentage of contracts awarded to Aboriginal-owned businesses has remained flat from 2017-18 to 2018-19, despite the introduction of the policy. The number of contracts awarded has increased by eight, however the percentage of total contracts has decreased.

Results of the Aboriginal participation requirements for goods and services contracts over \$10 million was very low, with only 0.18 per cent of spend directed to Aboriginal participation in 2018-19.

Participants in the review process identified the lack of cluster and agency accountability to promote and meet the targets as a factor in the low number of engagements with Aboriginal businesses.

Key recommendation: Introduce cluster targets and a spend target

This review recommends that clusters be assigned targets for the number of contracts to award to Aboriginal-owned businesses. These targets would be calculated based on three percent of the average number of goods and services contracts the cluster has awarded per year, over the past three financial years. This approach copies the Commonwealth's methodology for setting federal agency targets under its IPP.

To minimise the risk of only low-value contracts being awarded to Aboriginal-owned businesses, we are also recommending that government introduce a target of one per cent of a cluster's total 'addressable' spend be awarded to Aboriginal-owned businesses.

'Addressable' spend excludes categories where no Aboriginal-owned businesses are available to supply goods or services, or where Aboriginal-owned businesses are excluded due to market dynamics (e.g. where a monopoly or reduced competition is in place).

Requirements and Targets

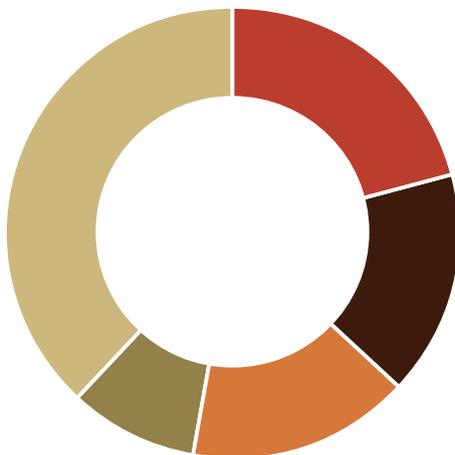
Findings

Throughout the consultation process, we've heard that we need to provide clarity, transparency and accountability:

- > Clarity of policy requirements and permissions, as the current lack of understanding means that the policies are not being implemented fully
- > Transparency in reporting progress toward the targets so that the clusters toward targets can be assessed
- > Increased accountability for implementing the policy by assigning contract and spend targets to clusters and reporting publicly on their progress to the targets.

SURVEY RESULTS: REQUIREMENTS AND TARGETS

Which of the following policy requirements will best enable AAP policy outcomes to be achieved?



- Closed panel contracts **21%**
- Measure spend **16%**
- Individual agency targets **16%**
- Reduce the threshold **9%**
- No response **38%**

Public consultation responses to the survey were evenly split – most respondents indicated that they would have chosen several options had the survey allowed this, and therefore provided feedback in the comments field.

Feedback themes were as follows:

- > Targets are difficult to meet as there are not enough Aboriginal-owned businesses on prequalification schemes. Some respondents felt that Aboriginal-owned businesses tended to be more expensive, so sourcing could be complicated
- > Individual cluster targets would support achieving the overall policy targets, as they assign more responsibility than whole-of-government targets
- > There should be visible consequences for targets not being met, and these should be openly reported, particularly in the case of Aboriginal employment participation targets not being met. Publishing results on a public website would create peer pressure and improve accountability
- > Agencies should engage with community and buy within a local language area where possible

'There are Aboriginal artists in NSW who are capable of conducting cultural consultations within their language area. As such, I expected a Gumbaynggirr artist would consult with Gumbaynggirr people, a Yaegl artist with Yaegl people, and a Bundjalung artist with Bundjalung people.'
- Public consultation, written submission.

- > Educate and encourage agencies to consider supply chain diversity and use their role or function to influence change

- > Closed panel contracts should be accessible to Aboriginal and other minority suppliers within a framework of prequalification, to minimise commercial disadvantage. Confirmed panellists should also be actively encouraged, monitored or contracted to embed Aboriginal-owned businesses within their supply chain.

'Devolving the responsibility and implementation of a state-wide policy to an agency-level without a central agency strategic direction or monitoring lens may continue to abet 'assumed' authority. It may also aid the continuance of mixed messaging, barriers to participation and related probity issues referred to within this comment.'

- Public consultation.

- > Sub-contracts with Aboriginal-owned businesses should count toward the target of three per cent of goods and services contracts to be awarded to Aboriginal-owned businesses. Large suppliers to NSW Government that also supply to the Commonwealth Government have advocated for this type of reporting as it motivates them to include more Aboriginal businesses in their supply chain, and so encourages business capability and capacity growth across the sector.

'Subcontracts are where the involvement often exists for Aboriginal businesses in larger contracts. It is very important that sub-contracts can be included in targets.'

- Public consultation, survey response.

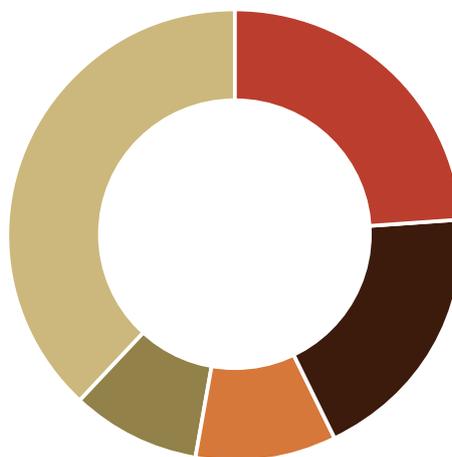
Monitoring and Reporting

Findings

Throughout the review consultation process we heard that we need to increase the accountability of purchasing agencies and suppliers to meet the policy outcomes.

