

REGULATION IMPACT STATEMENT

MORE INDIGENOUS JOBS THROUGH COMMONWEALTH PROCUREMENT

Overview

The Government currently has existing policies in place to try to close the gap on Indigenous employment and Indigenous economic development. This includes the Indigenous Opportunities Policy (IOP) and an exemption in the Commonwealth Procurement Rules (CPRs) for small and medium sized Indigenous businesses which are at least 50 per cent Indigenous-owned.

The recently released Report of the Forrest Review, "Creating Parity"¹, notes that these policies have not had an impact. In 2012-13, Indigenous businesses secured only 0.02 per cent of the overall Commonwealth Government spend (around \$6.2 million of the \$39 billion spent).

"Creating Parity" recommended creating a target to grow demand for Indigenous businesses and Indigenous workers. In particular, it recommended that the Government purchase at least 4 per cent of its goods and services within four years (either directly or through subcontractors) from Indigenous businesses (with a minimum of 25 per cent Indigenous ownership) and in particular from the new Indigenous commercial enterprises once they are established.

The purpose of this Regulation Impact Statement (RIS) is to inform the Government's response to this recommendation.

1. What is the policy problem you are trying to solve?

Closing the Gap on Economic Outcomes is a Key Government Priority

The gap in outcomes between Indigenous and non-Indigenous Australians in relation to Indigenous economic development, Indigenous wealth-creation and Indigenous employment is not closing despite the government's efforts.

- The Indigenous population is young and growing, and the gap in employment outcomes between Indigenous and non-Indigenous Australians is getting larger. In 2007 the gap was 21 per cent. This grew by 6.6 per cent to around 28 per cent in 2012-13.
- Currently, less than half of the working age population of Indigenous Australians are in paid work – 46 per cent compared to 76 per cent of non-Indigenous Australians. In remote and very remote areas, only 35 per cent of Indigenous Australians are in paid work compared to 83 per cent of non-Indigenous Australians.
- More than 60 per cent of 17 to 24 year old Indigenous Australians leave school without connecting to further study or work, compared to only 26 per cent of other young Australians. In remote areas, this figure is 82 per cent for Indigenous Australians.
- Compared with non-Indigenous Australians, Indigenous Australians are less than half as likely to be in full time work or study and over four times more likely to be unemployed.

¹ A Review of Indigenous Training and Employment Programmes was undertaken by Mr Andrew Forrest in 2013-14. Public submissions to the Review were received from November –December 2013. Further submissions providing feedback on the Review were received from 1 August to 20 September 2014. The Review's Report, entitled "Creating Parity" 2014 can be found on the [Indigenous Jobs and Training Review website](#).

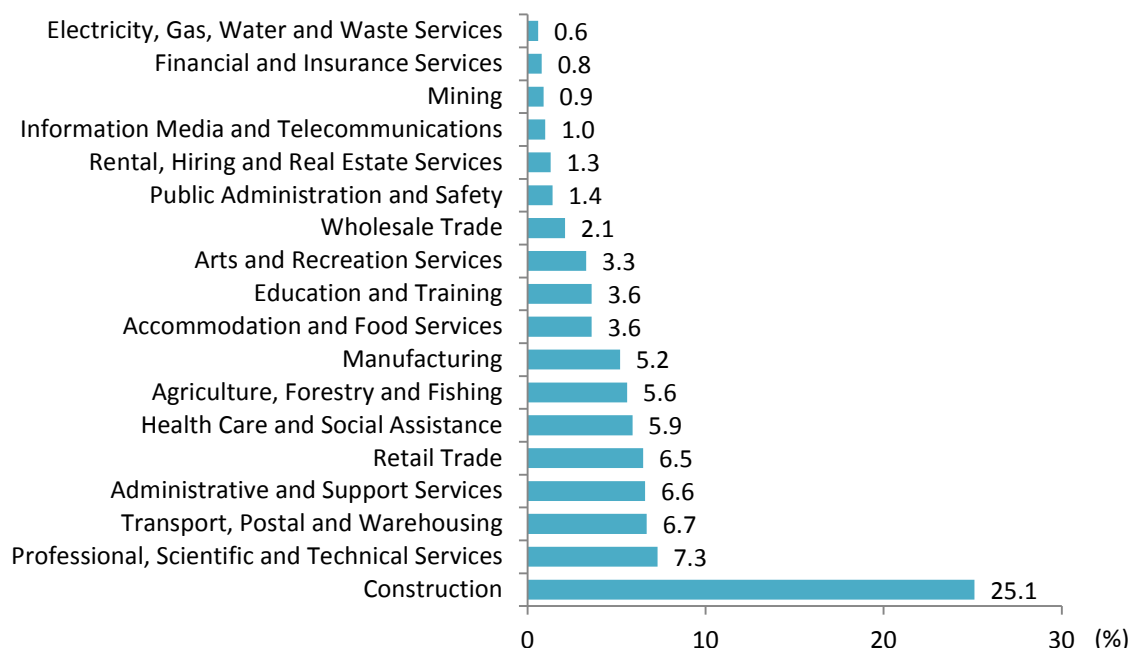
While Indigenous businesses are more than 100 times more likely than non-Indigenous businesses to employ Indigenous Australians, Indigenous businesses are not participating in government contracting opportunities at a level comparable to non-Indigenous businesses. Building demand for Indigenous workers and for goods and services from Indigenous businesses is likely to increase the rate of Indigenous employment, improve Indigenous economic independence and create Indigenous wealth. These in turn will improve outcomes for Indigenous Australians across a wide spectrum including health, education and self-determination.

If nothing is done to increase Indigenous economic development and employment, then the human and social costs will continue to increase. In addition, direct costs to the government, in terms of social security payments and health care payments will be large. State governments will also incur high costs associated with incarceration, policing and health care.

The Indigenous Business Sector and Government Procurement Outcomes

There is limited available information about the Indigenous business sector. We know that almost all Indigenous businesses are small to medium sized enterprises² (SMEs) and that Indigenous businesses are variably represented across a wide spectrum of industries (see Figure 1). According to 2011 Census information there are around 9,000 businesses that identify as Indigenous businesses in Australia.

Figure 1: Distribution of Indigenous Businesses by Sector (2011 Census)



Government procurement of goods and services injects significant money into the economy each year, however, only a very small number of Indigenous businesses share in government procurement opportunities. In 2012-13, the government purchased around \$39 billion of goods and services but of this only 0.02 per cent (around \$6.2 million) was secured by Indigenous businesses.

² Small to medium sized enterprises (SMEs) are defined as an Australian or New Zealand firm with fewer than 200 full-time equivalent employees, Division 2, *CPRs*.

Based on the available data there are no sectors in government procurement where Indigenous businesses predominate, but on a dollar value basis the following industries were most highly represented in government procurement: events management (four contracts totalling \$1.6 million), information and telecommunications technology (two contracts totalling \$711,400), education and training services (four contracts totalling \$377,809) and public relation services (three contracts totalling \$312,670)³.

Given the limitations of the data about Indigenous businesses, only limited conclusions can or should be drawn.

Current approaches to increasing Indigenous procurement are not working

In understanding the reasons for the low numbers of government contracts with Indigenous businesses, stakeholder consultation has indicated the following key factors:

1. Difficulty in readily sourcing suitable Indigenous businesses.
2. Lack of confidence of government procurement officers to procure from Indigenous suppliers and high levels of procurement risk aversion.
3. Inexperience of Indigenous businesses to write tenders for government contract opportunities and win government contracts.
4. Weak accountabilities under the current IOP.

1. Difficulty in readily sourcing suitable Indigenous businesses

Supply Nation is a not-for-profit business-to-business membership body dedicated to growing supply-chain diversity. The Department of the Prime Minister and Cabinet (PM&C) has supported Supply Nation's development and is now funding Supply Nation to create a comprehensive national directory of Indigenous businesses that will be freely and publicly available from 1 July 2015.

Currently, Supply Nation's Indigenous business list is only available to its fee paying members. Under Supply Nation's previous certification process, Indigenous businesses were required to provide considerable supporting documentation about their financial status and day to day operations, and have an interview with Supply Nation. Additionally, only Indigenous businesses that were 51 per cent Indigenous-owned, managed and controlled with a significant financial turnover were able to join the list. This meant that many legitimate Indigenous businesses, including husband and wife partnerships and 100 per cent Indigenous-owned franchises, were unable to join the Supply Nation list. These arrangements reduced the opportunity for the Indigenous business sector to grow and thrive.

Being able to readily source Indigenous businesses is fundamental to improving opportunities for Indigenous businesses and the successful implementation of the policy. While there are a number of existing directories of Indigenous businesses, some are only available for a fee and there is no truly national whole-of-sector directory available, meaning that trying to source a relevant Indigenous business can be time and resource intensive.

Under the preferred approach, Indigenous businesses listed by Supply Nation will be subject to a risk-based verification process to ensure only legitimate Indigenous businesses can join the directory. The updated online application

³Source: AusTender, 2014.

form is designed to make it administratively easier for Indigenous businesses to join. The new directory will be fully searchable, reflect the Commonwealth procurement definition of an Indigenous business (50 per cent) and contain information relevant to purchasers including the products delivered, service footprint and contact details. It is anticipated that the new streamlined process could see an additional 2,000 businesses join Supply Nation's register in 2015.⁴

2. Lack of confidence of government procurement officers to procure from Indigenous suppliers and high levels of procurement risk aversion

The government's requirements around value for money⁵ and minimising procurement risk has meant that there is a lack of willingness and/or know-how by government procurement officers to procure from Indigenous businesses. This is particularly so where Indigenous businesses do not submit well-written tenders, and/or if they have no previous government contracting experience.

