



Australian Government

Department of Infrastructure, Regional Development and Cities

# Indigenous Employment and Supplier-Use Infrastructure Framework

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## 1. Introduction to the Framework

The Australian Government is committed to improving Indigenous economic development by increasing Indigenous employment opportunities and supporting the Indigenous business community through a whole-of-government approach to advance the Council of Australian Government's (COAG) Closing the Gap targets. The Indigenous Employment and Supplier-Use Infrastructure Framework (the Framework) aims to increase Indigenous employment and supplier-use in the delivery of land transport infrastructure projects funded or co-funded by the Australian Government. The Framework applies to projects receiving \$7.5 million or more in Australian Government contributions (and in some circumstances for projects below \$7.5 million with strong potential to support Indigenous participation) under the next National Partnership Agreement on Land Transport Infrastructure Projects (the NPA) which will come into effect from 1 July 2019. More information on Project Thresholds and Exemptions is at [Section 9](#).

## 2. Whole of government approach to Indigenous Economic Development and Closing the Gap

Building Indigenous prosperity is at the heart of the Australian Government's Indigenous affairs agenda. As highlighted in the *Prime Minister's Closing the Gap Report 2018*, the target to halve the gap in employment between Indigenous and non-Indigenous Australians by 2018 has not been on track, with Indigenous employment rates falling slightly over the decade. In 2016, the Indigenous employment rate was 46.6 per cent, compared to 71.8 per cent for non-Indigenous Australians. This lack of progress calls for the need to adopt different approaches to support Indigenous participation, to focus on building Indigenous ownership and participation across the economy.

The Australian Government has identified land transport infrastructure as an area that can help with Indigenous economic participation, due to the scale of opportunities to enhance employment and business capability in both urban and regional Australia. The Infrastructure Investment Program (IIP) is the Australian Government's primary funding program for investment in land transport infrastructure. The majority of the IIP is delivered through state and territory governments under the NPA.

All levels of government across Australia have their own Indigenous employment and supplier-use policies and approaches, including through direct government contracts and competitive procurement across industry sectors. At the meeting of the Council of Australian Governments on 9 December 2016, jurisdictions agreed to consider establishing whole-of-government Indigenous procurement policies with Indigenous employment and business targets and stronger reporting mechanisms.

Since then, jurisdictions have also demonstrated their support for stronger public reporting and greater transparency in infrastructure projects. On 9 February 2018, COAG leaders agreed to promote opportunities for Indigenous economic development and workplace participation. They noted that having a job or being involved in a business activity contributes to economic and social outcomes for Indigenous families and communities. To demonstrate its commitment in this area, COAG will publish jurisdiction-specific procurement policies, and Indigenous employment and business outcomes annually.

Generally, government policies, including construction-related procurement, are designed in consideration of a range of factors, including Indigenous populations and labour force within a defined region, and important socio-economic and cultural issues that face local Indigenous communities in their respective jurisdictions. With respect to the differences in each jurisdiction, the Framework builds on the approaches already in place at the state and territory level.

### 3. Key objectives of the Framework

The objective of the Framework is to increase Indigenous employment and business participation across the supply chain in the delivery of land transport infrastructure projects funded (or co-funded) by the Australian Government. This will ensure Indigenous Australians share in the economic opportunities created by these projects.

The Framework identifies the appropriate supports required for its success and provides guidance to establish sustainable Indigenous employment outcomes. Its intention is to advance Indigenous employment and business outcomes and ensure that land transport projects across Australia are delivered efficiently and effectively, with the principal criterion remaining value for money. Throughout the Framework's implementation, the Australian Government will work closely with jurisdictions to allow for flexibility in recognising local circumstances and specific needs, while still promoting a national approach.

The Framework will also inform Indigenous employment and supplier-use provisions in future Australian Government transport infrastructure funding agreements.

There is a range of initiatives already underway aimed at promoting greater Indigenous participation at the state and territory government policies and industry-led initiatives, however these have had mixed success. Key concerns with the current approach include:

- lack of transparency – policies are difficult to find
- lack of accountability for results – results are published on an ad hoc basis
- inconsistency of approaches and reporting requirements across jurisdictions, meaning that companies operating across state boundaries need to adjust their practices for projects operating across different jurisdictional policies.