SURVEY RESULTS: MONITORING AND REPORTING

Which of the following monitoring and reporting options will best enable APP policy outcomes to be achieved?



- Central reporting portal **24%**
- Sub contracts should count toward targets **19%**
- Consequences for not meeting target **10%**
- Monitor agency compliance, report publicly **9%**
- No response **38%**

Participants told us that assigning individual contract and spend targets to agencies, then reporting their progress on a public website would improve accountability and provide an overview of how well the policy is being implemented.

Agency staff that participated in the consultation process also indicated that public reporting will help Government departments and agencies be more accountable and will motivate staff to comply with the policy.



Both industry and agency staff also said that the publicly available reporting should be provided to the Minister for Finance and Small Business, the Minister for Aboriginal Affairs, and/or the Premier on a regular basis.

'Central reporting would be a useful step, because individual agencies are often unsure of what other agencies are doing and how they do it. Agencies can learn from centralised, public reporting. Also, it would be good to promote more collaboration between agencies, and between ProcurePoint and agencies. Some agencies may be doing great things that other agencies don't know about. Sharing ideas and practices across government can be VERY useful.'

– Public consultation, survey response.

Common feedback themes were as follows:

- > **Simplify reporting requirements:** suppliers have told us they find themselves reporting similar things to several agencies, or reporting on different aspects of the same contract to one agency. We've heard that respondents would like to see a central portal that captures all the reporting required from government for each contract. We've also heard the required reporting is too lengthy and confusing. Simplifying what we are asking businesses to report will help speed things up and encourage compliance.

'All this constant reporting is a hindrance to agencies. As if there is not enough to report on already. Agencies know it is mandatory. It would be great to see more Aboriginal suppliers on board because at the moment there is not. I agree there should be some form of reporting, but this should be as simple as possible and not a lengthy, confusing process.'

– Public consultation, survey response.

- > **Remove the requirement to report contracts under \$150,000:** the Government Information Public Access Act 2009 (GIPA) requires all contracts over \$150,000 to be publicly disclosed. To track progress toward the APP target of awarding three per cent of goods and services contracts to Aboriginal-owned businesses, we asked agencies to disclose all contracts with Aboriginal-owned businesses over \$50,000. We've heard throughout the consultation that compliance with the lower disclosure threshold is low. The data also shows us most contracts with Aboriginal-owned businesses are currently below \$50,000, so even with the lower threshold we are not getting an accurate view of our progress. We will remove the requirement to disclose contracts with Aboriginal-owned businesses valued over \$50,000 and revert to the statutory requirement of disclosing contracts over \$150,000. Agencies may manually disclose additional contracts or provide data from contract management systems.

'GIPA is \$150,000 and the reporting threshold for the APP is \$50,000 and staff often forget to disclose these lower value projects. Educate Government staff and make them aware of APP. Make it easy to procure from Aboriginal businesses.'

– Public consultation, survey response.

- > **Consequences for suppliers that don't achieve their Aboriginal participation requirement:** Aboriginal and non-Aboriginal businesses are requesting that there be consequences for suppliers that don't meet the Aboriginal requirement. A common view is that, at times, the requirements or targets set in a tender response can influence the tender outcome and must be enforced.

'The financial penalty of a target spend not being met should be increased to 5% of total project spend, irrespective of how much has been spent.'

– Public consultation, survey response.

Engagement

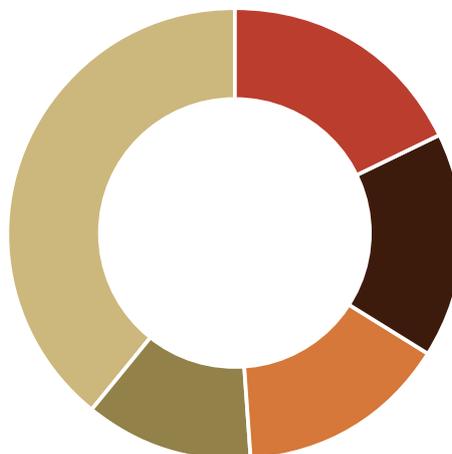
Findings

The consultation process has shown us that we need to be better at collaborating with Aboriginal-owned businesses, non-Aboriginal suppliers and NSW Government agency's staff. The best way for us to drive results and meet the policy targets is to work together to achieve them.

Survey responses on the preferred engagement options to achieve the APP outcomes were fairly even. Most respondents told us that they would have chosen several, if not all, of the options had this been a possibility.

SURVEY RESULTS: ENGAGEMENT

Which of the following engagement options will best enable AAP policy outcomes to be achieved?



- Procurement mentoring for Aboriginal businesses **18%**
- Seek feedback from Aboriginal businesses regarding prequalification **16%**
- More engagement by government **15%**
- Opportunity for Aboriginal business to market themselves **12%**
- No response **39%**

Eighteen per cent of survey participants indicated that NSW Government should engage in procurement mentoring for Aboriginal-owned businesses.

