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Performance Audit

# **Procurement Initiatives to Support Outcomes for Indigenous Australians**

Across Entities

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Canberra ACT  
8 July 2015

Dear Mr President  
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit across entities titled *Procurement Initiatives to Support Outcomes for Indigenous Australians*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Grant Hehir  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

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For further information contact:

**Australian National Audit Office**  
**GPO Box 707**  
**Canberra ACT 2601**

**Phone: (02) 6203 7300**

**Fax: (02) 6203 7777**

**Email: [ag1@anao.gov.au](mailto:ag1@anao.gov.au)**

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### **Audit Team**

Tony Varnes  
Gillian Meek  
Dr Andrew Pope

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# Abbreviations

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ABN	Australian Business Number
ANAO	Australian National Audit Office
ATM	Approach to Market
ATO	Australian Taxation Office
CPRs	Commonwealth Procurement Rules
DEEWR	Former Department of Education, Employment and Workplace Relations
Defence	Department of Defence
DHS	Department of Human Services
Employment	Department of Employment
Finance	Department of Finance
IBE	Indigenous Business Exemption
Industry	Department of Industry and Science
IOP	Indigenous Opportunities Policy
IOP Plan	Indigenous Training, Employment and Supplier Plan
IPP	Indigenous Procurement Policy
OECD	Organisation for Economic Co-operation and Development
PCPs	Procurement Connected Policies
PM&C	Department of the Prime Minister and Cabinet
SAFTA	Singapore-Australia Free Trade Agreement

# Glossary

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Approach to Market	Any notice inviting potential suppliers to participate in a procurement which may include a request for tender, request for quote, request for expression of interest, request for application for inclusion on a multi-use list, request for information or request for proposal.
AusTender	The central web-based facility for the publication of Australian Government procurement information, including annual procurement plans, business opportunities and contracts awarded.
Indigenous Training, Employment and Supplier Plan (IOP Plan)	Plans submitted to the Department of Prime Minister and Cabinet by suppliers tendering for Australian Government contracts that met Indigenous Opportunities Policy criteria. Plans were to set out how the supplier was to provide employment, training and business opportunities to Indigenous Australians if they were to be awarded a relevant contract.
Commonwealth Procurement Rules	Rules governing procurement, issued by the Minister for Finance under section 101(1) of the <i>Public Governance, Performance and Accountability Act 2013</i> .
Limited tender procurement	Involves a relevant entity approaching one or more potential suppliers, and where the process is not required to meet the rules for an open tender or prequalified tender.
Implementation and Outcomes Report	Reports submitted annually by suppliers describing outcomes achieved by the supplier against commitments made in Indigenous Training, Employment and Supplier Plans.
Indigenous business	This includes Indigenous owned businesses where 50 per cent ownership is held by an Indigenous Australian, and Indigenous owned and controlled businesses where 51 per cent ownership is held by an Indigenous Australian.



Indigenous Opportunities Policy Region (IOP Region)	A region where the Indigenous population was above the national average for the purpose of applying the Indigenous Opportunities Policy.
MyPlan	Online information system used to support reporting by businesses under the Indigenous Opportunities Policy.
Procurement	The purchase of goods and services. The procurement cycle generally encompasses the processes of risk assessment, seeking and evaluating alternative solutions, the awarding of a contract, delivery of and payment for the goods and services and, where relevant, ongoing contract management and consideration of disposal of goods.
Procurement Connected Policy	A policy of the Australian Government for which procurement has been identified as a means of delivery.
Request for Tender	A published notice inviting suppliers who satisfy the conditions for participation to submit a tender in accordance with requirement of the Request For Tender and other request documentation.



# Summary and Recommendations



# Summary

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## Introduction

1. The Australian Government's policy on procurement is contained in the Commonwealth Procurement Rules (CPRs), which are administered by the Department of Finance (Finance). The CPRs set out the rules for government procurement and the obligations on officials when undertaking a procurement. The CPRs also incorporate the requirements of Australia's international trade obligations. The core element of the CPRs is to promote the use of sound and transparent procurement practices that seek to achieve value for money for the Commonwealth.<sup>1</sup> To support value for money outcomes, procurement by government entities is expected to be based on processes which encourage competition and non-discrimination, and which result in the efficient, effective, economical and ethical use of public funds.<sup>2</sup>

2. The significant purchasing power of government means that procurement policies and actions of governments can also be used to influence broader strategic policy objectives, such as employment outcomes for marginalised groups, environmental outcomes, and growth of the small and medium business sectors.<sup>3</sup> Successive Australian Governments have developed and maintained a range of Procurement Connected Policies (PCPs) to support the achievement of such targeted outcomes within the overall procurement framework. As at June 2015, there were 18 PCPs in place, covering a range of areas including outcomes for Indigenous Australians.<sup>4</sup>

3. The Australian Government's approach to promoting Indigenous opportunities through procurement generally operates at two levels. Firstly, the approach seeks to maximise opportunities within government contracts to increase Indigenous training, employment and business opportunities by

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1 The CPRs state that "achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquires, that the procurement achieves a value for money outcome". See Department of Finance, *Commonwealth Procurement Rules*, July 2014, p. 13.

2 *ibid.*, p. 13.

3 Organisation for Economic Cooperation and Development, *Government at a Glance 2013*, p. 129.

4 Other PCPs seek to achieve outcomes through procurement in relation to Small and Medium Enterprises, gender equity, Disability Enterprises and environmental management, among others. For a full list see Department of Finance, *Procurement Connected Policies*. Available from: <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/policy-framework/procurement-policies/principles.html>> [Date accessed: 12 March 2015].

placing obligations on suppliers. Secondly, the approach seeks to increase the number of Indigenous businesses that are awarded government contracts in their own right.

4. The Commonwealth Procurement Guidelines released in 1998<sup>5</sup> required entities issuing contracts over a financial threshold of \$5 million (\$6 million for construction), and in areas with high Indigenous populations, to consider how employment and training outcomes for Indigenous Australians could be promoted. This requirement was subsequently referred to as the Indigenous Opportunities Policy (IOP). The IOP was strengthened in 2011, to require any suppliers (Indigenous or non-Indigenous) that won Australian Government contracts in IOP regions, which were over the financial threshold, to develop, implement and report on a plan to employ, train and provide sub-contracting opportunities to Indigenous Australians.

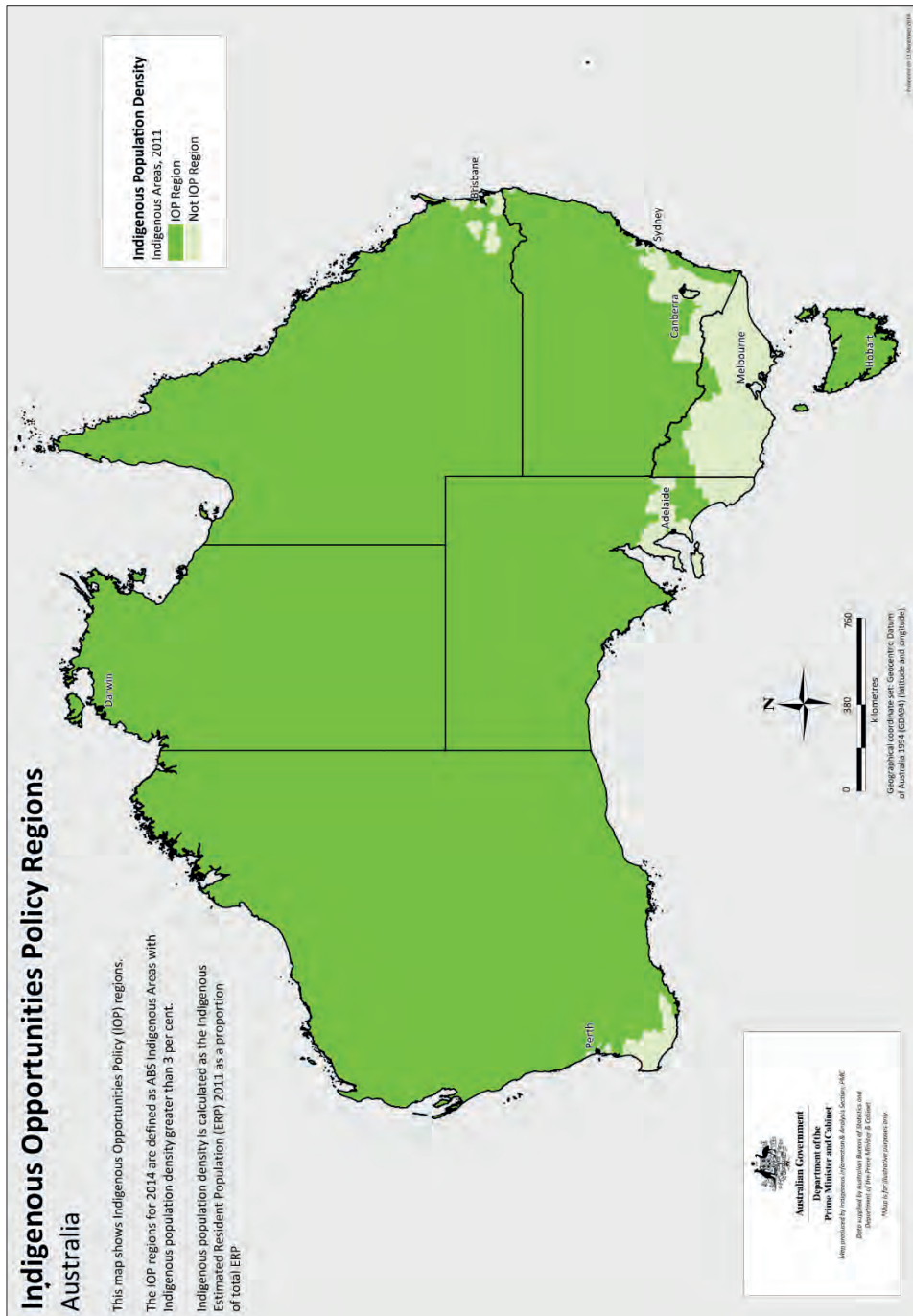
5. A region was defined as an IOP region if the Indigenous population for the area was above the national average of three per cent. IOP regions, as at April 2015, are shown in Figure S.1. In most urban areas of Australia the Indigenous population is lower than the national average and therefore these areas were generally excluded from the operation of the IOP.<sup>6</sup>

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5 The *Commonwealth Procurement Guidelines* were re-named the *Commonwealth Procurement Rules* in 2012.

6 Some localised areas, with high Indigenous populations, in urban areas were identified as IOP regions.

Figure S.1: Indigenous Opportunities Policy Regions as at April 2015



Source: PM&C.

Note: Additional maps, showing some local areas within major cities which are identified to be in IOP regions are included at Appendix 6.

6. Under the IOP, Australian Government entities were required to identify whether a proposed procurement met the requirements to be identified as an IOP contract and include this information in their approach to market. All suppliers that were successful in winning IOP related contracts were in turn required to develop and implement an approved Indigenous Training, Employment and Supplier Plan (IOP Plan) to create training, employment and business opportunities for Indigenous Australians. The IOP was administered by the Department of the Prime Minister and Cabinet (PM&C), which was responsible for establishing guidance, monitoring and reporting on the application of the policy. Australian Government entities were required to ensure that the supplier to which they issued an IOP related contract had an IOP plan, which had been approved by PM&C, in place for the duration of the contract. Entities were not, however, required to include the approved plan within their contract arrangements with the supplier, nor were they required to monitor or report on the outcomes achieved for Indigenous Australians resulting from their procurement activities. Suppliers with IOP related contracts were required to provide regular reporting to PM&C on the implementation of their IOP plans.

7. With respect to directly increasing the participation of Indigenous businesses in government contracting, the Australian Government added a specific exemption under the CPRs in 2011. The Indigenous Business Exemption (IBE) enables entities to directly approach Indigenous businesses for procurements valued over the relevant financial threshold<sup>7</sup> without making an open approach to market or applying the other additional conditions required under the CPRs for high value procurements. The intent of the IBE was to streamline procurement and reduce administrative requirements where possible. As at June 2015, the IBE was one of 17 exemptions to the CPRs.<sup>8</sup>The CPRs are administered by Finance, the decision as to whether to apply the IBE, along with the responsibility to do so in accordance with the CPRs, rests with the entities undertaking procurement.

8. The Australian Government's Indigenous Procurement Policy (IPP) came into effect on 1 July 2015 to replace the IOP. The IPP requires all government portfolios to have a target for the number of contracts awarded to

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7 The financial thresholds above which procurements must, unless exempted, apply Division 2 of the CPRs are \$80,000 for non-construction procurement and \$7.5 million for procurement of construction services.

8 Department of Finance, *Commonwealth Procurement Rules*, July 2014, p. 33.



Indigenous businesses. The target is being phased in over time and is expected to reach 3 per cent of all contracts by 2019–20. Performance against the target is to be published annually and reporting arrangements strengthened. In addition, for certain Commonwealth contracts, a mandatory set aside process applies, which requires entities to consider whether an Indigenous business can deliver the required goods or services on a value for money basis before an approach to market can be made. Similar to the IOP, some government contracts are still required to include minimum 'Indigenous participation requirements' for Indigenous employment and Indigenous business use, however, in contrast to the previous IOP, procuring entities are now required to monitor these. No changes have been made by Finance to the administration of the IBE, however the introduction of targets, and the set aside approach, is expected to result in an increase in the use of the IBE by entities, and an ability to extract relevant data is expected to be enhanced.

## **Audit objective, criteria and scope**

9. The objective of the audit was to assess the effectiveness of the administration of procurement initiatives to support opportunities for Indigenous Australians.

10. To conclude against this objective the ANAO adopted high-level criteria which considered the effectiveness of the administration by PM&C and Finance of the IOP and IBE respectively. The criteria also considered the application of these policies by selected entities and the overall monitoring and reporting of outcomes achieved.

11. The scope of the audit included:

- the application of the IOP since 2011 by selected Australian Government entities and its overall administration by PM&C, and formerly by the Department of Education, Employment and Workplace Relations (DEEWR); and
- the use of the exemption for Indigenous businesses in the CPRs by selected Australian Government entities and the administration of the exemption by Finance since 2011.

12. The application of the IOP and the IBE was examined in the following entities:

- Department of Defence (Defence);
- Australian Taxation Office (ATO);
- Department of Human Services (DHS);
- Department of Employment (Employment);
- Department of Industry and Science (Industry); and
- Department of Education and Training.

13. The ANAO also considered aspects of the Indigenous Procurement Policy which commenced from 1 July 2015, insofar as the experience of the IOP and IBE is relevant to its implementation.

## Overall conclusion

14. Procurement Connected Policies (PCPs) to improve Indigenous economic outcomes have been used in various forms by the Australian Government since 1998. Through the Indigenous Opportunities Policy (IOP) and the Indigenous Business Exemption (IBE), a two-tiered approach was developed that sought to increase Indigenous involvement in the government supply chain, both directly as suppliers and indirectly through training and employment opportunities. Indigenous organisations have generally played a significant part in the delivery of government services funded through grant programs but the participation of Indigenous businesses in government procurement has remained very low.

15. Overall, while the policy intent to leverage better Indigenous outcomes from Australian Government procurement activity has been clear, the frameworks developed by entities to achieve the objectives have not generally facilitated effective delivery of the outcomes sought. Key factors in this respect include the geographical limitations placed on the application of the IOP, the absence of any requirement for procuring entities to drive or monitor outcomes including those resulting from either their own or their suppliers actions, and the voluntary reporting requirements placed on entities which have hindered the ability of the Department of the Prime Minister and Cabinet (PM&C) and the Department of Finance (Finance) to analyse activity and provide advice to government. A number of these issues are being addressed in the development of

the new policy arrangements from 1 July 2015, although achieving the intended policy outcomes is likely to require continued efforts by government entities.

**16.** In developing the IOP framework, a significant population was defined as being one where the proportion of the Indigenous population of a region was equal to or higher than the national average. This relative approach, however, had the effect of excluding areas, particularly urban areas, where there were significant Indigenous populations in absolute rather than relative terms. As a result, the geographic regions where the IOP applied until June 2015 included only 73 per cent of the total Indigenous population and did not generally include urban and some regional areas where economic activity was likely to be higher and more diverse.

**17.** The geographic requirements of the IOP also provided practical challenges to its application by entities. Entities were required to determine whether contracts over certain values should have been identified as being subject to the IOP based on the physical location of the main contract activity. IOP regions were determined and publicised by PM&C, and it provided guidelines for entities and businesses. However, in cases where contracted activity occurred in multiple locations, including in both IOP and non-IOP regions, the interpretation of the requirements was not always straightforward and implementation by the entities included as part of this audit was not always consistent. More broadly, the data systems of audited entities often did not sufficiently capture the geographical locations where the main contracted activity was to take place and generally a limited record was maintained of decisions in relation to whether the IOP should be applied to particular approaches to market.

**18.** In order to minimise the additional workload on procuring entities arising from the introduction of the IOP, entities were required only to take steps to ensure that a supplier has an approved IOP plan in place prior to issuing a contract. These plans were to provide details of the suppliers' commitments in relation to Indigenous employment, training and business opportunity. Suppliers were required to implement these commitments if awarded a contract. Entities, however, were not required to include any of the supplier's commitments under the plan into the contract nor to monitor the implementation of any of those commitments as part of managing the contracts. Instead, PM&C—and prior to that the Department of Education, Employment and Workplace Relations (DEEWR)—had the responsibility to monitor that entities are appropriately identifying contracts to which the IOP

applied and to receive the required reports from suppliers about the implementation of their IOP plans. While PM&C, and previously DEEWR, made appropriate efforts to fulfil this responsibility, the voluntary nature of entity reporting and data limitations, where the geographical location of contracts is not recorded in the government's procurement database (AusTender), means that relevant information upon which to assess implementation was not easily accessible. As a result PM&C was not well positioned to advise government on the extent that the IOP contributed to the desired objective of creating economic opportunities for Indigenous Australians, or on the extent that Australian Government entities were appropriately implementing the IOP.

19. To complement the IOP and improve direct access for Indigenous business as suppliers to government, the Indigenous Business Exemption (IBE) allows entities to conduct streamlined procurement processes with Indigenous businesses within the Commonwealth Procurement Rules (CPRs). Although the IBE has been available under the procurement framework since 2011, use of the IBE was low in the entities examined by the ANAO and there is no aggregated reporting by Finance on the use of the exemption by Australian Government entities. Based on available data, the involvement of Indigenous businesses in government purchasing is very limited. Since 2011, 120 contracts with Indigenous businesses certified through Supply Nation<sup>9</sup> have been listed on AusTender. Of these, only 17 were listed as limited tender procurements over the relevant financial threshold and where the exemption may have been applied.

20. Using the IBE requires procurement officers to consider choosing a procurement method on the basis of the indigeneity of the supplier and, at times, with limited information on the strength and distribution of the Indigenous supplier market. These decisions are required early in the procurement process and require entity staff to assess the value for money represented by an Indigenous business proposal in the absence of a competitive assessment process, requiring other information to be sought in order to make an assessment of value for money. While the IBE may shorten the timeframes of some procurements by removing the need for an open tender process to occur, the additional steps (scanning the market for suitable Indigenous supplier(s) and

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9 Supply Nation is a not-for-profit organisation which seeks to facilitate the integration of Indigenous businesses into the supply chain of private sector corporations and government entities. Supply Nation maintains a list of certified Indigenous business although not all Indigenous businesses are necessarily certified with Supply Nation.

approaching them for a quote) and decisions (assessing the value for money offering of a supplier in the absence of an open approach to market) outside of the more commonly used procedures, may also be contributing to the low levels of application of the IBE.

**21.** Some Indigenous businesses interviewed by the ANAO reported that use of the IBE was generally only considered by entity staff when support for its use was advocated by a sufficiently senior officer of the entity, and that committed leadership was a key element present in the cases when their approaches to entities resulted in the use of the IBE. However, Indigenous businesses reported that in most cases, their approaches to entities did not result in the use of the IBE being actively considered as a procurement method.

**22.** From 1 July 2015, Australian Government portfolios are required to report performance against agreed targets for the level of contracting with Indigenous business, and to set aside some contracts for which Indigenous businesses will be approached, on a value for money basis, prior to any approach to the open market. Based on current performance, both in terms of the low level of entity use of Indigenous suppliers and in terms of oversight, monitoring and reporting arrangements, successful implementation of these new policy requirements will need increased promotion and support.

**23.** The Indigenous Procurement Policy (IPP) introduces flexibility in the way entities can approach their targets including by: setting them at portfolio levels; allowing sub-contracting opportunities to be included; applying a formula to enable the conversion of the target from number of contracts by volume to a target by contract values; and including contracts with Joint Ventures which have at least 25 per cent Indigenous equity. Nonetheless, the targets are ambitious. There are risks in seeking to move quickly to meet the new targets and entities will need to be vigilant to ensure that the requirements of the procurement framework, including achieving procurement outcomes economically and efficiently, continue to be met in addition to meeting the targets. While the IPP is the overarching framework in relation to Indigenous procurement policy, some elements of the IOP have remained, including the use of geographically-defined areas. In view of the experience of entities to date there would be merit in PM&C further reviewing the approach to determine the conditions under which the proposed minimum Indigenous participation requirements may be most effectively applied, particularly those relating to the use of Indigenous businesses by government suppliers. The ANAO has made three recommendations to assist PM&C and Finance to better

implement, monitor and report on initiatives seeking to increase opportunities for Indigenous Australians through government procurement.

## Key findings by chapter

### Chapter 2 – Application of the Indigenous Opportunities Policy

24. As the administrator of the Indigenous Opportunities Policy (IOP), PM&C, and previously the Department of Education, Employment and Workplace Relations (DEEWR), sought to facilitate its efficient administration and the creation of opportunities for Indigenous Australians. In that context, PM&C, and DEEWR, undertook a number of activities and developed systems and guidelines to promote awareness and understanding of the IOP, and to clarify key aspects of the policy. However the regional application of the IOP added complexity to its administration, and the guidelines allowed a number of possible interpretations, particularly where contracted activity occurred in multiple locations.

25. Entities were responsible for implementing the IOP by determining its applicability to a project in the planning stages (and consulting with PM&C if they were uncertain), and by ensuring that Approaches to Market (ATM) documentation included reference to the IOP when applicable. Entities were also responsible for ensuring that IOP Plans had been approved, or were in the process of being assessed by PM&C for the tenderer(s), and that they remained current during the term of any IOP related contracts. Overall, the application of the IOP by entities was variable, and while some entities reported to PM&C on the contracts to which they have applied the IOP, not all entities reported, and not all contracts applied the IOP as required. The voluntary nature of entity reporting, and the lack of a central mechanism for PM&C to monitor application of the IOP to contracts meant that the extent of under-reporting by entities was not accurately known by PM&C.

26. The Australian Government introduced the Indigenous Procurement Policy (IPP) with effect from 1 July 2015. The new policy has added additional requirements on entities to monitor and report against their activities and to apply the mandated 'set aside' policy and the minimum participation requirements to some contracts. Some elements of the IOP have continued under the new policy, including the geographic application of 'minimum Indigenous participation requirements' to some contracts. In this respect the experience of implementation of the IOP to date is relevant to informing the implementation of the IPP including the complexities introduced by a regional

approach, in relation to the use of Indigenous businesses and the ability to use AusTender for overall monitoring.

### **Chapter 3 – Use of the Indigenous Business Exemption**

27. The Indigenous Business Exemption (IBE) is a component of the Commonwealth Procurement Rules (CPRs), which are administered by Finance. As part of its overall role in relation to the CPRs, Finance has prepared guidelines on the use of the IBE. However, an approach to more broadly promoting the potential for the IBE to contribute to Indigenous policy outcomes has not been developed by PM&C, or previously by DEEWR. Some Indigenous suppliers interviewed by the ANAO observed a low level of awareness of the IBE. Entity staff interviewed by the ANAO perceived a number of potential barriers to the IBE's use, including the difficulty in identifying a suitable Indigenous business, and having sufficient information to assess whether a value for money outcome would be achieved through the use of the IBE, compared to undertaking an open tender process.

