

Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

[Across Entities](#)

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ISSN 1036–7632 (Print)

ISSN 2203–0352 (Online)

ISBN 978-1-76033-522-9 (Print)

ISBN 978-1-76033-523-6 (Online)

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Canberra ACT
20 February 2020

Dear Mr President
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit across entities titled *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

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

Yours sincerely



Grant Hehir
Auditor-General

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

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Contents

Summary and recommendations.....	7
Background	7
Conclusion	8
Supporting findings.....	8
Recommendations.....	10
Summary of entity responses	11
Key messages from this audit for all Australian Government entities	13
Audit findings.....	15
1. Background	16
Procurement initiatives to support Aboriginal and Torres Strait Islander economic opportunities.....	17
Mandatory minimum requirements for major procurements	19
Previous audit coverage	20
2017 Senate Inquiry into the Community Development Program	20
Rationale for undertaking the audit	21
Audit approach	21
2. Policy design	23
Was the design of the MMRs aligned to the Australian Government's policy objectives?	23
Was the design of the MMRs informed by stakeholder views and previous experience?	24
Does the coverage of the MMRs support the achievement of policy objectives?	27
Have appropriate criteria been established for setting participation targets?	31
3. Policy implementation and monitoring.....	33
Was an appropriate implementation plan developed for the MMRs?	33
Have the MMRs been effectively communicated to support implementation?	35
Have appropriate mechanisms been established to monitor compliance and report on implementation?	38
Is the contribution of the mandatory minimum requirements to Closing the Gap being measured?	43
4. Entity compliance in major procurements	45
Have entities provided appropriate guidance to staff on complying with the MMRs?.....	46
Have entities complied with the MMRs in the procurement phase?	47
Have entities agreed appropriate MMR participation targets?	52
Have entities established appropriate reporting arrangements for MMR contracts?	55
Have entities gained appropriate assurance over reported results?.....	57
Appendices	61
Appendix 1 Entity responses	62
Appendix 2 MMR industry coverage	71
Appendix 3 MMR coverage by portfolio	72
Appendix 4 ANAO compliance testing sample	73



Audit snapshot

Auditor-General Report No.25 2019–20

Aboriginal and Torres Strait Islander Participation Targets in Major Procurements



Why did we do this audit?

- ▶ The mandatory minimum requirements (MMRs) are the Australian Government's principal mechanism for applying Aboriginal and Torres Strait Islander participation targets in major procurements.
- ▶ The audit was undertaken to provide assurance the MMRs are being administered effectively and entities are complying.



What did we find?

- ▶ The effectiveness of the MMRs has been undermined by ineffective implementation and insufficient compliance.
- ▶ While the design of the MMRs supports the Government's policy settings, the MMRs have been ineffectively implemented and monitored by the policy owner.
- ▶ Selected entities' compliance with the MMRs fell short of standards. Most contracts assessed failed to comply with required steps.



Key facts

- ▶ The MMRs apply to non-corporate Commonwealth entity procurements valued over \$7.5 m in eight services industry sectors (expanding to 19 from July 2020).
- ▶ Entities must ensure contractors commit to participation targets of at least 4% for the project or 3% for the organisation.
- ▶ The ANAO examined a sample of 69 active MMR contracts from six selected entities to test compliance with the MMRs. 35 contracts had a component delivered in a remote area.



What did we recommend?

- ▶ The Auditor-General made three recommendations to the National Indigenous Australians Agency aimed at improving the implementation and monitoring of the MMRs.
- ▶ The Auditor-General also made three recommendations to all audited entities aimed at increasing compliance levels.
- ▶ Audited entities agreed to the recommendations.

30%

Estimated proportion of the value of procurement by non-corporate Commonwealth entities covered by the MMRs from July 2020.

52%

Percentage of tested contracts that created a contractual requirement to meet MMR targets.

4.3%

Percentage of tested contracts that were actively reporting in the monitoring system as at 30 June 2019.