We recognise that there needs to be more information and support for suppliers about the various types of procurement and NSW ICC may be best positioned to assist.

We heard the following ideas throughout the review process:

- > **Hold more information sessions, especially in regional areas:** We understand that supplying to government can be a complex process. The multiple ways that purchasing is undertaken, the steps involved, and varying requirements can be overwhelming for small businesses. We've heard that more information sessions would help suppliers, especially in regional areas.

We will work with other government agencies and the NSW Indigenous Chamber of Commerce to make sure APP and APIC policy information is covered in their workshops.

'Centralised opportunities for First Nation suppliers to market themselves directly to government and business through tradeshows and conferences are supported. These should actively seek to create networks and promote collaboration of First Nation business along with the opportunity to have direct engagement with the buyer. Announcing forecasted and advance procurement plans within this setting would be ideal.'

– Public consultation, written submission.

- > **Meet-the-buyer sessions before tendering for larger projects:** tender briefing sessions are often aimed at large suppliers who are bidding to become the primary supplier on a high-value government contract. Aboriginal-owned businesses have told us that inviting them to attend these will provide them the opportunity to prepare to bid for the tender themselves, or make connections with larger businesses for sub-contracting opportunities
- > **Direct access to government procurement managers:** Aboriginal-owned businesses have told us that they struggle to know who to approach in government to market their business or seek procurement/policy advice. They also told us that some agency staff do not have the knowledge the business is asking for and appear unaware of the proper application of the policy. Government and industry respondents have indicated that publishing a list of contact people for each agency would help businesses get the information they need.

'Asking Aboriginal businesses what THEY think and what THEY need is probably the best way of understanding the issues and making the system more effective (rather than imposing rules from the top down).'

– Public Consultation, survey response.

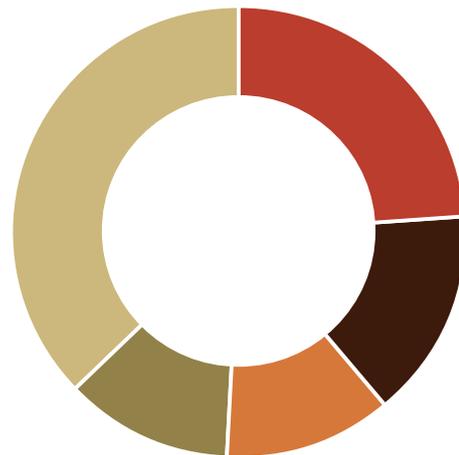
Tools and Support

Findings

We have heard that the policy needs to be more directive and define the requirements and permissions, and that the clarity provided in the Commonwealth IPP should be provided in the APP. We understand that some Aboriginal-owned businesses, particularly the small-to-medium-sized enterprises, need support to build capacity in their businesses and guidance in writing capability statements, tender responses, purchasing emails and requests for quotes.

SURVEY RESULTS: TOOLS AND SUPPORT

Which of the following tools and support will best enable AAP policy outcomes to be achieved?



- Provide training to agencies in how to engage Aboriginal businesses **24%**
- Increase awareness of the policy and how it works **15%**
- Improve policy support and guidance **12%**
- Help more Aboriginal businesses register on prequalification schemes **12%**
- No response **37%**

Some participants have indicated that publishing a whole-of-government pipeline of upcoming major pieces of work would assist Aboriginal-owned businesses to become ready to supply – either as a principal contractor or approaching lead contractors for sub-contracting opportunities. Businesses have also found that, even when registered on a prequalification scheme, their visibility to government buyers does not improve.

‘Plain English and definitions of terms to make understanding requirements easier and less intimidating to encourage engagement by Aboriginal people/businesses.’

– Survey response, Public Consultation.

We have heard that larger suppliers struggle with guidance on how to plan for Aboriginal participation in contracts, how to approach the community for guidance and where to find suitably qualified Aboriginal-owned businesses and Aboriginal staff. This is also an issue for government buyers who would like more guidance on how to apply the APP, standard clauses for Aboriginal participation in tender documents to provide consistency, and training to improve awareness of the policies and their implementation across government.

‘Many government sector employees are unaware of how, in a practical way, to go about engaging Aboriginal businesses (even if they are aware of the policies). Policies are good, but putting them into practice can be difficult for people who lack knowledge of where to start.’

– Survey response, Public Consultation.

Both government and business stakeholders have told us that there is not enough material available to support all stakeholders in their needs and we need to work together on the practical implementation of the policy and reporting. We will work to improve and publish information, and to provide quality guidance and support.

‘More work with agency employees is needed as they make the decisions and consider making them responsible for parts of the targets. I think the cheat sheets and tool kits would be great for agency staff and businesses. Frequently Asked Questions; some guides on what a good capability statement is, responding to emails, tenders, quotes etc. Code of conduct would also be good. Also consider some behaviour measurements for agency staff and ask whether they provided feedback to suppliers who email them, provide quotes, tender, etc.’

– Survey response, Public Consultation.

‘It is now mandatory to include criteria in evaluations, however no training has been provided on what the agencies should be asking and how to evaluate responses. The additional requirement for suppliers to log monthly the Aboriginal spend is an increase, which in turn will increase costs for the government and, as a net result, the taxpayer. We are trying to reduce red tape, however this is increasing it.’

– Survey Response, Public Consultation.