28. Data on the overall use of the IBE is not collected or reported by either Finance or PM&C. Finance generally does not report on the use of any of the CPR exemptions. Finance does, however, regularly extract data using the Australian Business Numbers (ABNs) of Australian Disability Enterprises, to assist the Department of Social Services in monitoring the use of the exemption provided for Disability Enterprises (Exemption 16 of the CPRs). While no similar arrangement had been put place in relation to the IBE as at June 2015, PM&C has agreed with Supply Nation to expand the list of ABNs it holds from 1 July 2015, and for PM&C to use this list for data extraction from AusTender. The introduction of targets for procurement from Indigenous businesses and the requirement for entities to set aside certain procurements to give Indigenous businesses first option to tender are likely to increase the future use of the IBE. Accordingly, strengthened promotion of the IBE by PM&C among entities will be an important consideration to support the implementation of the changed Indigenous procurement arrangements from July 2015.

### **Chapter 4 – Monitoring Outcomes**

29. The broad aim of the IOP and the IBE has been to increase the employment and business opportunities available to Indigenous Australians generated as a result of the procurement activity of Australian Government entities. To assess the effectiveness of these initiatives over time, a baseline of current use would need to be established and supported by periodic and

reliable reporting of relevant performance data. However, the extent to which Indigenous businesses were included in government procurement supply chains has been difficult for relevant departments to establish due to the lack of a comprehensive and accessible way of identifying Indigenous businesses. In addition there have been variations in the definitions of an Indigenous business<sup>10</sup> used over time.

30. Further, the reporting arrangements for the IOP limited the ability of PM&C to readily obtain information on the use of the IOP and any outcomes being achieved and there were no obligations on the entities managing IOP contracts to actively assess outcomes. The use of exemptions to the CPRs is not required to be reported, and data on the use of exemptions, in general, is not centrally collected. Accordingly, and in line with the voluntary nature of its application, there is currently no centralised capture of data on the use of the IBE. As a result there has been no regular reporting to government on the effect of either initiative in relation to their operation or impact on the desired policy outcomes.

## Summary of entity responses

### Department of the Prime Minister and Cabinet

*The Department agrees with all of the recommendations in the report. The ANAO's recommendations align with the new Indigenous Procurement Policy (IPP) that was jointly released on 25 May 2015 by the Minister for Indigenous Affairs and the Minister for Finance. From 1 July 2015, the IPP will commence, replacing the Indigenous Opportunities Policy (IOP).*

*I appreciate the collaborative approach the ANAO has taken in performing this audit and acknowledge the contribution that your work has made in developing the IPP.*

### Department of Finance

*The Department supported all of the recommendations in the report.*

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10 Supply Nation currently requires 51 per cent Indigenous ownership, management and control for inclusion on its list of certified Indigenous business. The IOP applied a 50 per cent Indigenous ownership requirement from July 2011 to January 2013, and subsequently applied a 51 per cent Indigenous ownership requirement. The IBE defines 'Indigenous business' using a 50 per cent ownership requirement.



## Department of Defence

*Defence acknowledges the recommendations contained in the audit report on the Procurement Initiatives to Support Outcomes for Indigenous Australians.*

*Defence has made a significant contribution to the new Indigenous procurement policy through its membership of the Indigenous procurement cross entity working group that is co-chaired by the Department of Prime Minister and Cabinet and Department of Finance. Defence has also implemented various initiatives to support Indigenous suppliers; such that spending has increased to over \$900 000 in quarters 1 and 2 of Financial Year 2014-15.*

*Defence notes that to obtain entity buy-in, current and future policy and procedures should be practical in their application, otherwise they will be difficult and resource intensive to apply and desired outcomes may not be achieved.*

## Department of Human Services

*The Department of Human Services (the department) notes that there are no recommendations directed to the department. Notwithstanding, the department welcomes the report and considers that implementation of its recommendations will enhance the effectiveness of the Commonwealth Procurement Framework in providing opportunities to Indigenous Australians through government procurement.*

*The introduction of the Indigenous Procurement Policy, which the department is currently assisting the Department of the Prime Minister and Cabinet to develop, will be a significant step in addressing the ANAO recommendations and will assist the department in delivering further outcomes to Indigenous business through its established Supplier Diversity Strategy.*

## Department of Education and Training

*The recommendations in this report are supportive of a whole of government approach aimed at the ongoing improvement for Indigenous Australians in relation to government procurements.*

*The Department of Education and Training looks forward to continuing this work through implementation of the new Indigenous Procurement Policy.*

## **Department of Employment**

*The Department of Employment welcomes the report on Procurement Initiatives to Support Outcomes for Indigenous Australians.*

*The Department of Employment will continue to be actively involved in the implementation of the Indigenous Procurement Policy to improve Indigenous economic development and Indigenous employment. As part of our commitment to Indigenous procurement initiatives, and in collaboration with the Shared Services Centre, the Department has implemented strategies to promote the introduction of the Indigenous Procurement Policy on 1 July 2015.*

*The new Indigenous Procurement Policy includes improved monitoring considerations and the Department is taking steps to improve our procurement monitoring and reporting to include the capture of all Indigenous procurement in accordance with the Indigenous Procurement Policy definitions.*

## **Department of Industry and Science**

*The Department of Industry and Science acknowledges the findings of the ANAO audit on Procurement Initiatives to Support Outcomes for Indigenous Australians and supports the recommendations proposed in the report.*

*The department notes the difficulty in identifying a broad sample of Indigenous businesses and as a result the approach taken was to rely heavily on Supply Nation. The department notes that this approach is likely to underestimate the actual instances of procurement from Indigenous Businesses given that Supply Nation certified suppliers represent a small percentage of Indigenous Businesses.*

## **Australian Taxation Office**

*The Australian Taxation Office (ATO) strongly supports this ANAO report's findings and recommendations. The ATO will work with and support PM&C and Finance on delivering the recommendations.*

*In particular the ATO supports the approach in which agencies take responsibility for achieving the Indigenous Procurement Policy outcomes for their own contracts.*

*The ATO accepts the feedback from Indigenous businesses in the report that application of Indigenous procurement policies generally only occurred when supported by senior leaders in an agency.*

*The ATO's senior leaders actively support the objective of increased Indigenous economic participation through our procurement activities.*

*To support this, the ATO has:*

- Established a Reconciliation Action Plan (RAP) and Supplier Diversity strategy that includes procurement targets,*
- Proactively engaged with suppliers to build sustainable arrangements that incorporate Supply Nation certified suppliers, and*
- Actively sourcing MURU Group paper supplies through our stationery supplier.*

*The ATO's approach and strategy to engage, inform and support Supplier Diversity has received endorsement from Supply Nation and Indigenous businesses.*

## **Supply Nation**

*Supply Nation, on behalf of its Indigenous certified suppliers and corporate and government members welcomes this report and the lessons learnt from the government's history of Indigenous business engagement. Supply Nation and its partners aim to effectively adapt to and enhance the new strengthened Indigenous Procurement Policy, launching 1 July 2015.*

*Supply Nation has begun registering 50 per cent or more Indigenous owned business, which will be listed on a new public directory of Indigenous businesses called Indigenous Business Direct, to launch 1 July 2015. Registered businesses that meet certification criteria (51 % or more owned, managed and controlled) will be encouraged by Supply Nation to become certified. Once certified, the business will be clearly marked as certified with the Supply Nation Certified logo.*

# Recommendations

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## Recommendation No. 1

### Paragraph 2.15

In order to inform implementation arrangements for the Indigenous Procurement Policy the ANAO recommends that PM&C, in consultation with other government entities, review the regional approach of the IOP and, as appropriate, provide advice to the Australian Government on potential alternative models by which the proposed minimum Indigenous participation requirements may be most effectively applied.

**PM&C's Response:** *Agreed*

**Finance's Response:** *Supported*

## Recommendation No. 2

### Paragraph 3.18

In order to better promote the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C, in consultation with Finance, develop a strengthened promotion strategy which takes into account the exemption's potential contribution to broader Indigenous policy outcomes.

**PM&C's Response:** *Agreed*

**Finance's Response:** *Supported*

## Recommendation No. 3

### Paragraph 4.25

In order to better monitor and report on the contracts facilitated by the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C, in consultation with Finance, develop a periodic reporting arrangement, and provide regular advice to the government on the extent of Indigenous business participation in government procurement.

**PM&C's Response:** *Agreed*

**Finance's Response:** *Supported*

# Audit Findings



# 1. Introduction

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*This chapter outlines the policy context for procurement initiatives targeting outcomes for Indigenous Australians. It also provides an outline of the audit objective, criteria and approach.*

## Supporting outcomes for Indigenous Australians through procurement

**1.1** There is a long history of Indigenous organisations receiving grant funding from government, and there has been a relatively high level of participation by Indigenous organisations in the delivery of services on behalf of the Australian Government. However, to date there has been a much lower level of participation by Indigenous entities in procurement opportunities on a commercial basis. In relation to broader efforts to reduce Indigenous disadvantage, successive Australian Governments have sought to make use of government procurement activities to increase employment and training opportunities for Indigenous people, as well as increasing participation by Indigenous businesses as suppliers to government on a commercial basis.

**1.2** Procurement of goods and services is a substantial activity for the Australian Government and in 2013–14, 66 047 procurements were undertaken with a value of \$48.9 billion.<sup>11</sup> The significant purchasing power of government means that, along with the objective of the efficient and effective purchasing of goods and services, procurement policies and actions of governments can influence broader strategic policy objectives. Examples of these strategic policy objectives include better employment outcomes for marginalised groups, improved environmental management outcomes, and the growth of the small and medium business sectors.

**1.3** Through the establishment of Procurement Connected Policies (PCPs) and the inclusion of these into the procurement framework, the Australian Government has sought to leverage off its procurement activities in order to

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11 Department of Finance <http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/> accessed 5 June 2015

support other policy objectives.<sup>12</sup> As noted in the foreword to the Commonwealth Procurement Rules:

The Government is committed to improving access to Government contracts for competitive Small and Medium Enterprises, Indigenous businesses and disability enterprises. Ensuring these suppliers are able to participate in Commonwealth procurement benefits the Australian community and economy.<sup>13</sup>

1.4 Reflecting this sentiment, the Organisation for Economic Co-operation and Development (OECD) has observed that ‘OECD member countries are no longer considering value for money in the strict sense of price and quality as the sole objective of public procurement’ and that OECD members are ‘gradually including more strategic objectives such as support to small and medium enterprises (SMEs), innovation, and environmental considerations.’<sup>14</sup>

## The procurement framework

1.5 The Australian Government’s policy on procurement is contained in the Commonwealth Procurement Rules (CPRs) which are managed and administered by the Department of Finance (Finance). The core element of the CPRs is to promote the use of sound and transparent procurement practices that seek to achieve value for money for the Commonwealth.<sup>15</sup> Division 1 of the CPRs imposes a number of mandatory requirements that apply to all Australian Government procurements, including the need to achieve value for money and the requirement that procurements:

- be non-discriminatory and encourage competition;
- use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and

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12 There are currently 18 Procurement Connected Policies (PCPs) which seek to leverage additional outcomes from Commonwealth procurement, including in the areas of environmental management, gender equity, Indigenous opportunities and disability services. The full list of PCPs is listed at Appendix 3 of this report.

13 Department of Finance, *Commonwealth Procurement Rules*, July 2014, p. 3.

14 Organisation for Economic Cooperation and Development, *Government at a Glance 2013*, p. 129.

15 The CPRs state that “achieving value for money is the core rule of the CPRs. Officials responsible for a procurement must be satisfied, after reasonable enquires, that the procurement achieves a value for money outcome”. See Department of Finance, *Commonwealth Procurement Rules*, July 2014, p. 13.



- be commensurate with the scale and scope of the business requirement.

**1.6** As the value of procurement increases, additional mandatory requirements for procurements are applied at certain financial thresholds. Division 2 of the CPRs applies to non-corporate Commonwealth entities for all procurements of \$80 000 and over (for procurement of construction services the threshold is \$7.5 million). Among other things, Division 2 sets out the requirements for approaching the market, including the requirements for Request for Tender (RFT) documentation, and time limits for which an approach to market must remain open.

## Exemptions

**1.7** Under certain circumstances, procurements are exempted from the additional requirements of Division 2 of the CPRs. There are 17 exemptions identified in the 2014 CPRs, including the Indigenous Business Exemption (IBE) (see Appendix 2 of this report). Finance provides guidance to Australian Government entities on all procurement matters, including in relation to the exemptions. However, as exemptions are generally seeking to achieve outcomes in areas where other entities have the policy responsibilities, the role of promotion (as distinct from providing interpretive guidance) does not necessarily fall to Finance. For example, the Department of Social Services has taken a lead role in the promotion of and monitoring outcomes under Exemption 16 the Disability Enterprise Exemption, and is supported in this role with procurement data provided to it by Finance.

## Procurement connected policies seeking to enhance economic outcomes for Indigenous Australians

**1.8** The potential for government procurement to support economic participation opportunities for Indigenous Australians has been recognised since at least 1991 when the Royal Commission into Aboriginal Deaths in Custody made two recommendations seeking to leverage outcomes from Commonwealth procurement. These recommendations were that governments:

- adopt a fair employment practice of preferencing tenderers for government contracts who are able to demonstrate that they have implemented a policy of employing Indigenous people; and
- award contracts for public works in remote Indigenous communities to local tenderers and those that provide training and employment opportunities to the local community.

**1.9** The resulting policies adopted by the Australian Government introduced the requirement for government entities to include clauses:

- in their requests for offer, asking tenderers to indicate the employment opportunities they would provide for Indigenous people if they were to gain the contract; and
- in contracts with winning suppliers specifying their responsibilities in this regard.<sup>16</sup>

**1.10** Subsequently, the Commonwealth Procurement Guidelines<sup>17</sup> released in 1998 required entities managing procurements over certain financial thresholds (\$5 million or \$6 million for construction projects) in locations where there were significant Indigenous populations and where there were limited private sector employment and training opportunities for Indigenous people, to:

- consider employment opportunities for training and employment for local Indigenous communities and document the outcomes;
- consider the capabilities of local Indigenous suppliers when researching sources of supply; and
- consult the Aboriginal and Torres Strait Islander Commission and/or the relevant community council or group, as appropriate, in the planning stages of proposed projects.<sup>18</sup>

These requirements became known as the Indigenous Opportunities Policy (IOP).

**1.11** Further attention to achieving Indigenous economic outcomes through procurement was given in 2008 by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. In its report *Open For Business*, the committee made the following recommendations:

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16 Department of Administrative Services, *Securing a Better Future – Evaluation of Commonwealth Procurement Policies Arising out of the Royal Commission into Aboriginal Deaths in Custody*, February 1996, p. 48.

17 In the 2012 the *Commonwealth Procurement Guidelines* (CPGs) were re-named the *Commonwealth Procurement Rules* (CPRs).

18 Department of Finance and Administration, *Commonwealth Procurement Guidelines*, March 1998, p. 21.

- Recommendation 1:
  - that the Australian Government conduct a biennial national review of Indigenous businesses in Australia, collating data on industry sector, business size and structure, location and economic contribution.
- Recommendation 9:
  - that the Australian Government establish a series of target levels of government procurement from Indigenous businesses, and require all Australian Government agencies and authorities to nominate a target; and
  - that all Australian Government agencies and authorities be required to report in their annual report the procurement level from Indigenous businesses and that future consideration should be given to introducing an escalating series of mandated procurement levels over the next decade.
- Recommendations 13 and 14:
  - that the Australian Government fund an Indigenous Minority Supplier Development Council; and
  - that government agencies with significant procurement budgets become members of the Supplier Council and direct a targeted proportion of their budget to Indigenous suppliers through the supplier council.<sup>19</sup>

**1.12** The then Australian Government did not formally respond to the Committee's recommendations,<sup>20</sup> although an Indigenous Minority Supply Council (now known as Supply Nation) was subsequently developed in 2009 as part of the National Partnership Agreement on Indigenous Economic Participation agreed by the Council of Australian Governments (COAG). In addition to the establishment of the supply council, COAG resolved to strengthen 'government provisions ... requiring successful contractors to ... implement

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19 Parliament of the Commonwealth of Australia, *Open for Business: Developing Indigenous Enterprises in Australia*, October 2008, Recommendation 9, page xvii.

20 Parliament of the Commonwealth of Australia, *House of Representatives Committees*. Available from: <[www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=/asia/reports.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=/asia/reports.htm)> [Date accessed: 18 February 2015].

Indigenous training and employment and supplier strategies<sup>21</sup>. For the Australian Government, the IOP already provided a framework largely consistent with these commitments, although the Government agreed to revise the IOP to further strengthen its implementation.

## **The Indigenous Opportunities Policy 2011**

**1.13** The revised IOP, formally introduced in July 2011, required suppliers to government to develop and implement Indigenous Training, Employment and Supplier Plans (IOP Plans) that included commitments on the provision of Indigenous training, employment and business opportunities. IOP plans were to be in place for businesses that win Australian Government contracts over \$5 million (or \$6 million for construction) in regions where there were significant Indigenous populations.<sup>22</sup> Businesses that won contracts to which the IOP applied were to report annually on the implementation of their IOP plans and the results achieved.

**1.14** The revised IOP adopted the same thresholds (\$5 million for all non-construction contracts, and \$6 million for construction contracts) as the 2003 IOP, but where the earlier policies only asked entities to consider and to consult with respect to Indigenous outcomes, the 2011 IOP formally required suppliers to have an approved IOP plan, to implement it and to report against outcomes annually. In the development of the strengthened IOP, one of the initial proposals considered by the Department of Education Employment and Workplace Relations (DEEWR) was to require all suppliers with contracts over the threshold values to develop and implement approved IOP Plans. However this initial proposal was not supported, and a regional approach was adopted which required the establishment of the IOP regions.

**1.15** The rationale for identifying specific IOP regions stemmed from the Singapore-Australia Free Trade Agreement (SAFTA) which was signed in 2003. International free trade agreements generally require that government procurement practices do not unreasonably restrict the ability of overseas businesses from tendering competitively for contracts, but can include various exemptions to this principle. The SAFTA includes an exemption allowing the

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21 Council of Australian Governments, *National Partnership Agreement on Indigenous Economic Participation*, December 2008, p. 6.

22 For the administration of the IOP, a region 'with a significant Indigenous population' was one where the percentage of the population which identifies as Indigenous is equal to or above the national average.

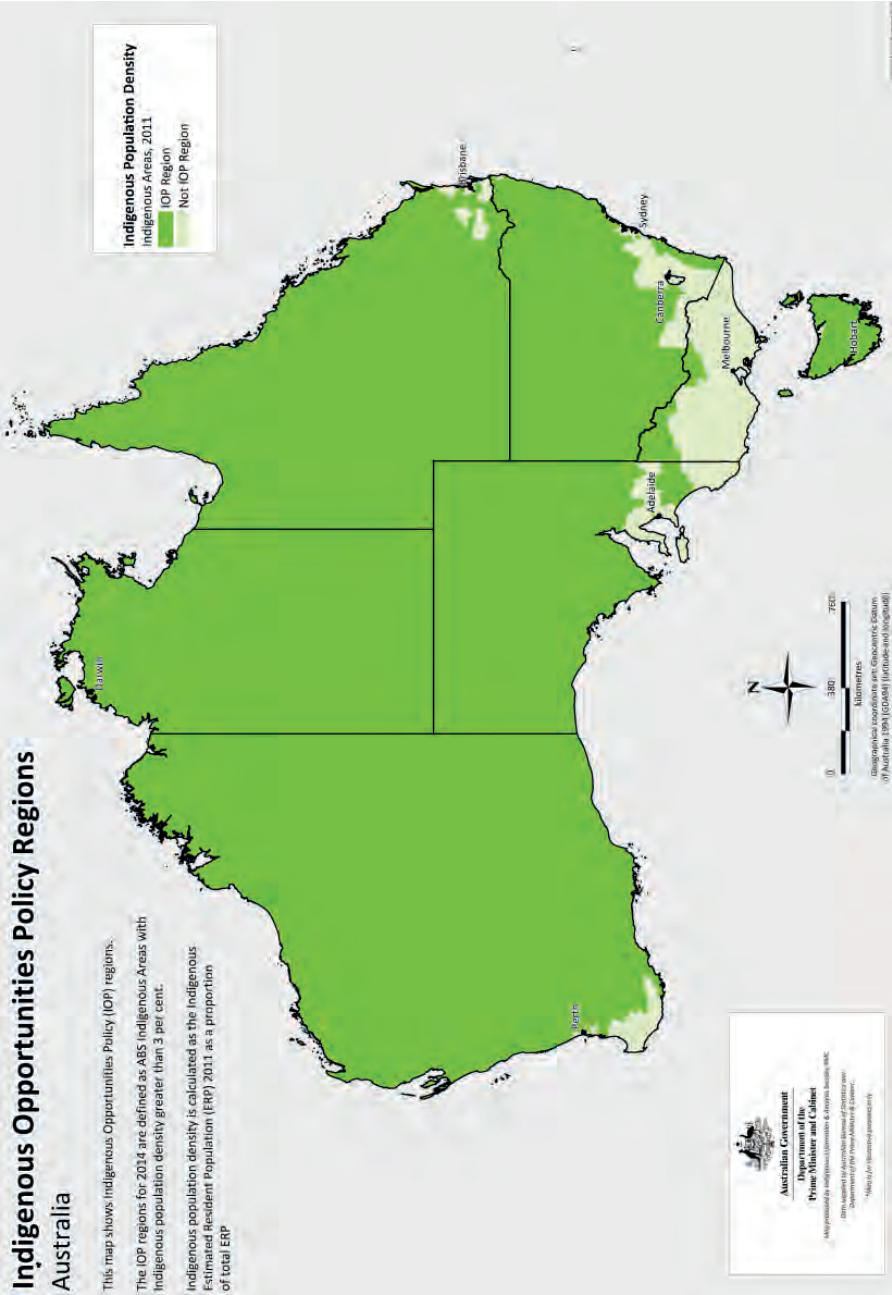
use of procurement measures to promote 'opportunities for Indigenous persons' noting that '...nothing [in the Government Procurement chapter of the agreement] shall prevent Australia from promoting employment and training opportunities for its Indigenous people in regions where significant Indigenous populations exist.'<sup>23</sup>

**1.16** A region was defined as an IOP region if the Indigenous population for the area was equal to or above the national average of three per cent. IOP regions, as at April 2015, are shown in Figure 1.1. In most urban areas of Australia the Indigenous population is lower than the national average, and therefore these areas were generally not identified as IOP regions, although some localised areas within some cities had been identified as IOP regions, for example some parts of western Sydney.

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23 Singapore-Australia Free Trade Agreement (SAFTA), Chapter 6 article 15. The SAFTA also includes a general exemption in relation to industry development through measures to assist small and medium enterprises access the government procurement market.

**Figure 1.1: Indigenous Opportunities Policy Regions as at April 2015**



Source: PM&C.

Note Additional maps, showing some local areas within major cities which were identified to be in IOP regions are included at Appendix 6.

## The Indigenous Business Exemption to the Commonwealth Procurement Rules

**1.17** In parallel to the development of the revised IOP, the Australian Government also introduced in 2011 an exemption in the CPRs. The Indigenous Business Exemption (IBE) was proposed by the Department of Finance (Finance) in response to some of the criticisms<sup>24</sup> of the draft revisions to the IOP proposed in 2010, and was intended to broaden the geographic footprint and the applicable financial thresholds of the initiatives.

**1.18** All procurements are required to meet the core principles of the CPRs with higher value procurements also required to meet additional conditions. The exemptions agreed in the CPRs allow, in certain circumstances, procurements over the relevant financial threshold, (\$80 000 generally and \$7.5 million for construction) to be conducted without requiring the additional conditions to be met and, in effect, allow these procurements to be undertaken under the more streamlined conditions that apply to procurements below the financial thresholds. This can include entities approaching one or more suppliers of their choice to tender without the need to make an open approach to market.

**1.19** The IBE is not limited by any regional geographical boundaries, and, accordingly, provides a mechanism for entities to use procurement to deliver outcomes for Indigenous Australians for any procurement above the \$80 000 threshold. As Division 2 of the CPRs does not apply to procurements below \$80 000, the exemption in effect, allows for the limited tender contracting of Indigenous owned Small and Medium Enterprises (SMEs) for procurements at any value.