Summary and recommendations

Background

1. Over the past three decades the Australian Government has sought to use its position as a major procurer of goods and services in the Australian economy to generate economic opportunities for Aboriginal and Torres Strait Islander people.
2. In May 2015 the government introduced the Indigenous Procurement Policy (IPP), which includes a requirement for Australian Government entities to apply mandatory minimum requirements (MMRs) for Aboriginal and Torres Strait Islander participation to high value contracts in certain industry categories. Responsibility for the IPP transferred from the Department of the Prime Minister and Cabinet (PM&C) to the newly created National Indigenous Australians Agency (NIAA) on 1 July 2019 through a machinery-of-government change.
3. In 2017 the Senate Finance and Public Administration References Committee (the committee) held an inquiry into the Community Development Program. The committee recommended that the Australian National Audit Office (ANAO) conduct an audit of Australian Government contracts that relate to service delivery in remote locations with a specific focus on the use of, and compliance with, Aboriginal and Torres Strait Islander employment targets.

Rationale for undertaking the audit

4. The MMRs are the Australian Government's principal mechanism for applying Aboriginal and Torres Strait Islander participation targets in major procurements. As the MMRs have been in operation since July 2015, and binding on contractors since July 2016, their administration by the policy owner (PM&C until June 2019 and NIAA since July 2019) and application by government entities should be relatively mature.
5. This audit was undertaken to provide assurance that the MMRs are being effectively administered and entities are complying with them. The audit includes a focus on the application of the MMRs in remote areas, to address the Senate Finance and Public Administration References Committee's recommendation that the ANAO conduct an audit of Australian Government contracts relating to service delivery in remote locations. The audit timing also presents an opportunity for NIAA to address any identified areas for improvement prior to expanding the MMRs to cover eleven additional industry categories from 1 July 2020.

Audit objective and criteria

6. The audit objective was to assess the effectiveness of the administration of the MMRs for Aboriginal and Torres Strait Islander participation in major government procurements in achieving policy objectives.
7. To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:
 - Are the MMRs designed to achieve the government's policy objectives?
 - Are the MMRs being implemented and monitored effectively?
 - Are entities complying with the MMRs in major procurements?

8. Six entities were selected for examination in the entity compliance component of the audit, based on the number and nature of MMR contracts they held: Department of Defence (Defence); Department of Education (Education); Department of Employment, Skills, Small and Family Business (Employment); Department of Home Affairs (Home Affairs); Department of Infrastructure, Transport, Cities and Regional Development (Infrastructure); and NIAA.¹

Conclusion

9. While the MMRs for Aboriginal and Torres Strait Islander participation were effectively designed, their administration has been undermined by ineffective implementation and monitoring by the policy owner and insufficient compliance by entities.

10. The design of the MMRs supports the achievement of the government's policy objectives. The MMR policy settings are reasonable and supported by evidence.

11. The MMRs have not been implemented and monitored effectively due to inadequate implementation planning and delays in establishing a centralised monitoring system. While the policy owner has publicised the MMRs, it has not provided entities and contractors sufficient guidance on complying with the MMRs. The current regime for enforcing compliance with MMR reporting requirements is not operating effectively and, as a result, the policy outcomes have not been evaluated.

12. Selected entities' compliance with the MMRs fell short of the standard required for managing major procurements. In the procurement phase, while selected entities mostly recognised when the MMRs applied, they failed to comply with all required steps. In the contract management phase, entities have not established appropriate performance reporting arrangements. Where reporting has been occurring, entities have not gained appropriate assurance over reported performance.

Supporting findings

Policy design

13. The design of the MMRs aligns with the government's policy objectives, which were to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

14. The design of the MMRs was partially informed by stakeholder views and previous experience. The MMRs addressed concerns raised with the previous Indigenous Opportunities Policy, and PM&C consulted government entities with significant procurement activities. PM&C did not consult non-Indigenous businesses that would be affected by the MMRs and did not adequately consider previous experience with implementation challenges.

15. The industry coverage criteria and contract value threshold for the MMRs support the government's policy objectives by achieving broad coverage while limiting compliance burden. Categories for exempting or excluding contracts from the MMRs are appropriate. Applying the

1 At the time of audit the Department of Education and Department of Employment, Skills, Small and Family Business were separate entities. From 1 February 2020, through a machinery-of-government change, most functions dealt with by these entities were consolidated within the Department of Education, Skills and Employment. Further, the Department of Infrastructure, Transport, Cities and Regional Development became the Department of Infrastructure, Transport, Regional Development and Communications.

policy to Commonwealth corporate entities and companies would broaden opportunities for Aboriginal and Torres Strait Islander people to gain skills and economic benefit from large government projects.