Government respondents have told us that there is a lack of collaboration between agencies. This means that the policies are being applied inconsistently. A Community of Practice would provide an arena where a member from each agency can attend, seek advice, and share ideas, experience and best practice models.

Aboriginal Participation in Construction Policy

About the policy

The Aboriginal Participation in Construction (APIC) policy has evolved from guidelines introduced in 2007 into a policy introduced in 2015.

Following a 2017 review, the current APIC policy was released on 1 July 2018. Under the APIC policy, a minimum of 1.5 per cent of project spend must be dedicated to Aboriginal participation. Agencies are encouraged to set higher requirements where appropriate. Agencies are responsible for setting the project spend and Aboriginal participation requirements on each project.

In conjunction with the APP, the APIC policy aims to support an estimated 3,000 fulltime equivalent employment opportunities for Aboriginal people through NSW Government procurement activities by 2021.

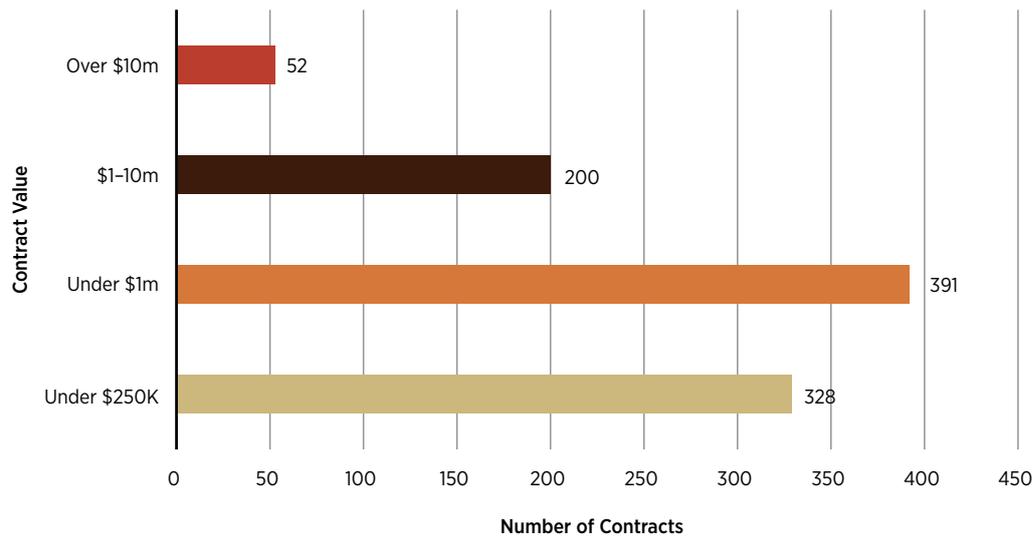
The APIC policy gives agencies permission to directly negotiate with suitably qualified Aboriginal-owned businesses for construction procurements up to \$250,000. The APIC policy further allows agencies to run a closed tender with prequalified Aboriginal-owned businesses for procurements valued up to \$1 million.

Agencies are required to include Aboriginal participation evaluation criteria in tenders for construction projects over \$1 million. Suppliers must submit an Aboriginal participation plan describing how they will allocate the participation requirements across four areas of eligible spend – sub-contracting to Aboriginal-owned businesses, employment, education/training and engagement/consultation.

Agencies are required to include Aboriginal participation evaluation criteria in tenders for construction projects over \$1 million. Suppliers must submit an Aboriginal participation plan describing how they will allocate the participation requirements across four areas of eligible spend – employment, education/training, sub-contracting to Aboriginal-owned businesses, and engagement/consultation – with the tender documentation. Suppliers are required to report on their progress quarterly for projects over \$1 million and monthly for projects over \$10 million. Should the full 1.5 per cent requirement not be allocated toward Aboriginal participation by the end of the project, remaining funds are required to be directed toward an 'approved body'.



NUMBER OF CONSTRUCTION CONTRACTS AWARDED FY2018-19



DIRECT SPEND WITH ABORIGINAL-OWNED BUSINESSES ON NSW GOVERNMENT CONSTRUCTION PROJECTS

Direct construction spend with Aboriginal-owned businesses	Financial Year			
	2015-16	2016-17	2017-18	2018-19
Total spend	\$7.6bn	\$7.4bn	\$9.5bn	\$14.2bn
Spend with Aboriginal businesses	\$12.4m	\$10.3m	\$19.6m	\$23.7m
% of total spend	0.16%	0.14%	0.21%	0.17%

ABORIGINAL PARTICIPATION ON NSW GOVERNMENT CONSTRUCTION PROJECTS

APIC spend – agency reporting	FY 2018-19
Construction contract value	\$14,236,440,068
1.5% contract value	\$258,546,601
Actual APIC spend	\$132,015,648
Actual percentage of value	0.8%

Does not exclude 'project exclusion' value.

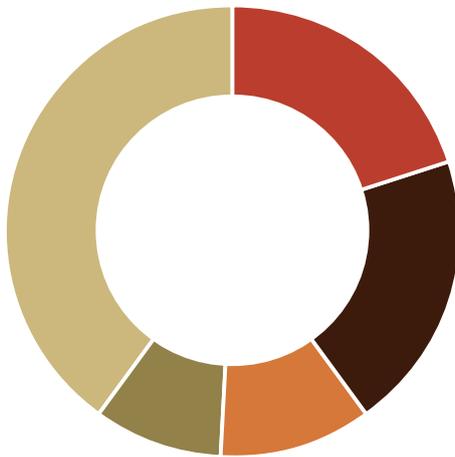
Requirements and Targets

Findings

Feedback we have heard throughout the consultation process tells us that, in principle, the targets and requirements set by the APIC policy are relatively well-received, although some minor changes could be made.