While Exemption 17 of the CPRs allows government agencies to direct-source from Indigenous-owned small to medium sized businesses, avoiding the need to go through a full market-testing process, procurement officers have stated that they lack confidence in assessing value for money outside a competitive tender process. This is the key reason why Exemption 17 is rarely used.

Given this, it is unlikely that Exemption 17 by itself will produce an improvement in the number of contracts awarded to Indigenous businesses without further government intervention.

3. Inexperience of Indigenous businesses to write tenders for government contract opportunities and win government contracts

Indigenous businesses have reported that they have little or no experience in successfully tendering in government approaches to market even where they consider they can deliver the services or goods on a value for money basis. Key factors cited are a lack of capability in writing and framing a competitive tender response and inexperience in previous government contracts which would support their capability statements on tenders. It appears that many Indigenous businesses are caught in a cycle where they are not able to enter government procurement as they have no previous government experience to support their tender. Creating incentives for the market to procure from Indigenous businesses would open up new opportunities for Indigenous businesses to get their foot in the door of government contracting.

4. Weak accountabilities under the current Indigenous Opportunities Policy

The current IOP requires tenderers for Government business that are valued at more than \$5 million (\$6 million for construction) who are operating in areas where there are significant Indigenous populations (more than 3 per cent) to develop an Indigenous Training, Employment and Supplier Plan (IOP Plan). The

⁴ The regulatory cost of removing the old Supply Nation process and replacing it with this streamlined process is anticipated to result in a net saving of \$69,000. This can be used to partially offset the cost of the policy options discussed at Section 4 of the RIS.

⁵ The assessment of 'value for money' is a current requirement under the Commonwealth Procurement Rules. Assessment of value for money encompasses more than dollar cost, and includes criteria such as fitness for purpose, timeliness, whole of life costing and quality etc. The reference to 'value for money' in Policy Option 3 is intended to refer to this current assessment requirement. A link to the Department of Finance website describing the value for money principle can be found [here](#).

IOP Plan needs to be submitted for approval by the IOP Administrator within PM&C.

Once approved, however, there is no guarantee that the IOP Plan will be implemented and there are limited consequences for those companies that do not comply with their plan. The current IOP is ineffective as it imposes additional regulation for very limited outcomes.

The IOP and Exemption 17 together provide the fundamental elements necessary for increasing opportunities for Indigenous businesses, but their limited results over several years demonstrate that stronger action is needed.

2. Why is Government Action Needed?

The gap between Indigenous and non-Indigenous economic outcomes is not closing. Government has both a moral and an economic imperative to act to improve Indigenous economic outcomes. The Forrest Report, "Creating Parity", identified the need for government action and recommended implementing a target of 4 per cent of all government procurement, to grow demand for both Indigenous businesses (defined as at least 25 per cent Indigenous-owned) and Indigenous workers.

The government's annual procurement spend is a lever at the government's disposal to maximise opportunities for Indigenous businesses. By increasing the commercial opportunities available to Indigenous businesses through leveraging its own procurement, the government will provide important opportunities for the Indigenous business sector to grow and diversify. This will improve Indigenous economic independence, wealth-creation and employment outcomes, which are key Government goals.

The goal of government intervention would be to put in place conditions which will bring the levels of government contracting with Indigenous businesses up to parity levels (defined as at least 3 per cent which is the current percentage of Indigenous Australians in the population) and to increase private sector levels of contracting with Indigenous businesses and employment of Indigenous Australians.

A related goal is to embed new ways of working with the Indigenous business sector by both the public and private sectors and to increase the capacity of Indigenous businesses over time so that Indigenous businesses will be more firmly entrenched in supply-chains and able to compete on an equal footing into the future.

Evidence that government intervention can produce results

Government intervention to drive economic and social outcomes through procurement policy has proven successful overseas. The United States of America (USA) uses legislated targets to drive federal government purchasing from small business and minority groups (particularly from small businesses owned by women, returned veterans who have suffered a disability during their service, and businesses in disadvantaged areas). The procurement policies aimed at supporting veterans in the USA have seen a dramatic increase in the volume of business going to businesses owned by veterans. In 2004, these businesses received \$1.2 billion worth of federal contracts; eight years later (2012), these businesses received \$12.3 billion worth of federal contracts. The table at [Attachment A](#) provides additional information.

There is evidence within our own government that it is possible to significantly increase the use of Indigenous businesses in supply chains. For example, in 2012-13, the Australian Taxation Office's (ATO) spend with Indigenous suppliers was \$45,300. In 2013-14, it's spend was \$12,000. In 2014 the ATO aimed to increase its procurement activity with Indigenous businesses and has driven a number of initiatives across the organisation to develop a strong procurement program that incorporates supplier diversity principles.

One strategy was for the ATO to approach a number of its strategic suppliers, asking these suppliers to take action to incorporate Indigenous businesses into their supply chains. As a result, Complete Office Supplies, the ATO's supplier of stationary, engaged Muru Group, a Supply Nation certified Indigenous business, to supply the ATO with all of its recycled copy paper nationally. To the end of May in this financial year, the ATO's expenditure with Indigenous businesses has significantly increased to approximately \$542,000.

Considerations for government intervention

Some relevant factors in considering government intervention to increase opportunities for Indigenous businesses:

- the number of existing Indigenous businesses that could immediately provide goods and/or services to government, including the industry sectors and geographic regions in which they operate,
- the number of existing Indigenous businesses that could, over the medium timeframe, provide goods and/or services to government, and the industry sectors and geographic regions in which these businesses operate,
- the capability of Indigenous businesses to provide goods and services to government;
- the capacity for new Indigenous businesses to be formed; and
- the risks involved in possible oversubscription of Indigenous businesses to meet increased demand.

Information about these factors is impeded by:

- A lack of detailed quantitative and qualitative data about Indigenous businesses including the areas in which they operate, their capacity, business development needs and their ability to meet increased demand from government.
- A lack of information about where government contracts are currently delivered. Currently, information is collected through AusTender⁶ on the location of the contractor's head office, but there is no information on location of where goods/services are delivered.

3. What policy options are you considering?

Context – The Forrest Review

Recommendation 18 of "Creating Parity" recommends the Government agree to set a target of purchasing at least 4 per cent of its goods and services within four years from Indigenous businesses (either directly or indirectly).

There were extensive consultations undertaken as part of the Forrest Review from October to December 2013. This process included public town hall

⁶ AusTender is the Commonwealth Government's procurement reporting system. All Commonwealth contracts valued at \$10,000 and above are required to be reported on AusTender. AusTender data has been use throughout the RIS.

meetings, roundtables, site visits and a written submission process. There was broad representation throughout the consultation process from community groups, industry, employment and training service providers, education institutes and members of the public. Of the 349 written submissions received, 29 per cent were from Indigenous people, businesses and communities. The "Creating Parity" report, including the recommendations relating to government procurement and Indigenous employment, is the outcome of these consultations.

Government conducted a second round of consultation from August to 20 September 2014 on the recommendations of "Creating Parity". A further 230 submissions were received, including 26 from peak bodies such as the Business Council of Australia and Minerals Council of Australia. Many of these submissions made reference to recommendation 18 and stakeholders supported increasing government procurement from Indigenous business through a stronger approach but sought more detail on implementation. In particular, the Business Council of Australia asserted that realistic targets for employment needed to be included in contracts. Westpac pointed out that government spending was important to develop and finance Indigenous businesses. The Cape York Institute was the main critic of recommendation 18 on the grounds that it would not be effective in remote communities. Since announcement of the details of the Indigenous procurement policy, the stakeholder response received by PM&C has been overwhelmingly positive.

The RIS proposes three alternative policy options in order to drive better Indigenous economic and social outcomes through procurement policy.

Policy Option 1 – No Indigenous Procurement Policy

Overview

Under this option, the existing IOP and Exemption 17 would be removed. This would be on the basis that, as currently implemented, these policies are having minimal impact in terms of contracts awarded to Indigenous businesses and are imposing additional administration on government and businesses for little positive effect.

Policy Option 2 – Better enforcement of existing policy (status quo)

Overview

Under this option, the existing IOP and Exemption 17 would be maintained and no new regulation would be introduced, however, these existing policies would be better promoted and more actively enforced. In particular, agencies would be required to contractually enforce compliance with IOP Plans and to monitor compliance.

PM&C would raise awareness through promotion of Exemption 17 and the new Supply Nation Indigenous Business Register to drive more direct sourcing of Indigenous businesses.

Policy Option 3 – New strengthened policy

Overview

Under this option, Exemption 17 would be retained and a new strengthened Indigenous procurement policy implemented. The strengthened policy would address the short-comings of the current IOP – particularly the challenges facing government agencies in sourcing suitable Indigenous businesses and the lack of both incentives and sanctions for government agencies to procure from Indigenous businesses. The strengthened approach will provide increased opportunities for Indigenous businesses to contract with Government and the private sector.

Six changes would be made:

- Increasing opportunities through a target: A target for government purchasing from Indigenous suppliers will be set. This target will be set at a level which aims to bring the number of government contracts with Indigenous businesses up to parity level with those with non-Indigenous businesses by 2020 (parity is considered to be 3 per cent, reflecting the proportion of Indigenous Australians in the population). Interim targets will gradually increase the opportunities for Indigenous businesses from 0.5 per cent in 2015-16, 1.5 per cent in 2016-17, 2.0 per cent in 2017-18 and 2.5 per cent in 2018-19 and finally 3 per cent in 2019-20.

Phasing in the Indigenous procurement target in this way, along with recognising subcontracts and including all categories of goods and services in the policy will provide a strong foundation for sustained growth and diversification of the Indigenous business sector as it strives to meet steadily increasing procurement demand from government.