16. The criteria established under the MMRs for setting participation targets are appropriate. The minimum target requirements allow contractors flexibility to choose targets appropriate to their situation. The criteria for remote targets allow flexibility to set targets above the minimum requirements that are appropriate to the services being procured and the remote area in which they will be delivered.

Policy implementation and monitoring

17. PM&C did not develop an appropriate implementation plan for the MMRs in 2015. NIAA has developed an implementation plan for the 2020 expansion of the MMRs.

18. Current arrangements for communicating the MMRs are partially effective. PM&C and NIAA have promoted awareness of the MMRs to relevant stakeholders through their communication activities. However, they have provided ineffective guidance and advice to entities and contractors on how to comply with the MMRs throughout the contract lifecycle to ensure intended outcomes are achieved.

19. PM&C has established a central database, the IPP Reporting Solution, which has the potential to monitor compliance and report on implementation of the MMRs. However, the system has not delivered on this potential due to delays in its rollout and low levels of uptake by entities and contractors. As a result, information in the system for MMR contracts is incomplete and cannot be used to assess contractors' previous MMR performance or report on implementation.

20. The most recent evaluation of the IPP was completed in 2019. It did not evaluate the MMRs or assess their contribution to closing the gap in Aboriginal and Torres Strait Islander and non-Indigenous economic outcomes due to the lack of monitoring data on MMR contracts.

Entity compliance in major procurements

21. Selected entities mostly provide appropriate guidance to staff on complying with the MMRs. Once NIAA has updated its guidance information on the MMRs, there is scope for central procurement teams within entities to provide greater support to officers managing MMR procurements to ensure they comply with requirements.

22. None of the selected entities fully complied with the MMRs during the procurement phase. Entities generally recognised the need to apply the MMRs to major procurements but did not comply with all required steps. Key compliance issues identified were: excluding contracts for invalid reasons; and not creating a contractual requirement to meet targets.

23. Entities agreed MMR participation targets that met or exceeded the minimum levels for most assessed contracts. For contracts that included a remote delivery component, entities did not comply with the requirement to ensure targets deliver significant participation outcomes.

24. Entities have not established appropriate performance reporting arrangements, as less than half of the contractors that are required to report on their compliance with the MMRs have been doing so. Contractors have not been using the IPP Reporting Solution for reporting.

25. Entities have not established appropriate controls and risk-based assurance activities to gain assurance over contractors' reported MMR performance.

Recommendations

Recommendation no.1 Paragraph 3.17

National Indigenous Australians Agency develops tailored guidance on managing the MMRs throughout the contract lifecycle in consultation with entities and contractors.

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.2 Paragraph 3.35

National Indigenous Australians Agency implements a strategy to increase entity and contractor compliance with MMR reporting requirements to ensure information in the IPP Reporting Solution is complete.

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.3 Paragraph 3.46

National Indigenous Australians Agency implements an evaluation strategy for the MMRs that outlines an approach to measuring the impact of the policy on Aboriginal and Torres Strait Islander employment and business outcomes.

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.4 Paragraph 4.19

All audited entities review and update their procurement protocols to ensure procuring officers undertaking major procurements that trigger the MMRs comply with required steps in the procurement process.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.5
Paragraph 4.37

All audited entities establish processes, or update existing processes, to ensure contract managers and contractors regularly use the IPP Reporting Solution for MMR reporting.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.6
Paragraph 4.48

After guidance has been provided by the policy owner, all audited entities establish appropriate controls and risk-based assurance activities for active MMR contracts.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

Department of Home Affairs response: *Agreed.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

National Indigenous Australians Agency response: *Agreed.*

Summary of entity responses

26. Summary responses from audited entities are below. Entities' full responses are at Appendix 1.

National Indigenous Australians Agency

The National Indigenous Australians Agency (NIAA) welcomes the Australian National Audit Office's (ANAO) report on Aboriginal and Torres Strait Islander Participation Targets in Major Procurements.