SURVEY RESULTS: REQUIREMENTS AND TARGETS

Which of the following policy requirements will best enable APIC policy outcomes to be achieved?



- Increase the \$1 million threshold for closed tenders **20%**
- Direct unspent APIC funds differently **20%**
- Increase the minimum requirement for Aboriginal participation annually **11%**
- Aboriginal Participation Strategy to include construction **9%**
- No response **40%**

The survey responses show us that 20 per cent of respondents would like to see an increase to the \$1 million threshold that allows agencies to run a closed tender with prequalified Aboriginal-owned businesses. A further 20 per cent of respondents would like to see unspent APIC funds pooled and directed to projects in Aboriginal communities. Others would like to see the minimum 1.5 per cent participation

requirement on projects increased and a requirement for agencies to publish an annual Aboriginal Participation Strategy that includes construction projects. Most respondents have indicated they would have selected multiple responses to this question had this been possible.

'There is a potential for the APIC policy to have unintended disadvantages toward small businesses...some small businesses are unaware that contractors tendering for NSW Government projects can commit to a higher target than that set out in the APIC policy which can, in turn, be enforced on subcontractors...given the size of small businesses, it may not always be realistic for small business to meet ambitious targets set by contractors higher up in the supply chain.'
- Public consultation, written submission, NSW Small Business Commissioner.

A snapshot of commentary from respondents is as follows:

- > Raising the current \$1 million threshold for closed tenders with Aboriginal-owned business would encourage agencies to procure from these businesses
- > Some agencies do not use the closed tender option as they believe it is not in the best interest of the agency and is dependent on the person within the agency undertaking the procurement. The number of closed tenders undertaken should be reported against
- > Follow the Commonwealth Government approach by making agencies responsible for their spend by publicly reporting progress
- > Unspent APIC policy funds should be pooled and directed in consultation with the Aboriginal community where the project is taking place, or given as grant funding to Aboriginal not-for-profits to support programs for Aboriginal people

'Quarantine the APIC funds of a project as a separate budget line and have companies/agencies issue a separate invoice to draw down on the APIC component. Unspent funds could then be easily be identified and channelled into sustainable business and community development actions for Aboriginal business.'

– Survey response, public consultation.

- > A significant number of participants felt that the APIC policy requirement to direct unspent APIC funds to Literacy for Life Foundation or the Master Builders Association needed to be revised
- > Some would like to see the minimum participation requirement increased to three per cent to ensure the economic benefits of the current infrastructure boom are shared
- > All construction projects (large or small) should have a committed target for Aboriginal employment on the project
- > Employment and engagement targets should be devolved to individual agencies; however, this needs to be supported by a strategic direction and monitored carefully.

'Stop allowing the Master Builders Association to collect unspent funds as they run the audits on the companies to ensure site compliance.'

– Survey response, public consultation.

The data shows us that agencies and suppliers are struggling to meet the 1.5 per cent target for construction projects over \$1 million. The consensus is that increasing the target will better support Aboriginal people and businesses, and that thresholds should align with those in the Commonwealth IPP as many suppliers work under both policies.

Raising the \$1 million threshold to \$7.5 million and applying it across both goods and services and construction projects (as per the Commonwealth policy) would see a significant increase in the Aboriginal participation spend and help us achieve the policy outcomes.

Respondents also told us that government should focus more on supporting agencies and suppliers to meet the current target, before making an increase. This can be done through improved tools and support, and ensuring monitoring and compliance is accurate and enforced.

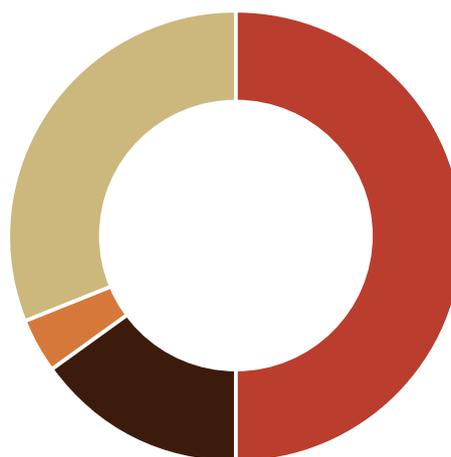
Monitoring and Reporting

Findings

Throughout the consultation process, we heard that participants would like to see more accountability from agencies and suppliers in their achievement of policy targets.

SURVEY RESULTS: MONITORING AND REPORTING

Which of the following engagements options will best enable APIC policy outcomes to be achieved?



- More accountability **50%**
- Verification of supplier through random audits/site visits **15%**
- Simpler and less detailed project reporting **4%**
- No response **31%**

The public consultation survey responses made this clear, with 50 per cent of participants indicating that increased accountability is a priority.

To further support this, 15 per cent of respondents would like to see supplier reporting verified through random audits and site visits by government agencies and primary contractors.

Other respondents indicated the need for simpler and less detailed project reporting.