It will be important the Framework adds value to these efforts, not simply another layer of red tape. To this end, the Framework is flexible, and is aimed at avoiding adding unreasonably to tendering and delivery costs, and affecting the Australian Government's ability to achieve value for money from its infrastructure investments.

## 4. Principles of the Framework

The Framework is underpinned by the following principles:

### **Sustainable and meaningful opportunities**

- Indigenous Australians are able to access jobs through infrastructure projects at all levels, ranging from entry-level jobs, which can be a first step into the real economy, to professional, high skill roles.
- Ensuring that Indigenous businesses are given the best chance of success. Governments should promote early notice of opportunities, appropriate sizing and timing of packages of work to allow continuity of business, encourage major contractors to recognise the value of embedding supply chain diversity and promote ongoing opportunities for Indigenous participation at the conclusion of projects.

### **Achievable and measurable progress**

- Participation requirements are evidence-based and progress is measurable, taking into account both quantitative and qualitative data where appropriate.
- Appropriate supply-side supports are in place, including business sector, employment, training and skills development services.

### **Flexibility**

- Recognises the importance of local circumstances and is able to respond flexibly.
- Promotes opportunities for Indigenous participation across the supply chain.
- Complements, and builds on, existing initiatives by state and territory governments and industry.

### **Accountability and ownership**

- Encouraging strong industry buy-in and ownership of Indigenous participation efforts, to ensure the benefits and opportunities are achieved and acknowledged, and over the medium/longer-term efforts transition to market-driven rather than government--led.
- Robust monitoring and reporting processes are in place to provide appropriate transparency on Indigenous participation. Appropriate mechanisms will also be developed for ensuring that the states can be held to account for the non-achievement of Indigenous objectives.

### **Value for regions and local communities**

- Promoting consideration of local Indigenous participation where appropriate and practical.
- Recognising the particular importance of infrastructure projects in regional and remote economies, where transport infrastructures project may represent a substantial source of economic activity and employment in the region.

## Value for money

- Ensuring that infrastructure projects are delivered on time and to budget and that value for money is a core principle at all times.

These principles are integral to the design and implementation of Indigenous participation requirements, noting the importance of balancing the need to meet Indigenous outcomes, reducing red tape for industry and governments, and achieving value for money.

## 5. Indigenous participation requirements under the next NPA

### Indigenous Participation Plans

States and territories are required to develop Indigenous Participation Plans for transport infrastructure projects receiving \$7.5 million or more in Australian Government contributions through the major road and rail investment program under the NPA. The requirements apply to projects where construction stage funding is formally approved under the *National Land Transport Act 2014* and that are publicly tendered from 1 July 2019 (requirements will not be applied retrospectively to projects where construction stage funding was approved and/or works were publicly tendered prior to 1 July 2019).

The Plans should set out the anticipated opportunities for Indigenous participation, including specific targets for Indigenous employment and supplier-use in the delivery of projects (see *Calculation of targets* below). The Plan should address how targets will be met, how opportunities will be communicated to the community, and how the longer-term participation of Indigenous employees and suppliers will be facilitated (for example through capability development).

It is expected that states and territories will address these requirements through their procurement processes and the approach to Indigenous participation will be negotiated with the successful contractor. States and territories should look favourably on proposals that promote long-term and sustainable Indigenous participation.

The relevant jurisdiction is required to submit the Indigenous Participation Plan at the time of providing their Project Proposal Report to the Department of Infrastructure, Regional Development and Cities (the Department), which occurs before formal approval of Australian Government funding and states going out to tender. The Department will assess the Plan's approach and rationale supporting proposed targets, and may request further information from jurisdictions or request changes to the Plan.

Jurisdictions will need to set out the Indigenous participation requirements in tender documents to ensure industry has visibility prior to bidding for work. Should there be significant variation to the Plan (i.e. contractors are unable to satisfactorily address the proposed requirements set out in the agreed Plan), the state should consult with the most appropriate Indigenous representative body (for example a Land Council), and come back to the Department for further discussions before awarding the contract.