- Increasing opportunities through a mandatory contract set-aside: Reflecting the fact that the majority of Indigenous businesses are Small and Medium Sized Enterprises (SME), government agencies will need to firstly consider whether a sought after good or service valued between \$80,000 and \$200,000, could be delivered by an Indigenous SME. Agencies can make use of the existing Exemption 17 for this purpose. The mandatory set-aside will also apply for all procurement in defined remote areas including all of the Remote Jobs and Community Programme (RJCP) regions and also Darwin, Alice Springs, Mt Isa, Broken Hill, Wyalla, Port Augusta, Port Lincoln, Esperance, Kalgoorlie, Geraldton and Broome.
- Increasing Indigenous economic opportunities through mandatory minimum Indigenous Participation Requirements: The strengthened policy will replace current IOP requirements with contractual requirements mandating minimum requirements for Indigenous employment and the use of Indigenous businesses for certain government contracts. Businesses will need to report on past performance against these requirements in all subsequent tenders. The strengthened policy will apply to all government contracts in defined remote areas as well as to high-value contracts (above \$7.5 million) in certain specified industry. This approach is expected to increase opportunities for Indigenous businesses to operate in private sector supply chains as well as opportunities to improve Indigenous employment through government contracting, particularly in areas of high Indigenous population.

- Increasing supply by expanding the definition of an Indigenous business: The pool of Indigenous businesses eligible under the policy will be increased by expanding the definition of Indigenous business to include equal partnerships (50 per cent ownership).

The recognition of partnerships in this way will also provide benefits to Indigenous businesses including more wealth generation for Indigenous businesses, more engagement with Indigenous businesses by the private sector, more capacity development and transfer of business knowledge and experience and more exposure to head contracting opportunities.

- Increasing support for Indigenous businesses:

The Supply Nation Indigenous Business Register is a key support for the new Indigenous procurement policy.

From 1 July 2015, Supply Nation will provide a free, publicly accessible register of Indigenous businesses, (defined as at least 50 per cent Indigenous-owned). Registration will be through a streamlined self-registration process. The new Indigenous Business Register will provide both government agencies and private sector businesses with access to information about Indigenous businesses. This database will make it easier for Indigenous businesses to integrate into current and future supply chains.

Indigenous Business Australia's (IBA) Commercial Markets initiative will also provide support for Indigenous businesses. This initiative will provide Indigenous businesses access to finance for business growth and diversification as these businesses strive to meet increased demand. IBA will also provide a service linking Indigenous businesses to government procurement opportunities. It will do this by identifying upcoming procurement opportunities and then actively sourcing Indigenous enterprises to tender for those opportunities. As opportunity arises, IBA will also assist Indigenous businesses by, for example, providing training in writing tenders to government. As well as providing this linking service, IBA will ensure that Indigenous businesses that have received IBA financing are supported to perform the requirements of the government contract or private sector subcontract.

Support for businesses to employ Indigenous workers will also be available through the Indigenous Advancement Strategy and the CDP.

- Increasing accountability of government: There will be increased accountability and transparency around the government's procurement from Indigenous business. Government portfolios' performance against the interim targets will be published on a central public website –www.Dpmc.gov.au/IPP. In line with current reporting requirements, AusTender information on contracts valued at more than \$10,000 will be cross-matched with Supply Nation's database to determine the number and value of government contracts with Indigenous businesses. Portfolios will have an option to also report on contracts valued at less than \$10,000 and subcontracts if they wish these to be included in reporting on the target.

4. What is the likely net benefit of each option?

During the policy development process, PM&C sought more information from government agencies on the likely impact of the options proposed.

Policy Option 1- No Indigenous Procurement Policy

This option is likely to result in no change to Indigenous employment/Indigenous business development given the current low take-up of Exemption 17 and the lack of enforcement of the IOP.

If procurement policy is not used, then the objective of increasing Indigenous employment and Indigenous business development will need to be pursued through other means, such as expanding existing grant programmes, with the associated direct increase in cost to Government. There is a cost to this approach – assuming a cost of \$10,000 per 26 week employment outcome, if we sought to create parity in Indigenous employment through grants alone (188,000 new Indigenous jobs), the cost would be \$1.9 billion.

This option would result in reduced administration for suppliers to Government and procurement officers.

Who is affected?

- Indigenous businesses that currently rely on Exemption 17.
- Suppliers to Government with IOP Plans or who would be required to complete IOP Plans.
- Government agencies.
- Indigenous Australians.

Costs

- Some Indigenous businesses may receive less business due to removal of the exemption, although the number affected will be low, due to the low use of the exemption.
- Government agencies will have more difficulty engaging Indigenous businesses without the exemption (although impact will be low as the exemption is not widely used).
- The demand for employing Indigenous Australians is likely to be lower as suppliers to Government will not have an incentive to engage Indigenous employees (there is likely to be low impact due to the low rate of compliance with the existing policy).
- Government is likely to be criticised for reducing assistance to Indigenous Australians. If the Government was to remove procurement as one of its policy levers to increase Indigenous economic independence and employment, it would face pressure to increase other activities to deliver these outcomes.

Benefits

- Reduced administration for suppliers to Government who will no longer be required to complete IOP Plans or outcome reports.
- Government agencies will no longer require organisations to submit IOP Plans as part of tender processes.

Compliance impacts

- The costing table below reflects the costing that has been calculated using the RMB Calculator and agreed with Office of Best Practice Regulation (OBPR). This shows an overall regulatory saving of **\$238,000** associated with Option 1. This arises because businesses currently subject to the IOP will no longer be required to comply with it, meaning they will not need to prepare IOP Plans and report on them on an annual basis.

Policy option 1 – costing table

Table 1: Average Annual Regulatory Costs

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	-\$0.238	\$0	\$0	-\$0.238
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	N/A	N/A	N/A	N/A
Are all new costs offset?				
<input type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input checked="" type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = -\$0.238 (SAVING)				

Policy Option 2 –Better enforcement of existing policy (status quo)

If strongly promoted and led by departmental Secretaries, this option could increase opportunities for Indigenous businesses to contract with government and increase the rate of Indigenous employment among tenderers.

However, given that the IOP and Exemption 17 have already failed to deliver results, there is a real risk that without structural changes to the policies, there will be insufficient buy-in, resulting in no increased opportunities for Indigenous businesses. At best, it is expected that improved outcomes will be minimal and there will be no rectification of the current disparity in government contracting outcomes between Indigenous and non-Indigenous businesses.

This option is unlikely to meet stakeholder expectations from Government in its response to the Forrest Review's "Creating Parity" recommendations.

Who is affected?

- Indigenous businesses.
- Suppliers to Government with IOP Plans or who are currently required to complete IOP Plans.
- Government agencies.
- Indigenous Australians.

Costs

- Government agencies may incur additional contract management costs if they increase their monitoring of compliance with IOP Plans and report on outcomes achieved.

- Suppliers operating in areas with higher numbers of Indigenous Australians may incur additional contract costs if they have not previously complied with IOP Plans.
- This cost may be passed through to the government (level of additional cost actually incurred will depend on the extent to which suppliers currently comply with their IOP Plans and currently pass through to Government.) Quantifying this cost is difficult because the level of compliance with the IOP requirement currently is not known.
- The government is likely to be criticised for not responding strongly enough to the “Creating Parity” recommendations.

Benefits

- Better enforced IOP Plans could result in increased opportunities for Indigenous employment.
- With greater awareness of Exemption 17 and access to a comprehensive directory of Indigenous suppliers, government agencies will be more likely to direct source from Indigenous businesses, saving time spent on procurement processes.
- Indigenous businesses should have greater opportunities to participate in government contracts (through Exemption 17 being used more widely) and from suppliers to government who are required to comply with IOP Plans. The publicly accessible Indigenous Business Register will support the approach.
- Indigenous Australians may experience increased employment opportunities from suppliers to government looking to employ them in areas where they are required to have IOP Plans in place. This may have flow on effects increasing mentoring opportunities for other Indigenous workers in workplaces.
- This measure is cost neutral as it is better enforcing compliance with a current policy.

Compliance impacts

- This option is cost neutral as it involves better enforcement of the existing policy.

Policy option 2 – costing table

Table 2: Option 2 Average Annual Regulatory Costs

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	\$0	\$0	\$0	\$0
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	N/A	N/A	N/A	N/A
Are all new costs offset?				
<input type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input checked="" type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = \$0				

Policy Option 3 – New strengthened policy

The new strengthened policy will aim to increase procurement opportunities for Indigenous businesses.

As the Indigenous business sector is dominated by SMEs, the new policy should focus effort on these enterprises.

As economic need is most pronounced in remote locations, any approach should consider the particular needs of remote locations. Discussion of Areas of Significant Indigenous Population (SIP Areas), a feature of the current IOP is at [Attachment C](#). Option 3 builds on the IOP's approach to areas of greatest need and extends it by targeting those industries where the greatest 'bang for buck' can be achieved.

The policy is expected to increase demand for purchasing from Indigenous enterprises, which in turn is likely to improve Indigenous economic development and strengthen the Indigenous business sector.

As the intent of this policy option is to provide Indigenous businesses greater opportunities to access government contracts, some Indigenous businesses may gain contracts which could have previously gone to non-Indigenous businesses. While the available data is insufficient for a comprehensive analysis, the impact on non-Indigenous businesses is likely to be small (at least in the short term) as currently almost all Indigenous businesses are SMEs and some of these may not yet have the capacity and capability to meet some government contract requirements.