**1.20** At the time of its introduction, the objective of the IBE was described as being to:

- provide increased opportunities for greater access to the Australian Government procurement market for all Indigenous SMEs;
- raise awareness among officers undertaking procurement of the (then) Government's commitment to the Closing the Gap strategy on Indigenous disadvantage; and

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<sup>24</sup> The proposed structure and design of the revised IOP was distributed to entities and stakeholders for consultation in 2010. Some comments received on the proposed drafts included concerns relating to the proposed definition of Indigenous business, the limitations imposed by the value thresholds and the geographic regions, the absence of establishing agreed targets, and the risk that the model focused on plans rather than on results.

- complement implementation of the enhanced IOP administered by the then DEEWR.<sup>25</sup>

## Roles and responsibilities for the Indigenous Opportunities Policy and Indigenous Business Exemption

### Department of the Prime Minister and Cabinet

1.21 Responsibility for the overall administration of the IOP initially rested with the Department of Education, Employment and Workplace Relations (DEEWR) but was transferred to the Department of the Prime Minister and Cabinet (PM&C) as part of machinery of government changes in September 2013. As a result of these changes PM&C became responsible for Indigenous policy advice and program implementation. In relation to the IOP, PM&C was responsible for:

- determining the IOP regions;
- development of the IOP website and IOP guidelines;
- promotion of the IOP, and responding to requests relating to the IOP;
- reviewing IOP Plans and Implementation and Outcomes Reports;
- monitoring implementation of the IOP by entities and by businesses, including conducting audits of the implementation of a sample of IOP Plans; and
- reporting annually to the government on the outcomes achieved under the policy.

### Department of Finance

1.22 Finance's core functions include: maintaining the financial framework, providing advice on the Australian Government's procurement policy framework, and improving procurement outcomes through whole of Australian Government arrangements. While Finance is responsible for the operation of the overall procurement framework it does not have an explicit role in relation to

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25 Department of Finance and Deregulation, Finance Circular No. 2011/02, *Commonwealth Procurement Guidelines Exemption for Indigenous Businesses*, 19 May 2011.



specific PCPs, or targeted exemptions, or their use, other than in relation to procurement directly managed by Finance.

## Role of procuring entities

**1.23** Non-corporate Australian Government entities are required to adhere to the CPRs, including the requirements to conduct non-discriminatory, and where possible, competitive procurement. Entities are also expected to contribute to broader policy outcomes by appropriately applying procurement connected policies and in the appropriate use of relevant CPR exemptions in their procurement activities.

## Supply Nation

**1.24** Supply Nation (formerly known as the Australian Indigenous Minority Supply Council) is a not-for-profit organisation which seeks to:

- facilitate the integration of Indigenous businesses into the supply chain of private sector corporations and government entities; and
- foster business to business transactions and commercial partnerships between corporate Australia, government entities and Indigenous business.

**1.25** Supply Nation receives some funding from the Australian Government as well as generating membership fees from corporate and government entities. As at April 2015, 336 businesses were certified as Indigenous suppliers and 35 Australian Government entities were registered with Supply Nation as members. A further 137 businesses were corporate members and 4 were state or local government entities.

## Indigenous Procurement Policy implementation

**1.26** In May 2015, in part as a response to the *Creating Parity*<sup>26</sup> report and its recommendations, the Australian Government released guidelines for the new Indigenous Procurement Policy (IPP) which commenced 1 July 2015.

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26 The Australian Government commissioned Mr Andrew Forrest to undertake a review of Indigenous training and employment. The *Creating Parity* report, completed in August 2014, includes a number of recommendations relating to government procurement initiatives.

**1.27** The key changes introduced by the IPP include:

- the adoption of a target of 3 per cent<sup>27</sup> of all new procurement by Australian Government portfolios from Indigenous owned businesses, and for achievement against the targets to be reported publicly;
  - for the purpose of contributing to the portfolio targets, contracts with Indigenous businesses, sub-contracts entered into with an Indigenous business by a supplier to government, and Joint Ventures where 25 percent equity is held by Indigenous Australians, are included. Additionally Indigenous suppliers with multi-year contracts contribute to the target in each year of the contract and purchases made by credit cards also can be counted towards the target.
- an obligation for procuring entities to:
  - set aside some contracts, for which the first option to tender goes to Indigenous businesses; and
  - include a range of ‘minimum Indigenous participation requirements’ in the procurements they undertake;
- a requirement for suppliers to report against the minimum Indigenous participation requirements to the procuring entity as a component of their contract, rather than to PM&C; and
- Supply Nation developing a new, publicly available listing of Indigenous businesses that include 50 per cent owned businesses.

**1.28** These changes have the effect of replacing the IOP but not the IBE which will continue to be in place. A transitional period requires entities to monitor commitments made by businesses under previously approved IOP plans and which are required to be implemented under contracts which continue beyond 1 July 2015. PM&C anticipates that the IPP will increase the volume of opportunities created for Indigenous Australians and support improved monitoring of the extent to which Indigenous owned businesses are included in the supply chains of the Australian Government. PM&C also anticipates that use of the IBE will increase as a result of the IPP. As the IPP took effect from

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27 The target will increase annually from 0.5 per cent in 2015–16 to 3 per cent in 2019–20. The target is based on the number of contracts by volume, however entities are expected to be able to adopt a target by value of procurement using the average value of their contracts, under some conditions.

1 July 2015 the ANAO has not examined its proposed operation in detail, but has considered aspects of it insofar as the experience of the IOP and IBE is relevant to the implementation arrangements of the IPP.

## Audit approach

### Audit objective, criteria and scope

**1.29** The objective of the audit was to assess the effectiveness of the administration of procurement initiatives to support opportunities for Indigenous Australians.

**1.30** To conclude against this objective the ANAO adopted the following broad criteria:

- the Indigenous Opportunities Policy, (IOP) was effectively administered and monitored by PM&C and used appropriately by entities;
- the Indigenous Business Exemption (IBE) under Division 2 of the CPRs is appropriately used by entities and supported by relevant guidance, monitoring and reporting; and
- the effectiveness of the IOP and the IBE in terms of supporting Indigenous economic participation was periodically analysed by PM&C and Finance and the government provided with this analysis.

**1.31** The scope of the audit included:

- the application of the IOP between July 2011 and March 2015 by selected Australian Government entities and its overall administration by PM&C, and formerly by DEEWR; and
- the use of the IBE in the CPRs by selected Australian Government entities and support for the use of the exemption by Finance since 2011.

**1.32** The main audited entities were the Department of the Prime Minister and Cabinet and the Department of Finance. In order to assess the practical application of the policies, the ANAO also examined relevant procurement activities of the following entities:

- Department of Defence (Defence);
- Australian Taxation Office (ATO);
- Department of Human Services (DHS);

- Department of Employment (Employment);
- Department of Industry and Science (Industry); and
- Department of Education and Training.

## Audit methodology

1.33 The audit methodology included an examination of the relevant policy and operational documents held by PM&C relating to the IOP and the IPP, and those held by Finance relating to the IBE; an analysis of procurements and procurement related approaches and communication made by a range of entities including in relation to the IOP and the IBE; analysis of AusTender data and IOP outcomes reports; and interviews with a number of Indigenous businesses and Australian Government entities.

1.34 The audit was conducted in accordance with the ANAO’s Auditing Standards at a cost to the ANAO of approximately \$384,900.

## Structure of the report:

1.35 The remainder of this report is structured as follows:

**Table 1.1: Structure of the report**

Chapter	Overview
2. Application of the Indigenous Opportunities Policy	This chapter outlines the key elements of the Indigenous Opportunities Policy (IOP), the roles and responsibilities allocated between procuring entities and the Department of the Prime Minister and Cabinet (PM&C), the guidelines developed and the issues relating to the application of the IOP by selected entities.
3. Use of the Indigenous Business Exemption.	This chapter outlines the key elements of the Indigenous Business Exemption (IBE), the roles the Department of Finance (Finance), and the extent to which the exemption has been used by entities.
4. Monitoring outcomes	This chapter examines how activity under the IOP and the IBE has been monitored, assessed and reported to government.

## 2. Application of the Indigenous Opportunities Policy

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*This chapter outlines the key elements of the Indigenous Opportunities Policy (IOP), the roles and responsibilities allocated between procuring entities and the Department of the Prime Minister and Cabinet (PM&C), the guidelines developed and the issues relating to the application of the IOP by selected entities.*

### Introduction

**2.1** In 2013–14 the Australian Government conducted 66 047 procurements to purchase goods and services worth approximately \$48.9 billion.<sup>28</sup> The Indigenous Opportunities Policy (IOP) sought to leverage this procurement activity to create greater opportunities for Indigenous people where government procurement occurred in regions which have Indigenous populations above the national average.<sup>29</sup> Expected broad outcomes from the IOP related to improved training and employment opportunities for local Indigenous populations and increased participation by Indigenous businesses in supplying goods and services to government contractors. In developing the framework for the implementation of the IOP, a range of factors were considered which shaped the nature of implementation arrangements. This chapter examines the development of the IOP framework, the roles and responsibilities of Australian Government entities and the application of the IOP. While the IOP has largely been replaced by new policy arrangements that commenced from 1 July 2015, some aspects of the IOP have carried through and the overall experience of its implementation is relevant to informing the implementation of the new Indigenous Procurement Policy.

### The Indigenous Opportunities Policy

**2.2** The IOP initiative sought to create indirect opportunities by requiring suppliers (Indigenous and non-Indigenous) to government entities to employ and train Indigenous people and to contract with Indigenous owned businesses as commercial suppliers in contracts worth over \$5 million (\$6 million in relation

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28 Department of Finance <http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/> accessed 5 June 2015

29 A map showing the IOP regions is included in Chapter 1 (Figure 1.1).

to construction). Suppliers that won government contracts to which the IOP applied were to have approved Indigenous Training, Employment and Supplier Plans (IOP Plans) in place, which outlined how they intended to provide opportunities for Indigenous Australians during the period of the contract.

## **The framework for implementing the Indigenous Opportunities Policy**

**2.3** As noted in Chapter One, the IOP was implemented from 1998 with revisions made at various points to further refine it. Overall the design of the IOP, as it operated from 2011, required the balancing of a number of competing tensions. These included the:

- aspiration that tangible opportunities were generated for Indigenous Australians in the locations where government contracts occurred, and as a direct result of government procurement and contract terms;
- aspiration that contracted suppliers implemented strategies relevant to local circumstances so that Indigenous opportunities were maximised;
- policy imperative to reduce red tape, and/or not add red tape unless the benefits outweighed the cost;
- need for procurement processes to be time efficient (that is, limit any delays arising from any additional procurement processes);
- desire to limit any additional burden placed on procuring entities and, in particular, on procurement staff; and
- requirements derived from the Singapore–Australia Free Trade Agreement (SAFTA).<sup>30</sup>

**2.4** Key features of the final IOP model, agreed by the Australian Government, included the allocation of the majority of all implementation and monitoring responsibility to a single entity known as the IOP Administrator, with fewer responsibilities placed on the Australian Government entities undertaking procurement activities. Initially the IOP Administrator was the former Department of Education, Employment and Workplace Relations

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30 The Singapore-Australia Free Trade Agreement (signed in 2003) allows an exemption to the broad principle of non-discriminatory access to government contracts for measures which promote employment and training opportunities for Indigenous Australians, but only in regions where there are significant Indigenous populations. This was interpreted to require that the IOP be limited to apply only in regions which had an Indigenous population above the national average.

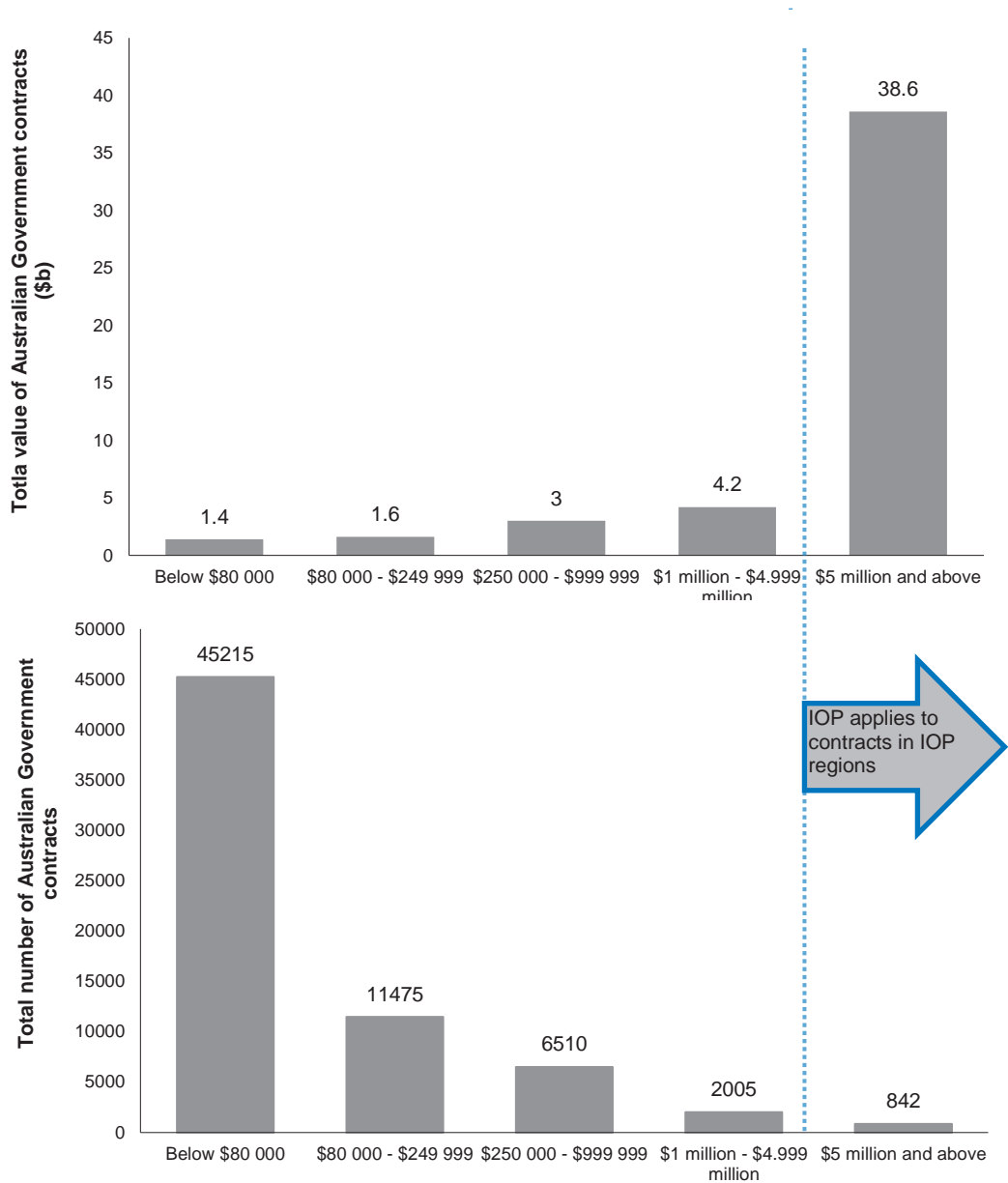
(DEEWR) but since September 2013 the role was fulfilled by the Department of the Prime Minister and Cabinet (PM&C). The responsibility placed on entities conducting procurements to which the IOP applied was limited to taking steps that ensured suppliers awarded contracts had approved IOP plans in place where applicable.

**2.5** Other key features included the application of a financial threshold of \$5 million (\$6 million for construction contracts) above which IOP requirements applied and the limiting of the IOP to certain geographic regions. By establishing these relatively high financial thresholds, the IOP sought to target larger businesses potentially more able to accommodate the IOP obligations. However, this threshold also had the effect of limiting the IOP to relatively few potential contracts. Of the 66 047 procurements undertaken by Australian Government entities in 2013–14, only 842 were for amounts above the financial threshold for the IOP, across all regions, as shown in Figure 2.1. Available data does not allow the ready identification of how many of these 842 contracts were in IOP regions, but as there were only 197 IOP Plans approved<sup>31</sup> since 2011, it is reasonable to assume that only a minority of these contracts related to the IOP regions.

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31 Note: Approved plans did not relate directly to contract awarded. Some businesses with an approved IOP plan may have secured multiple contracts to which the IOP related (potentially across multiple entities), while others may not have been awarded any contracts.

**Figure 2.1: Australian Government contracts by value and volume in 2013–14**



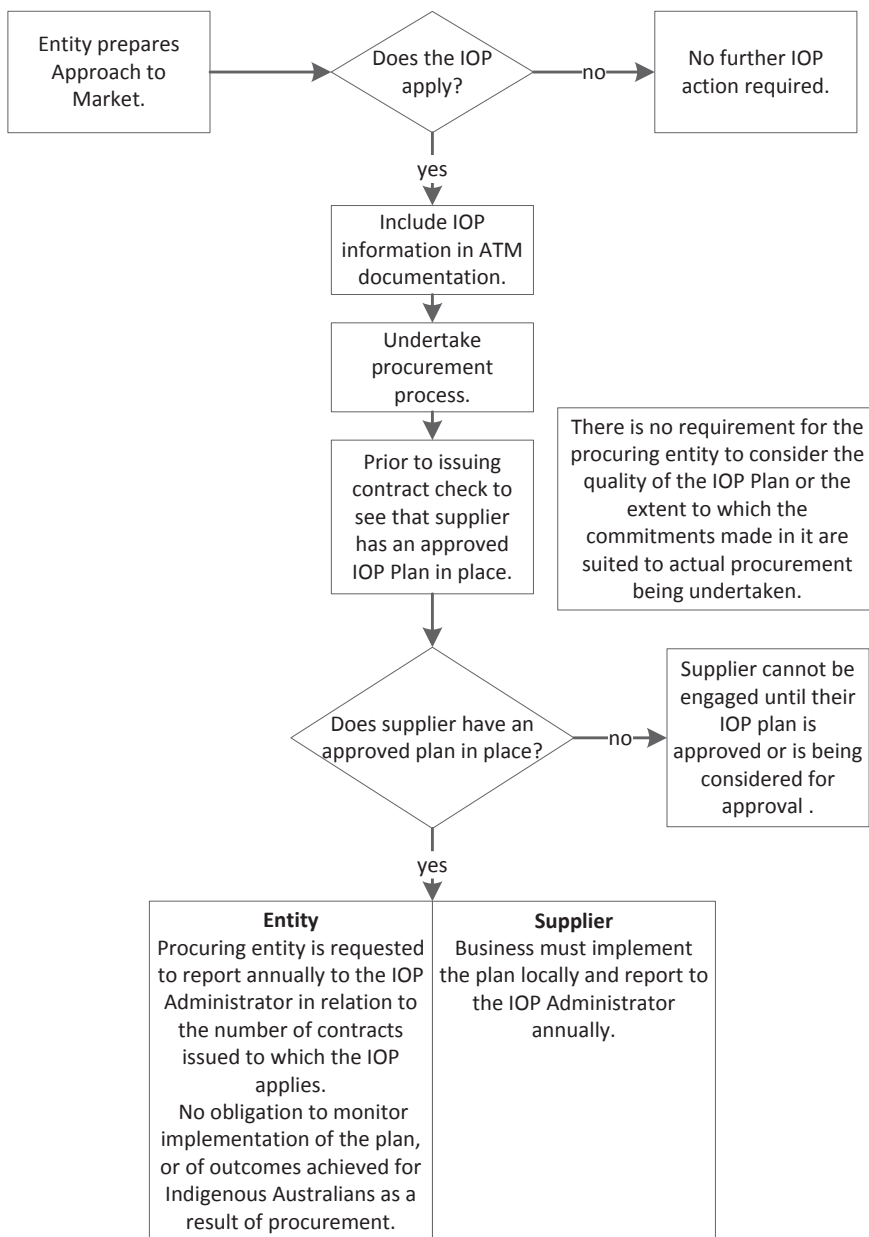
Source: ANAO analysis.



**2.6** Additionally, the geographic approach of the IOP restricted the contracts to which the IOP was applicable to those areas where the contracted activity occurred in regions with higher than average Indigenous populations. This feature further reduced the number of contracts to which the IOP applied. The IOP regions are shown in Chapter 1 (Figure 1.1).

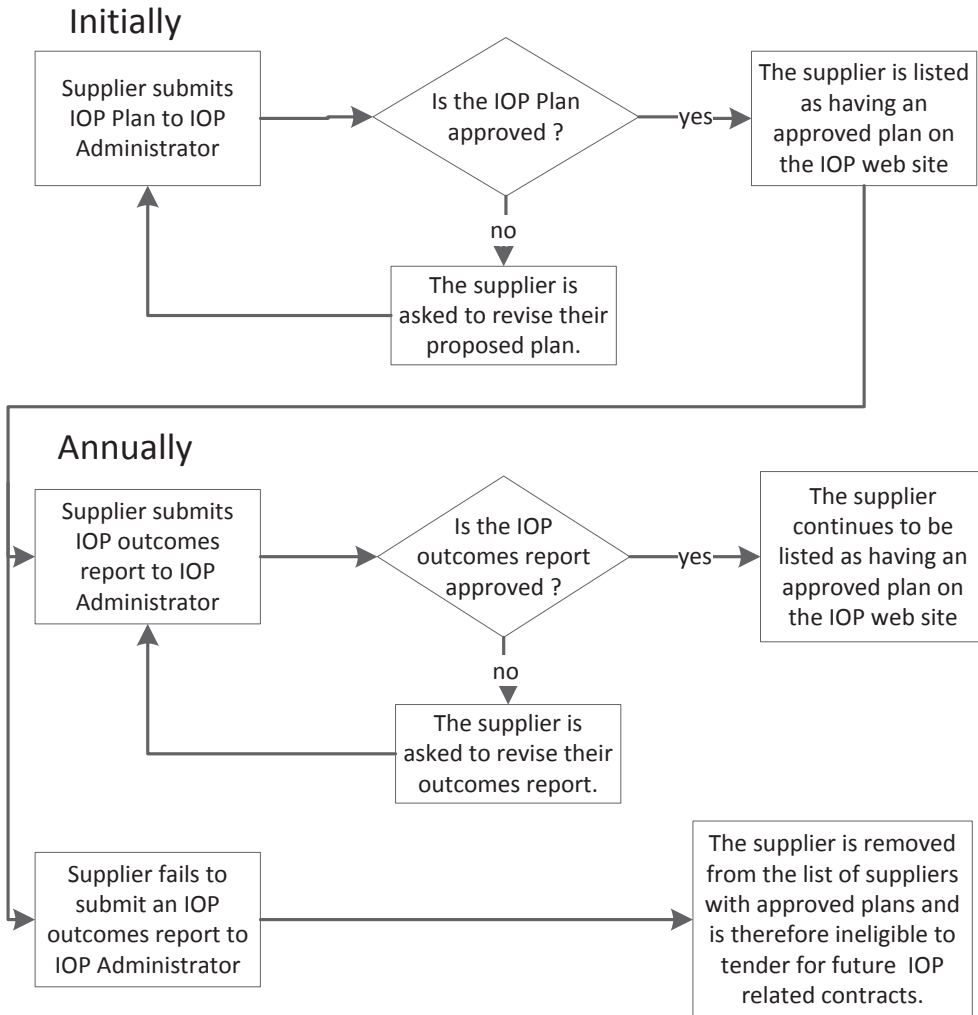
**2.7** Entities undertaking procurement, PM&C and businesses tendering for and executing government contracts each played roles in the IOP. The IOP related processes which were required to be followed by procuring entities and their suppliers are shown in Figure 2.2. The IOP related processes which were required to be followed by PM&C and the businesses seeking to tender or supply services to procuring entities are shown in Figure 2.3. Some of the steps in the IOP processes could occur concurrently or precede others. For example, businesses could submit their IOP plans to PM&C at any time and did not need to wait for an Approach to Market (ATM) to be issued.

**Figure 2.2: Indigenous Opportunities Policy Flow Chart for procuring entities and suppliers**



Source: ANAO based on the IOP Guidelines.