State and territory governments should also engage early with the Department of the Prime Minister and Cabinet's regional offices and/or the Department of Jobs and Small Business

State Office Network on the development of their Plans. In terms of geographic reach, on-the-ground presence and knowledge of local Indigenous communities, the regional offices are well-placed to connect up appropriate supports with the specific needs of individual projects and communities. This will also allow for early and ongoing identification of any gaps in supply-side supports.

Agreement to the proposed Plan from the Australian Government minister with responsibility for transport infrastructure is required prior to the contract being awarded. The Department may seek advice from other relevant agencies in developing advice to the Minister.

#### *Alternatives to developing an Indigenous Participation Plan*

Where a state has developed a detailed Indigenous participation plan for a specific project, the Department may agree to accept the state's plan in lieu of completing an Indigenous Participation Plan. This will be considered on a case-by-case basis.

This option would only apply where the state's plan has been developed for a specific project and provides sufficient detail for the Department to assess whether it addresses all of the Framework's requirements, including with regard to setting targets, appropriate engagement with supply-side support providers and Indigenous bodies, and public reporting on performance.

This approach is intended to recognise proactive efforts by states to develop ambitious and high-quality Indigenous participation plans for transport projects and avoids duplication of effort.

States would need to seek prior agreement in writing from the Department to their proposed plan. In line with the process for agreeing Indigenous Participation Plans, the agreement of Australian Government minister with responsibility for transport infrastructure will also be required.

#### **Calculation of targets**

Indigenous participation targets are to be set to reflect the local Indigenous working age population, with states able to put forward adjustments to targets (up or down), supported by appropriate justification, taking into consideration:

- the local employment market, including in terms of the number of Indigenous businesses, workers and job seekers, and their relevant skills, capabilities, qualifications and training; AND
- the scale, value and location of the project, and skills and capabilities required to deliver the project; AND
- the availability of supply-side services to support the meeting of any targets and assist build the capacity of Indigenous businesses and job-seekers to take up opportunities; AND
- existing state and territory policies and/or targets.

Information on the local Indigenous working age population can be sourced from the Australian Bureau of Statistics or from an equivalent state agency. Any queries about setting the target can be referred to the Department in the first instance.

Targets can be met through any combination of employment or supplier-use across the supply chain (see below).

- Employment is to be measured in terms of number of full time equivalent (FTE) employees (not head count).
- Supplier-use is to be measured by percentage of contract spend, calculated at the project level.

States and territories need to specify the proportion of both employment and contract spend and how each component contributes to the overall target.

Where a state or territory proposes to use alternative metrics to calculate targets, including in accordance with their own jurisdictional policy, this should be explained in the Indigenous Participation Plan.

Indigenous participation targets can be met over the life of a project, allowing varying levels of labour requirements and supplier engagement during the project phases. Once targets are agreed, any variation to targets, for example where there is a change to the scope or size of the project which impacted on Indigenous participation, requires agreement from the Australian Government.

As the capability of the Indigenous workforce and business sector increases, and additional supply-side supports are implemented, and readiness of employers/contractors to take on increased numbers of Indigenous workers and contracted suppliers increases, it is expected that there will be less need for flexibility in setting targets.

## **Weighting of Indigenous participation requirements**

State and territory governments have primary responsibility for the procurement, construction and maintenance of infrastructure projects, and the majority also have their own Indigenous employment and procurement policies. The Framework is intended to provide jurisdictions with flexibility to procure and manage projects effectively and efficiently, while still meeting the Australian Government's Indigenous participation requirements.

On this basis, the Framework does not specify a weighting for Indigenous participation requirements in the award of contracts. Instead, the procuring agency has discretion to consider the strength of the Indigenous participation component in the context of the proposal as a whole.

This will ensure that contractors' capability to deliver the required works on a value for money basis remains the prevailing consideration in the award of contracts by state and territory governments.

## Verifying Indigeneity

To ensure that Indigenous Australians are the genuine beneficiaries of the Framework, it is important to apply a consistent approach to verifying Indigeneity of businesses and individuals.