Forrest Review consultations indicate that Indigenous businesses were supportive of a strengthened approach to Indigenous procurement. This option does not place any regulatory burden on Indigenous businesses. With the removal of the IOP under this policy option, non-Indigenous businesses previously required to comply with the IOP will have a reduced regulatory burden.

The key components of the policy which will impact on Indigenous businesses are:

1. TARGET

Three per cent (by number) of new domestic Commonwealth government contracts will be awarded to Indigenous suppliers in 2019-20, with interim targets applying from 1 July 2015 to drive and track performance.

The interim targets are:

0.5 per cent in 2015-16

1.5 per cent in 2016 17

2.0 per cent in 2017-18

2.5 per cent in 2018-19.

Based on AusTender data⁷, it is estimated that in 2015-16, the target will result in at least 250 new domestic contracts being awarded to Indigenous businesses across the Commonwealth, increasing to more than 1,500 contracts in 2019-20 when the full 3 per cent target applies.

The target will be allocated across portfolios, based on past contracting share. Individual portfolio performance against the target will be published each year on PM&C's website which will boost accountability and transparency of the government's performance.

Contracts which may be counted towards the target include partnerships and joint-ventures between Indigenous and non-Indigenous businesses (minimum 25 per cent Indigenous-owned) and sub-contracts with Indigenous businesses.

Who is affected?

- Indigenous businesses.
- Suppliers to Government.
- Government agencies.

Costs

- As a result of this option, some non-Indigenous businesses may not win government contracts that they otherwise might have won. Quantifying the impact of this is difficult. As the target is 3 percent of contracts across all government procurement, the impact on the broader business sector (especially on any specific region or industry) is likely to be small.
- As Indigenous businesses are predominantly small and medium sized, contracts awarded to Indigenous businesses are likely to be of smaller value, further reducing potential negative impacts on government procurement opportunities for non-Indigenous businesses, at least in the early stages of the policy's implementation.
- Government agencies will likely incur some cost in implementing this aspect of the policy as they must record and report the number of contracts with Indigenous businesses. Reporting requirements under the policy will make use of current reporting mechanisms, such as AusTender which will minimise

⁷ The total number of domestic Commonwealth contracts recorded in AusTender averaged over three financial years from 2011-12 to 2013-4, provides the total number of contracts on which the percentages have been calculated.

the expected administrative impacts and will be absorbed as part of normal business.

Benefits

- There is likely to be a positive impact on the number of Indigenous businesses which contract with government.
- As Indigenous businesses are 100 times more likely to employ Indigenous employees than non-Indigenous businesses, there is likely to be a positive impact on the rate of Indigenous employment arising from increased government contracting with Indigenous businesses.
- The target will be a visible measure of the government's performance in contracting with Indigenous businesses and a strong incentive for government agencies to purchase from Indigenous businesses. Having the government accountable for a target number of contracts with Indigenous businesses will provide more opportunities for Indigenous businesses to be included in supply chains of government agencies.
- Counting subcontracts towards the target and requiring the use of Indigenous suppliers for certain government contracts will increase the use of Indigenous suppliers in the supply chains of non-Indigenous businesses.
- As Indigenous businesses form partnerships or joint-ventures with non-Indigenous businesses in order to win government contracts, there is likely to be a transfer of business knowledge and capability between non-Indigenous and Indigenous businesses. This is likely to drive an improvement in the capability and industry coverage of Indigenous businesses and improve cultural understanding within the broader business sector.
- Joint-ventures between Indigenous and non-Indigenous businesses may provide greater procurement opportunities for non-Indigenous businesses under the policy.

Table 3: The anticipated impact of the target on the number of contracts awarded to Indigenous suppliers under Option 3. (Source: AusTender)

Year	Target (% of the total number of Government contracts)	Number of estimated contracts awarded to Indigenous suppliers (based on number of contracts recorded in AusTender as of 2013-14)
2012-13	N/A	28
2015-16	0.5	256
2016-17	1.5	769
2017-18	2	1025
2018-19	2.5	1282
2019-20	3	1538

The estimates of the number of contracts to be awarded to Indigenous businesses in each year to 2020, as shown in this table, are calculated as specified percentages of the total number of domestic Commonwealth contracts recorded in AusTender averaged over three financial years from 2011-12 to 2013-14. (This equates to an average of 51,266 new Commonwealth contracts that were awarded each year for this period.)

2. MANDATORY SET-ASIDE

Contracts in defined remote areas and all domestic contracts valued between \$80,000 and \$200,000 will be subject to a mandatory set-aside process.

This means that for these contracts, government agencies will first have to check whether an Indigenous SME can deliver the goods or services, on a value for money⁸ basis, before approaching the market.

There will be clear delineation of the geographic locations to which the mandatory set-aside applies, supported by interactive, web-based maps.

To satisfy the mandatory set-aside, the government agency will need to check whether Supply Nation's register of Indigenous businesses includes a business that has the necessary capability and, if so, investigate whether the Indigenous SME offers value for money. If it does, the contract must be offered to the Indigenous SME. If there is no suitable Indigenous SME then the Commonwealth buyer can select another contractor through its normal purchasing process.

Who is affected?

- Indigenous businesses.
- Suppliers to Government.
- Government agencies.
- Remote Indigenous communities.

Costs

- Some non-Indigenous businesses may not win government contracts that they otherwise might have won.
 - The mandatory set-aside process applies to all Commonwealth contracts valued between \$80,000 and \$200,000 (or 14 per cent of all Commonwealth contracts) and to all Commonwealth contracts that will be delivered in remote areas.
 - There is no data available on the delivery location of contracts, so it is not possible to quantify how many contracts will be affected by the mandatory set-aside.
 - In some instances there will not be an Indigenous supplier available, or one that offers value for money, and so some contracts subject to the set-aside will be awarded to non-Indigenous businesses.
 - As the mandatory set-aside applies to Indigenous SMEs, contracts awarded to Indigenous businesses under this element may be of smaller value, reducing potential negative impacts on government procurement opportunities for non-Indigenous businesses.
 - As part of the new reporting arrangements which will be introduced under this option better data will be collected. This will make it

⁸ The mandatory set-aside process does not override normal value for money considerations in the procurement process (see footnote 5 above). Currently, procuring officers are required to evaluate the value for money outcome in all procurements, even when there is only one quote under consideration. The mandatory set-aside described here does not change this requirement, it simply means that for certain procurements Indigenous businesses must be provided an opportunity to quote for the goods and/or services first.

possible to quantify the impact of the mandatory set-aside on non-Indigenous businesses in the year-one review.

- Government agencies will need to keep records and report to PM&C on a six monthly basis their application of the set-aside to relevant contracts. While implementing and reporting on the mandatory set-aside will initially impose an additional administrative impost on agencies, this will be offset by the use of Exemption 17 which reduces the costs and time involved in formal Approaches to Market.

Benefits

- The requirements will provide improved access for Indigenous businesses to government procurement opportunities, by ensuring that Indigenous businesses are a focus of government procurement.
- The mandatory set-aside is expected to increase contracting opportunities for existing Indigenous suppliers, some of which may expand and diversify. It is also likely that the market will respond to the new demand by helping to develop new Indigenous businesses.
- There is also scope for Indigenous businesses and non-Indigenous businesses to form partnerships and joint-ventures as these are counted in the target. This may provide opportunities for non-Indigenous businesses, and may lessen any negative impact on non-Indigenous businesses arising from this element.
- The mandatory set-aside and the use of Exemption 17 will streamline quoting for services for Indigenous businesses which otherwise would be required to participate in a full tender approach (a formal Approach to Market), which is a cost and time saving for both Indigenous businesses and government.
- Government agencies will be required to increase their engagement with the Indigenous business sector more than before. This is likely to promote cultural change and improve understanding of the Indigenous business sector across government.
- Applying the mandatory set-aside to remote areas will maximise Indigenous economic opportunities in locations which have demonstrably higher need.

3. MINIMUM PARTICIPATION REQUIREMENTS

This component of the new policy aims to provide opportunities for Indigenous people to gain economic benefit from some of the largest Commonwealth contracts.

Mandatory minimum requirements will apply to all contracts delivered in Australia that are valued at \$7.5 million or more, where the majority of the goods or services are in one of the following specified industries:

1. Building, construction and maintenance services
2. Transportation, storage and mail services
3. Education and training services
4. Industrial cleaning services
5. Farming and fishing and forestry and wildlife contracting services
6. Editorial and design and graphic and fine art services
7. Travel and food and lodging and entertainment services
8. Politics and civic affairs services

These industries have been chosen because they are where Indigenous businesses currently predominate and therefore represent some of the biggest opportunities to improve Indigenous participation outcomes.

These procurement categories reflect the United Nations Standard Products and Services Code (UNSPSC) and is currently the classification used in AusTender.

This approach provides government agencies and contractors with certainty about when the minimum requirements will apply. This reduces administrative complexity and cost to business.

Table 4: Proportion of Commonwealth Contracts in Specified Industry Sectors by value.

Threshold	Percentage of Commonwealth contracts by value	Percentage of Commonwealth contracts by number
All Commonwealth Contracts in a SIP Sector, valued at \$1M or more	17.14%	0.63%
All Commonwealth contracts in a SIP Sector, valued at \$5M or more	15.61%	0.21%
All Commonwealth contracts in a SIP Sector, valued at \$7.5M or more	15.05%	0.15%

Applying a value threshold for the application of the mandatory minimum requirements at \$7.5 million, gives the Commonwealth greatest 'bang for buck' in terms of capturing a large value of Commonwealth contracts, across a relatively small number of contracts. Based on AusTender data, it is anticipated that around 150 contracts per year will be captured by the minimum requirements. This will reduce the administrative impost on agencies and contractors. (For more information, see [Attachment B](#)).