**Figure 2.3: Indigenous Opportunities Policy flow chart for the Department of the Prime Minister and Cabinet and suppliers**



Source: ANAO based on the IOP Guidelines.

**2.8** Suppliers were able to submit their proposed plans to PM&C either prior to or during a tender process or, in some cases, once they had been advised they were the successful tenderer. Businesses contracted under IOP contracts were to implement their IOP Plans locally and report on the outcomes achieved to PM&C annually. The design of the IOP noted that businesses which failed to implement or report on their plans would be deemed ‘non-compliant’, have their IOP Plans suspended by PM&C, and would not be permitted to win future Australian Government contracts to which the IOP applied.

2.9 PM&C maintained the list of suppliers with approved IOP Plans but the onus was on procuring entities to check the list of businesses with approved plans in place prior to issuing a contract. However there was no other mechanism in place to alert an entity that a previously approved plan had been suspended or had expired, other than by contacting PM&C on a case by case basis. Similarly, where a supplier had been deemed to be no longer eligible for future contracts, as a result of non-compliance, entities relied on being advised of this by PM&C. Procuring entities were not required to incorporate the commitments made in the IOP Plan into the contract with the supplier, nor to monitor the outcomes generated for Indigenous Australians through their procurement activities. Under the Indigenous Procurement Policy (IPP), entities are now required to include minimum Indigenous participation requirements as a component of some contracts<sup>32</sup>, to monitor compliance with those agreed terms, and to record the contractor performance in a central database.

## Geographic application of the Indigenous Opportunities Policy

2.10 The decision to restrict the IOP's application to some regions and not others was originally based on an exemption in the Singapore Australia Free Trade Agreement (SAFTA). International free trade agreements generally require that government procurement practices do not unreasonably restrict the ability of overseas businesses from tendering competitively for contracts, but can include various exemptions to this principle. As outlined in paragraph 1.15, the SAFTA included an exemption allowing the Australian government to use measures to promote 'employment and training opportunities for its Indigenous people in regions where significant Indigenous populations exist'. As a result, the implementation of the IOP was restricted to geographic regions where the Indigenous population is equal to or above the national average.

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32 For high value contracts (over \$7.5 million) where:

- more than half of the contract activity relates to selected industry areas where Indigenous businesses have an identified capability; or
- where the contracted activity occurs in a designated 'Remote Area'; then

entities and contractors are required to negotiate whether the Indigenous participation requirements of the IPP (such as percentage of Indigenous employment, a the percentage of Indigenous supply of goods and services) apply to the specific contract being negotiated or to the whole of the contracted business' enterprise.

Additionally the IPP states that all other contracts (below \$7.5 million) should include a requirement for the contractor to use reasonable endeavours to increase their employment of Indigenous Australians and their use of Indigenous suppliers in their supply chains in the delivery of the contract.

**2.11** A 2014 study into the geographic spread of economic activity in Australia<sup>33</sup> showed that the vast majority of economic activity occurred in urban areas, and that within urban areas there was a further concentration of activity in Central Business District (CBD) areas. While there were some areas within major urban areas which had been designated as IOP regions, generally most urban areas were not included in the IOP.

**2.12** Furthermore, 2011 census data indicates that 27 per cent of Indigenous Australians resided outside of the regions in which the IOP applied. Similarly, Indigenous businesses were distributed both inside and outside IOP regions. For example, Indigenous Business Australia data reflects that 29 per cent of its current business loan clients were located in major cities<sup>34</sup> as at May 2015, and may therefore have been located outside the IOP.

**2.13** The SAFTA exemption specifically refers to procurement efforts to promote *employment and training* for Indigenous people in some regions. Advice provided to DEEWR in 2009 advised that the SAFTA does not prevent the Australian Government from using procurement to promote the development of an Indigenous business sector by targeted preferential use of *Indigenous businesses*, so long as they were SMEs. In this respect there is a specific clause in the SAFTA that allows Australian Government procurement policies to promote industry development including through measures to assist Small to Medium Enterprises (SMEs) (without specifying any particular type) to gain access to the government procurement market. However, the option to ‘un-couple’ the employment component from the business support component of the IOP, in order to maximise opportunities for Indigenous businesses, was not canvassed amongst entities in developing the IOP model, nor was an ‘un-coupled’ proposal taken to the Australian Government for consideration.

**2.14** In view of the experience of entities to date, there would be merit in PM&C further reviewing the regional approach to determine the conditions under which the mandatory Indigenous participation requirements are most effectively applied under the Indigenous Procurement Policy.

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33 Grattan Institute, *Mapping Australia's Economy: Cities as engines of prosperity*, July 2014, p. 8.

34 The IOP regions did not align directly with the more commonly used remoteness categories, such as remote, very remote, inner regional, outer regional and major cities. Consequently, while most of the regions classified as major cities were outside of the IOP regions there were some locations which were in a ‘major cities’ by remoteness, and were also inside the IOP region.

## Recommendation No.1

**2.15** In order to inform implementation arrangements for the Indigenous Procurement Policy the ANAO recommends that PM&C, in consultation with other government entities, review the regional approach of the IOP and, as appropriate, provide advice to the Australian Government on potential alternative models by which the proposed minimum Indigenous participation requirements may be most effectively applied.

### Department of the Prime Minister and Cabinet:

**2.16** *PM&C agrees with this recommendation. On 25 May 2015, the Minister for Indigenous Affairs and the Minister for Finance, released policy guidelines for a new Indigenous Procurement Policy (IPP). The IPP will take effect on 1 July 2015 and will replace the Indigenous Opportunities Policy (IOP). The IPP was developed through extensive engagement with government entities and the regional approach that applied under the IOP was carefully reviewed. As a result of this review, the IPP takes a new approach to achieve better procurement outcomes for Indigenous businesses and simpler administration for government entities. Under the new approach, all contracts in remote Australia will be set aside for Indigenous businesses, together with all contracts valued between \$80,000 and \$200,000. The detailed IPP guidelines include clear guidance for agencies to assist them to determine whether a contract is in remote Australia.*

### Department of Finance:

**2.17** *Supported. The new Indigenous Procurement Policy, released on 25 May 2015, was developed by PM&C in close consultation with Finance and other key procuring entities. The regional focus of the previous policy has been replaced with minimum Indigenous participation requirements for high value contracts in eight key industry sectors known to have high Indigenous employment. Additionally, the new policy recognises an opportunity for additional Indigenous employment in remote areas, and includes additional requirements for suppliers delivering contracts in those areas.*

**2.18** The IPP, implemented on 1 July 2015, includes<sup>35</sup> minimum requirements for Indigenous participation (to be negotiated relating to either Indigenous employment or Indigenous supplier volumes, or both) for high value contracts (over \$7.5 million) where:

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35 The mandatory minimum requirements of the IPP do not apply to contracts that are subject to paragraph 2.67 of the Commonwealth Procurement Rules, which deals with measures for international peace and security, human health, essential security interests and national treasures.

- more than half of the contract activity relates to industries identified by the policy;<sup>36</sup> or
- where the contracted activity occurs in a designated 'Remote Area'<sup>37</sup>.

**2.19** Additionally the IPP states that all other contracts (below \$7.5 million) 'should include a requirement for the contractor to use reasonable endeavours to increase their employment of Indigenous Australians and their use of Indigenous suppliers in their supply chains in the delivery of the contract'. Although there are some differences to the previous IOP requirements, other aspects are broadly similar and periodic assessment of entities' experience in implementation of the IPP requirements will be beneficial.

## **Administration of the Indigenous Opportunities Policy by the Department of the Prime Minister and Cabinet**

**2.20** The role of IOP Administrator was performed by PM&C between September 2013 and 30 June 2015. The main responsibilities of the IOP Administrator were to:

- determine the IOP regions;
- develop the IOP website and IOP guidelines;
- promote the IOP, and respond to requests relating to the IOP;
- review IOP Plans and Implementation and Outcomes Reports;
- monitor implementation of the IOP by entities and by businesses, including conducting audits of the implementation of a sample of IOP Plans; and
- report annually to the government on the outcomes achieved under the policy.

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36 As at 25 May 2015 the industry areas covered by the IPP Minimum indigenous participation requirements were: building construction and maintenance services; transportation, storage and mail services; education and training services; Industrial cleaning services; farming and fishing and forestry and wildlife contracting services; editorial and design and graphic and fine art services; travel and food and lodging and entertainment services; politics and civic affairs services.

37 Maps of the areas classified as 'Remote Areas' under the IPP are to be made available via the IPP web site.

**2.21** While the IPP effectively replaced the IOP from 1 July 2015, PM&C has continued to undertake similar roles in relation to the IPP, with the exception of the review of IOP Plans and related outcomes reports.

**2.22** The ANAO considered the effectiveness of some of the key responsibilities of PM&C in the role of IOP Administrator, including:

- developing the IOP website and IOP guidelines;
- promoting the IOP, and responding to requests relating to the IOP;
- reviewing IOP Plans and Implementation and Outcomes Reports; and
- monitoring implementation of the IOP by entities and by businesses.

**2.23** PM&C's reporting to government is examined in Chapter 4.

### **Developing the Indigenous Opportunities Policy website**

**2.24** To support entities, PM&C (and previously the then DEEWR) developed information that outlined how to apply the policy and made this publicly available on the Department of Employment<sup>38</sup> (Employment) website. This website had a dedicated Indigenous Opportunities Policy section which, in addition to providing the IOP guidelines, presented information for both entities and suppliers to assist in determining IOP eligibility and in applying the policy. Most notably, the website provided the following supporting information:

- maps showing IOP regions; (see Chapter 1 Figure 1.1 for a copy of the national IOP map. Additional maps are available for each major urban area, showing localised areas within which the IOP applied, some of which are included in Appendix 6 of this report)
- a list of potential resources for developing an IOP Plan;
- a MyPlan (the IOP's online information system) user guide;
- guidelines on the IOP for entities; and
- guidelines on the IOP for potential suppliers.

**2.25** Until November 2014 a list of organisations with approved IOP Plans was available on the IOP website, although this was removed by PM&C in order

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38 The IOP web site and the MyPlan software customised to support the IOP were initiated in DEEWR. These elements of the IOP continued to be hosted by the Department of Employment however all content matters were managed by PM&C.



to encourage procuring entities to contact the department and request a current IOP compliance check for specific businesses to be provided to them. Overall the website provided relevant information about the IOP.

## **Promoting the Indigenous Opportunities Policy**

**2.26** PM&C was responsible for promoting awareness and understanding of the IOP. This promotion occurred through the provision of information on the IOP website for businesses and entities. In addition, PM&C (and DEEWR before it) conducted the following activities to promote the policy, including:

- public information sessions, jointly presented with Supply Nation;
- one-on-one presentations to entities and inter-departmental committees;
- development of content on the IOP for inclusion in Department of Finance procurement newsletters;
- distribution of IOP brochures;
- responding to questions and request from entities and businesses received through the IOP mailbox; and,
- correspondence to all portfolio secretaries in March 2012 to inform them of reporting requirements under the IOP.

## **Indigenous Opportunities Policy Guidelines**

**2.27** In addition to the website and other information, a key source of advice to entities was the IOP guidelines initially developed by DEEWR and maintained by PM&C. The IOP guidelines provided key information, including:

- requiring implementation of the policy by Australian Government entities for all relevant Approaches to Market (ATMs) after 1 July 2011;
- defining the regions across Australia to which the IOP applied (IOP regions) as those where the proportion of Indigenous Australians was equal to or higher than three per cent (the national average);
- clarifying that a review of information provided on the IOP website by non-corporate Commonwealth entities was sufficient to meet the requirement to consult with PM&C (minimising the administrative load placed on the entities);

- requiring businesses responding to Australian Government ATMs, to which the IOP applied, to have, or to develop, an IOP Plan approved by PM&C;
- requiring businesses to implement their IOP Plans locally should they have won such a contract and report on outcomes achieved to PM&C annually; and
- indicating that businesses not meeting the requirements of the IOP were not eligible from tendering for future IOP contracts.

2.28 Ideally, program guidelines should impart consistent advice and information so that entities are able to interpret and apply the policy correctly and consistently. In this regard the IOP guidelines could have been improved by adopting a more consistent approach to describing how contracted activity related to the geographic regions, as discussed in the following section.

*Clarification of the geographic applicability of the Indigenous Opportunities Policy in the guidelines*

2.29 As noted in paragraph 2.10, the IOP only applied in certain geographic regions where significant Indigenous populations resided. The regional approach to the IOP added a level of complexity to its implementation and reduced the visibility of entity compliance. Accordingly, the guidelines needed to provide clarity so that businesses and entities could easily determine if the IOP ought to be applied. The ANAO observed that the guidelines provided a number of possible interpretations regarding the regions where the IOP was to be applied. In particular the guidelines variously indicated that the IOP applied:

- where *projects involved expenditure* over \$5 million (\$6 million for construction) in regions where there were significant Indigenous populations; (emphasis added)
- to a contract or contracts each valued at over \$5 million (\$6 million in construction) for *which the resulting activities or services took place in a region* or regions with a significant Indigenous population; (emphasis added)
- where an approach to market was likely to result in a contract or contracts each valued at over \$5 million (or \$6 million for construction) where the *main location* of the activity or service under the contract/s would take place in a region with a significant Indigenous Australian population; (emphasis added)

- where a project was undertaken in a number of regions, some with and some without a significant Indigenous Australian population, a business was only obligated to implement its Plan in the region(s) with a significant Indigenous Australian population. Generally, however, the Policy should have applied to contracts where the *dominant purpose* was to commission work in relevant regions. (emphasis added)

**2.30** The ANAO observed several cases where the application of the policy varied according to the adoption of one or other of the possible interpretations of the above approaches. In one case determining the ‘main location’, and the ‘dominant purpose’ was not straightforward because the services were provided by phone from call centres. The call centres were physically located outside the IOP regions, but many recipients of the services, and therefore the location where the services were delivered to, were inside the IOP regions. In this respect while the ‘dominant purpose’ of the contract could be readily interpreted as being to provide services to clients within IOP regions, the ‘main location’ where the employment and training opportunities were predominantly created, was outside an IOP region. In this example, the IOP was not applied.

**2.31** In another case a supplier was contracted by an entity to deliver services in multiple locations, some of which were in IOP regions. In this case, the majority of the value of the contract was allocated to non-IOP locations, and therefore the ‘main location(s)’ were considered to be outside the IOP regions. However, the value of services delivered in IOP regions, although being a minority part of the contract value, was still over \$5 million. In this case the IOP was not applied by the entity and the supplier did not have an approved IOP plan. In general, application of the IOP by entities was variable as discussed in more detail in paragraph 2.41.

#### *Consistency of definitions in reported outcomes*

**2.32** Guidelines on the application of a policy or program require the consistent application of agreed terms and key definitions, in order for the resulting data to be comparable and meaningful. The IOP guidelines, while requiring suppliers to report to PM&C on employment outcomes generated for Indigenous people, did not provide a definition of an employment outcome under the policy, thereby allowing variation in reporting. For example, full-time, part-time, casual/seasonal and contract employment, were each able to be reported as an IOP ‘employment outcome’ even though the impact of each could vary significantly. The guidelines also required businesses to report on their use of Indigenous businesses in their supply chains under the IOP contract. The

guidelines include a definition of an Indigenous business<sup>39</sup> however, as discussed in paragraph 2.38, outcomes reports received by PM&C included a number of businesses which were not Indigenous owned businesses, indicating variability in the application of the definition.

## **Monitoring the application of the Indigenous Opportunities Policy by entities**

**2.33** The IOP guidelines assigned PM&C responsibility for monitoring entities' implementation of the policy. As discussed in paragraph 2.4, entities were responsible for ensuring that a selected supplier had an approved plan in place when the contract met the requirements of the IOP. PM&C relied on self-reporting by entities and information available in AusTender as its key approach to monitoring implementation of the IOP by entities. However this has had significant limitations.<sup>40</sup>

**2.34** The AusTender system can be readily searched for contracts exceeding the IOP financial thresholds (\$5 million or \$6 million for construction contracts), as data is collected on the value of each contract awarded. However, AusTender data does not identify the location where the contract activity occurred and therefore data was not available to inform PM&C whether the contract related to an IOP region. PM&C has, in the past, requested entities to undertake best endeavours reporting on their application of the IOP, but it was unable to independently confirm the completeness of the information it received. Therefore, PM&C was reliant on entity advice on their application of the IOP and on businesses nominating that plans are related to specific Approaches to Market. Under the IPP, minimum participation requirements apply to contracts over \$7.5 million in particular sectors or in remote areas. Accordingly the IPP will continue to require entities to advise PM&C of some relevant contract activities.

## **Reporting on Indigenous Training, Employment and Supplier Plans**

**2.35** When a business won a contract to which the IOP applied, it was required to implement its approved Indigenous Training, Employment and Supplier Plan (IOP Plan) and report on an annual basis to the IOP

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39 Until 2013, for the purposes of the IOP an Indigenous Business was defined as a business with 50 per cent Indigenous ownership. This was consistent with the definition under the Indigenous Business Exemption of the Commonwealth Procurement Rules. In 2013, the Government adopted a definition for the IOP based on 51 per cent Indigenous ownership.

40 AusTender is a publicly available Australian Government website that, among other functions, provides centralised publication of Commonwealth tenders and contracts awarded.

Administrator. PM&C received IOP Plans and outcomes reports from businesses through an online information management system, MyPlan. The use of MyPlan aimed to limit the administrative workload imposed on businesses, as it generated templates for IOP Plans and outcomes reports for businesses to populate. MyPlan also facilitated PM&C's administration of the IOP by providing a streamlined means of approving plans and reports, and of sending automated letters and reminders to businesses to complete tasks.

**2.36** The outcomes report template generated by MyPlan pre-populated the report with the commitments made by the business in their IOP Plan. The business was required to report on outcomes against each of the commitments made. Against each commitment the MyPlan outcomes report provided fields for the business to detail:

- specific activities undertaken in relation to the commitment;
- a description of the evidence that exists of these activities;
- issues, barriers or lessons learnt; and
- any general comments.

**2.37** Where PM&C deemed an outcome report to be unsatisfactory it would be marked as 'draft' in MyPlan thereby allowing the business to update and revise the report and resubmit it. Once deemed satisfactory, the report would be accepted as an 'approved' outcomes report in MyPlan. However, there were no documented guidelines or benchmarks for staff to refer to when assessing IOP Plans or outcomes reports.

**2.38** The ANAO examined a sample of outcomes reports accepted as satisfactory by PM&C. These reports reflected a mixture of detailed, concrete outcomes achieved (for example, the business reported that it hired a specific number of Indigenous staff members in the period) with some more general responses. Furthermore, as noted in paragraph 2.32 outcomes reporting included details of contracts provided to a range of businesses that were not Indigenous owned businesses; in a list of 625 sub-contractors reported as being Indigenous businesses extracted by the ANAO, 26 were local government entities, two were Commonwealth government entities and two were universities.

**2.39** The IOP guidelines indicated that part of the role of the IOP Administrator was to undertake a periodic sample based audit of outcomes reports to provide some assurance over reporting quality. This requirement was

in place since 2011, however as at April 2015 no audit had occurred, limiting the assurance obtained over reporting.

## Summary

**2.40** Overall, while PM&C's arrangements for the promotion and support for the IOP were generally satisfactory, the IOP framework did not position PM&C well to monitor the application of the policy or its results. Key factors in this respect included the inability to use available information to monitor entity compliance with the policy; the quality of data captured by self-reporting submitted by businesses; and the limited efforts to verify and review information. Accordingly PM&C was not well placed to advise the government in relation to the quantity and quality of the outcomes generated via approved IOP plans.

## Application of the Indigenous Opportunities Policy by Australian Government entities

**2.41** Entities were responsible for implementing the IOP by determining the applicability of the IOP to a project in its planning stages (and consulting with PM&C if they were uncertain), and by ensuring that Approach to Market (ATM) documentation included reference to the IOP when applicable. Entities were also responsible for ensuring that an IOP Plan had been approved, or was in the process of being assessed by PM&C for the tenderer(s), and that the plan remained current during the term of any IOP related contract.

## Promotion of the Indigenous Opportunities Policy by and within entities

**2.42** To support their staff, entities included in the audit provided general guidance on the application of the IOP on their intranet sites, in procurement manuals and in procurement policy instructions. They also, to varying degrees, promoted the use of the IOP through presentations, newsletters and procurement-related forums. While promoting the IOP and providing guidance on it contributed to having IOP obligations met by procurement officers, promotion could be missed and IOP guidance could be overlooked if instructions and references were not adequately built into the relevant procedures.

**2.43** One way to do this was to include a standard reference to the policy in the entity's RFT template. For example, in one entity conducting procurements, the instructions provided to staff preparing a Request for Tender (RFT) included the following clause for inclusion in the tender document:

Note to Tenderers: The Indigenous Opportunities Policy applies if:

- a) the contract is valued at over \$5 million (GST inclusive); and
- b) the services take place in a region or regions with a significant Indigenous population.

Whether an Indigenous Training, Employment and Supplier Plan is required will be discussed with the successful Tenderer(s) during negotiations.

**2.44** The ANAO observed that some entities included a standard reference to the IOP in their RFT templates, while others did not. The entities with the highest number of contracts that were likely to require IOP application had standard IOP clauses in their contract templates. Entities where it was less common to have contracts occur in IOP regions over \$5 million were less likely to have standard clauses. Entities that did not include a standard reference to the IOP in their RFT templates either relied on officers to insert pre-determined clauses located in departmental procurement guidance or on officers to insert their own clauses (suggested clauses are provided on the IOP website).

**2.45** In order to test the implementation of the IOP by entities, the ANAO used available data on AusTender to assess how selected entities had fulfilled their IOP responsibilities. The ANAO compiled a sample of 339 post-July 2011 contracts valued at over \$5 million from the contracts listed by the Department of Human Services (DHS), the Department of Defence (Defence), the Australian Taxation Office (ATO), the Department of Employment and the Department of Industry and Science (Industry)<sup>41</sup> on AusTender.

**2.46** Of the 339 contracts considered, discussions with the entities indicated that 227 did not meet the criteria to require action in relation to the IOP. These reasons included that the contract:

- resulted from a tender process that pre-dated the IOP (and had an ATM conducted prior to 1 July 2011);
- was a renewal of an agreement that pre-dated the IOP;
- was in fact a purchase order under a pre-existing contract;
- was created under a whole-of-government arrangement where the initial commitment by government was under \$5 million; and

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41 Some of the contracts sampled in through the Department of Industry and Science were transferred to the Department of Education and Training as part of a machinery of government change in December 2014.

- activity was deemed to be outside of IOP regions.

**2.47** For a further 10 per cent of the contracts sampled (33 contracts out of 339) insufficient information was maintained by entities to determine whether the IOP applied. For example, one entity sampled could not easily determine, from readily available administrative data, the location where roughly two-thirds of their contracts had occurred, and therefore could not advise whether the IOP applied to these contracts or not.

## **Contracts to which the Indigenous Opportunities Policy applied**

**2.48** Within its sample, the ANAO found 79 contracts that met the criteria for application of the IOP. Of these, IOP Plans had been completed for 61 contracts (77 per cent). The ANAO found overall, that the range of approaches used by entities is likely to have contributed to the variable application of the IOP within and between entities.

**2.49** In one entity, one business area had applied the IOP to all relevant contracts and had sought, and received, early advice from PM&C regarding which regions the IOP would apply to. This business area demonstrated a planning process that gave timely consideration to the IOP which resulted in approved IOP Plans being submitted for all of its contracts over \$5 million within IOP regions. By contrast, another area within the same entity had not applied the IOP to several of their contracts, despite the fact that these contracts were over \$5 million and included relevant contracted activity within IOP Regions. In this case the requirements of the IOP were not sufficiently considered at the planning stage of the tender process.

**2.50** The ANAO also observed variation in the application of the IOP between entities. For example, one entity assessed tenderers for a large multi-regional contract against the IOP criteria, even though the department was technically not required to do so given that the ATM predated the IOP. A number of the IOP Plans submitted to MyPlan related to this ATM, including some which had contract values below \$5 million.