It is pleasing the ANAO has concluded that the design of the mandatory minimum requirements (MMR) element of the Indigenous Procurement Policy (IPP) supports the achievement of the Government's policy objectives and that the policy settings are reasonable and supported by evidence.

The IPP is a key plank of the Government's approach to driving growth in Aboriginal and Torres Strait Islander businesses and employment, by creating opportunities for Indigenous Australians to enter the government's supply chain. The positive impact the IPP has made, in a relatively short period of time, has attracted the attention of many governments in Australia and abroad.

The NIAA considers the audit would have benefited from greater acknowledgement of the scale of the reform. The IPP represents a significant change to how the Australian Government procures

goods and services. It challenges procurement officers to step outside often deeply ingrained and, in some cases, rigid procurement processes to consider how they could preference their procurement activities to benefit Aboriginal and Torres Strait Islander people while still achieving value for money for the Government.

The ANAO has identified a number of opportunities for the NIAA to improve the implementation of the MMR. While the NIAA has been active in informing and supporting stakeholders to implement the MMR, it is acknowledged that there is a need to build on existing MMR guidance materials and communications strategies by adopting a more tailored approach.

The NIAA also acknowledges that our ability to report fully on the impact of the MMR is hampered by the underuse of the IPP Reporting Solution (IPPRS) by the entities managing these contracts. While the NIAA stands by the IPPRS as an effective tool to manage the MMR, the NIAA is committed to seeing it continually evolve as lessons are learnt and new technology is released.

The NIAA agrees with each of the recommendations and will increase implementation efforts in the lead up of the expansion of the MMRs from 1 July 2020.

Department of Defence

Defence acknowledges the findings contained in the audit report on *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements* and agrees to the recommendations.

Overall, Defence considers the findings presented by the ANAO are weighted toward observations of non-compliance with limited consideration given to better practice. The Defence Indigenous Procurement Strategy outlines Defence's commitment and pathway to delivering Indigenous Procurement Policy outcomes. As the Commonwealth's largest procurer, Defence continues to exceed portfolio targets for contracts awarded to Indigenous suppliers. A number of Defence contracts voluntarily include Mandatory Minimum Requirements (MMRs), despite being exempt or categorised outside of a specified industry sector. Inclusion of this information would present a more balanced view of Defence's management of Aboriginal and Torres Strait Islander participation targets in major procurements.

Defence is proud to have been awarded the 2017 and 2019 Supply Nation Government member of the year award, in recognition of its significant commitment towards supporting the long term growth and sustainability of the Indigenous business sector. Defence will continue working with National Indigenous Australians Agency to improve the implementation and monitoring of the MMRs.

Department of Education, Skills and Employment

The Department of Education, Skills and Employment (the department) acknowledges the Australian National Audit Office's (ANAO) report and its conclusions on Aboriginal and Torres Strait Islander Targets in Major Procurements and welcomes its findings.

The department notes and agrees with recommendations made by the ANAO within its report and will use these recommendations to further strengthen its commitment to leveraging the department's annual procurement spend to drive demand for Indigenous goods and services, stimulate Indigenous economic development and grow the Indigenous business sector.

Department of Home Affairs

The Department is committed to assist in the implementation of the Government's policy objective to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

The Department agrees with the three recommendations made to audited entities by the Auditor-General aimed at increasing compliance with the MMRs and will review and update its existing guidance and processes to better support compliance with the MMRs.

Department of Infrastructure, Transport, Regional Development and Communications²

The Department of Infrastructure, Transport, Cities and Regional Development (the Department) acknowledges the ANAO's overall conclusions and welcomes the recommendations to improve guidance and monitoring of Aboriginal and Torres Strait Islander participation in major procurement projects. The audit process was a valuable exercise and the feedback provided by the ANAO will assist the department in refining its approach to strengthen future compliance.

The Department remains committed to ensuring compliance with Aboriginal and Torres Strait Islander participation targets in major procurement. While the ANAO report indicates that the Department excluded two contracts from the Mandatory Minimum Requirements (MMRs) for an invalid reason, these contracts were excluded on the basis of advice provided by the policy owner. In line with the recommendations the Department would welcome clearer guidance from the policy owner in future on the application of exclusion categories for the MMRs.