Under the mandatory minimum requirements, contractors will be required, in consultation with the Commonwealth, to choose to apply one of the following:

- a) An individual contract requirement – at least 4 per cent of the Full Time Equivalent of the Australian –based workforce on the contracted project must be Indigenous, or 4 per cent of the contract value must be subcontracted to Indigenous businesses; or
- b) An organisation based requirement – at least 3 per cent of the Full Time Equivalent of the organisation’s total Australian based workforce must be Indigenous or 3 per cent of the value of the organisation’s supply chain must be with Indigenous businesses.

In addition, where at least part of the contract is to be delivered in a defined remote area, the government agency and the contractor will agree to significant Indigenous employment or supplier use requirements in that area.

Allowing a contractor a choice in how it meets the minimum requirements will reduce the administrative burden and compliance costs particularly for those contractors who have multiple contracts with the government.

The approach also mitigates a potential risk that Indigenous employees may be arbitrarily moved to work on contracts as they arise.

Consistent with normal contracting reporting obligations, contractors will be required to report quarterly against these requirements and a contractor’s past performance will be taken into account in future tenders.

Who is affected?

- Indigenous businesses.
- Suppliers to Government.
- Indigenous Australians.
- Remote Indigenous communities.
- Government agencies.

Costs

- Requiring companies to employ a specified percentage of Indigenous workers and/or to use a specified percentage of Indigenous suppliers in their supply chain may introduce costs for those contractors currently not doing this.
- Feedback from business is that employing Indigenous workers can cost more than employing non-Indigenous workers. The actual cost to business will depend on the area in which they operate and the availability and skillset of the workers required. These costs can be offset through funding available from PM&C through the Indigenous Advancement Strategy and the RJCP for private sector employers who retain employees for 26 weeks.
- The value range was chosen to capitalise on the larger contracts and businesses which have greater capacity to meet minimum participation requirements.
- It is anticipated that the minimum requirements will apply to only 150 contracts per year and that this is fewer businesses than those which were bound by the minimum contractual requirements under the current IOP.

This is because the new requirement would only apply to specified industries and for contracts above \$7.5 million.

- The contracting government agency will be required to monitor and enforce the contractual obligations and it is envisaged that this will be in line with normal contracting reporting schedules and requirements.
 - Businesses subject to the minimum requirements will be required to report quarterly to their contracting government agency (under the IOP reporting is annual). However, reporting is to be in line with normal contracting reporting obligations for large contracts and so reporting under this option will at most impose a minimal additional burden.
 - It is possible that any additional costs associated with meeting the requirements may be passed on to the Commonwealth in tender quotations. However, experience in the Northern Territory where Indigenous employment requirements have been a contractual requirement since October 2014, is that there is no overall increase in contract price as companies find efficient mechanisms to respond to the new requirement.
 - Any additional cost as a result of these compliance requirements will be offset by removing the requirement for contractors to report to government on IOP plans (or those contracts which had previously had IOP plans but which were not subject to the minimum participation requirements).

Benefits

- The minimum participation requirements will benefit Indigenous Australians by increasing opportunities for Indigenous businesses to participate in the supply chains of major suppliers to government and by increasing employment opportunities for Indigenous Australians in certain suppliers.
- This increase in demand for Indigenous businesses and workers should result in improved Indigenous economic development. Improving Indigenous economic independence will have substantial social benefits, including arresting current inter-generational Indigenous economic disadvantage.
- For contracts in remote locations the minimum participation requirements are likely to improve the local economy bringing more job opportunities and increasing local wealth.
- Suppliers to government will benefit from the removal of the requirement to develop and report on IOP Plans. Their performance will be assessed as part of the general contract management of the contract, removing double handling.
- There is likely to be significant improvement in the penetration of Indigenous businesses into more extensive industry sectors as supply chains are diversified.
- There will also be a benefit to Government as increased Indigenous employment will mean less demand for income support to Government employment programmes.

Other components of the policy

The expanded definition of an Indigenous business will drive the establishment of more partnerships and joint-ventures between non-Indigenous and Indigenous companies. It is anticipated that this will facilitate knowledge transfer and business skill development for the Indigenous partner.

Compliance on Policy Option 3

This policy option introduces a range of compliance impacts across each of its components which are partially offset by the removal of obligations under the IOP, piggy-backing reporting on normal contractual reporting requirements and streamlined purchasing using Exemption 17 of the CPRs.

Some government reporting will be automated (PM&C will source information on the number and value of contracts with Indigenous businesses across government agencies, through cross-matching AusTender and Supply Nation information). There will be the following additional manual reporting requirements for government agencies/portfolios:

- On a six monthly basis, portfolios must manually report to PM&C:
 1. The number of Remote Procurements conducted by the portfolio; and the number of Remote Contracts that were awarded to Indigenous SMEs.
 2. For each new contract subject to mandatory minimum requirements, the following information:
 - Contracting agencies;
 - Value of the contract;
 - Term of the contract;
 - Good/service type; and
 - Minimum requirement applied in the contract.
 3. For each contract subject to mandatory minimum requirements, whether the contractor is compliant with the agreed Indigenous Participation Plan.

Contractor reporting obligations under the new policy will be:

- Quarterly reporting to their contract manager on the contractor's compliance with its Indigenous Participation Plan.
- Final report to their contract manager on compliance with the Indigenous Participation Plan and the mandatory minimum requirements.
- The costing table below reflects the costing that has been calculated using the RMB Calculator and agreed with OBPR. This shows an overall regulatory saving of **\$185,000** associated with Option 3.
- This cost saving is based on the following:
 - The existing IOP plan and reporting requirement (described in Option 1) will be removed, resulting in an annual saving to business of \$238,000.

- A new contractual reporting requirement will be placed on certain businesses, which will come at an annual regulatory cost of \$53,000.
- The cost of the new reporting requirement is based on the following assumptions (see [Attachment B](#) for data):
 - Based on AusTender data, this equates to around 150 new contracts per annum. It has been assumed that each of these contracts run for three years.
 - The contractual requirements will be managed by the relevant contracting Government entity. As such there will be limited additional impost on the contractor.
 - It is estimated that it will take a contractor’s administration officer 30 minutes to prepare each quarterly report.
 - Reporting on performance against the specific minimum requirements will be calculated by the contracting government entity at the end of the contract using the data already collected as part of the quarterly reporting cycle.
 - The contracting government entity will then report the outcomes to PM&C.
 - While the minimum requirements will apply to around 150 contracts a year, some of these contracts will be held by the same business.
 - These larger companies are also likely to have IT systems to support the envisaged reporting regime.
 - The minimum requirements have been designed to give these businesses flexibility by allowing the requirements to be applied on a contract or organisation base, reducing overall compliance costs for companies that may have more than one contract with minimum requirements.
- The assumptions described have been tested during the consultations with government. There has been no direct testing of the assumptions and the potential regulatory saving with businesses.

Policy option 3 – costing table

Table 5: Option 3 Average Annual Regulatory Costs

Average annual regulatory costs (from business as usual)				
Change in costs (\$ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	-\$0.185	\$0	\$0	-\$0.185
Cost offset (\$ million)	Business	Community organisations	Individuals	Total, by source
Agency	N/A	N/A	N/A	N/A
Are all new costs offset?				
<input type="checkbox"/> Yes, costs are offset <input type="checkbox"/> No, costs are not offset <input checked="" type="checkbox"/> Deregulatory—no offsets required				
Total (Change in costs – Cost offset) (\$ million) = -\$0.185 (SAVING)				

5. Who will you consult with about these options and how will you consult them?

A targeted approach to consultation has been employed, as the key stakeholders are fairly well defined and the government currently has a variety of ongoing relationships with these stakeholders.

Extensive consultation was conducted as part of the Forrest Review, with two rounds of public consultation held. Feedback from these consultations has also informed the detailed policy design.

Consultation within Government

An extensive consultation process has been conducted within the government to identify the strategies agencies are currently using to procure from Indigenous businesses, what is working, what is not, what approach should be taken and what would be needed to bed down any new procurement policy. Understanding the strengths and limitations of both the existing system and strategies, and gaining an appreciation of the possibilities for future reform are critical in the development of any new policy. The policy analysis has been conducted over a six month period (December 2014 to May 2015).

A senior group of SES officers from the Department of Defence, Department of Human Services, Treasury, Australian Taxation Office, Department of Employment, Department of Immigration, and Department of Foreign Affairs and Trade, has worked with PM&C and Finance on examining approaches and honing a proposed model. This group, the Cross Agency Working Group (CAWG) met regularly from December 2014 to April 2015 to consider a range of implementation options, devise solutions to emerging issues and agree approaches. Sub-working groups also met over this time to focus analysis on specific complex issues, on an as-needs basis.

In parallel, the ANAO conducted an audit of the existing Indigenous procurement policies, including interviewing agencies and Indigenous businesses. This process has also informed the policy development.

Consultation with the Indigenous business sector and key stakeholders

PM&C has had open and ongoing discussions with IBA, Supply Nation and the Prime Minister's Indigenous Advisory Council on proposed approaches. This has been critical in informing implementation of a new approach, particularly in relation to new roles for IBA and Supply Nation. Discussions have focussed on the supporting services and infrastructure required to support Indigenous businesses and the wider business sector under a new policy.

PM&C also met with a range of Indigenous businesses from different industries to understand better the challenges they face in accessing Commonwealth contracts and the type of support they consider is needed. This has informed policy development.

As a result of these discussions, IBA and Supply Nation are in the process of remodelling and redesigning their operations and services offered to Indigenous businesses, government agencies and the private sector organisations to ensure they offer services which will best support the implementation of the new procurement policy for immediate and future needs of these stakeholders.