## **Conclusion**

**2.51** The Indigenous Opportunities Policy (IOP) required entities, suppliers and PM&C to each undertake various responsibilities to facilitate opportunities for Indigenous Australians through government procurement. The division of responsibilities under the policy was designed to limit the administrative workload on entities, and resulted in the responsibility for monitoring



compliance by entities and assessing the plans and reports prepared by suppliers being centralised in one entity. Procuring entities were required to ensure that suppliers had approved IOP plans in place when required by the policy but were not required to monitor the implementation of the IOP plans as part of their role managing the contracts to which the plans related. Under the IPP this role has been amended so that procuring entities are to, when applicable, include minimum Indigenous participation requirements as a component of the contracts they manage, and to monitor compliance with them.

**2.52** As the administrator of the IOP, PM&C (and previously DEEWR) sought to enable efficient administration of the initiative. To facilitate awareness and understanding of the IOP, promotional activities were undertaken and guidelines developed that clarified key aspects of the policy. Nonetheless the ANAO found application of the IOP by entities has been variable and key challenges existed in the framework established for implementation.

**2.53** The regional application of the policy added complexity to its implementation and packaged together employment, training and business opportunities even though the Indigenous focused exemption in the Singapore Australia Free Trade Agreement (SAFTA) refers to employment and training only. In some cases, the performance of contracts required activities to be undertaken in multiple locations, both inside and outside IOP regions, and in these cases the guidelines allowed a number of possible interpretations as to the applicability of the IOP which is likely to have led to variability in the application by entities. While some entities reported on their application of the IOP to some contracts PM&C was not well positioned to accurately determine the extent of entities' under-reporting. Key factors in this respect include the inability to use available information to monitor entity compliance with the policy; the quality of data captured by self-reporting submitted by businesses; and the limited efforts to verify and review information. Accordingly, the extent to which outcomes have been achieved through the implementation of approved plans was difficult to determine with accuracy and PM&C undertook limited verification of the outcomes reported by businesses.

## 3. Use of the Indigenous Business Exemption

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*This chapter outlines the key elements of the Indigenous Business Exemption (IBE), the roles and responsibilities allocated between procuring entities and Finance, and the extent to which the exemption has been used.*

### Introduction

**3.1** The Indigenous Business Exemption (IBE) was included in the Australian Government's procurement framework in 2011 to provide increased opportunities for Indigenous Small to Medium Enterprises (SMEs) to access the Australian Government procurement market. The IBE was expected to facilitate an increase in direct contracting opportunities for Indigenous businesses by reducing

... obstacles for Commonwealth Government agencies to contract directly with Indigenous small-to-medium businesses. [The IBE] will make it easier for Indigenous businesses to compete for government contracts, as the procurement process is simpler and administrative costs are reduced.<sup>42</sup>

**3.2** The IBE was specifically developed and introduced in response to concerns that the Indigenous Opportunities Policy (IOP), on its own, did not provide opportunities below the \$5 million threshold (or \$6 million for construction), did not provide coverage across the whole country, and specifically excluded the areas with the highest levels of economic activity. Accordingly the IBE can be applied to any procurement over \$80 000 and to contract activity in any region of the country.

**3.3** The IBE is not mandatory and all procurement must comply with Division 1 of the Commonwealth Procurement Rules (CPRs). However, as discussed in Chapter One, the CPRs allow, under certain circumstances, for some procurements to be exempted from the additional requirements of Division 2 of the CPRs to facilitate streamlined procurement. There are 17 exemptions listed in the 2014 CPRs, one of which is the IBE. The complete list of exemptions to Division 2 is included at Appendix 2 of this report.

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42 Australian Government, *Indigenous Economic Development Strategy 2011–2018*, p. 8.

3.4 Fifteen of the 17 exemptions listed relate to specific types of product or service being procured, for example blood plasma, advertising or leasing real estate. Only two exemptions relate to the nature of the supplier: Exemption 16 which applies to procurements from Disability Enterprises and Exemption 17 which applies to procurements from Indigenous owned SMEs.

3.5 The CPRs, along with the additional supporting direction to procurement staff,<sup>43</sup> emphasise that procurement officers must pursue value for money and encourage non-discriminatory and competitive processes. Additionally, the CPRs and supporting guidance set out the probity requirements, which require that, among other things, procurement officers deal with potential suppliers equitably.<sup>44</sup>

### **Definition of Indigenous Business adopted by the Indigenous Business Exemption**

3.6 The IBE uses a 50 per cent ownership definition for Indigenous business. Under the current (2014) guidelines, the obligation to confirm the Indigenous status of a business rests with the entity undertaking the procurement. Government entities that are members of Supply Nation<sup>45</sup> are able to check the Supply Nation register of Indigenous businesses. However, in some cases, entities may need to make further inquiries to verify the status of a business, noting that until recently, Supply Nation's list was solely based on a 51 per cent ownership, management and control requirement and the IBE allows a 50 per cent ownership. Furthermore, it is likely that not all Indigenous businesses have chosen to be certified with Supply Nation.

3.7 The potential for benefits under the policy to flow substantially to non-Indigenous parties has been the basis for Supply Nation and other Indigenous business sector stakeholders to advocate for a 51 per cent ownership requirement to be adopted, as a 51 per cent definition is considered to provide the Indigenous party with control along with part ownership benefits.

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43 Department of Finance, *Procurement Process Considerations*. Available from: <<http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/process-considerations/practice.html>> [Date accessed: 1 April 2015].

44 Additional online guidance clarifies that this requirement means that all tenderers must be treated fairly—it does not necessarily mean that they must all be treated equally. See Department of Finance, *Commonwealth Procurement Rules 2014*, paragraph 6.6 (b).

45 Supply Nation is a not-for-profit organisation which seeks to facilitate the integration of Indigenous businesses into the supply chain of private sector corporations and government entities. Supply Nation maintains a list of certified Indigenous business although not all Indigenous businesses are necessarily certified with Supply Nation.

**3.8** The potential exists for non-Indigenous businesses to form joint ventures with Indigenous businesses in order to bid for government contracts. In some cases these may be legitimate joint ventures but in others there is an underlying risk that the partnership has been established primarily to enable easier access by the non-Indigenous supplier. During the audit the ANAO was advised by some entity staff that they were aware of instances where the use of the IBE was an available option as a potential supplier was 50 per cent Indigenous owned, however doubts were raised about the extent to which substantive economic benefits would flow to Indigenous Australians from the use of the supplier by the entity.

## **Administration of the Indigenous Business Exemption by Finance**

**3.9** The application of the IBE, in line with the procurement requirements, remains the responsibility of the relevant procuring entity. Finance is responsible for the guidance on the CPRs, including the exemptions to the CPRs, but does not have a role in promoting the Indigenous policy aspects of the IBE or in monitoring its use or the extent to which its use generates outcomes for Indigenous Australians. In this context, the routine consideration of the IBE by entities is only likely to occur if clear supportive guidance on when and how to apply it is built into the relevant stages of entity procurement processes.

## **Guidelines on the application of the Indigenous Business Exemption**

**3.10** The IBE was included in the CPRs in 2011 and at that time Finance prepared a circular to all entities that set out basic information on the exemption, including an explanation of its application, key definitions, and the intended purpose. Guidelines on the use of the IBE were also prepared in 2011 to support its implementation. Finance published revised guidelines on the use of the IBE on its website in August 2014.<sup>46</sup> These guidelines cover a number of key areas, such as establishing value for money and the need to confirm Indigenous ownership, required in an application of the IBE. A copy of the guidelines is included at Appendix 4.

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<sup>46</sup> Department of Finance, *Engaging with Australian suppliers*. Available from: <http://www.finance.gov.au/blog/2014/08/18/engaging-with-australian-suppliers/> [Date accessed: 23 November 2014].

**3.11** At a general level the guidelines point to the importance of officers' needing to understand the market as the principle mechanism to establishing the estimated value of a proposed procurement and selection of an appropriate procurement method. This is consistent with the broader requirement of the CPRs for entities to undertake appropriate procurement planning.

**3.12** In competitive procurement processes, entities can draw on comparisons between bids to inform their assessment of value for money. As a limited tender can involve approaching a single supplier, this option is not always available and entities may need alternative ways to develop a value for money assessment. Accordingly, the IBE guidelines promote the following as potential options available to ascertain value for money when using the exemption:

- using research on comparable offerings, for example via the internet;
- searching AusTender<sup>47</sup> for similar contracts;
- talking to other procurement officers; and
- introducing competition by approaching more than one Indigenous owned business.

**3.13** In this respect the use of the IBE does not necessarily preclude the element of competition from the process adopted, subject to the number of Indigenous owned suppliers available.

### **Potential improvements to the current Indigenous Business Exemption guidelines**

**3.14** The current IBE guidelines could be improved by:

- including a reference to, or link to, material which outlines the policy intent on which Exemption 17 is predicated—that is, the Australian Government's objective of increasing procurement opportunities for Indigenous businesses; and
- providing a 'flow chart' setting out the steps that effective use of the IBE would require, and points to consider at each stage. Additionally the use of the IBE could be included in existing procurement flow

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<sup>47</sup> AusTender provides centralised publication of Australian Government business opportunities, annual procurement plans, multi-use lists and contracts awarded. AusTender is managed by the Department of Finance. All contracts awarded by non-corporate government entities over \$10 000 are required to be listed on AusTender. Entities are not required to record the location of contracted activity, nor supplier ownership details, in AusTender.

charts such as the '*Commonwealth Contracting Suite Decision Tree*', which is made available via the Finance web site to support procurement decision making processes in entities.

## **Promotion of the Indigenous Business Exemption**

**3.15** Some Indigenous business operators interviewed by the ANAO advised that when they approached government entities in relation to any contract opportunity they generally encountered staff who had little or no knowledge of the IBE. One Indigenous business advised the ANAO that they no longer contact the officers nominated in AusTender for specific procurements, as these staff typically (in their experience) have limited knowledge of the IBE, and do not have the delegation or flexibility to implement the IBE. Some Indigenous businesses advised the ANAO of their preference to communicate directly with senior executives as use of the IBE was generally only considered by entity staff when support for its use was advocated by a sufficiently senior officer of the entity, and that committed leadership was a key element present in the cases when their approaches to entities resulted in the use of the IBE. However, Indigenous businesses also reported that in most cases, their approaches to entities did not result in the use of the IBE being actively considered as a procurement method.

**3.16** Supply Nation advised that it has held a number of events attended by a range of Commonwealth procurement officers. At these events it found that knowledge of the IBE was limited. A cross-entity workshop to discuss the barriers to the use of the IBE was held in March 2014, hosted by PM&C and attended by a range of entities, including Finance. ANAO was informed that attendees of the workshop had agreed on the clear need for the IBE to be more broadly promoted.

**3.17** While Finance has developed guidelines for the use of the IBE, little other information has been developed to support the promotion of the IBE within entities in the context of its contribution to the government's Indigenous policy goals. As noted in paragraph 1.26, the Indigenous Procurement Policy includes an obligation for entities to set aside some contracts to give first option to Indigenous businesses to tender for those contracts. PM&C anticipates that the set aside process, in conjunction with the establishment of targets, is likely to increase the use of the IBE. The IPP effectively means that the IOP and IBE come under the same policy framework and are more integrated. Given the current level of procurement from Indigenous business by entities, a well implemented

promotion strategy relating to the IBE is likely to be required if the Government's ambitious targets are to be met. In this respect there is benefit in PM&C, as the lead agency for Indigenous affairs, strengthening the promotion of the IBE in conjunction with Finance.

## Recommendation No. 2

**3.18** In order to better promote the Indigenous Business Exemption (IBE) the ANAO recommends that PM&C, in consultation with Finance, develop a strengthened promotion strategy which takes into account the exemption's potential contribution to the target under the Indigenous Procurement Policy.

### Department of the Prime Minister and and Cabinet:

**3.19** *PM&C agrees with this recommendation. As part of the IPP, the Department and Finance has developed a much stronger approach to promoting the IBE. Under the IPP, government entities will be required to set aside certain contracts for Indigenous small and medium enterprises, if an Indigenous business can deliver the required goods or services on a value for money basis. The IBE will be used to award these contracts to Indigenous businesses. Guidance material on the use of the IBE has been clarified and a new website supporting the IPP has been launched. In addition, a new Indigenous business directory will be launched on 1 July 2015, to assist government and non-government buyers more quickly identify capable Indigenous businesses. It is anticipated that these measures will ensure that the IBE is much better understood and more frequently used.*

### Department of Finance:

**3.20** *Supported. The IBE is one of the 17 exemptions listed in Appendix A of the Commonwealth Procurement Rules (CPRs) and will continue to apply under the new policy. This exemption enables Commonwealth entities to procure goods and services directly from Indigenous small and medium enterprises that are at least 50 per cent Indigenous owned regardless of the value of the procurement. Noting the rules in Division 1 of the CPRs still apply to the procurement, including the requirement to achieve value for money. The IBE supports easier and more streamlined purchasing from Indigenous SMEs and will be promoted for use by Commonwealth entities as a tool to assist them to meet the requirements of the new Indigenous Procurement Policy. Finance will also continue to actively promote awareness of the IBE at procurement and other related forums.*

## Application of the Indigenous Business Exemption by Australian Government entities

**3.21** As discussed in paragraph 1.24, Supply Nation maintains a list of its Indigenous business suppliers. As at April 2015, there were 336 Indigenous businesses on Supply Nation's list. This is a voluntary list based on a definition of 51 per cent ownership, management and control and accordingly may not represent all Indigenous businesses in Australia. The list does, however, include the Australian Business Numbers (ABNs) for these businesses, which enables data to be matched to contract details in AusTender.

**3.22** The ANAO extracted AusTender data on contracts listed between 1 July 2011 and March 2015 for suppliers certified as Indigenous owned with Supply Nation. Of the 260 939 procurements, valued at \$170.6 billion recorded on AusTender, between 1 July 2011 and March 2015, 120 procurements (0.046 per cent by volume) with a total value of \$13.3 million (0.008 per cent by value) were directly between government entities and suppliers certified with Supply Nation. Of these 120 procurements 17 were limited tender procurements over the financial threshold which would generally require application of Division 2 of the CPRs. These 17 procurements had a total reported contract value of \$5.9 million. Acknowledging the potential limitations of data extraction on the use of Indigenous businesses, AusTender data indicates that participation by Indigenous businesses in Australian Government procurement is very low.<sup>48</sup> Although there is reasonable flexibility in the IPP in relation to how targets are set across portfolios and the contracts that can be counted towards the targets, the current low levels of contracting with Indigenous businesses highlight the extent of the challenge in meeting the targets.

**3.23** In relation to the use of the IBE by audited entities the ANAO extracted AusTender data on contracts issued to Indigenous suppliers certified by Supply Nation prior to 25 March 2015, over the relevant financial thresholds and undertaken by Limited Tender. The ANAO also requested the audited entities to identify any known use of the IBE with Indigenous suppliers which were not certified with Supply Nation, noting that the exemption allows for 50 per cent owned business whereas Supply Nation, until 1 July 2015, required 51 per cent ownership, management and control. In the ANAO sample of entities there

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48 By comparison, the top 20 Aboriginal and Torres Strait Islanders Corporations listed with the Office of the Registrar of Indigenous Corporations (ORIC) received government funding of over \$215 million in the 2012–13 financial year.



were four procurements identified as having used the IBE. The four cases are listed in Table 3.1.

**Table 3.1: Sampled uses of the Indigenous Business Exemption**

Entity	Nature of Contract	Date	Value*
Industry	Event Management	June 2013	\$0.1 million
Defence	Construction	May 2014	\$0.7 million
Defence	Construction	January 2015	\$1.5 million
DHS#	Cleaning	February 2015	\$8.3 million

Source: AusTender and information provided by entities.

Note: There are a number of procurements where the IBE and the broader policy intent to increase the level of procurement from Indigenous businesses, was referenced by the supplier in their marketing and promotion to government entities, which has resulted in subsequent contracts. Where these are for transactions which are individually below the threshold of \$80,000 they have not been included in the table above. For example, a supplier of teleconferencing has regularly referred to the IBE in correspondence with entities, but the resulting commitment to spend on this product is generally on a fee per usage basis, which is well below the threshold.

# This procurement was managed by a third party on behalf of the government entity.

\* Rounded values from AusTender. Total final contract values may vary due to contract terms and variations.

**3.24** The ANAO examined each case in relation to the entities' assessment of value for money and confirmation of Indigenous ownership. In general, the processes followed were consistent with the guidance proposed by Finance and discussed in paragraph 3.10.

## Assessing value for money

### *Defence*

**3.25** In both of the IBE procurements run by Defence, value for money was assessed using the processes and evaluation panels that are also used in standard procurements of similar value. The value for money assessments involved a two-step process:

- an assessment of the technical capability of the supplier; and then
- an assessment of 'comparative value' of the fees and schedules proposed by the supplier in response to the specific request for quote.

**3.26** In the first instance this was done by contracting a quantity surveyor to review the quote provided, and in the second instance the fee was assessed against other comparable fees recently paid for similar contracts by the entity.

## *Industry*

**3.27** Procurement documentation maintained by Industry reflected that value for money was considered and that an additional independent confirmation of the value of the procurement was sought prior to progressing to a contract with the supplier. Additionally documentation shows that other Australian Government entities which had used this supplier were contacted in relation whether the supplier had previously provided value for money. Value for money was also assessed by comparison with other similar recent procurements in the department.

## *DHS*

**3.28** A procurement, managed by a third party on behalf of DHS, for a large cleaning contract applied the IBE. The value for money assessment in this case used a known comparable benchmark to assess the value of the quote received from an Indigenous supplier. The supplier was able to offer additional cost savings to the previous contract by consolidating multiple contracts into one contract, thereby potentially reducing the overall administrative costs.

## **Confirmation of Indigenous ownership**

**3.29** Confirmation of Indigenous ownership is a further requirement for entities seeking to take advantage of the IBE. In each of the cases above the supplier was a certified Indigenous supplier under the Supply Nation list.

**3.30** Given the higher value of its contracts, Defence also sought and received legal advice confirming that Supply Nation certification, combined with other available documentation, was sufficient in order to comply with the policy requirement.

## **Challenges to the use of the Indigenous Business Exemption identified by entity staff**

**3.31** Aside from limited awareness of the IBE, discussed in para 3.15, a number of additional potential challenges to the application of the exemption were identified by entity staff interviewed by the ANAO.

### *Difficulty identifying an Indigenous owned supplier*

**3.32** Prior to 1 July 2015 there was no single list of businesses that are confirmed to be Indigenous owned which was available to all general procurement staff. While Supply Nation did have a list of suppliers that were certified to be at least 51 per cent Indigenous owned, this list was restricted to

paid-up members and access to the list was restricted to a password protected email log on. Procurement officers advised the ANAO that even where a procurement officer was employed in an entity which was a paid up Supply Nation member, the additional steps to source the password in order to access the list may have been a sufficient barrier to staff accessing the list of Supply Nation certified suppliers. While the additional steps may not have been onerous, entity staff advised the ANAO that any additional steps may have reduced the application of the process, particularly having regard to budget constraints. Furthermore, the Supply Nation list did not until recently<sup>49</sup> align with the guidance for the IBE which defines an Indigenous business as having 50 per cent ownership.

*The challenge of balancing use of the Indigenous Business Exemption with the procurement principles*

**3.33** Finance describes an open tender process as ‘the default approach’<sup>50</sup> for all procurement valued over the relevant thresholds. The use of an alternative approach requires a justification, and a related decision making process, by the relevant procurement officer. This use of judgement must be managed often in a time and budget constrained working environment, and the overarching general procurement policy principle of undertaking a competitive and non-discriminatory process may in some cases may be more influential than the specific policy intent of increasing Indigenous opportunities. Some entity staff interviewed by the ANAO indicated that processes which are perceived to add additional process or timeframes tend to be avoided, particularly if they are not mandatory and if they require a variation from previously well accepted and established processes.

*The challenge arising from the timing of key decisions*

**3.34** The CPRs require entity staff to undertake appropriate planning in relation to procurement to choose the most appropriate procurement method.<sup>51</sup>

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49 PM&C advised that from 1 July 2015 Supply Nation includes both 50 per cent and over 51 per cent and over, in the lists of Indigenous businesses which it maintains.

50 Department of Finance, *Procurement Process Considerations*. Available from: <http://www.finance.gov.au/procurement/procurement-policy-and-guidance/buying/procurement-practice/process-considerations/practice.html> [Date accessed: 8 February 2014].

51 According to the CPRs, the expected value of a procurement must be estimated before a decision on the procurement method is made. See Department of Finance, *Commonwealth Procurement Rules 2014*, section 9. Additionally, they state that an efficient procurement is one which includes the selection of a procurement method that is the most appropriate for the procurement activity, given the scale, scope and risk of the procurement (see section 6).

In this respect, consideration should be given in the planning stage as to whether an Indigenous business could be approached under limited tender on the basis the business can offer a value for money outcome.

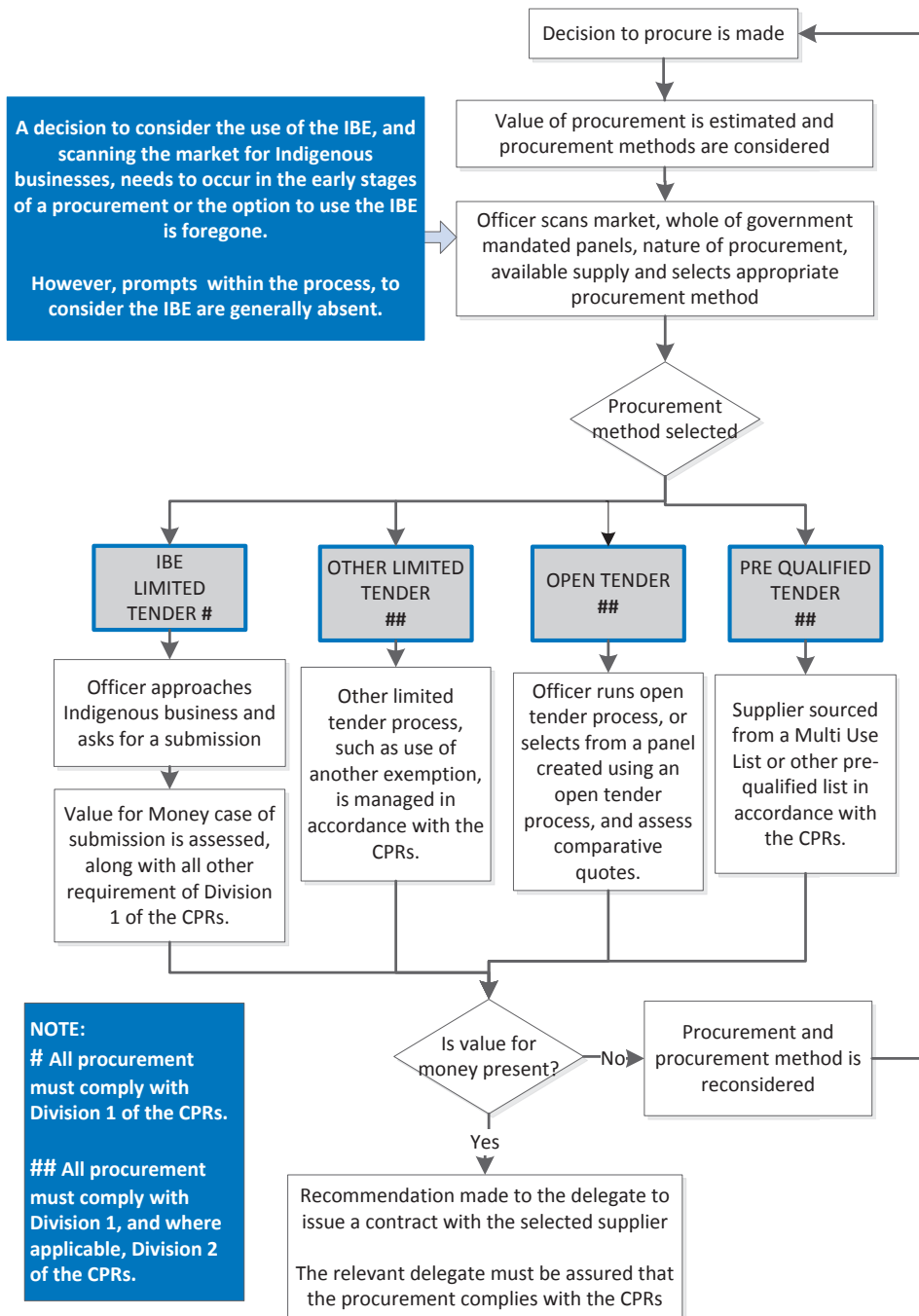
**3.35** The IBE varies from most other CPR exemptions in that it is based on the nature of the supplier (in this case the indigeneity of the supplier), rather than on the nature of the goods or services being procured. Therefore the nature of the procurement does not necessarily prompt consideration of an exemption process, in the way that, for example, procuring a property lease might.