The Department also notes the requirement to deliver significant Aboriginal and Torres Strait Islander employment or supplier use outcomes in remote area contracts is very difficult to achieve on a contractual basis in some of Australia's external Territories which have very low Aboriginal and Torres Strait Islander populations.

Key messages from this audit for all Australian Government entities

27. Below is a summary of key messages, including instances of good practice, which have been identified in this audit and may be relevant for the operations of other Australian Government entities.

Procurement

- Policy owners can increase levels of compliance with procurement-connected policies by providing comprehensive and clear guidance on how to comply with requirements, including worked examples and case studies.
- Policy owners are accountable for: establishing mechanisms for monitoring compliance and assessing the impact of the policy; implementing an appropriate regime for addressing non-compliance; and ensuring policies achieve their intended outcomes.
- Central procurement areas within entities can support compliance by: promoting the requirements internally; ensuring that procurement templates are up to date; and providing operational support to procuring officers and contract managers.

Contract management

- Entities should not take performance reported by contractors at face value. To maintain the integrity of reporting arrangements, entities should establish appropriate controls and risk-based assurance activities. Further, entities should not treat compliance with mandatory government requirements as secondary to other contractual considerations.

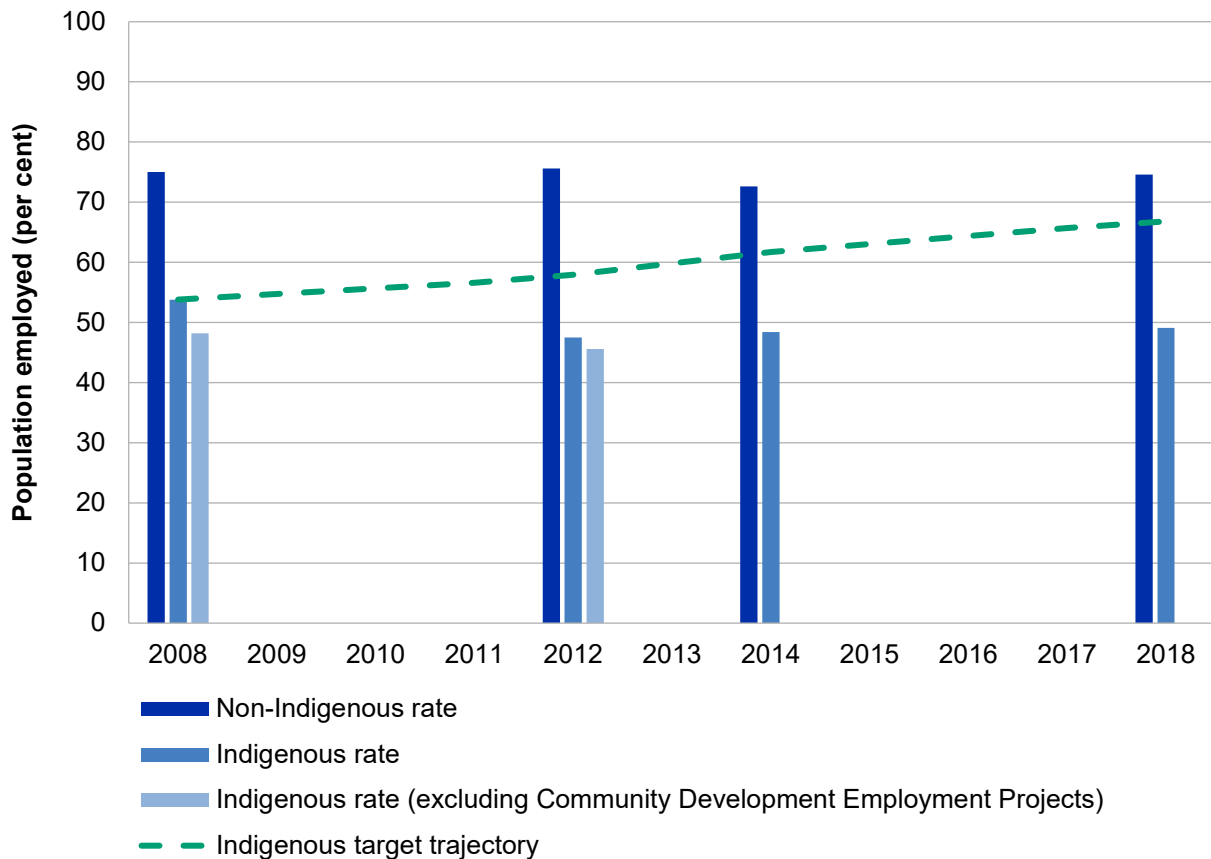
2 Note: the department's name changed through a machinery-of-government change on 1 February 2020, after its response was received.