It is noted, however, that seeking to verify Indigeneity, particularly of individuals, poses both cultural and administrative complexities. Some job-seekers and businesses may be unwilling to identify as Aboriginal or Torres Strait Islander due to fear of discrimination. There are also cultural sensitivities associated with governments or businesses asking Indigenous Australians to “prove” their cultural heritage, which may cause offence and in some cases documentation may not be readily available.

In addition, it is important to be mindful of the administrative burden for contractors associated with additional pre-employment checks.

To the extent possible, the proposed approach to verifying Indigeneity aligns with established and accepted practices for other Indigenous policies and programs, such as the Australian Government’s Indigenous Procurement Policy (IPP).

For the purposes of verifying that a business meets the definition of an **Indigenous business**:

- Businesses listed on Supply Nation’s register are accepted as an Indigenous business.
- If a business says it is Indigenous owned and is not listed with Supply Nation, the procuring officer must take steps to assure themselves that the business is 50 per cent or more Indigenous owned. This may include:
  - confirming registration with an Indigenous Chamber of Commerce,
  - seeking a statutory declaration or a letter of Indigeneity from organisations such as Land Councils.
- Indigenous corporations registered with Office of the Registrar of Indigenous Corporations ORIC (<http://www.oric.gov.au/>) are accepted as an Indigenous business.

The definition recognises that in some family businesses just one member of a couple is Indigenous and that private sector investment is critical to support growth of the Indigenous business sector.

For the purposes of verifying that a business meets the IPP definition of an **Incorporated Indigenous joint venture**:

- They must be registered with Supply Nation; and
- Be at least 50% Indigenous owned and demonstrate 50% Indigenous involvement in the management and control of the joint venture.

Additionally, as part of this registration they must have in place:

- A strategy to build the capability of the Indigenous business partner.
- An Indigenous workforce strategy.

**Individuals** would be required to sign and provide a statutory declaration or a confirmation of Indigeneity to the employer stating they:

- are of Aboriginal descent and/or Torres Strait Islander descent
- identify as an Australian Aboriginal and/or Torres Strait Islander
- are accepted as an Australian Aboriginal and/or Torres Strait Islander in the community in which they live or have lived
- are aware that under the Criminal Code Act 1995 (Cth) section 137.1 giving false or misleading information is a serious offence
- have documentary evidence to support information contained in the declaration.

States should communicate these requirements to contractors as part of the tender process.

Where a state determines that this approach would not be suitable for their specific circumstances, they may apply a different approach to verifying Indigeneity, provided they can satisfy themselves as to the level of genuine Indigenous participation in projects.

## 6. Sectors in the supply-chain

Indigenous participation requirements apply to roles and industry sectors that primarily relate to infrastructure construction, in line with the Approved Purposes or eligible project costs stipulated in the *National Land Transport Act 2014* and in the *Notes on Administration*. These include roles spanning across the infrastructure construction supply chain, for example but not limited to: project management; engineering design; financial services; environmental management; traffic management; supply-chain logistics; construction of roads; rail; bridges; tunnels and retaining walls.

However, where a jurisdiction or contractor identifies an opportunity for Indigenous participation in an aspect of project delivery not specifically identified in the *Notes on Administration*, this may be considered in consultation between the Australian Government and the relevant state or territory governments. This provides additional flexibility to meet any Indigenous participation requirements.

## 7. 'Local first' principle

The Framework is intended to result in tangible economic and social benefits for local Indigenous people living in surrounding communities. To this end, ideally employees and contractors required for a project should be first sourced from within the local area, then from the wider region and beyond, where local capacity is unable to meet the participation requirements.

There may be circumstances where this approach is neither practical nor cost-effective. Where necessary and culturally appropriate, contractors may need to rely on Indigenous employees or contracted businesses from outside of the local area. As such, 'local first' should be regarded as a principle, rather than a requirement of the Framework.

Stakeholders have indicated that there are a range of definitions for 'local' being used in the different jurisdictions and that definitions are dependent on the context of specific projects.

On this basis, local should be defined in terms of what makes sense for a specific project, based on but not limited to:

- the needs and values of the local community, including Indigenous connections to land and country
- formal definitions such as local government area
- proximity to the project.