**3.36** There are limited triggers in current procurement processes,<sup>52</sup> for entity staff to include a scan for Indigenous businesses during the initial market scan prior to deciding on a procurement method. This is significant given that Finance's guidance indicates that the IBE cannot be used subsequent to an approach to market being listed on AusTender, and the decision to use the IBE, or not, needs to be made prior to this listing. Figure 3.1 shows the location of key decision points for effective application of the IBE.

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52 PM&C advise that the Indigenous Procurement Policy (IPP) that was implemented from 1 July 2015 is anticipated to increase the use of the IBE by entities by prompting consideration of its use early in the process of some procurements.

**Figure 3.1: Flow chart showing the location of key decision points for effective application of the Indigenous Business Exemption.**



Source: ANAO analysis of CPRs and IBE guidelines.

**3.37** Under an open tender procurement value-for-money decisions are typically made after competitive tenders are received. Under the IBE, if a sole supplier is approached, the value for money decision must be based on something other than a comparison of quotes (unless multiple Indigenous suppliers are able to provide quotes). Further, the decision to seek quotes from an Indigenous supplier requires procurement officers to be aware of the potential Indigenous owned suppliers, capable of providing value for money in the market. If there is limited awareness of the Indigenous supplier market, the procurement officer is not confident that the Indigenous business is likely to provide value for money, or lacks confidence in their own ability to establish value for money in the absence of comparable quotes from other suppliers, they may perceive the process to approach an Indigenous business to be a time consuming exercise with little or no benefit, and involving a potentially high level of risk.

## Conclusion

**3.38** The Commonwealth Procurement Rules (CPRs), administered by Finance, provide for a range of exemptions which allow procurements to occur with sole suppliers under the provisions for limited tenders. The Indigenous Business Exemption (IBE) is a procurement method intended to provide value for money and efficient outcomes for entities, as well as commercial opportunities for Indigenous businesses.

**3.39** Based on available information, the participation of Indigenous businesses in the broader context of government purchasing is very limited. Since 2011, 120 contracts with Indigenous businesses certified through Supply Nation have been listed on AusTender and of these 17 were listed as limited tender procurements over the relevant financial threshold. Audited entities were also only able to identify few examples of the use of the IBE.

**3.40** Some Indigenous suppliers interviewed by the ANAO reported a low level of awareness of the IBE based on their communication with entity staff. Some Indigenous businesses advised the ANAO that use of the IBE was generally only considered by entity staff when support for its use was advocated by a sufficiently senior officer of the entity, and that committed leadership was a key element present in the cases when their approaches to entities resulted in the use of the IBE. However, Indigenous businesses reported that in most cases, their approaches to entities did not result in the use of the IBE being actively considered as a procurement method.

**3.41** Using the IBE requires procurement officers to consider choosing a procurement method on the basis of the indigeneity of the supplier. Seeking out a supplier on the basis of its ownership status is typically not a feature of government procurement given the CPRs discourage discrimination and encourage competitive processes. Entity staff who were aware of the IBE advised the ANAO they perceived a number of potential barriers to its use, including the difficulty in identifying a suitable Indigenous business, and having sufficient information to assess whether a value for money outcome would be achieved through the use of the IBE, compared to undertaking an open tender process.

**3.42** The preparation of guidelines on the CPRs, including the IBE, is the responsibility of the Department of Finance and it has periodically prepared guidance on the use of the IBE. However, an approach to more broadly promoting the potential for the IBE to contribute to Indigenous policy outcomes has not been developed by PM&C, or previously by DEEWR. In the context of the increased requirements that have been placed on entities from July 2015 under the Indigenous Procurement Policy, a strengthened approach to the promotion of the IBE is warranted.

## 4. Monitoring Outcomes

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*This chapter examines how activity under the IOP and the IBE has been monitored, assessed and reported to government.*

### Introduction

**4.1** Assessing the effectiveness of policy initiatives requires implementing entities to establish a sound performance framework. In general, such a framework would include: the use of consistent definitions; arrangements to support the collection of appropriate and relevant information; and arrangements to report to government on the effectiveness or otherwise of the initiatives being implemented. The broad objective of the Australian Government's procurement initiatives to support opportunities for Indigenous Australians was, and continues to be, to increase the employment and business opportunities available to Indigenous Australians generated as a result of the procurement activity of Australian Government entities. To assess whether arrangements in place up to June 2015 allowed for an assessment of performance against this objective, the ANAO considered the design and operation of performance monitoring, and reporting arrangements and responsibilities in relation to the IOP and the IBE.

### Consistency of key definitions

**4.2** Using consistent definitions for an Indigenous business is a central consideration for policy efforts seeking to increase the participation of Indigenous businesses in Australian Government procurement. Accurately assessing the current (and historical) involvement of Indigenous businesses has been made challenging due to the adoption across different government initiatives of definitions that either used a 50 per cent or 51 per cent level of Indigenous ownership as the threshold. The IOP initially adopted a definition based on 50 per cent ownership but moved to using a definition based on 51 per cent in 2013. The IBE has maintained a 50 per cent ownership definition to identify Indigenous businesses. Until recently,<sup>53</sup> Supply Nation has required

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53 Supply Nation advised that it has recently expanded its definitions of Indigenous businesses into two categories. The first, *certified suppliers*, have remained 51 per cent or more Indigenous owned, managed and controlled. The second, *registered Indigenous businesses* have included any business that is 50 per cent or more Indigenous owned. Both categories of business are accessible publicly on the Supply Nation website with certified Suppliers being clearly differentiated.



businesses to have at least 51 per cent Indigenous ownership to be eligible to become a supplier. In other government entities, such as Indigenous Business Australia, a 50 per cent ownership threshold has been adopted to determine eligibility for certain programs.

**Table 4.1: Definitions of Indigenous owned business prior to 1 July 2015**

Policy or program	Responsible entity	Definition
Indigenous Opportunities Policy	PM&C	Over 51%
Indigenous Business Exemption	Finance	50% and over
Business support	Indigenous Business Australia	50% and over
Supply Nation (an independent organisation, partly funded by government)	PM&C (funder)	51% ownership, management and control.

Source: ANAO analysis.

**4.3** Supply Nation has argued for the adoption of a 51 per cent definition on the grounds that Indigenous control of business activity is an important mechanism to limit the extent to which non-Indigenous operators may receive the benefits and opportunities intended for Indigenous Australians. Using the 51 per cent definition, however, excludes a number of businesses where the ownership is equally shared between two parties, such as husband and wife partnerships, where one or the other party is Indigenous.

**4.4** Responding to Recommendation 1 of the *Open For Business* report (referred to in paragraph 1.11) the Australian Bureau of Statistics (ABS) examined the issues surrounding a definition of Indigenous business. In 2012 the ABS proposed<sup>54</sup> the adoption of two distinct categories, using separate definitions for:

- (a) Indigenous owned businesses (including 50 per cent ownership and over)
- (b) Indigenous owned and controlled businesses (including 51 per cent ownership and over) where majority ownership is used as a proxy for control.

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54 Australian Bureau of Statistics, *Information Paper: Defining Aboriginal and Torres Strait Islander Owned Businesses*, 2012, p. 5.

**4.5** The ABS also noted that a key challenge was ‘developing a suitable list of in-scope businesses that could be used for data collection purposes’.<sup>55</sup> The *Creating Parity* report by Mr Andrew Forrest, referred to in paragraph 1.26, recommended further broadening definitions to include a number of categories of Indigenous owned business, including over 51 per cent and over 50 per cent, and Joint Venture partnerships with at least 25 per cent Indigenous ownership. Under the Indigenous Procurement Policy, which came into effect from July 2015, the Government has adopted a 50 per cent Indigenous ownership definition which will provide for consistent use over time. The policy also allows for contracts with incorporated Joint Ventures with 25 per cent Indigenous equity to contribute towards portfolio targets.

## **Visibility of outcomes under the Indigenous Opportunities Policy**

**4.6** In relation to the IOP, PM&C was responsible for, “monitoring implementation of the policy and reporting to government”, however there are a number of features of the IOP which affected the extent that PM&C could obtain a comprehensive picture on the operation and outcomes of the IOP. These features included:

- the adoption of generic plans by businesses (limiting the visibility of outcomes intended to be delivered locally);
- the separation of monitoring outcomes from the procuring entity (limiting the extent that implementation of plans could be monitored during the course of the contract); and
- the adoption of a regional approach to implementation (restricting the visibility of government entity compliance with the IOP).

### **Generic planning**

**4.7** As noted in paragraph 2.2, the IOP required suppliers to advise PM&C how they intended to provide opportunities to Indigenous Australians, where they were awarded relevant contracts. However, to reduce the potential administrative workload on both tenderers and procuring entities, the IOP model allowed suppliers to have high-level generic plans, which could be considered and approved in advance of the local circumstances of a contract

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55 Ibid., p. 6.

being known. The IOP software, MyPlan, provided a number of generic 'drop down' menu items that businesses could select from when developing their Indigenous Training, Employment and Supplier Plans (IOP Plans). The template also provided 'free text' fields for businesses to propose their own commitments for PM&C to consider. The template used for IOP plans, including the drop down menu options, is included at Appendix 5.

**4.8** The advantage of this approach was that there is a potentially lower administrative requirement for tenderers in the procurement processes, recognising also that tenderers may not have been successful in their bids. Preparing and assessing locally specific plans is likely to have added to the effort required to the preparation of each tender by businesses and to the assessment of each tender by government entities. Additionally, government entities (or PM&C) would need to have had both the capability to, and an acceptance that their responsibilities included to, consider the merits of plans with respect to the local outcomes potentially achieved for Indigenous Australians. Under the more generic planning model, suppliers made broad commitments about the types of activities they would implement if they were successful in winning an IOP contract.

**4.9** At the time the IOP was being revised in 2010, the Department of Education, Employment and Workplace Relations (DEEWR) anticipated that the risks inherent in the adopted 'generic plan' model were that:

- (a) suppliers might consider the pre-approval of a plan as an 'administrative requirement only';
- (b) a planned activity may not suit a specific location or might fail to maximise the opportunities available under the local circumstances of a particular contract; and
- (c) broad commitments might not be implemented at the local level.

**4.10** In securing approval for the streamlined generic model in December 2010, DEEWR, as the then IOP Administrator, proposed that to mitigate these risks it would:

- (a) work directly with each business in order to help local implementation of all plans; and
- (b) audit a sample of plans annually to ensure implementation had occurred at the local level.

**4.11** DEEWR also advised the then Minister that the extent of local implementation would be identifiable through the annual reports submitted by suppliers, and that 'poor local training and employment outcomes' would result in organisations being suspended from being eligible to bid for future Australian Government contracts to which to IOP applied.

**4.12** Businesses that were successful in winning relevant tenders were required to submit annual outcomes reports to PM&C. As at November 2014, there had been 116 outcomes reports submitted in relation to IOP plans since 2011. Over the same period some 197 IOP plans had been approved. Businesses were encouraged to submit an IOP plan as part of tenders but were only required to submit outcomes reports in the event that they won a relevant contract. It is likely that a number of the businesses that have had IOP plans approved had not won contracts and therefore the number of outcomes reports expected was be less than the number of IOP approved plans. Nonetheless, PM&C was not readily able to assess whether outcomes reports have been submitted for all relevant plans or whether IOP plans were in place for all relevant contracts.

**4.13** As noted in paragraph 2.38, the quality of reporting on these outcomes was variable and not always consistent with definitions. PM&C advised that there had been no audits, as proposed by the IOP guidelines, of any of the reports submitted, in order to verify that the outcomes reported had occurred, as initially proposed by DEEWR.

## **Monitoring requirements on entities**

**4.14** In line with the intention to minimise the administrative workload on entities, the IOP model did not place a requirement on procuring entities to monitor or assess the outcomes achieved for Indigenous Australians through the procurements which they manage. The principal requirement placed on procuring entities was to ensure that suppliers winning contracts had approved plans in place. Procuring entities were not required to assess the content of those plans, nor to consider how the commitments made under the plans were to be met or that they were met, in the performance of the contract.

**4.15** In general, the entity managing the procurement, rather than PM&C, could be expected to have had a higher level of visibility on the performance of the contract by the supplier. PM&C, and previously DEEWR, encouraged entities to include the commitments made in the IOP Plan as a component of contracts, therefore making the plan enforceable under the contract terms, and

facilitating direct oversight of outcomes for Indigenous Australians by the procuring entities. However this requirement was not mandatory, and the exclusion of consideration of Indigenous issues from their monitoring of the contract means an opportunity to increase the visibility of outcomes may not have been maximised.

**4.16** Under the IPP, businesses are no longer required to have IOP plans approved by PM&C, or to submit outcomes reports to PM&C. However, some procurements will continue to place 'minimum Indigenous participation requirements', on businesses including in relation to employment and supplier opportunities. Entities are required to monitor and report on the extent to which they contract with Indigenous businesses. This will require a step up in monitoring approaches by entities compared to the current approach of limited entity involvement.

### **Data capture in AusTender**

**4.17** AusTender is the Australian Government's centralised database which captures information on procurement activities by entities. The IOP's geographic approach, however, presented challenges to monitoring relevant activity in that the location of contracts is not included in AusTender. Furthermore, the data captured by AusTender does not identify the extent to which the main suppliers to government employ and train Indigenous staff, or contract with Indigenous owned businesses. Consequently, PM&C was largely reliant on procuring entities to inform it as to which contracts were IOP related, and whether training, employment, or sub-contracting outcomes were being achieved. As noted in paragraph 2.29, determining whether a contract related to an IOP region had some challenges.

**4.18** In addition, where employment, training and sub-contracting data was collected by entities from suppliers it may not have been compiled using the same definitions or quality collection processes in all cases, limiting the ability to aggregate, assess or compare outcomes. The new policy, to be implemented from 1 July 2015, requires portfolios to report on targets of procurement from Indigenous suppliers. Some entities have initiated changes in these areas with a view to improving their ability to capture and report on outcomes generated through their procurement activity, however further work will be required by PM&C, Finance and entities to ensure that improved data is available to accurately inform the Government on the impact achieved by the Indigenous Procurement Policy.

## **Entity reporting on the application of the Indigenous Opportunities Policy**

**4.19** For the first year of the IOP's operation the then DEEWR requested all entities to report on their application of the IOP. Senior procurement officers within entities were sent reporting templates, requesting that they provide information to DEEWR relating to the 2011–12 financial year on:

- Approaches to Market (ATM) to which the IOP had been applied;
- contracts to which the IOP had been applied; and
- any action taken in relation to non-compliance with contractual requirements related to a supplier's IOP Plan .

**4.20** DEEWR reported that it requested information from 111 entities, but only received responses from 59 of these. Responses from 44 of the 59 entities were available for examination by the ANAO. Of the 44 responses only one of these indicated any application of the IOP. The majority of the responses indicated that there were no ATMs or contracts to which the IOP applied. A number of entities pointed out that they had not conducted any procurements or entered into any contracts over the \$5 million threshold at all. One entity responded by pointing out that its geographically dispersed, decentralised structure and its large number of procurements meant that it would be difficult or impossible to report comprehensively on the application of the IOP.

**4.21** Since taking responsibility for the IOP, PM&C did not regularly or systematically request information from government entities on the application of the IOP since DEEWR's initial request. Additionally the reporting provided by entities in 2011–12 has not been analysed by PM&C, or previously DEEWR, to provide any aggregated report to the Australian Government. While PM&C had responded to requests for information from the Government on the status of the IOP, there was no regular reporting arrangement in place to inform assessments of progress.

## **Visibility of outcomes under the Indigenous Business Exemption**

**4.22** Similar to the IOP, there is also no aggregated reporting by Finance on the use of the IBE. While Finance generally does not report on the use of any of the exemptions in the CPRs, it does assist the Department of Social Services in monitoring the use of the CPR exemption provided for Disability Enterprises (Exemption 16 of the CPRs).

**4.23** The IBE varies from Exemption 16 of the CPRs for Australian Disability Enterprises (ADEs) in that the list of registered disability enterprises to which the exemption applies is managed by the Department of Social Services (DSS). Enterprises cannot self-identify as being a registered disability enterprise without the knowledge of DSS, and DSS maintains a list of the ABN numbers of the registered ADEs. The levels of participating ADEs in government procurement is extracted from AusTender by Finance and, by agreement, provided to DSS quarterly. In 2013–14 there were 36 contracts listed, with a total value of \$17.7 million, across all entities. Of these 11 were over \$80 000, and of these, five were listed as being conducted under limited tender processes.

**4.24** In light of the proposed Indigenous procurement targets there would be benefit in PM&C considering the development of a similar arrangement with Finance to support reporting on the use of the IBE. Considerations in this respect would include the application of a consistent definition of Indigenous business and the use of identifiers. AusTender does include the ABNs of businesses, which are able to be manually cross-checked against businesses' registration with Supply Nation. While not all Indigenous businesses choose to register or certify with Supply Nation, developing a reporting arrangement using these parameters will provide for a better assessment of the use of the IBE than is currently undertaken. PM&C have advised that it has agreed to use the expanded list of Indigenous businesses registered with Supply Nation from 1 July 2015 to monitor use of the IBE in the future by extracting data from AusTender using the ABNs of listed Indigenous businesses. To align with the IBE, the list to be available from 1 July 2015 has adopted a 50 per cent ownership as the threshold for identification as an Indigenous business.

### Recommendation No. 3

**4.25** In order to better monitor and report on the contracts facilitated by the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C, in consultation with Finance, develop a periodic reporting arrangement, and provide regular advice to the government on the extent of Indigenous business participation in government procurement.

#### Department of the Prime Minister and Cabinet:

**4.26** *PM&C agrees with this recommendation. The IPP contains much clearer periodic reporting and accountability arrangements. From 1 July 2015 each portfolio will need to meet an annual Indigenous procurement target. Data on performance against the*

*target, as well as on performance against the other requirements of the IPP, will be collected through AusTender as far as possible, as well as through periodic manual reporting to PM&C. This will allow PM&C to provide regular advice to government on the extent of Indigenous business participation in government procurement. This information will also be used to report publicly on an annual basis, on the Commonwealth's and each portfolio's performance under the IPP.*

## **Department of Finance:**

**4.27** *Supported. Commonwealth entities are required to report contracts valued at or above \$10,000 on AusTender in accordance with the CPRs. To assist PM&C measure performance against the new Indigenous Procurement Policy, Finance will conduct an annual data matching exercise between contracts reported on AusTender and the list of Indigenous enterprises registered in the Supply Nation database. Performance will be published on PM&C's Indigenous Procurement website, at the whole-of-government and the portfolio level.*

## **Conclusion**

**4.28** Measuring the contribution of the IOP and the IBE to the Australian Government's broader policy objective of increasing opportunities for Indigenous businesses has been difficult for relevant departments due to the nature of the framework established to implement both policies. Variations in the definition of Indigenous business, and the absence of a comprehensive list of Indigenous businesses, meant that relevant data could not be extracted from AusTender, and limited the ability of PM&C to collect and assess data on the involvement of Indigenous businesses in Australian Government procurement.

**4.29** In relation to the IOP, the separation of roles between procuring entities and PM&C meant that the entities likely to have the most visibility of how the procurements they manage provided opportunities to Indigenous Australians were not required to monitor the extent to which such opportunities were created. As the entity that was required to monitor the approaches of suppliers with respect to creating opportunities, PM&C was limited to reviewing broad generic commitments, sometimes made prior to the actual details of the procurement being known. The extent to which these commitments were implemented locally was required to be reported to PM&C annually, however the quality of the data provided in these reports varied and generally was not verified by PM&C as originally intended. Additionally, PM&C was not able to determine the extent that businesses complied with their reporting requirements



since determining the number of contracts to which the IOP applied was reliant on self-reporting by entities and businesses. As a result PM&C did not have the data necessary to provide advice to government on the impacts of the IOP. The IPP, implemented from 1 July 2015, requires procuring entities to include, where applicable, the relevant minimum Indigenous participation requirements as components of the contracts they manage, and to monitor and report on supplier's compliance with those requirements.

**4.30** In relation to the IBE, the absence of a requirement for entities to report against usage of an exemption to the CPRs generally, including the IBE, means that additional steps are required to monitor its use. However the responsibility for overall monitoring of the initiative had not, prior to May 2015, been allocated to any entity and as a result a mechanism to regularly inform government on the impact of the IBE had not been implemented. Under the new contracting and reporting obligations that took effect from 1 July 2015 under the Indigenous Procurement Policy, portfolios are required to set targets for the use of Indigenous businesses and to report on these annually. When the experience to date of reporting in relation to the IOP and the IBE is considered, a significant strengthening of the reporting approach including data definition and collection will be required.

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Grant Hehir  
Auditor-General

Canberra ACT  
8 July 2015



# Appendices



## Appendix 1 Entity Responses

### 1. Department of the Prime Minister and Cabinet



#### Australian Government

#### Department of the Prime Minister and Cabinet

ANDREW FISHER BUILDING  
ONE NATIONAL CIRCUIT  
BARTON

Ref: PAR 12696

Dr Andrew Pope  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope *Andrew*

**RE: Proposed report on Procurement Initiatives to Support Outcomes for Indigenous Australians**

Thank you for providing the Department of the Prime Minister and Cabinet with the Australian National Audit Office's (ANAO's) proposed report on Procurement Initiatives to Support Outcomes for Indigenous Australians on 6 May 2015.

Pursuant to sub-section 19(7) of the *Auditor-General Act 1997* please find the Department's response to your comments for consideration before preparing the final audit report. I note that sub-section 19(8) of the *Act 1997* requires the Auditor-General to include all comments received in the final report.

The Department agrees with all of the recommendations in your report. The ANAO's recommendations align with the new Indigenous Procurement Policy (IPP) that was jointly released on 25 May 2015 by the Minister for Indigenous Affairs and the Minister for Finance. From 1 July 2015, the IPP will commence, replacing the Indigenous Opportunities Policy (IOP).

In response to recommendation one, the IPP was developed through extensive engagement with government entities. The regional approach taken in the IOP was reviewed and a new approach developed to achieve better procurement outcomes for Indigenous businesses and simpler administration for government entities.

In response to recommendation two, the Department and Finance have developed a much stronger approach to promoting the Indigenous Business Exemption (IBE). Under the IPP, government entities will be required to set aside certain contracts for Indigenous businesses, if an Indigenous business can deliver the required goods or services on a value for money basis. The IBE will be used to award these contracts to Indigenous businesses. This approach will ensure that the IBE is much better understood and more frequently used.

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Postal Address: PO Box 6500, CANBERRA ACT 2600  
Telephone: +61 2 6271 5473 Fax: +61 2 6271 0000 [www.pmc.gov.au](http://www.pmc.gov.au) ABN: 18 108 001 191

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In response to recommendation three, the IPP contains much clearer periodic reporting and accountability arrangements. From 1 July 2015 each portfolio will need to meet an annual Indigenous procurement target. Data on performance against the target, as well as on performance against the other requirements of the IPP, will be collected through AusTender as far as possible, as well as through periodic manual reporting to the Department. Performance will be reported publicly on the Department's website on an annual basis, for the Commonwealth as a whole, and on a portfolio-by-portfolio basis.

I appreciate the collaborative approach the ANAO has taken in performing this audit and acknowledge the contribution that your work has made in developing the IPP. As requested, please find our formal response to the recommendations at [Attachment A](#).

