



# NSW Government

## Audit of 15 NSW Government contract's compliance with Aboriginal Participation Commitments

### Summary Report

June 2022



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## 1. Executive Summary

### 1.1 Background

The new Aboriginal Procurement Policy (APP) commenced in January 2021 and was designed to support and create opportunities for Aboriginal-owned businesses in New South Wales (NSW) through Government procurement of goods and services including the construction industry.

The APP sets out mandatory requirements for contracted suppliers (contractors) including developing and submitting an Aboriginal Participation Plan (Plan), directing a minimum of 1.5% of the project value towards Aboriginal Participation and providing quarterly reports.

As part of the new APP, the NSW Government committed to audit 5% of government contracts subject to the APP each financial year to determine compliance and the accuracy of reporting against agreed Aboriginal Participation Plans.

### 1.2 Objectives

The objective of this audit was to examine the accuracy of reporting provided by suppliers on NSW Government contracts and their progress towards meeting their Aboriginal Participation commitments. The audit included consultations with the NSW Government agencies for access to quarterly Aboriginal Participation reporting provided by primary contractors, interviews with primary contractors, their sub-contractors including Aboriginal businesses and Aboriginal employees, to verify activities associated with the reported spending.

While the audit set out to review the 2021 APP, we found that previous iterations had been applied. The previous 2018 Aboriginal Procurement Policy and the Aboriginal Participation in Construction (APIC) Policy merged into the new Aboriginal Procurement Policy (APP). The APP applied to only 1 of the 15 contracts audited (Fulton Hogan). The remaining contracts were signed prior to the implementation of the APP in January 2021. These contracts had the APIC policy applied to 12 of those contracts (relating to construction services). The previous 2018 Aboriginal Procurement Policy applied to AMTEK.

In TATA's case, the project value fell below the \$10 million threshold for applying the 2018 Aboriginal Procurement Policy to goods and services contracts. While the policy was not applicable, the project was included in the audit to explore a greater variety of contractor and cluster understanding of the APP.

### 1.3 Participating Sample

The following table summarises the contracts audited. This sample was chosen by NSW Treasury.

**Table 1: Contract Sample for Audit**

Cluster	Project	Applicable Policy	Contract Value \$M
Customer Service	TATA	Nil*	6.1
Education	Grindley Constructions	APIC	33.6
	Taylor Constructions	APIC	73.9
Health	Hansen Yuncken	APIC	20.4
	Lendlease Building	APIC	411.6
	Richard Crookes Construction	APIC	37.0
Planning, Industry & Environment	Degree Constructions	APIC	4.5
	Tradelink Constructions	APIC	6.0
Regional NSW	Fulton Hogan Constructions	APP	115.6
Stronger Communities	AMTEK	APP 2018	57.0
Transport	Arenco	APIC	11.8
	Austral Construction	APIC	24.3
	Great City River Light Rail	APIC	536.0
	John Holland	APIC	3,804.1
	Steven Edwards	APIC	12.2
<b>Total</b>			<b>5,154.1</b>

\* The TATA project was valued below the \$10 million contract threshold for applying the 2018 APP to goods and services contracts.

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## 1.4 Key Findings

The overall key findings as they relate to the NSW Government are presented below. To understand key findings for each cluster please see section 3 below.

### Aboriginal Participation Plans

#### Observations

- The APP came into effect in January 2021. Approaches to market prior to this time necessarily had contract conditions that applied to the preceding APIC policy. These related to construction.
- The APP in 2021 combined construction and goods and services procurement, effectively broadening the scope of services subject to threshold targets. In the 2 instances where timing allowed for the APP to be applied, some mitigating circumstances prevented the application of the APP (see AMTEK and TATA in sections 4 and 5).
- Where Aboriginal Participation Plans were prepared the following observations were consistent across most contracts:
  - Differing versions of plans showed many initiatives that did not clearly align categories with targets.
  - Contract conditions on some occasions prevented a transition to the newer APP categories.
  - Some confusion existed across clusters as to what services the APP applied to and how to operate exclusions and thresholds.
  - Early stages of contracts saw less spending where later stages often saw, met or exceeded Aboriginal Participation spend targets.
  - Planned Aboriginal Participation activities are not reported at a whole of Government level, only progress towards Aboriginal Participation targets.
  - Spending on one quarterly report was incorrect.

#### Recommendation 1

We recommend that NSW Government:

- 1.1 Refine the Aboriginal Participation Plan template so that it clearly aligns activities with targets and enables the reporting of quantitative and qualitative outcomes and impacts.
- 1.2 Augment the APP guidance and plan template to make clear that the APP applies to all procurement contracts over \$7.5 million. This could also include how to calculate the threshold with extension options and how to provide appropriate justification for exclusions.
- 1.3 Work with Cluster procurement officers to ensure all contract managers are fully aware of the APP so that procurements and related documentation are up to date, plans are robust and appropriate and contract managers can implement effective and fit for purpose monitoring.
- 1.4 Work with Clusters to either have clear contract conditions that allow for a transition to new provisions when policy requirements are amended or consider how to embed the APP requirements into existing plans.