Following the announcement of the policy, feedback from the Indigenous business sector has been extremely positive.

6. What is the best policy option from those you have considered?

6.1 Overview and rationale of the Preferred Approach

Option 3 is considered to be the best approach as it will have the highest net benefit to achieving the government's aim to increase opportunities for Indigenous business development and Indigenous employment. The option is deregulatory and cost effective, providing a net saving of \$185,000.

The approach will leverage the Government's procurement through a range of mandatory approaches that would increase incentives to contracting with Indigenous businesses. This includes a target for government procurement from Indigenous businesses, a mandatory set-aside of certain government contracts for Indigenous businesses and mandatory minimum Indigenous participation requirements for certain high-value contracts. It retains Exemption 17 of the CPRs and would fully replace the current IOP.

As part of the strengthened procurement policy, access to Indigenous businesses will be streamlined through the provision of a free and publically available Supply Nation registry. The approach will also be complemented by other economic and employment government initiatives for Indigenous Australians and businesses, such as Employment Parity and reforms to the RJCP.

Implementation and Evaluation of the Policy

7.1 Implementation

On 17 March 2015, the government announced a new Indigenous procurement policy to drive demand for Indigenous businesses. Details of the policy have since been developed and policy guidelines were released on 25 May 2015. The policy will become operational on 1 July 2015. At the time of the policy's release, the RIS had not been updated since it was first provided to OBPR as an Early Assessment RIS on 20 October 2014 and 14 November 2014. OBPR comments were provided on 18 November 2014. A first pass of the RIS was submitted on 18 June 2015 for consideration by OBPR.

Guidance and policy documentation is available on the [Department of the Prime Minister & Cabinet website](#) and will be updated as necessary to take into account feedback on the implementation. As part of implementation and addressing stakeholder needs, fact sheets have been developed about the policy and are located on the [Department of the Prime Minister & Cabinet website](#).

Consultation and available evidence have informed details of the policy approach, particularly to ensure that incentives are appropriately targeted, potential unintended impacts are identified and addressed, the policy is workable and that it has the highest potential for success.

Potential risks or adverse consequences have been addressed in developing the policy settings, and the policy's monitoring and evaluation arrangements.

7.1.1 Implementation Challenges

One of the biggest implementation challenges is that the market has not been required to engage in an accountable and substantial way with the Indigenous business sector in relation to government procurement and has not been required to demonstrate participation outcomes.

A cultural change strategy has been developed in recognition that the new Indigenous procurement policy will require government agencies to have new or

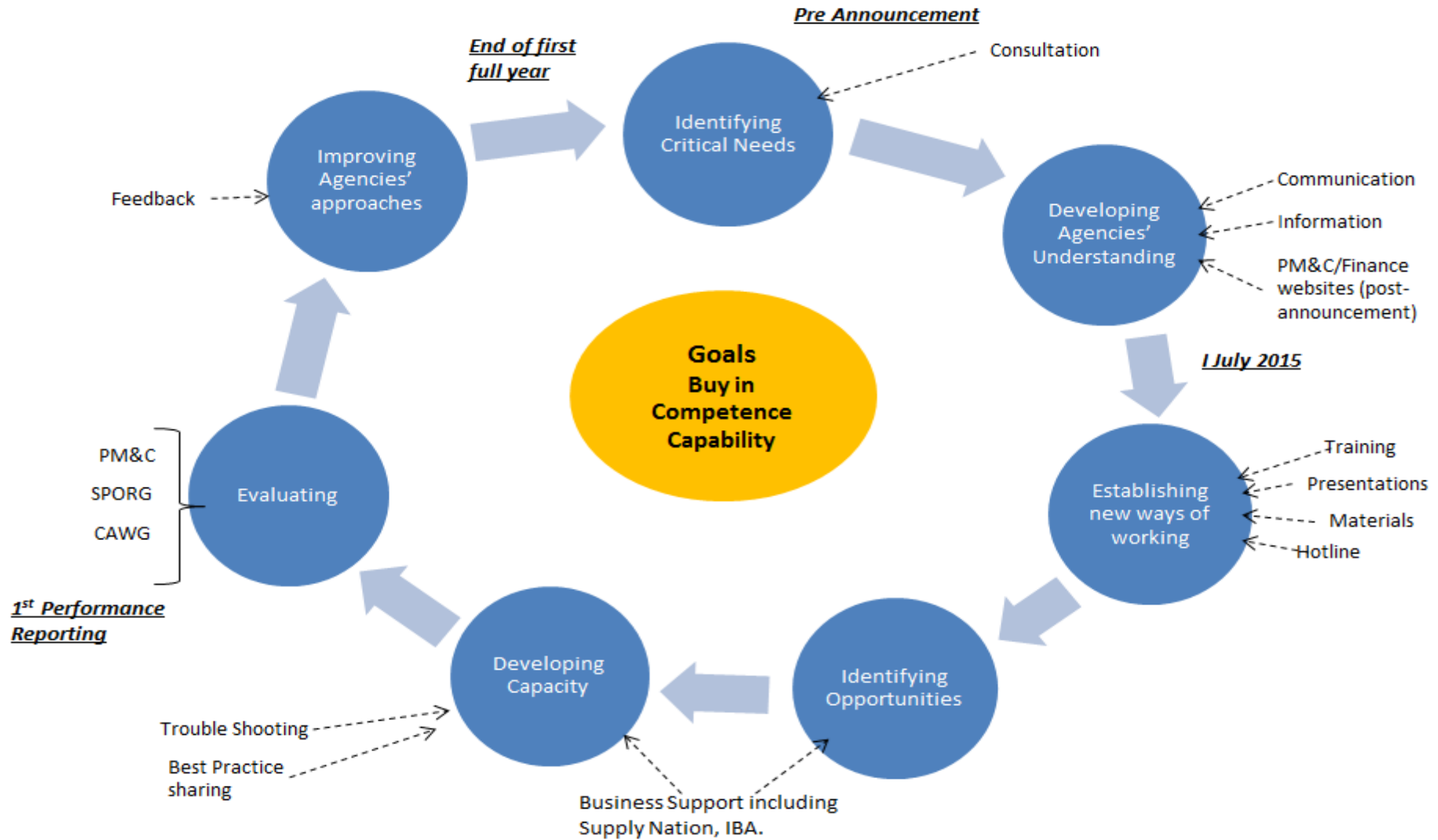
stronger engagement with the Indigenous business sector, new ways of working and a reliance on new or enhanced resources.

Under the strategy, government agencies will be supported through access to new and enhanced services including education and training and Supply Nation's database of Indigenous suppliers.

The diagram below illustrates the elements of the proposed cultural change strategy for Commonwealth agencies. The Secretaries' Committee on Indigenous Reform (SCIR) will be the policy champion.

Cultural Change Strategy for Commonwealth Agencies

Policy Championing (SCIR)



Clearly delineated and communicated roles and responsibilities under the policy, clear and workable performance measurement and reporting, access to necessary information and training packages as well as robust evaluation to inform refinements to the implementation will all be critical.

7.1.2 Indigenous Opportunities Policy Transition arrangements

The new policy will rescind the current IOP. On 30 June 2015, IOP Plans and Reports will no longer be submitted through My Plan. The submission and notifications functions in My Plan will be disabled and have 'read only' functionality.

On 1 July 2015, government agencies will assume responsibility for their contractors with IOP obligations. From this date, government agencies that have contracts with IOP obligations can elect to continue to receive IOP reports, to waive existing IOP obligations or to negotiate a contract variation to transition the IOP obligation to a new obligation that is similar to what is required under the Policy.

On 18 March 2015 and 26 June 2015 PM&C issued notices advising IOP contractors of the transition arrangements for the IOP and to contact their contract manager about transition arrangements.

7.1.3 Information and Training

As part of the transition to the new policy, communication materials have been available since late March 2015 and training and guidance materials have been available since May 2015. These will be updated as need arises to take into account feedback from government agencies and stakeholders. These will be directed at all stakeholders.

Communication and information packages for Commonwealth agencies will be largely directed at procurement officers and their delegates and will focus on:

- why the policy is needed and how it can play an important role in closing the gap on Indigenous disadvantage;
- the intended impact of the policy;
- new requirements under the policy;
- new accountabilities and performance reporting;
- resources that are available to assist procurement officers to engage Indigenous businesses, including information about the new Supply Nation Indigenous enterprise database and IBA's Commercial Markets initiative; and
- A dedicated email address for queries about the policy has been established to engage with stakeholders and collect information on how the policy is working.

In order to establish new ways of working, a suite of training materials (updated as necessary), workshops and presentations will be developed by PM&C and Finance (drawing on expertise from a range of stakeholders) and distributed to agencies. In addition, informal mentoring between agencies will be encouraged, so that agencies that have had success in engaging Indigenous businesses can share the strategies they have used to achieve this success. Agencies'

Indigenous employee networks may also have a role in raising awareness of Indigenous businesses.

Indigenous business support to build capacity and improve access to government procurement opportunities will be provided through IBA and PM&C. Targeted events such as 'Meet the supplier' will be hosted by interested Commonwealth agencies. These events will bring together Commonwealth procurement officers and non-Indigenous and Indigenous businesses to better understand how the policy applies, get information on Commonwealth procurement requirements, improve business exposure to networking opportunities, and provide opportunities to Indigenous businesses to identify potential supply chains. Other channels will also be used as appropriate. These events will be announced on PM&C's website.