Yours sincerely



Richard Eccles  
Deputy Secretary  
Indigenous Affairs

2 June 2015



## Australian Government

Department of the Prime Minister and Cabinet

Attachment A

### PM&C's response to the ANAO's proposed report on Procurement Initiatives to Support Outcomes for Indigenous Australians

#### Proposed Recommendation No. 1

**2.15** In order to inform implementation arrangements for the Indigenous Procurement Policy (IOP) the ANAO recommends that PM&C, in consultation with other government entities, review the current regional approach of the IOP and, as appropriate, provide advice to the Australian Government on potential alternative models by which the proposed minimum Indigenous participation requirements may be most effectively applied.

#### *PM&C Response:*

PM&C agrees with this recommendation. On 25 May 2015, the Minister for Indigenous Affairs and the Minister for Finance, released policy guidelines for a new Indigenous Procurement Policy (IPP). The IPP will take effect on 1 July 2015 and will replace the Indigenous Opportunities Policy (IOP).

The IPP was developed through extensive engagement with government entities and the regional approach that applied under the IOP was carefully reviewed. As a result of this review, the IPP takes a new approach to achieve better procurement outcomes for Indigenous businesses and simpler administration for government entities. Under the new approach, all contracts in remote Australia will be set aside for Indigenous businesses, together with all contracts valued between \$80,000 and \$200,000. The detailed IPP guidelines include clear guidance for agencies to assist them to determine whether a contract is in remote Australia.

#### Proposed Recommendation No. 2

**3.18** In order to better promote the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C, in consultation with Finance, develop a strengthened promotion strategy which takes into account the Exemption's potential contribution to broader Indigenous policy outcomes.

#### *PM&C Response:*

PM&C agrees with this recommendation. As part of the IPP, the Department and Finance has developed a much stronger approach to promoting the IBE.

Under the IPP, government entities will be required to set aside certain contracts for Indigenous small and medium enterprises, if an Indigenous business can deliver the required goods or services on a value for money basis. The IBE will be used to award these contracts to Indigenous businesses. Guidance material on the use of the IBE has been clarified and a new website supporting the IPP has been launched. In addition, a new Indigenous business

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Postal Address: PO Box 6500, CANBERRA ACT 2600  
 Telephone: +61 2 6271 Fax: +61 2 6271 www.pmc.gov.au ABN: 18 108 001 191

directory will be launched on 1 July 2015, to assist government and non-government buyers more quickly identify capable Indigenous businesses.

It is anticipated that these measures will ensure that the IBE is much better understood and more frequently used.

**Proposed Recommendation No. 3**

**4.25** In order to better monitor and report on the contracts facilitated by the IBE the ANAO recommends that PM&C, in consultation with Finance, develop a periodic reporting arrangement and provide regular advice to government on the extent of Indigenous business participation in government procurement.

*PM&C Response:*

PM&C agrees with this recommendation. The IPP contains much clearer periodic reporting and accountability arrangements.

From 1 July 2015 each portfolio will need to meet an annual Indigenous procurement target. Data on performance against the target, as well as on performance against the other requirements of the IPP, will be collected through AusTender as far as possible, as well as through periodic manual reporting to PM&C. This will allow PM&C to provide regular advice to government on the extent of Indigenous business participation in government procurement. This information will also be used to report publicly on an annual basis, on the Commonwealth's and each portfolio's performance under the IPP.



2. Department of Finance



**Australian Government**  
**Department of Finance**

**Jane Halton PSM**  
**Secretary**

Our Ref: SEC0011807

Dr Andrew Pope  
Group Executive Director  
Australian National Audit Office  
GPO Box 707  
Canberra ACT 2601

Dear Dr Pope

Thank you for your letter of 6 May 2015, requesting comment from Department of Finance on the proposed audit report on the *Procurement Initiatives to Support Outcomes for Indigenous Australians*.

Finance's response is provided at Attachment A to this letter. If you would like to discuss the Department's response, please do not hesitate to contact Ms Yvette Sims, Assistant Secretary, Procurement Policy Branch, on (02) 6215 2970.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J Halton', written over a horizontal line.

Jane Halton  
Secretary

3 June 2015

## **Attachment A**

### **Response to section 19 report on the performance audit of *Procurement Initiatives to Support Outcomes for Indigenous Australians***

#### **Recommendation 1**

In order to inform implementation arrangements for the Indigenous Procurement Policy the ANAO recommends that PM&C, in consultation with other government entities, review the current regional approach of the IOP and, as appropriate, provide advice to the Australian Government on potential alternative models by which the proposed minimum Indigenous participation requirements may be most effectively applied.

#### **Finance Response:**

Supported. The new Indigenous Procurement Policy, released on 25 May 2015, was developed by PM&C in close consultation with Finance and other key procuring entities. The regional focus of the previous policy has been replaced with minimum indigenous participation requirements for high value contracts in eight key industry sectors known to have high indigenous employment.

Additionally, the new policy recognises an opportunity for additional indigenous employment in remote areas, and includes additional requirements for suppliers delivering contracts in those areas.

#### **Recommendation 2**

In order to better promote the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C, in consultation with Finance, develop a strengthened promotion strategy which takes into account the exemption's potential contribution to broader Indigenous policy outcomes.

#### **Finance Response:**

Supported. The IBE is one of the 17 exemptions listed in Appendix A of the Commonwealth Procurement Rules (CPRs) and will continue to apply under the new policy. This exemption enables Commonwealth entities to procure goods and services directly from Indigenous small and medium enterprises that are at least 50 per cent Indigenous owned regardless of the value of the procurement. Noting the rules in Division 1 of the CPRs still apply to the procurement, including the requirement to achieve value for money.

The IBE supports easier and more streamlined purchasing from Indigenous SMEs and will be promoted for use by Commonwealth entities as a tool to assist them to meet the requirements of the new Indigenous Procurement Policy.

Finance will also continue to actively promote awareness of the IBE at procurement and other related forums.

**Recommendation 3**

In order to better monitor and report on the contracts facilitated by the IBE, the ANAO recommends that PM&C, in consultation with Finance, develop a periodic reporting arrangement, and provide regular advice to the government on the extent of Indigenous business participation in government procurement.

**Finance Response:**

Supported. Commonwealth entities are required to report contracts valued at or above \$10,000 on AusTender in accordance with the CPRs.

To assist PM&C measure performance against the new Indigenous Procurement Policy, Finance will conduct an annual data matching exercise between contracts reported on AusTender and the list of Indigenous enterprises registered in the Supply Nation database. Performance will be published on PM&C's Indigenous Procurement website, at the whole-of-government and the portfolio level.

### 3. Department of Defence



**Australian Government**  
**Department of Defence**

Mr Dennis Richardson  
Secretary

Air Chief Marshal Mark Binskin, AC  
Chief of the Defence Force

SEC/OUT/2015/110  
CDF/OUT/2015/628

Dr Andrew Pope  
Group Executive Director  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2600

Dear Dr Pope

**Australian National Audit Office Performance Audit of Procurement Initiatives to Support Outcomes for Indigenous Australians**

Thank you for the opportunity to provide comment on the Proposed Report provided to Defence on 6 May 2015.


The Defence response to the proposed report is included at Enclosure A, for inclusion in the published report.

Should you have any queries, please contact Mr Geoffrey Brown, Chief Audit Executive.

Yours sincerely

  
**Dennis Richardson**  
Secretary

21 May 2015

  
**M. D. BINSKIN, AC**  
Air Chief Marshal  
Chief of the Defence Force

11 May 2015

PO Box 7900 Canberra BC ACT 2610 Telephone 02 626 52851 - Facsimile 02 6265 2375

*Defendina Australia and its National Interests*

**Enclosures:**

A. SUMMARY OF THE AGENCY RESPONSE

**For Information**

ASSOCSEC

CEO DMO

DEPSEC DSRG

Chief Audit Executive

Assistant Secretary Audit

**ANAO Performance Audit: Procurement Initiatives to Support Outcomes for Indigenous Australians - Proposed Audit Report**

**Agency Response**

Defence acknowledges the recommendations contained in the audit report on the *Procurement Initiatives to Support Outcomes for Indigenous Australians*.

Defence has made a significant contribution to the new Indigenous procurement policy through its membership of the Indigenous procurement cross entity working group that is co-chaired by the Department of Prime Minister and Cabinet and Department of Finance. Defence has also implemented various initiatives to support Indigenous suppliers; such that spending has increased to over \$900 000 in quarters 1 and 2 of Financial Year 2014-15.

Defence is developing an Indigenous supplier engagement strategy, has implemented a single access point for Indigenous suppliers into Defence, and set up a web page providing information about Indigenous procurement policy and details of more than 300 Indigenous suppliers and their capabilities. In development of this, Defence made contact with more than 900 Indigenous businesses across Australia and has provided this information to SupplyNation for the Indigenous business register.

In addition, on 12 June 2014, Defence signed a contract worth up to \$6 million with an Indigenous company, *Pacific Services Group Holdings* and has recently engaged this same company for another project to repair the Cruiser Wharf at Garden Island, Sydney, estimated at \$55 million (\$5 million planning and \$50 million delivery phase).

Defence understands that sub-contracts will be counted towards meeting the targets under the new Indigenous procurement policy and this is an avenue for Defence to explore further potential opportunities for Indigenous suppliers.

Defence notes that to obtain entity buy-in, current and future policy and procedures should be practical in their application, otherwise they will be difficult and resource intensive to apply and desired outcomes may not be achieved.

## 4. Department of Human Services



**Australian Government**  
**Department of Human Services**

**Kathryn Campbell CSC**  
**Secretary**

Ref: EC15/151

Dr Andrew Pope  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope *Andrew*

Thank you for the opportunity to comment formally on the proposed 'section 19' report arising from the Australian National Audit Office's (ANAO) performance audit of Procurement Initiatives to Support Outcomes for Indigenous Australians, dated 6 May 2015.

The Department of Human Services (the department) notes that there are no recommendations directed to the department. Notwithstanding, the department welcomes the report and considers that implementation of its recommendations will enhance the effectiveness of the Commonwealth Procurement Framework in providing opportunities to Indigenous Australians through government procurement.

The introduction of the Indigenous Procurement Policy, which the department is currently assisting the Department of the Prime Minister and Cabinet to develop, will be a significant step in addressing the ANAO recommendations and will assist the department in delivering further outcomes to Indigenous business through its established Supplier Diversity Strategy.

If you would like to discuss the department's response, please do not hesitate to contact Ms Liz Bundy, National Manager, Procurement and Contract Management, on 02 61330383.

Yours sincerely

*Kathryn Campbell*

Kathryn Campbell

3 June 2015

5. Department of Education and Training

GED  
25 MAY 2015  
9.20



**Australian Government**  
**Department of Education and Training**

Secretary  
Lisa Paul AO PSM

Dr Andrew Pope  
Group Executive Director  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

  
Dear Dr Pope

**Performance Audit: Procurement Initiatives to Support Outcomes for Indigenous Australians**

Thank you for the opportunity to comment on the Australian National Audit Office's performance audit, Procurement Initiatives to Support Outcomes for Indigenous Australians.

I note the report's recommendations which have a whole of government focus.

The Department of Education and Training looks forward to continuing our commitment to supporting outcomes for Indigenous Australians through implementation of the new Indigenous Procurement Policy in 2015.

As requested, the department's formal response to the report is provided at Attachment A to this letter.

Thank you again for seeking our input.

Yours sincerely



Lisa Paul

25 May 2015

*Opportunity through learning*

50 Marcus Clarke Street, Canberra ACT 2601  
GPO Box 9880, Canberra ACT 2601 | Phone (02) 6121 6000



**ATTACHMENT A**

**Response to the ANAO performance audit: Procurement Initiatives to Support Outcomes for Indigenous Australians**

**Summary of the Department of Education and Training's formal response**

The recommendations in this report are supportive of a whole of government approach aimed at the ongoing improvement for Indigenous Australians in relation to government procurements.

The Department of Education and Training looks forward to continuing this work through implementation of the new Indigenous Procurement Policy.

*Opportunity through learning*

50 Marcus Clarke Street, Canberra ACT 2601  
GPO Box 9880, Canberra ACT 2601 | Phone (02) 6121 6000

## 6. Department of Employment



Australian Government  
Department of Employment

Your Ref PAR12696  
Our Ref

Secretary  
Renée Leon PSM

Dr Andrew Pope  
Group Executive Director  
Performance and Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope

**Performance audit report on Procurement Initiatives to Support Outcomes for Indigenous Australians**

Thank you for your letter of 6 May 2015 providing the opportunity to comment on the proposed audit report on Procurement Initiatives to Support Outcomes for Indigenous Australians.

I am pleased to note that the report provides a positive evaluation of the intent of the Indigenous Opportunities Policy and the Indigenous Business Exemption policies to leverage better Indigenous outcomes from Commonwealth procurement activity. I note the concerns raised in the report that the frameworks in place to support the implementation of these policies do not generally facilitate effective delivery of the outcomes sought.

The Department supports efforts to strengthen the overall framework for Procurement Connected Policies that aim to improve Indigenous economic outcomes, including improvements in the implementation, monitoring and reporting of initiatives that seek to increase opportunities for Indigenous Australians.

Attached are the Department's summary comments for inclusion in the report (Attachment A) and specific comments concerning the proposed report (Attachment B).

If you have any questions regarding the Department's response, please contact Helen McCormack, the Chief Internal Auditor, on telephone number (02) 6121 3633 or via email, [helen.mccormack@employment.gov.au](mailto:helen.mccormack@employment.gov.au).

Yours sincerely

Renée Leon  
2 June 2015

GPO Box 9880, Canberra ACT 2601 | Phone 13 33 97 | [www.employment.gov.au](http://www.employment.gov.au) | ABN 542 012 184 74

**ATTACHMENT A**

**Response for inclusion in the Audit Report Summary**

The Department of Employment welcomes the report on Procurement Initiatives to Support Outcomes for Indigenous Australians.

The Department of Employment will continue to be actively involved in the implementation of the Indigenous Procurement Policy to improve Indigenous economic development and Indigenous employment. As part of our commitment to Indigenous procurement initiatives, and in collaboration with the Shared Services Centre, the Department has implemented strategies to promote the introduction of the Indigenous Procurement Policy on 1 July 2015.

The new Indigenous Procurement Policy includes improved monitoring considerations and the Department is taking steps to improve our procurement monitoring and reporting to include the capture of all Indigenous procurement in accordance with the Indigenous Procurement Policy definitions.

## 7. Department of Industry and Science



**Australian Government**  
**Department of Industry and Science**

**Secretary**

Dr Andrew Pope  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope

I refer to your letter of 6 May 2015, seeking comments on the proposed audit report on Procurement Initiatives to Support Outcomes for Indigenous Australians.

The department acknowledges the findings of the audit and supports the recommendations proposed in the report.

The department notes that the report contains some generalisations regarding procurement officers' knowledge of the Indigenous Business Exemption (IBE) and the low numbers of procurements from Indigenous businesses. The report should recognise that statements regarding a lack of knowledge on the IBE are based on the views of Supply Nation and are not necessarily indicative of the level of knowledge of all procurement officers.

Further, the statistics collected on the use of the IBE are based on Indigenous Businesses registered with Supply Nation. The report notes that not all Indigenous businesses choose to register with Supply Nation, as such it is likely to largely underestimate the actual instances of use of the exemption. The report may benefit from strengthening this point.

Please find comments for the ANAO to consider including in the report at [Attachment A](#).

Thank you for the opportunity to provide comment on the proposed report.

Yours sincerely

A handwritten signature in black ink that reads "G. A. Beauchamp".

Glenys Beauchamp

1 June 2015

Phone: (02) 6213 6650 Fax: (02) 6213 6657 Email: [Glenys.Beauchamp@industry.gov.au](mailto:Glenys.Beauchamp@industry.gov.au)  
Industry House - 10 Binara Street, Canberra City, ACT 2601 - GPO Box 9839 Canberra ACT 2601 - [www.industry.gov.au](http://www.industry.gov.au) - ABN: 74 599 608 295

**Attachment A****Summary of Department of Industry and Science's response for inclusion in the report Summary**

The Department of Industry and Science acknowledges the findings of the ANAO audit on Procurement Initiatives to Support Outcomes for Indigenous Australians and supports the recommendations proposed in the report.

The department notes the difficulty in identifying a broad sample of Indigenous businesses and as a result the approach taken was to rely heavily on Supply Nation. The department notes that this approach is likely to underestimate the actual instances of procurement from Indigenous Businesses given that Supply Nation certified suppliers represent a small percentage of Indigenous Businesses.

8. Australian Taxation Office



Second Commissioner of Taxation

Dr Andrew Pope  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope

**AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT OF  
PROCUREMENT INITIATIVES TO SUPPORT OUTCOMES FOR INDIGENOUS  
AUSTRALIANS (CROSS ENTITY AUDIT)**

Thank you for your letter dated 6 May 2015 and for the opportunity to provide comments on the proposed report on Procurement Initiatives to Support Outcomes for Indigenous Australians.

The ATO agrees with the three recommendation/s as presented in the section 19 report.

Attached is the ATO response to recommendations (Annexure 1) and summary of our comments to be included in the report (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

If you require further information on this matter, please contact Paul Kruspe, Assistant Commissioner, Procure to Pay Solutions, (03) 9275 4108.

Yours sincerely

A handwritten signature in black ink, appearing to read "Andrew Pope".

Second Commissioner  
Australian Taxation Office

2 June 2015

**Annexure 2****Summary of ATO's response**

The Australian Taxation Office (ATO) strongly supports this ANAO report's findings and recommendations. The ATO will work with and support PM&C and Finance on delivering the recommendations.

In particular the ATO supports the approach in which agencies take responsibility for achieving the Indigenous Procurement Policy outcomes for their own contracts.

The ATO accepts the feedback from Indigenous businesses in the report that application of Indigenous procurement policies generally only occurred when supported by senior leaders in an agency.

The ATO's senior leaders actively support the objective of increased Indigenous economic participation through our procurement activities.

To support this, the ATO has:

- Established a Reconciliation Action Plan (RAP) and Supplier Diversity strategy that includes procurement targets,
- Proactively engaged with suppliers to build sustainable arrangements that incorporate Supply Nation certified suppliers, and
- Actively sourcing MURU Group paper supplies through our stationery supplier.

The ATO's approach and strategy to engage, inform and support Supplier Diversity has received endorsement from Supply Nation and Indigenous businesses.

## Annexure 1

Rec	ANAO recommendation	ATO response
1	In order to inform implementation arrangements for the Indigenous Procurement Policy the ANAO recommends that PM&C, in consultation with other government entities, review the current regional approach of the IOP and, as appropriate, provide advice to the Australian Government on the potential alternative models by which the proposed minimum Indigenous participation requirements may be most effectively applied.	<b>Agreed</b>
2	In order to better promote the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C in consultation with Finance, develop a strengthened promotion strategy which takes into account the exemption's potential contribution to broader Indigenous policy outcomes.	<b>Agreed</b>
3	In order to better monitor and report on the contracts facilitated by the Indigenous Business Exemption (IBE), the ANAO recommends that PM&C in consultation with Finance, develop a periodic reporting arrangement, and provide regular advice to the government on the extent of Indigenous business participation in government procurement.	<b>Agreed</b>



## 9. Supply Nation



4 June 2015

Dr Andrew Pope  
Group Executive Director  
Performance Audit Services Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Dr Pope

**ANAO Performance Audit of Procurement Initiatives to Support Outcomes for Indigenous Australia.**

Thank you for providing Supply nation with the opportunity to formally respond. Please find attached our detailed response.

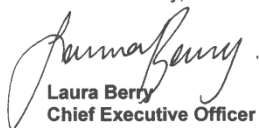
For the purposes of the report summary, I am pleased to provide the following paragraphs for inclusion:

*Supply Nation, on behalf of its Indigenous certified suppliers and corporate and government members welcomes this report and the lessons learnt from the government's history of Indigenous business engagement. Supply Nation and its partners aim to effectively adapt to and enhance the new strengthened Indigenous Procurement Policy, launching 1 July 2015.*

*Supply Nation has begun registering 50 per cent or more Indigenous owned business, which will be listed on a new public directory of Indigenous businesses called Indigenous Business Direct, to launch 1 July 2015. Registered businesses that meet certification criteria (51% or more owned, managed and controlled) will be encouraged by Supply Nation to become certified. Once certified, the business will be clearly marked as certified with the Supply Nation Certified logo.*

Should you require any additional information, please do not hesitate to contact me.

Yours Sincerely,



**Laura Berry**  
Chief Executive Officer

PO Box 524  
Stawberry Hills, NSW 2017  
Australia

t 1300 055 298  
e [info@supplynation.org.au](mailto:info@supplynation.org.au)  
w [www.supplynation.org.au](http://www.supplynation.org.au)

## Appendix 2 List of exemptions to the Commonwealth Procurement Rules

Procurements that are exempt from the rules of Division 2 by the operation of Appendix A of the CPRs are still required to be undertaken in accordance with value for money and with the rules of Division 1 of these CPRs.

Division 2 does not apply to:

1. leasing or procurement of real property or accommodation (note: the procurement of construction services is not exempt);
2. procurement of goods and services by an entity from other Commonwealth, state, territory or local government entities where no commercial market exists or where legislation or Commonwealth policy requires the use of a government provider (for example, tied legal services);
3. procurements funded by international grants, loans or other assistance, where the provision of such assistance is subject to conditions inconsistent with this document;
4. procurements funded by grants and sponsorship payments from non-Commonwealth entities;
5. procurement for the direct purpose of providing foreign assistance;
6. procurement of research and development services, but not the procurement of inputs to research and development undertaken by an entity;
7. the engagement of an expert or neutral person, including engaging counsel or barristers, for any current or anticipated litigation or dispute;
8. procurement of goods and services (including construction) outside Australian territory, for consumption outside Australian territory;
9. acquisition of fiscal entity or depository services, liquidation and management services for regulated financial institutions, and sale and distribution services for government debt;
10. procurement of motor vehicles;
11. procurement by the Future Fund Management Agency of investment management, investment advisory, or master custody and safekeeping

services for the purposes of managing and investing the assets of the Future Fund;

12. procurement of blood plasma products or plasma fractionation services;
13. procurement of government advertising services;
14. procurement of goods and services by, or on behalf of, the Defence Intelligence Organisation, the Defence Signals Directorate, or the Defence Imagery and Geospatial Organisation;
15. contracts for labour hire;
16. procurement of goods and services from a business that primarily exists to provide the services of persons with a disability; and
17. **procurement of goods and services from an SME with at least 50 per cent Indigenous ownership.**

## Appendix 3 Procurement Connected Policies

Procurement Connected Policy	Application
The Australian Industry Participation (AIP)	Applicable to large Commonwealth tenders generally above \$20 million.
The National Code of Practice for the Construction Industry and Implementation Guidelines	No minimum threshold for Commonwealth-funded construction projects
National Packaging Covenant	No minimum threshold
Energy Efficiency in Government Operations	No minimum threshold
The National Waste Policy	No minimum threshold
Australian Government ICT Sustainability Plan 2010–2015	Applicable to ICT procurements
Commonwealth Fraud Control Guidelines	No minimum threshold
National Public Private Partnership Policy Framework and Guidelines	Procurements with capital valued above \$50 million. May apply to procurements below the threshold if suitable
Limited Liability in ICT Contracts with Commonwealth Government entities	No minimum threshold
ICT Small to Medium Enterprise (SME) Participation Procurement Policy.	Applicable to ICT procurements from SMEs valued at or above \$20 million
Trade Sanctions	No minimum threshold
Legal Services Directions	No minimum threshold
Intellectual Property Principles for Australian Government Agencies	No minimum threshold
Protective Security Policy Framework.	No minimum threshold
Australian Government Information, Communications and Information Systems Security Manual	No minimum threshold
Commonwealth Disability Strategy	No minimum threshold
Workplace Gender Equality Procurement Principles and User Guide	Procurements that exceed the relevant procurement threshold outlined in paragraph 9.7 of the Commonwealth Procurement Rules
Indigenous Opportunities Policy Tenders	Applies to procurements over \$5 million (\$6 million for construction)

## Appendix 4 Department of Finance Indigenous Business Exemption (Exemption 17) Guidelines

### About the exemption

Exemption No. 17 allows an entity to engage directly (via limited tender) with a Small and Medium Enterprise (SME) with at least 50 per cent Indigenous ownership.