A snapshot of comments from the survey and written submissions tell us:

- > The current reporting portal is unworkable. Better systems and processes to gather the data are required
- > Simpler reporting is required and needs to acknowledge commercial-in-confidence requirements
- > Audits should be detailed to verify accuracy – some companies may claim to have Aboriginal employees when they do not in order to gain a competitive advantage
- > A tougher approach to suppliers not meeting APIC policy spend requirements is needed. Consider financial penalties including impact on their likelihood of securing future contracts
- > Public reporting of progress toward targets will also act as an incentive.

'More accountability means that there must be real consequences of a failure to meet Aboriginal participation targets. Redirection of funds to support initiatives in Aboriginal communities is one approach, however this is a soft mechanism as companies will simply build a "fail" cost into their pricing when submitting tenders. A tougher approach would include financial penalties including impact on likelihood of securing future contracts. Other approaches that should be adopted include public reporting, following the Victorian model.'

– Survey response, public consultation.

When the revised APIC policy was released on 1 July 2018, NSW Treasury launched the 'Aboriginal Participation Portal'. We understood that the reporting requirements had increased, and the portal was developed in an attempt to reduce the burden on businesses and agencies. During its development, NSW Procurement consulted with potential users and it appeared sufficient. However, through the first year of reporting, we have found that the current system does not fully support business needs. We are working with agencies to provide a more streamlined, user-friendly portal.

'Needs to have strict control. Currently there are companies claiming to have Indigenous employees when they do not to gain a competitive advantage of work.'
– Survey response, public consultation.

'The reporting process needs to be simplified to avoid additional cost to industry and government. The current portal is not fit for purpose.'
– Survey response, public consultation.

Most importantly, respondents would like to see agencies be more accountable and see policy targets applied to each agency or cluster, with their progress toward targets reported publicly. Further accountability measures, such as awarding future tenders, site visits and audits of suppliers are the responsibility of the agency undertaking the procurement. We will produce guidelines and tools to support agencies in their monitoring of supplier performance against policy requirements.

'Simpler and less detailed project reporting is supported; however transparency of procurement agreement and measured success is encouraged along with less frequent policy reviews and changes. Of course, this is subject to the resultant monitoring and the effectiveness of published reviews.'

- Written submission, public consultation.

Engagement

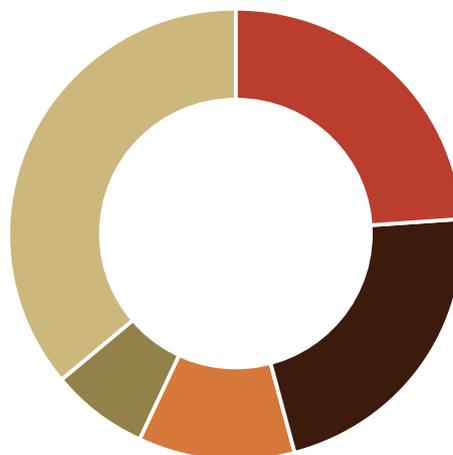
Findings

The APIC policy was introduced to drive outcomes for Aboriginal employees and Aboriginal-owned businesses, and to work toward building economic prosperity for Aboriginal people. The review consultation process has shown that we have work to do to make sure the APIC policy is implemented properly across government and that all stakeholders understand its requirements.

We also need to simplify and clarify the policy and its requirements to make implementation easier. The first step in this is to make sure that agency staff have the support and tools they need to provide the correct advice to suppliers.

SURVEY RESULTS: ENGAGEMENT

Which of the following engagements options will best enable APIC policy outcomes to be achieved?



- A central point of contact within each agency **24%**
- Increase collaboration with Supply Nation and NSW ICC **22%**
- More supplier engagement with Aboriginal communities and businesses **11%**
- More government engagement with Aboriginal communities and businesses **7%**
- No response **36%**

While most survey respondents indicated they would have chosen each item if possible, the data shows us that 24 per cent of respondents would like to see a central point of contact within each government agency to provide help and advice on the APIC policy to both agency staff and suppliers. Twenty-two per cent of respondents indicated they would like to see increased collaboration with NSW ICC and Supply Nation to work toward building capacity in Aboriginal-owned businesses. Respondents also indicated they believe it is necessary for both government and lead contractors to increase collaboration with Aboriginal communities and businesses.

'There are Aboriginal-owned small business enterprises that need to be in partnership with project contracting companies, so that the Aboriginal-owned business is supported with construction expertise, and so that in future projects the Aboriginal-owned business can submit for a future contract with at least "runs on the board". I contend that small Aboriginal-owned business enterprises are "last in line" because of lack of construction expertise, lack of capital, and lack of insurance, etc. Yes, there are Aboriginal-owned business enterprises that are construction savvy, but most Aboriginal-owned businesses are small operators. They need "a hand up" from all project contractors. Landscape project maintenance, such as Pacific Highway and Hospital grounds, are an area that could be fulfilled if there is a system of partnership between a project contractor and an Aboriginal-owned small business enterprise.'

– Written submission, Public Consultation.

- > Enforce compliance within agencies, publish results and consider key performance indicators – the policy relies on individuals being responsible for the implementation of the policy, which can lead to inconsistency and lack of action.

'More supplier engagement with Aboriginal communities and businesses, including open forums, roadshows and meet-the-buyer experiences promoted as the premier state-driven activities with existing stakeholders is supported to enable maximum participation, including that of sole traders and resource-poor SME First Nation businesses.'