7.2 Monitoring and Evaluation

7.2.1 Monitoring

Monitoring of the policy's overall implementation will be the responsibility of PM&C in collaboration with the Cross Agency Working Group, through ongoing bi-monthly meetings from 1 July 2015. This monitoring will include troubleshooting any emerging issues, and developing recommended implementation actions to address these. Individual government portfolios and relevant agencies will be expected to implement the policy in their portfolio/agency, including collection and reporting on performance.

Reporting requirements under the policy have been canvassed with stakeholders to ascertain a workable arrangement which balances the need to monitor implementation of and performance under the policy while minimising additional administrative actions for stakeholders. Where ever possible AusTender data will be utilised to reduce additional reporting.

A table showing reporting requirements is at [Attachment D](#).

PM&C will be responsible for uploading information on agency progress against the target on an agency-by-agency basis at www.Dpmc.gov.au/ipp. This information will be drawn from AusTender and cross referenced with ABN data from Supply Nation. PM&C will also be responsible for reviewing agency reports on progress against the target, including value of contracts let to Indigenous businesses to identify the average size and nature of contracts.

PM&C will also be responsible for the government's contractual relationship with Supply Nation (including the funding arrangement) and monitoring its progress in expanding the register of Indigenous businesses.

PM&C will monitor progress of the cultural change strategy and amend and disseminate updated information as necessary.

7.2.2 Evaluation

Evaluation of the policy will occur through a review at the end of the first and third years of the policy's implementation and will be undertaken by PM&C in consultation with Finance. It will be done in consultation with the Prime Minister's Indigenous Advisory Council and will utilise established reference groups and stakeholders involved in the development and implementation of the policy.

It is envisaged that the evaluation will assess the following questions and related Key Performance Indicators:

- Is the policy fully implemented? (if not, where are the gaps and why are there gaps?)
- Has the transition from the IOP to the new policy been fully implemented and have any issues arising from the transition been addressed?
- What are the impacts of the policy on the administrative processes of government entities, including the policy's mandatory set-aside and contractual minimum requirements?
- Is the policy achieving its intended outcomes? Has the number of Indigenous businesses supplying Government increased? Has the Indigenous business sector grown? How has the sector grown? Can this be attributed to the policy? If so, what are the contributing factors?
- What are some of the specific observable impacts? (eg number, proportion and value of contracts with Indigenous businesses, spread of industries of contracted Indigenous businesses, number of registered Indigenous businesses, Indigenous employment levels).
- Are there any negative outcomes from the policy? If so what are these? What are the factors leading to these negative outcomes? Do the positive outcomes outweigh the negative outcomes and what the policy's overall impact?
- Are there any unintended consequences from the operation of the policy (eg. Gaming of the system, fraud, unintended administrative burden on the private sector, emergent monopolies and other negative impacts on the market, etc), and how might these be addressed?
- Are the policy's incentives and regulations appropriately balanced and working effectively?
- Has there been a change in the way in which Government entities engage with the Indigenous business sector and individual Indigenous suppliers, and if so what is the nature of any change/s?
- How effective is the training and cultural change strategy for the policy? What improvements, if any, are needed?
- Is the policy still necessary?
- In what ways should the policy be amended to better achieve the goal of improving Indigenous economic development and in particular the number, industry-diversity, capability and competitiveness of Indigenous businesses in the open marketplace?

Attachment A – US experience supporting minorities through procurement policy

Prime Contracting - Indicator Table (1.2) ⁽¹⁾

Performance Indicator	Type of Measure	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2012 Target	FY 2012 Variance	FY 2013 Target	FY 2014 Target	FY 2015 Target
Contracts to Small Disadvantaged Businesses - 8(a) Program Participants (%)	Output	6.76%	7.57%	7.95%	7.67%	8.00%	5.00%	60%	5.00%	5.00%	5.00%
Contracts to Women-Owned Small Businesses (%)	Output	3.39%	3.68%	4.04%	3.98%	4.00%	5.00%	-20%	5.00%	5.00%	5.00%
Contracts to Service-Disabled Veteran Owned Small Businesses (%)	Output	1.49%	1.98%	2.50%	2.65%	3.03%	3.00%	1%	3.00%	3.00%	3.00%
Contracts to HUBZone Firms (%)	Output	2.34%	2.81%	2.77%	2.35%	2.01%	3.00%	-33%	3.00%	3.00%	3.00%
Jobs Supported (#)	Outcome	654,114	682,107	637,158	609,333	527,000	572,000	-8%	572,000	572,000	501,113
Cost per Job Supported (\$)	Efficiency	\$ 36.94	\$ 36.80	\$ 45.99	\$ 44.53	\$ 53.37			\$ 45.85	\$ 49.90	\$ 57.73

Budgetary Resources	Budgetary Obligations Incurred					Budget Requests		
	FY 2008 Actual	FY 2009 Actual	FY 2010 Actual	FY 2011 Actual	FY 2012 Actual	FY 2013 Actual	FY 2014 Enacted	FY 2015 Request
Total Administrative Resources (\$000)	\$ 24,164	\$ 24,230	\$ 29,300	\$ 27,136	\$ 28,126	\$ 26,226	\$ 28,541	\$ 28,929

(1)The data supporting the FY 2013 indicators are not finalized until the 3rd or 4th quarter of FY 2014. Therefore, FY 2012 data is reported as required by OMB Circular A-11.

Variance Explanation

Contracts to Small Disadvantaged Businesses - 8(a) Program Participants (60% over target) - There is a statutorily-defined goal of 5.00% of all small business eligible prime contracting dollars to be awarded to SDB businesses. The federal government as a whole was able to exceed this goal and achieve 8% for FY12. The goal was exceeded due to increased marketing of the capabilities of 8(a) firms, which are SDBs.

Contracts to Women-Owned Small Businesses (-20% under target) - There is a statutorily-defined goal of 5.00% of all small business eligible prime contracting dollars to be awarded to WOSBs. The federal government as a whole was not able to meet this goal, and achieved 4.00% for FY12. The WOSB federal contract program was newly implemented in FY12. Since implementation, there has been increased use of WOSB firms, but the program had caps limiting the dollar amount of contracts eligible for the program. Those caps were removed in FY13, and we expect to see increased use of WOSB firms in the future.

Contracts to HUBZone Firms (-33% under target) - There is a statutorily-defined goal of 3.00% of all small business eligible prime contracting dollars to be awarded to HUBZone program participants. The federal government as a whole was not able to meet this goal, and achieved 2.01% for FY12. The HUBZone program lost a significant number of firms due to the redesignation of areas in response to the 2010 census. Although the HUBZone office continues to recruit new firms, the portfolio size has not yet recovered from the loss of firms.

SOURCE: Small Business Administrator, FY 2015 Congressional Budget Justification and FY 2013 Annual Performance Report.

ATTACHMENT B - Historical data on the number and value of Commonwealth contracts valued at more than \$7.5M in the specified industry sectors

Sector/Category	Sum of Count			Sum of Value			Total Sum of Count	Total Sum of Value
	11/12 FY	12/13 FY	13/14 FY	11/12 FY	12/13 FY	13/14 FY		
Building and Construction and Maintenance Services	52	38	48	\$1,931,306,631.78	\$2,073,175,220.72	\$1,798,724,021.77	138	\$5,803,205,874.27
Politics and Civic Affairs Services	50	19	42	\$5,263,488,157.08	\$786,945,134.12	\$1,552,224,698.07	111	\$7,602,657,989.27
Education and Training Services	43	11	28	\$2,468,937,567.50	\$339,727,954.96	\$997,942,364.47	82	\$3,806,607,886.93
Transportation and Storage and Mail Services	6	17	13	\$187,195,581.76	\$770,564,125.90	\$2,074,577,212.10	36	\$3,032,336,919.76
Editorial and Design and Graphic and Fine Art Services	12	11	7	\$172,050,176.26	\$153,908,018.96	\$131,146,893.22	30	\$457,105,088.44
Travel and Food and Lodging and Entertainment Services	4	8	4	\$69,476,075.00	\$254,550,645.00	\$55,983,311.22	16	\$380,010,031.22
Industrial Cleaning Services	1	2	5	\$11,836,901.39	\$35,547,643.19	\$330,339,141.34	8	\$377,723,685.92
Farming and Fishing and Forestry and Wildlife Contracting Services		1	3		\$8,250,000.00	\$49,020,782.00	4	\$57,270,782.00
Grand Total	168	107	150	\$10,104,291,090.77	\$4,422,668,742.85	\$6,989,958,424.19	425	\$21,516,918,257.81

- As a percentage of the total number of Commonwealth contracts, the minimum requirements will apply to 0.15% of all Commonwealth contracts.
- As a percentage of the total value of Commonwealth contracts, the minimum requirements will apply to 15.05% of all Commonwealth contracts.

ATTACHMENT C – AREAS OF SIGNIFICANT INDIGENOUS POPULATION – APPLICATION TO OPTION 3

Indigenous Opportunities Policy's Significant Indigenous Population (SIP) Areas

The current IOP applies to contracts valued at \$5 million or more that will be delivered in “areas of significant Indigenous population” (known as SIP areas). It encourages contractors subject to the IOP to increase their rates of Indigenous employment and use of Indigenous suppliers by requiring them to submit a plan setting out how they will increase their rate of Indigenous employment and supplier use.

A SIP area is defined as any area where the Indigenous population is 3 per cent or more of the total population. The rationale for applying the IOP to these geographic areas was that these areas had the highest ratio of Indigenous people and hence the greatest need.

However, in considering whether this approach should be continued in the new policy, a number of policy and practical issues were identified through consultation with government agencies and through the Australian National Audit Office (ANAO) audit⁹ of the IOP.