A rationale for this definition and the approach forward should be clearly outlined in the Indigenous Participation Plan.

## 8. Supply-side supports

The success of the Framework will rely on the availability and whole-of-government coordination of appropriate supply-side supports to ensure an increase in the demand for Indigenous labour and business services is able to be met by a suitably skilled and qualified workforce.

This includes support for Indigenous job seekers and businesses for the training required to develop skills and obtain necessary qualifications; support for contractors to identify suitably skilled Indigenous job-seekers and businesses; and better visibility of project opportunities to enable time for upskilling. This is likely to involve a range of agencies across levels of government.

### **Support for job-seekers**

Employment service providers deliver support to Indigenous job seekers and work with employers to support better opportunities for job seekers. Given adequate notice of industry projects, they can be leveraged to encourage Indigenous job seekers to upskill and seek relevant employment or apprenticeship opportunities.

Complementing Indigenous specific supply-side measures are a range of mainstream employment services in metropolitan and regional areas managed by the Department of Jobs and Small Business. These mainstream employment services include:

- Jobactive – the Australian Government's mainstream employment program
- Transition to Work – which provides intensive pre-employment assistance to young people aged 15-21 who have disengaged from the labour market
- ParentsNext – which is an early intervention program for recipients of Parenting Payment who have young children
- New Enterprise Incentive Scheme – which provide individualised support to help job seekers to start their own business.

Indigenous specific services such as the Community Development Programme (CDP), Vocational Training and Employment Centres (VTECs) will work with contractors to prepare job-seekers for specific roles. Flexible employment grants such as Tailored Assistance Employment Grants (TAEG) are also available to directly support hiring action by employers.

## Support for businesses

Existing and emerging Indigenous businesses will be supported by the Australian Government's:

- Indigenous Entrepreneurs Fund which includes regionally-based business advisers and grants for capacity-enhancing plant and equipment for start-ups and growing remote and regional Indigenous businesses.
- Indigenous Business Sector Strategy which is rolling out Indigenous Business Hubs, an Indigenous Entrepreneurs Capital Scheme and a doubling of the footprint of microfinance services.

The Australian Government will consider partnering with relevant agencies in the jurisdictions to establish employment/business project hubs in strategic locations, where there is a business case for this, in order to help with the coordination of support services.

Staff in the PM&C regional offices will also play a role in tailoring supply-side strategies for projects as necessary.

This investment will be maximised if the Australian Government and the jurisdictions work to coordinate and tailor existing programs and services. Indigenous participation will be increased with sufficient lead-time for effective planning and implementation of supply-side strategies.

## 9. Project Thresholds and Exemptions

### Thresholds

The Framework applies to projects receiving \$7.5 million or more in Australian Government contributions.

For projects below the \$7.5 million threshold, the state's own Indigenous policy would apply. In some circumstances, the Australian Government or the relevant states or territory government may identify a project with strong potential to support Indigenous participation but where the Australian Government contribution is below \$7.5 million, such as locations where there is a high proportion of Indigenous people within the population. These projects may also require an Indigenous Participation Plan.

The Framework will apply to all projects funded under the Australian Government's Roads of Strategic Importance in Northern Australia regardless of the level of Commonwealth contribution.

### Exemptions

States may seek an exemption to Indigenous participation requirements for a specific project, where there is strong justification. This will be considered by exception only and requires agreement from relevant Australian Government ministers.

In addition, the IIP sub-programs are not covered by the Framework. Where relevant, the jurisdictions' own Indigenous participation policy will apply.

States and territories, through both their relationships with local governments and their jurisdictional procurement policies, are also well-placed to play a role in encouraging and supporting greater Indigenous participation in the delivery of smaller, local projects, including those funded under the Roads to Recovery and Black Spots sub-programs.

Projects funded under the Northern Australia Roads programs are covered by a separate Indigenous participation framework created in response to the Government's White Paper on Developing Northern Australia.

## 10. Accountability

The Australian Government recognises that the Framework's success will depend on an effective partnership between governments and industry.