– Written submission, public consultation.

Participants have told us that having a central contact person at each agency who understands the policy and can provide advice on supply opportunities would be helpful. We are working toward collating and publishing a list of contacts. Some respondents indicated that a central advocate for Aboriginal people in NSW would be helpful. We will provide links to the NSW Procurement Board's complaints management process as well as information on, and links to, the NSW Deputy Ombudsman (Aboriginal Programs) and the Office of the Small Business Commissioner's mediation services.

Feedback themes were as follows:

- > Provide a central point of contact within each agency, as some businesses report agency staff lack experience with the policy, or staff cannot identify a responsible or knowledgeable person
- > A nominated agency contact would also provide an unbiased point of contact where businesses can discuss concerns around misuse of the policies
- > A large portion of involvement in large infrastructure projects by Aboriginal businesses is as subcontractors. It is important that the lead contractor work with community and Aboriginal businesses, both prior to and during the project
- > Increase collaboration with other Aboriginal bodies, such as the NSW Aboriginal Land Council to ensure the best outcomes for Aboriginal people and businesses

'I would argue for a NSW Aboriginal Advocate at a central level to augment some of the above points. This would ensure a consistent, if not fair and equal, approach to all matters. While also being the one point where a number of these issues and questions can be directed to, when there is doubt or dispute. This is on top of any agency's own Aboriginal participation unit.'

– Survey response, public consultation.

Tools and Support

Findings

Since the release of the revised APIC policy on 1 July 2018, we have been working with businesses, agencies and peak bodies to implement the policy. We understand that we have work to do to make sure the APIC policy is implemented properly across government and that all stakeholders understand the requirements. We also need to simplify and clarify the policy and its requirements so that it is easier to implement.

The consultation process for this review has been helpful to inform us about the types of support that would be of assistance.

Once again, survey respondents indicated that, had the option been available, they would have selected multiple or all available answers. The data collected shows an almost even response across the options provided.

‘Small business owners, who are not able to dedicate considerable time preparing bids on tenders on NSW Government projects, need to be provided with information about NSW Government requirements in a simple format such as a table that can be easily understood in a relatively short amount of time. The NSW SBC therefore recommends guidance is developed for NSW Government agencies to share with contractors so they can in turn inform their own subcontractors about the policy requirements.’

– Public consultation, written submission, NSW Small Business Commissioner.

SURVEY RESULTS: TOOLS AND SUPPORT

Which of the following tool options will best enable APIC policy outcomes to be achieved?



- Publication of a pipeline of planned construction projects **15%**
- The APIC policy and APP should be combined into one policy **17%**
- More education, guidance material and communication **15%**
- Help more Aboriginal businesses register on prequalification schemes **20%**
- No response **33%**

Common themes were:

- > There is a need for more education, guidance material and stronger communication with agencies, non-Aboriginal and Aboriginal construction suppliers, on all aspects of the policy and provide relevant knowledge that will assist the implementation of the policy

‘Construction contractors need more support in how to achieve their APIC targets. This support needs to take the form of help in understanding the opportunities for expenditure on eligible APIC spend types; help in identifying suitable Aboriginal-owned suppliers; help in how to prepare a meaningful and achievable Aboriginal Participation Plan.’

– Survey response, public consultation.

- > Publish a pipeline of planned construction projects to enable businesses to build the capacity of their business and prepare to tender or sub-contract. This can be a strong motivator for businesses and employees
- > A further pipeline of works awarded that details the lead contractor, contact person, intended project timeframes, spend, and likely employee and sub-contractor requirements would help Aboriginal-owned businesses and staff to prepare for work and gain relevant qualifications
- > There is a need for examples of Aboriginal participation contract clauses for agencies to enable a consistent approach
- > Combine the APP and APIC policies into one policy and make it as consistent as possible

- > To embed the policy, there needs to be more Aboriginal-owned businesses listed on prequalification schemes and scheme lists need to indicate which business is Aboriginal owned.

Throughout the consultation and review process the need to get more Aboriginal-owned businesses on prequalification schemes has been a consistent point of feedback. Government buyers are struggling to find Aboriginal-owned businesses that are prequalified, while Aboriginal-owned businesses find the process time consuming and the requirements unclear. NSW Procurement has commenced a concierge service under which staff will work with interested Aboriginal-owned businesses to help them become prequalified.