1. In densely populated areas, (eg. Western Sydney), it is possible that a particular area has a very high Indigenous population that would benefit from government contracts but would not meet the definition of a SIP area, as Indigenous Australians represent less than 3 per cent of the total population.
2. SIP areas often border non-SIP areas, creating a patchwork effect. This creates time consuming administration around determining whether a contract is “in” a SIP area. Different agencies have adopted different approaches to managing this, thereby creating inconsistencies in application across the Commonwealth.

Government agencies identified that a fundamental hurdle to application of the current IOP, is the requirement that a procurement officer make a decision about where a contract is likely to be used or delivered. This is a complex decision because current supply chains are more likely to be global, government procurement is often centralised and distribution can be across several national locations.

- o For example, an agency may purchase paper for use across its network of offices around Australia. The RFT is run in Canberra and the successful supplier is based in Sydney. The paper is made in Indonesia and partly packaged there. It is then imported by the supplier to its factory in Sydney, where it is further packaged. The supplier then distributes the paper to four of the agency's warehouses around Australia. From there the paper is disbursed as needed to the agency's offices around the country.

⁹ ANAO's *Procurement Initiatives to Support Outcomes for Indigenous Australians* audit is on-going and not yet published.

Option 3 – Significant Indigenous Population Considerations

Mandatory Set-Aside

In developing Policy Option 3 a key aim was to avoid the administrative complexity of the previous SIP Area approach while ensuring that the policy was targeted to areas of greatest need and where the greatest 'bang for buck' could be achieved.

It was considered that a value range offered the best starting point and the value range of \$80,000 to \$200,000 was selected because:

- Indigenous businesses tend to be small to medium sized businesses looking to gain experience in government contracting. Contracts in this value range tend to be of the size and risk profile that small to medium sized businesses can more easily win and deliver.
- Contracts in this value represent around 14 per cent of all Commonwealth contracts (by number). This will help to put Indigenous businesses front and centre of the way the Commonwealth procures and drive cultural change within the Commonwealth.
- Having a value range lower than this risked overwhelming the Indigenous business sector with a large number of low value requests for quote, which can be time consuming to complete.

Remote areas have the most critical and intractable Indigenous economic development needs. Consequently, it was considered necessary that the mandatory set-aside also apply to all contracts that will be delivered in remote areas. However, to avoid some of the administrative problems created by the current SIP area approach, there will be a clear definition of the locations to which the mandatory set-aside applies, supported by interactive, web-based maps.

Minimum Requirements

The preferred policy approach must be workable, able to be consistently applied and achieve the policy aims of improving Indigenous economic participation. In developing this option, consideration was given to ensuring that non-Indigenous businesses could source and utilise Indigenous employees and suppliers in the delivery of the contracts.

Applying the minimum participation requirements to industry sectors that present the greatest opportunities for Indigenous employment and supplier use is a practical way forward. Specified industry sectors should also be growth industries.

The following specified industry sectors will constitute the SIP Sectors under the policy:

- 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

These procurement categories reflect the United Nations Standard Products and Services Code (UNSPSC) which is currently the classification system used in AusTender.

This approach provides government agencies and contractors with certainty about when the minimum requirements will apply. This reduces administrative complexity and cost to business.

When Minimum Requirements Should Apply

Stakeholders provided consistent feedback that it would be impractical and would not make business sense for a contractor to commit to Indigenous participation in low-value contracts.

Various thresholds for the minimum requirements were considered ranging from \$1million to \$7.5 million (representing the current reporting threshold for construction services in the CPRs). The table below shows the proportion of Commonwealth contracts in SIP Sectors, for contract threshold values.

Proportion of Commonwealth Contracts in SIP Sectors by value.

Threshold	Percentage of Commonwealth contracts by value	Percentage of Commonwealth contracts by number
All Commonwealth Contracts in a SIP Sector, valued at \$1M or more	17.14%	0.63%
All Commonwealth contracts in a SIP Sector, valued at \$5M or more	15.61%	0.21%
All Commonwealth contracts in a SIP Sector, valued at \$7.5M or more	15.05%	0.15%

Applying a value threshold for the application of the mandatory minimum requirements at \$7.5 million, gives the Commonwealth greatest 'bang for buck' in terms of capturing a large value of Commonwealth contracts, across a relatively small number of contracts. Based on AusTender data, it is anticipated that around 150 contracts per year will be captured. This will reduce the administrative impost on agencies and contractors. (For more information, see [Attachment B](#)).

What Minimum Requirements Should Apply

Under the mandatory minimum requirements, contractors will be required, in consultation with the Commonwealth, to choose to apply one of the following:

- c) An individual contract requirement – at least 4 per cent of the Full Time Equivalent of the Australian –based workforce on the contracted project must be Indigenous, or 4 per cent of the contract value must be subcontracted to Indigenous businesses; or
- d) An organisation based requirement – at least 3 per cent of the Full Time Equivalent of the organisation's total Australian based workforce must be Indigenous or 3 per cent of the value of the organisation's supply chain must be with Indigenous businesses.

In addition, where part of the contract is to be delivered in a remote area, the government agency and the contractor will agree to significant Indigenous employment or supplier-use requirements in that area. As the Indigenous working age population is significantly higher in remote areas than in metropolitan areas, negotiation of a higher rate of Indigenous employment for contracts delivered in these locations is appropriate.

Allowing a contractor a choice in how it meets the minimum requirements will reduce the administrative burden and compliance costs particularly for those contractors who have multiple contracts with the government. The approach also mitigates a potential risk that Indigenous employees may be arbitrarily moved to work on contracts as they arise.

Given that the Indigenous population is 3 per cent of the total Australian population, this is an appropriate starting point for setting minimum Indigenous employment and supplier use requirements. If a contractor chooses to apply the requirement on a contract by contract basis, it is reasonable to increase the minimum requirement to reflect the fact that the contract is in a SIP Sector which offers greater opportunities for Indigenous participation.

While these minimum requirements will only apply at these value thresholds and for the specified SIP Sectors, for all other domestic Commonwealth contracts, contractors will be required to use reasonable endeavours to increase their employment of Indigenous employees and their use of Indigenous suppliers in their supply chains in the delivery of the contract.

To strengthen accountabilities for this initiative, an enterprise's performance against contracted minimum requirements and best endeavours will form part of future procurement assessments.

ATTACHMENT D - Reporting Requirements under the Indigenous Procurement Policy

	Timing	Commonwealth reporting obligations (by PM&C)	Portfolio reporting obligations (some of these obligations may be devolved to individual Commonwealth agencies within the portfolio)	Contractor reporting obligations
Target for purchasing from Indigenous enterprises	PM&C public reporting – annual Portfolio manual reporting on contracts outside of AusTender – six monthly	Annual publication of the Commonwealth’s target, and individual portfolio targets, for purchasing from Indigenous enterprises. Annual publication of performance by the Commonwealth and portfolios of the number and value of contracts awarded to Indigenous enterprises. Periodic publication of case studies to highlight better practice Indigenous supplier use.	Reporting of contracts on AusTender in accordance with the Commonwealth Procurement Rules. Portfolios are encouraged to also report those contracts with Indigenous enterprises which are not required to be reported on AusTender. If the portfolio chooses to include the following types of contracts in its performance against the target, the portfolio must manually report the number and value of the following types of contracts to PM&C on a six monthly basis: <ul style="list-style-type: none"> • Subcontracts; • Contracts valued at less than \$10,000; • Contracts with Indigenous enterprises that are not registered with Supply Nation. 	Portfolios may require contractors to report on Indigenous supplier use, to allow subcontracts to be counted towards the portfolio’s target.
Mandatory set-aside	Six monthly	Publication every six months of: <ul style="list-style-type: none"> • The total number of contracts reported on 	Contracts valued between \$80,000 and \$200,000 Report contracts on AusTender in accordance with the Commonwealth	Nil

	Timing	Commonwealth reporting obligations (by PM&C)	Portfolio reporting obligations (some of these obligations may be devolved to individual Commonwealth agencies within the portfolio)	Contractor reporting obligations
		<p>AusTender in the previous six months that are valued from \$80,000 to \$200,000; and</p> <ul style="list-style-type: none"> • The total number of these contracts that are awarded to Indigenous enterprises that are registered with Supply Nation. • the number of Remote Procurements conducted across the Commonwealth and the number of Remote Contracts that are awarded to Indigenous SMEs. 	<p>Procurement Rules.</p> <p>Remote Procurements</p> <p>On a six monthly basis, portfolios must manually report to PM&C:</p> <ul style="list-style-type: none"> • the number of Remote Procurements conducted by the portfolio; and • the number of Remote Contracts that were awarded to Indigenous SMEs. 	

	Timing	Commonwealth reporting obligations (by PM&C)	Portfolio reporting obligations (some of these obligations may be devolved to individual Commonwealth agencies within the portfolio)	Contractor reporting obligations
Mandatory minimum requirements for Indigenous participation	PM&C publicly report on a six monthly basis	<p>PM&C report on the number of new contracts subject to mandatory minimum requirements, including the:</p> <ul style="list-style-type: none"> • Value of the contract; • Term of the contract; • Good/service type being purchased. 	<p>Report to PM&C every six <i>months</i>:</p> <ul style="list-style-type: none"> • For each new contract subject to mandatory minimum requirements, the following information: <ul style="list-style-type: none"> ○ Contracting agencies; ○ Value of the contract; ○ Term of the contract; ○ Good/service type; and ○ Minimum requirement applied in the contract. • For each contract subject to mandatory minimum requirements, whether the contractor is compliant with the agreed Indigenous Participation Plan. 	<p>At least quarterly report to the contract manager on the contractor's compliance with its Indigenous Participation Plan.</p> <p>Final report on compliance with the Indigenous Participation Plan and the mandatory minimum requirements.</p>