The Framework seeks to leverage the goodwill and effort demonstrated by state and territory governments and industry.

That said, it is important that governments and industry are accountable for Indigenous participation commitments – this has been particularly emphasised by Indigenous stakeholders.

States and territories would be required to keep effective records on the performance of contractors against their Indigenous participation requirements. States and territories would review contractors' performance against reviewed at the completion of each project and this would be a factor in consideration for the award of future contracts. This creates a clear incentive for contractors to meet Indigenous performance requirements in order to win future contracts.

## 11. Reporting

### *Business-as-Usual Reporting Requirements*

For individual projects, states and territories will be required to report on progress against Indigenous Participation Plans or the state's own Indigenous participation plan accepted by the Department (outlined in [Section 5](#)), as part of the standard monthly reporting process in place for the Infrastructure Investment Program. Where practical, reporting should cover:

- the target (per the agreed Indigenous Participation Plan)
- progress against the target, including (where available):
  - number of FTE Indigenous employees
  - value of contracts awarded to Indigenous businesses, as a proportion of the total project cost
  - qualitative information, including the type of roles in the supply chain filled by Indigenous persons and certifications obtained on the job.

Where actual participation rates vary from targets proposed in the Indigenous Participation Plan, states and territories should provide advice on the circumstances influencing the outcomes and should seek to address any issues in consultation with the Australian Government.

Transparent reporting from the states and territories throughout the project cycle will also assist the Australian Government to provide the necessary supply-side supports that are required to achieve the best Indigenous participation outcomes over the long-term.

At the conclusion of a project, states will be required to provide information on Indigenous participation, including performance against targets, as part of the Post Completion Report.

### *Public Reporting Requirements*

COAG agreed at its February 2018 meeting to report publicly on Indigenous employment and business outcomes annually. As part of this commitment, COAG has established online performance reporting for priority policies of the Closing the Gap Refresh, at the national, state and territory government levels.

Under the Framework, states and territories will be required to report publicly on Indigenous participation on a project-by-project basis, including performance against targets for all projects.

At a minimum, performance against targets must be reported publicly upon completion of a project, however, states may report more frequently at their discretion and in line with their own jurisdictional policies.

As a guide, public reporting on projects underway should include the participation target pursued for the project, and indicate the progress to date (on-track, not on-track, or met, not met):

- For projects that have met or exceeded participation targets, include key achievements, the factors that contributed to meeting targets, and where appropriate share lessons learnt.
- For projects where target are not on track or not met, a brief explanation of the reason(s) for targets not being met should be included.

This is intended to promote accountability and transparency, as well as consistency in reporting across all states and territories so that progress can be measured effectively. It is up to states and territories to decide the most appropriate channel to publicly report this information, for example on the relevant government agency website or through their respective COAG channels, noting states and territories may already have reporting requirements in place under their own policies.

Prior to public reporting, states and territories should undertake appropriate consultation with relevant Indigenous stakeholders and contractors, and observe the principles of respect and appropriateness, and protect the privacy of individuals.

As part of the Post Completion Report, states and territories will be required to confirm that public reporting requirements have been met.

## 12. Review

An interim review of the Framework will be undertaken two years after the Framework's implementation (expected around mid 2021) and a substantive review at around the three-four year mark (expected to commence late 2022), to feed into the development of the next NPA.

A review of the Framework will seek to test:

- its effectiveness in delivering increased Indigenous employment and supplier-use, including whether targets are becoming higher or more ambitious over time
- lessons learned and how these could be incorporated into future design of the Framework
- any implications in terms of project delivery including value for money
- adequacy and efficiency of monitoring, reporting and accountability arrangements
- adequacy of supply-side supports in place to enable governments and industry to meet targets.

The outcomes of the review should inform the need for any changes to the design and implementation of the Framework, and the need for any additional or different supply-side supports.

The review provides an opportunity for evidence-based analysis of the Framework's impacts in terms of benefits and any costs, drawing on actual project data. The review would be led by the Australian Government, in consultation with state and territory governments, industry and Indigenous representative bodies, such as the Prime Minister's Indigenous Advisory Council, peak land councils and Indigenous businesses and associations.