## Achieving Outcomes

### Observations

The implementation of the APP came at a very difficult time for industry due to COVID-19 impacts and staffing shortages. Nevertheless, all contracts completed showed targets were met or exceeded in terms of spending.

The following summarises the overall observations:

- Targets are mostly easily met for contracts relating to construction projects.
- The non-construction contracts audited are in very early stages of implementation and organisational commitment.
- Some contracts had greater targets than the mandated 1.5% (up to 6%) and this was largely more easily applied for the larger contracts and larger companies.
- Companies with repeat contracts are forward leveraging the investment on Aboriginal Participation with several capability building initiatives and this could be strengthened with advance advice to industry on planned infrastructure investment.
- Much of the target expenditure is passed on to the downstream supply chain including Indigenous organisations.

### Recommendation 2

We recommend that NSW Government:

- 2.1. Consider a mechanism to inform industry of future investments in infrastructure.
- 2.2. Consider a mechanism (either within the APP or at the discretion of agencies) to adjust the minimum or mandatory target based on demographics and/or repeat contracts.
- 2.3. Work with Cluster Procurement teams to ensure contract managers are aware of APP requirements and how to operationalise them in tender conditions for all procurements meeting the thresholds.

## Reporting

### Observations

The current policy requirement is for quarterly reporting. The 2018 APP required monthly reporting (for contracts valued over \$10m) and the 2018 APIC policy required monthly reporting for contracts valued over \$10m and quarterly reporting for contracts subject to the policy but valued below \$10m.

Overall observations are summarised as follows:

- All contracts were reporting in some form through monthly contract management meetings.
- All contracts demonstrated a positive relationship between the Principal Contractor and the Agency Contract Manager/Team.
- The issues with APP implementation are discussed, and any issues addressed as part of the contract management processes.
- Reporting templates vary by cluster and sometimes within the cluster.

- Reports are expenditure centric and do not adequately address description of progress against activities defined in the Plans.
- There is little to no reported or shared challenges or success stories either centrally or within clusters. Contract management reporting tends to focus on spend targets and the reporting on activities behind the numbers is limited and varied.
- There is no celebration of reported success stories at the local level.
- There is a lack of a fit for purpose assurance framework that validates the reported data, particularly for claims that are met through downstream arrangements.

### Recommendation 3

We recommend that NSW Government:

- 3.1 Consider implementing a reporting portal that enables the capture of both qualitative and quantitative data.
- 3.2 Develop and provide advice to Clusters about an appropriate risk-based assurance framework.
- 3.3 Once data is captured summarise good news stories for public release.

## Industry Commitment

### Observations

From discussions with the industry representatives, their sub-contractors and in some cases Aboriginal sub-contractors and Aboriginal staff the following observations are made:

- Working with local Aboriginal representative bodies early assists with identifying opportunities and resources.
- Cultural awareness is evident particularly from larger corporates in construction and those with Aboriginal staff who advise in this space are more progressed.
- The project commitments often build on existing workforce policies and reconciliation action plans.
- There is still opportunity to shift deficit model thinking and engage Aboriginal staff in leadership roles.
- The 2 Non-Construction contracts audited are aware but not advanced in APP implementation as it was not a requirement to comply with the 2021 APP.
- Smaller companies and contracts are limited in type of spending or are not as advanced in understanding the Aboriginal workforce and supply chain.
- Opportunities exist to broaden investment activities into training on business capability or training centres of excellence across projects within a cluster.
- Industry broadly appreciated the Audit and found it useful to provide feedback on the policy and its implementation.

### Recommendation 4

We recommend that NSW Government:

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- 4.1 Consider the development of an industry roundtable on APP implementation.
  - 4.2 Provide an indicative category spend impact hierarchy that indicates to industry where deeper social betterment occurs with types of spending.
  - 4.3 For the next Audit have a higher proportion of non-construction contracts.

## Cluster Commitment

### Observations

From discussions with the Cluster representatives the following overall observations are made:

- Although the Government identified the APP as a priority there is differing level of knowledge and buy in.
- Corporate commitment in Clusters appears strong.
- Commitment, in some cases, weakens as the APP is implemented within contract management teams.
- Clusters who have APP dedicated advisors tend to have greater operational and implementation maturity.
- There is general and positive commitment to the intent of the APP.
- Opportunities exist to strengthen overall impact by creating business capability centres of excellence, working across the cluster with training providers and identifying Aboriginal businesses.

### Recommendation 5

We recommend that NSW Government:

- 5.1. Consider promoting success stories and challenges across agencies.