### Does the exemption apply to all of the Commonwealth Procurement Rules (CPRs)?

No. The exemption **only** applies to the additional rules set out in Division 2 of the CPRs. The rules in Division 1 still apply to the procurement, including the requirement to achieve value for money.

### Is the exemption mandatory and how do I apply it?

None of the exemptions listed in Appendix A of the CPRs are mandatory. Entities have discretion on using the exemption, and when used, the delegate should be satisfied that the proposed supplier(s) to be approached:

- Meets the 50 per cent Indigenous ownership requirement; and
- Is an SME<sup>56</sup>.

A record of the delegate's decision to use the exemption should be made.

### What type and size of procurements can the exemption be applied to?

The exemption can be applied to any procurement where its estimated value is at or above the relevant procurement threshold (\$80,000 for general goods and services, and \$7.5 million for construction services).

The exemptions at Appendix A cannot be used for the procurement of goods or services for which a mandatory whole of government arrangement is in place. A list of these can be found at [<http://www.finance.gov.au/procurement/wog-procurement/>].

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<sup>56</sup> Defined in the Commonwealth Procurement Rules as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees.

### **Can I apply the exemption to procurements under the relevant threshold?**

As the CPRs allow you to approach one or more businesses directly via limited tender for procurements with an estimated value under \$80,000 for general goods and services (\$7.5 million for construction services), there is no need to apply the exemption under the threshold. It is important that you check what your entity's internal operating processes are and follow them as required.

### **What's required when approaching an Indigenous business?**

It's the same process as any limited tender, you will need to issue a request for quote including key information to allow the business(es) to provide a competitive submission.

### **Is the exemption part of the Indigenous Opportunities Policy?**

The Indigenous Opportunities Policy (IOP) is a separate policy and requires tenderers and contractors for certain projects to complete a plan outlining how they will engage Indigenous staff and/or suppliers.

### **When do I need to apply the Indigenous Opportunities Policy?**

The IOP only applies to procurements valued over \$5 million (\$6 million for construction) and where the predominant procurement activity is in a region(s) of significant Indigenous population.

More information on the Indigenous Opportunities Policy can be found at [<https://employment.gov.au/questions-australian-government-agencies-indigenous-opportunities-policy>].

### **Where can I find a list of Indigenous businesses and what they sell?**

There are a number of Indigenous business directories, business links and organisations. These are detailed on the Indigenous Opportunities Policy's web pages and can be found at [<https://employment.gov.au/questions-australian-government-agencies-indigenous-opportunities-policy>]. Note that these directories may apply different definitions of what constitutes an Indigenous business, including level of Indigenous ownership.

Supply Nation is a business-to-business membership body dedicated to growing diversity within the supply chain. Further information on Supply Nation can be found at [<http://www.supplynation.org.au/>].

### **Is it up to me to determine if a business is 50 per cent Indigenous owned?**

Yes. For low risk procurements, officials may rely on claims made by the business. For higher risk procurements, officials may seek declarations from the business regarding their ownership status, use a business which has been certified by Supply Nation (51 per cent Indigenous ownership is currently required to obtain this certification), or certified by an Indigenous chamber of commerce, or seek independent verification.

### **How do I demonstrate 'value for money' when using the exemption in the absence of competition?**

In the absence of an open tender, understanding the market, including an estimated cost, is a good start to demonstrating value for money.

For low risk procurements you could also:

- research comparable offerings on the internet;
- search AusTender ([www.tenders.gov.au](http://www.tenders.gov.au)) for similar contracts ;
- talk to procurement officials both within and outside your entity about other similar procurements; or
- create competition by approaching more than one Indigenous SME.

In addition to understanding the market, you might also obtain benchmarks for other contract deliverables such as the delivery timeframe, quality or nature of materials to be used.

### **Should I measure the social benefit as part of the 'value for money' consideration?**

There is no specific requirement to measure the social benefit of procuring from an Indigenous business. Your assessment of value for money should be based around delivery of the goods or services at the quality you require. These should generally be in line with market rates.

### **How do I ensure accountability and transparency in the procurement process and in selecting Indigenous SMEs?**

In terms of accountability, officials must maintain records for each procurement commensurate with the scale, scope and risk of the procurement including:

- the requirement for the procurement;

- the process that was followed;
- how value for money was considered and achieved; and
- relevant decisions.

Documentation should also be commensurate with the scale, scope and risk profile of the procurement.

AusTender is the mechanism for transparency. All contracts awarded above \$10,000 must be reported on AusTender within 42 days of being entered into.

**When applying the exemption, what procurement method do I report on AusTender?**

Typically, where an exemption has been used, the contract should be reported as 'limited tender'. Further information on the procurement methods is in the CPRs.

**If I have issued an open tender via AusTender, then find an Indigenous business which can supply the service I need, can I cancel the RFT and engage the Indigenous business directly?**

You should avoid cancelling an approach to market in order to directly engage an Indigenous business. A decision to use the exemption should be made prior to approaching the market.

**If I have previously unsuccessfully attempted to engage an Indigenous business through the exemption, can I later include the same business in a tender process for the same procurement?**

Yes. If you have been unsuccessful in engaging an Indigenous business directly via the indigenous exemption, and subsequently broaden the approach to market it is reasonable to advise the Indigenous business of the opportunity to bid.

**Who can I contact for help with applying the exemption?**

In the first instance contact your entity's Central Procurement Unit.



## Appendix 5 Commitments available for selection in the IOP Plan template

Category	Commitments
Training specific activities	<ul style="list-style-type: none"> <li>• Set targets for Indigenous Australian training and implement strategies for meeting those targets.</li> <li>• Work with schools, education and training providers, Job Services Australia and community groups to provide pre-employment training to Indigenous Australians.</li> <li>• Use state, territory and Australian Government training programs to address training needs and opportunities for local Indigenous Australians to assist them with pathways into my organisation.</li> <li>• Build relationships with student bodies, universities and other educational organisations to scope, develop and implement an Aboriginal and Torres Strait Islander internship, scholarship, accredited training and/or secondment program within my organisation.</li> <li>• Promote onsite training of Indigenous Australian persons working for contractors, subcontractors and project partners.</li> <li>• Other training activity (for the business to nominate).</li> </ul>
Employment specific activities	<ul style="list-style-type: none"> <li>• Set targets for Indigenous Australian employment and implement strategies for meeting those targets, including retention strategies.</li> <li>• Scope, develop and implement a culturally appropriate recruitment and retention strategy for Indigenous Australians, including targeting the unemployed, tertiary students and/or secondary students.</li> <li>• Scope, develop and implement a local pre-recruitment activity in order to ensure a pool of job-ready Indigenous applicants for my organisation's workforce needs.</li> <li>• Scope, develop and implement local Indigenous Australian secondment, up-skilling, internal training, accredited leadership and/or career development program.</li> <li>• Design and implement an employment strategy that accommodates the needs of local Indigenous labour markets.</li> <li>• Other employment activity (for the business to nominate).</li> </ul>

Category	Commitments
Indigenous business	<ul style="list-style-type: none"> <li>• Set targets for using Indigenous businesses in your supply chain and implement strategies for meeting those targets.</li> <li>• Become a member of Supply Nation and use the Supply Nation certified Indigenous businesses as suppliers where appropriate.</li> <li>• Scope, develop and implement procurement policies (including contract and risk management processes) across my organisation to identify Indigenous business, to remove barriers to participation for Indigenous business and/or to use Indigenous business.</li> <li>• Provide information on business opportunities to Indigenous small to medium enterprises, including contact points to access these opportunities.</li> <li>• Offer business mentoring, training support and skills development for Indigenous small to medium enterprises.</li> <li>• Develop joint ventures and consortia that involve my organisation and Indigenous small to medium enterprises.</li> <li>• Other business activity (for the business to nominate).</li> </ul>
General activities	<ul style="list-style-type: none"> <li>• Work with Reconciliation Australia to develop a Reconciliation Action Plan for my organisation and commit to implement the RAP.</li> <li>• Encourage contractors, sub-contractors and project partners to employ suitably qualified Indigenous Australians.</li> <li>• Promote Indigenous Australian training, employment and business opportunities within my profession and business community.</li> <li>• Appoint a staff member or a team within my organisation who has/have expertise in working with Indigenous Australian people and communities to be responsible for Indigenous Australian training and employment within my organisation.</li> <li>• Appoint a staff member to develop ongoing relationships between my organisation and the Indigenous communities where we work.</li> <li>• Scope, develop and implement policies across my organisation to provide training, employment and business opportunities for Indigenous Australians.</li> <li>• Other general activity (for the business to nominate).</li> </ul>

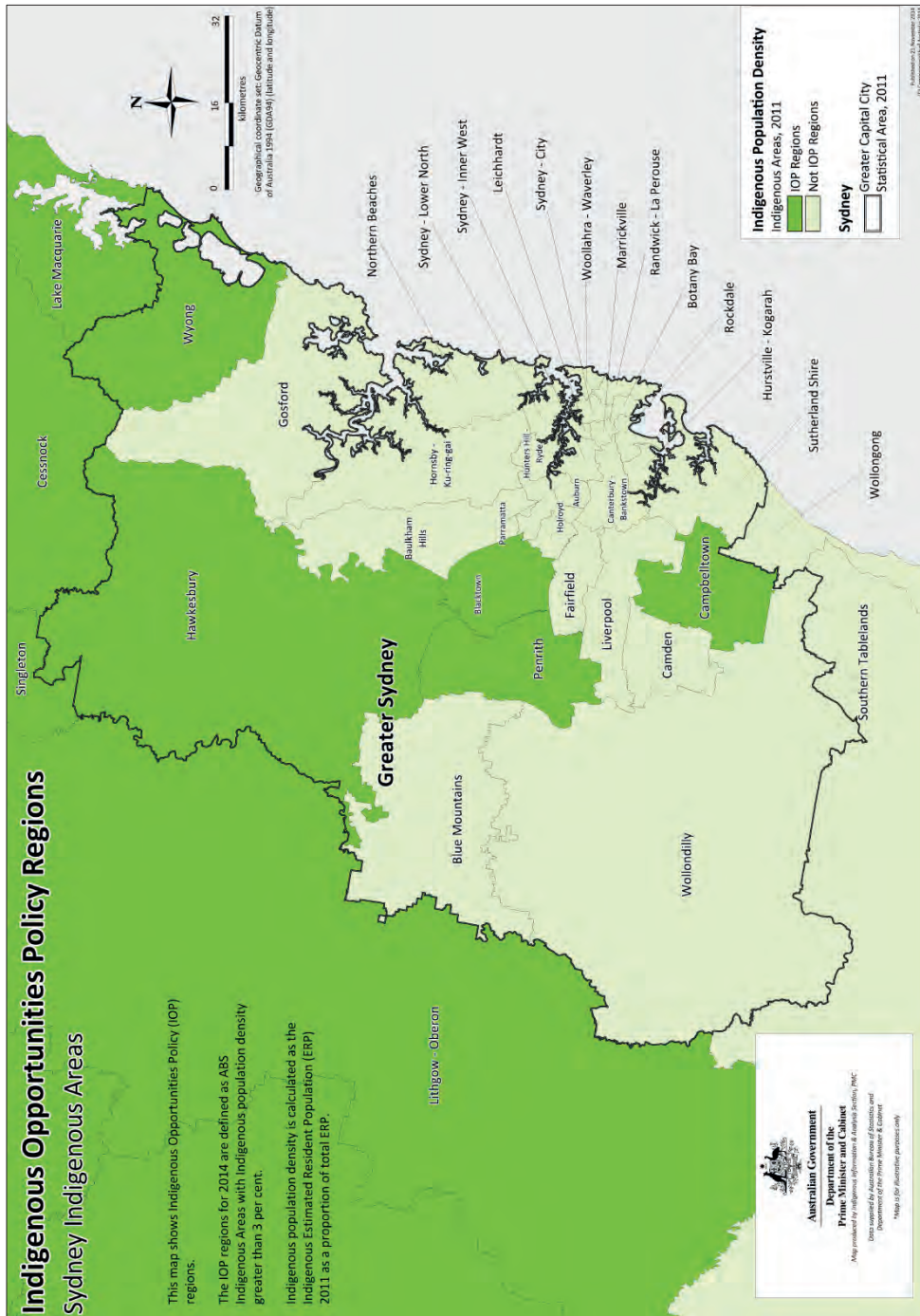
# Appendix 6 Significant Indigenous Population Regions Identified Within Major Cities as Applied by the Indigenous Opportunities Policy

Figure A.1: Brisbane



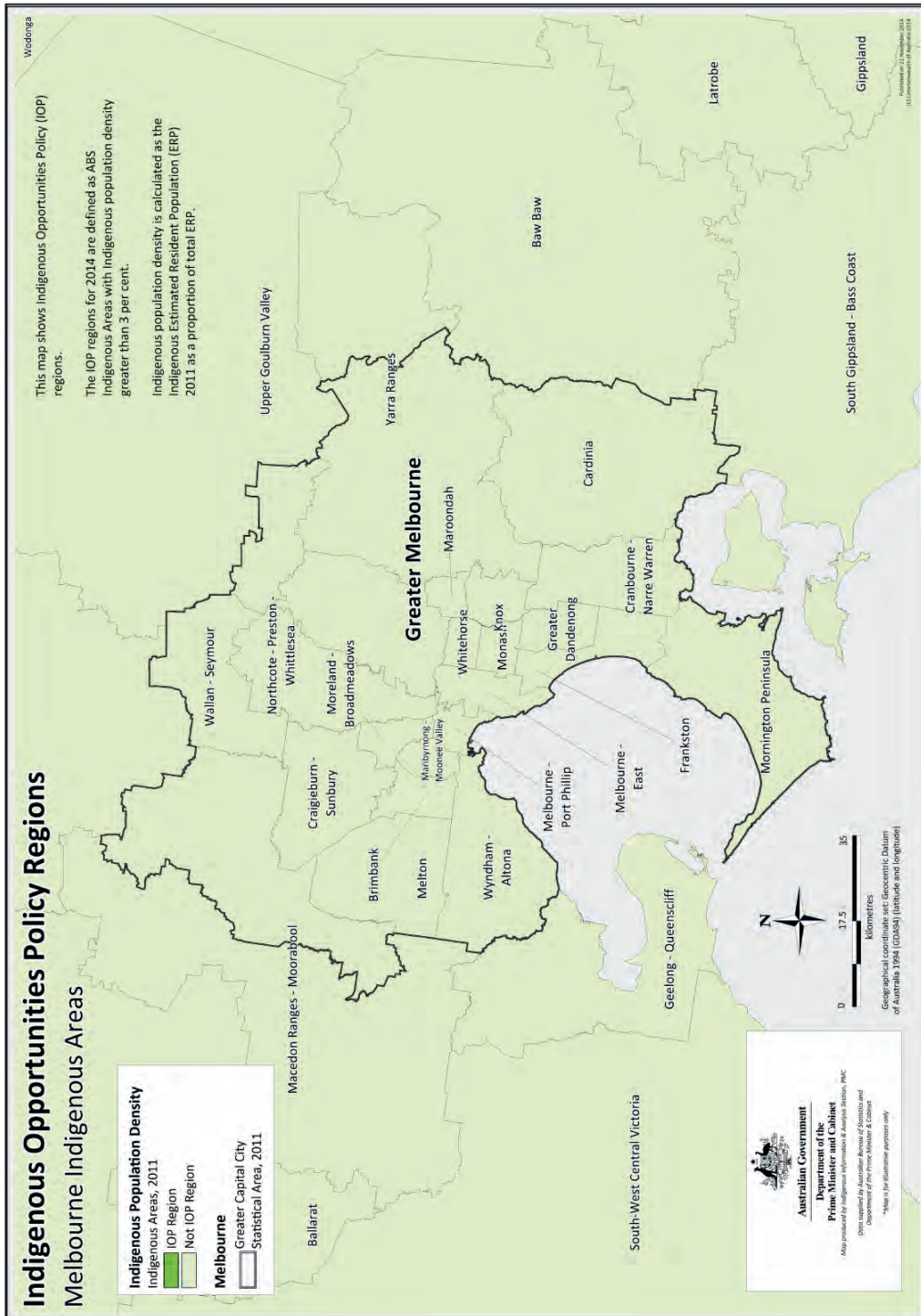
Source: PM&C.

Figure A.2: Sydney



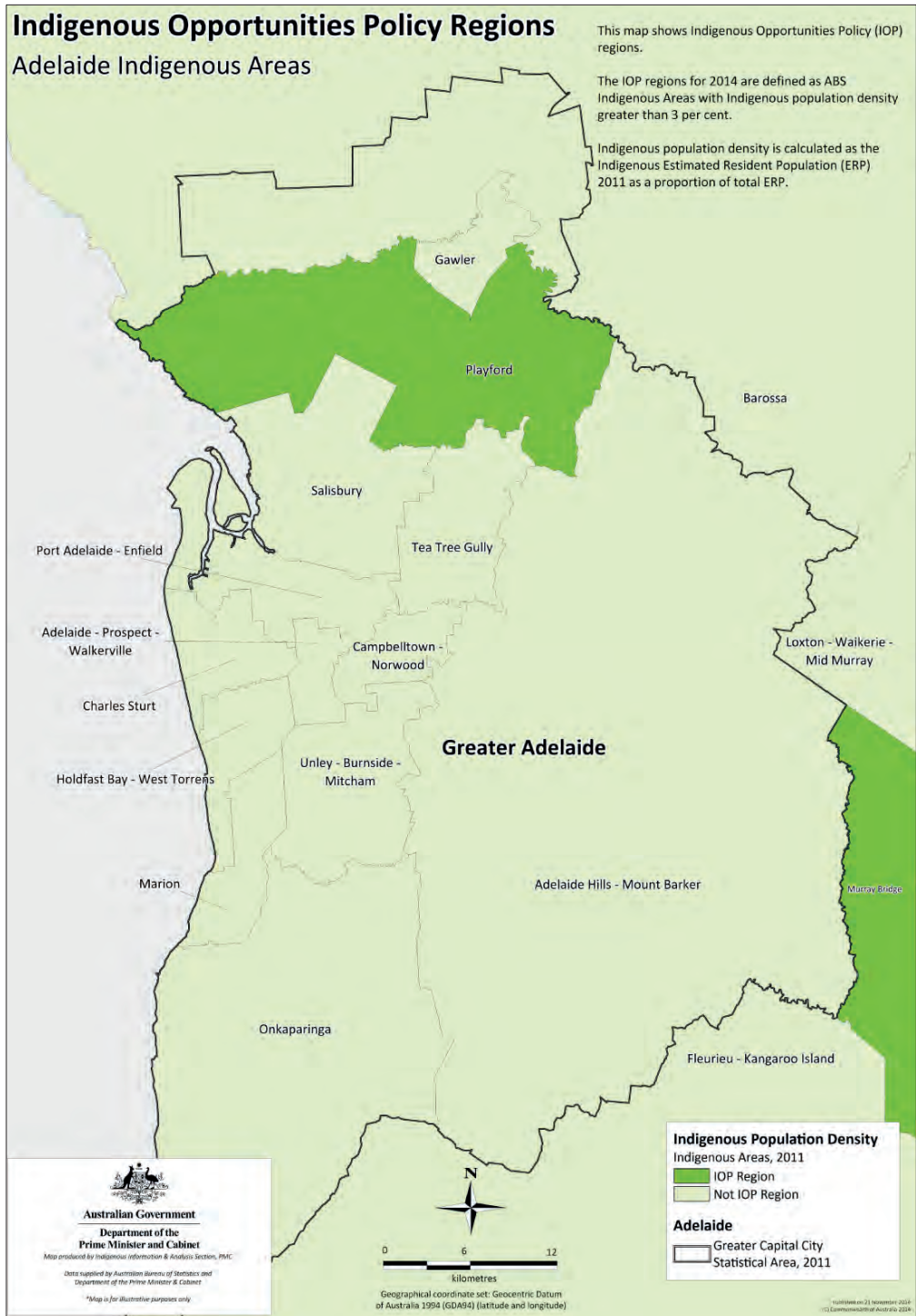
Source: PM&C.

Figure A.3: Melbourne



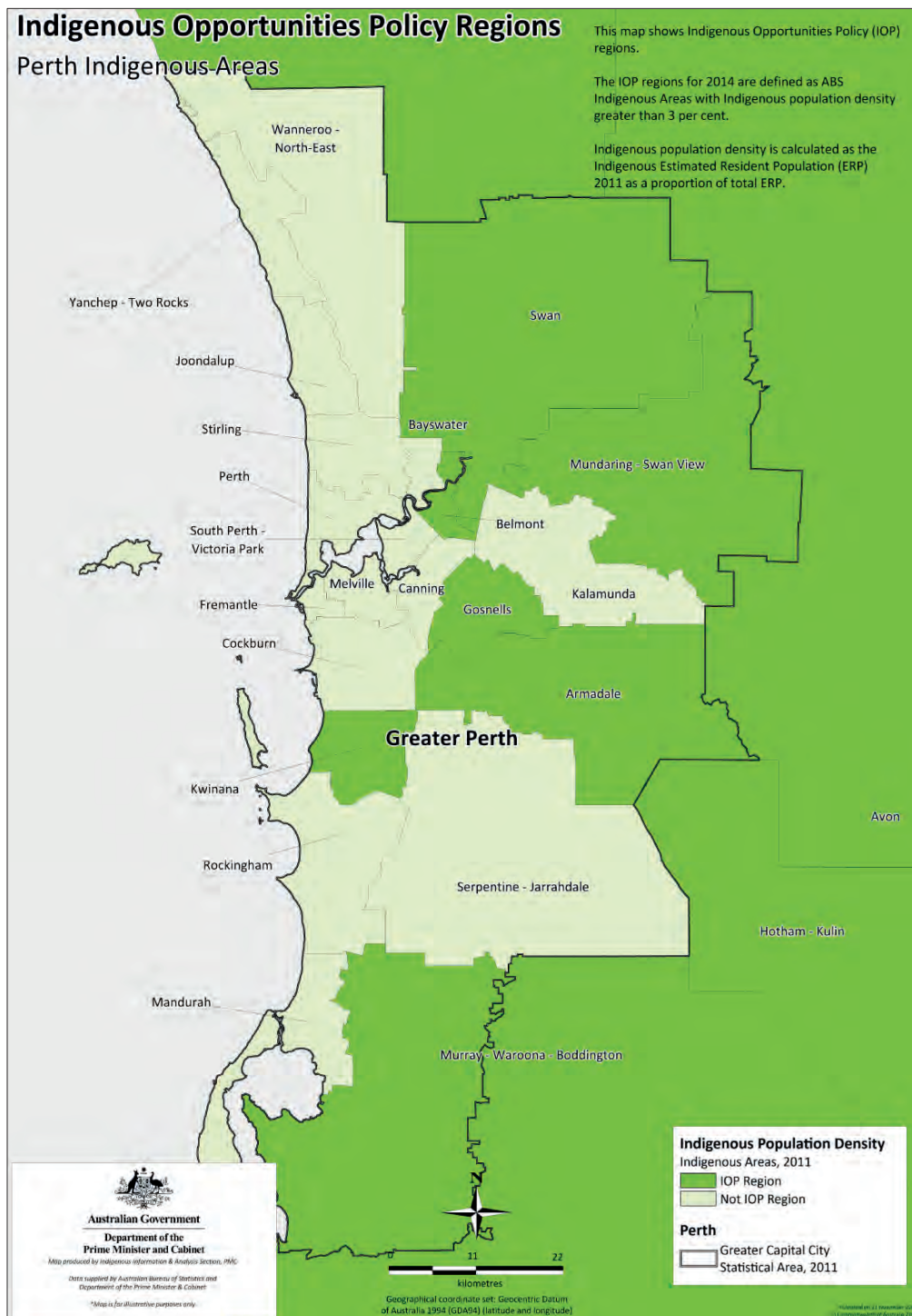
Source: PM&C.

**Figure A.4: Adelaide**



Source: PM&C.

Figure A.5: Perth



Source: PM&C.

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