Appendix A: Jurisdiction Review

Current as of August 2019

Jurisdiction	Policy
Commonwealth	<ul style="list-style-type: none">> Released the Indigenous Procurement Policy (IPP) on 1 July 2015.> The IPP applies to both construction and goods and services procurement and has three key components:<ol style="list-style-type: none">1. A target for purchasing from Aboriginal-owned businesses – the Commonwealth target is three per cent of domestic contracts within certain categories, with targets applied to each agency, based on three per cent of the average number of contracts in the preceding three years <p>In 2019, a spend target has also been applied to counteract the award of many small contracts to reach the target. From 2019, agencies must reach the target number of contracts and this must have a value of at least one per cent of their spend, increased by 0.25 per cent annually until a target of three per cent is reached</p><p>Sub-contracts with Aboriginal-owned businesses may be included toward an agency’s contract number/value target</p>2. A mandatory set-aside to direct some Commonwealth contracts to Indigenous enterprises for procurements between \$80,000 - \$200,000 where agencies must first consider procuring from an Indigenous business. Where the business is a small-to-medium-sized Indigenous business, agencies may procure directly, regardless of the value of the contract3. Mandatory minimum Indigenous participation requirements for certain Commonwealth contracts over \$7.5 million. The policy requires at least four per cent of the FTE domestic workforce to be Aboriginal people; or, four per cent of the value of the goods and services provided under the contract be subcontracted to Aboriginal-owned businesses; or a combination of both methods.
Victoria	<ul style="list-style-type: none">> The Victorian Social Procurement Framework applies to the procurement of all goods and services> The framework has a target of one per cent of procurement to Aboriginal-owned business, included in the overall target of three per cent of Victorian government procurement for social procurement> The Victorian government is also working to increase the number of targeted suppliers on prequalification panels to make it easier for buyers to identify social businesses.
Queensland	<p>The Queensland Indigenous Procurement Policy (QIPP):</p> <ul style="list-style-type: none">> Aims to increase Queensland government procurement spend with Aboriginal-owned businesses to three per cent of government addressable spend, noting that there may not be an Aboriginal supply market in some categories or locations> Includes targets for spend with Aboriginal suppliers on construction projects over \$500 million, under the Building and Construction Training Policy. This spend is reported and audited> Data collection occurs through Queensland Government internal mechanisms. Suppliers and agencies are not required to report separately.

Jurisdiction	Policy
South Australia	<ul style="list-style-type: none"> > The South Australian Industry Participation Policy requires that opportunities for small, start-up and Aboriginal-owned businesses operating in South Australia are considered in all procurements. Government agencies may procure directly from an eligible Aboriginal-owned business for procurements up to \$220,000. > For larger procurements over \$4 million, a minimum 15 per cent weighting, accompanied by tailored measures for Aboriginal participation, is applied. An Industry Participation Plan is then developed. > A tailored Industry Participation Plan has been developed for large contracts in Aboriginal Lands with a minimum requirement of 30 per cent of total on-site labour to be filled by local Aboriginal personnel. Contractors are required to report annually for projects under \$50m and bi-annually for larger projects.
Western Australia	<ul style="list-style-type: none"> > The Western Australian Aboriginal Procurement Policy sets a target for three per cent of the government's contracts to be awarded to Aboriginal-owned business. This target applies to each agency as well as major Government Trading Enterprises. > The policy was released on 1 July 2018 with a one per cent requirement, rising each year to three per cent by 2020-21. > The policy requires that contracts valued over \$50,000 be disclosed and agencies may provide a supplementary report to Finance WA regarding contracts awarded.
Tasmania	<ul style="list-style-type: none"> > Tasmania is currently developing an Aboriginal procurement policy. The Tasmanian government has a 'Buy Local Policy' that has requirements and permissions for local SMEs, which facilitates subsequent benefits for Aboriginal SMEs.
Northern Territory	<ul style="list-style-type: none"> > The Northern Territory's Aboriginal procurement policy applies only to construction projects. > The policy aims to provide employment opportunities and build the capacity of Indigenous businesses to successfully share in the delivery of construction projects in the Northern Territory. > The policy defines an Aboriginal-owned business as that which has 50 per cent or more Aboriginal ownership or a non-Aboriginal business that employs at least 75 per cent Indigenous workers.

Appendix B: Addressable & non-addressable spend categories

The NSW Government categorises its spend on different items or contracts across various categories to assist us in budgeting and reporting. For the purpose of this report, and the revised Aboriginal Procurement Policy that will follow, we have defined 'addressable' spend as a category of spend where NSW ICC or Supply Nation have an Aboriginal-owned business registered with them that can supply under those categories, such as human resources and training, legal services, construction and traffic management.

'Non-addressable' spend is a category of spend where there is no Aboriginal-owned business registered with either party, such as aircraft, weapons and large-scale construction equipment which is not readily available from Australian suppliers.

These categories don't stop agencies buying from an Aboriginal supplier - if a new business does appear in a 'non-addressable' categories, agencies are encouraged to engage with the business where relevant. The purpose of the categories is to help government get an accurate idea of what the spend is in areas where an Aboriginal business exists. Also, it helps us identify where there are no Aboriginal suppliers so we can work with NSW ICC and Supply Nation to build capacity for in-demand areas.

Spend categories and types that are likely to be excluded from a cluster's addressable spend include:

- > Spend categories where there is no Aboriginal supplier registered with Supply Nation or NSW Indigenous Chamber of Commerce (e.g. aircraft)
- > Spend to Government entities, State-owned Corporations and Statutory Authorities
- > Spend to head contractors on major infrastructure projects - the size of the contract excludes Aboriginal-owned businesses as these are mainly SMEs (the requirement for Aboriginal participation on these projects is not excluded)
- > Spend on utilities (e.g. electricity, gas etc)
- > Spend to long-term concessions (e.g. NSW Land Registry Services)
- > Spend to grant recipients (e.g. Public and non-government schools)
- > Spend categories that are subject to a mandatory whole-of-government arrangements and are closed to new applicants.

There are several other areas where the NSW Government spends money, however these do not go to a 'supplier' - for example, payments to foster carers, NSW Government employee costs, utilities, professional memberships, jury costs, etc. This group of expenditure would also be listed as 'non-addressable'.