Audit findings

1. Background

1.1 Reducing the disparity between Aboriginal and Torres Strait Islander³ and non-Indigenous economic outcomes has been a longstanding goal of Australian governments. In March 2008 the Council of Australian Governments (COAG) set a target to halve the gap in employment outcomes by 2018. However, as noted in the Prime Minister’s *Closing the Gap Report 2020*, the COAG employment target was ‘not met’ (see Figure 1.1).⁴

Figure 1.1: Progress towards halving the gap in employment outcomes by 2018^a



Note a: Data sources used to assess progress against this target include the Australian Bureau of Statistics’ National Aboriginal and Torres Strait Islander Health Survey and Social Survey, which are not conducted annually. Employment data for 2008 and 2012 included participants in Community Development Employment Projects.

Source: National Indigenous Australians Agency (NIAA) internal documentation.

1.2 Reasons for this disparity, identified through research into the determinants of lower Aboriginal and Torres Strait Islander employment rates, include: ‘lower levels of education, training and skill levels (human capital), poorer health, living in areas with fewer labour market

³ This report generally uses the term ‘Aboriginal and Torres Strait Islander’ to refer to Australia’s Indigenous peoples. The term ‘Indigenous’ is used where quoting another source or where it forms part of the name of an entity or program.

⁴ NIAA, ‘Employment’ from *Closing the Gap Report 2020* [Internet], 2020, available from: <https://ctgreport.niaa.gov.au/employment> [accessed 12 February 2020].

opportunities, higher levels of arrest and interactions with the criminal justice system, discrimination, and lower levels of job retention'.⁵

1.3 To address the issue of 'fewer labour market opportunities', over the past three decades the Australian Government has sought to use its position as a major procurer of goods and services in the Australian economy to generate economic opportunities for Aboriginal and Torres Strait Islander people. In 2018–19 the total value of Australian Government procurement contracts reported on AusTender (the government's procurement information system) was \$64.5 billion.⁶

Procurement initiatives to support Aboriginal and Torres Strait Islander economic opportunities

1.4 The Commonwealth Procurement Rules (CPRs) outline the rules officials undertaking procurement must follow.⁷ The core requirement of the CPRs is achieving value for money. Price is not the sole factor for assessing value for money — procuring officers must consider other factors such as quality, fitness for purpose, environmental sustainability and whole-of-life costs. For procurements over \$4 million (or \$7.5 million for construction services), officers must also consider the broader benefits to the Australian economy. In addition, officers must comply with any relevant 'procurement-connected policies'.⁸ Since the 1990s the Australian Government has implemented several procurement-connected policies to promote economic opportunities for Aboriginal and Torres Strait Islander people.

Indigenous Opportunities Policy (1998–2015)

1.5 In 1993 procurement-connected policies to promote Aboriginal and Torres Strait Islander employment opportunities were introduced in response to recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody. Revised requirements were developed in 1998, which became known as the Indigenous Opportunities Policy (IOP). The IOP applied to procurements over \$5 million (\$6 million for construction projects) in locations with significant Aboriginal and Torres Strait Islander populations and limited employment and training opportunities.

1.6 From 1 July 2011 a revised IOP was introduced. This retained the same value threshold as the previous policy but expanded its geographic application to regions where the percentage of

5 M Gray, B Hunter and S Lohar, *Increasing Indigenous employment rates*, Issues Paper no. 3 produced for the Closing the Gap Clearinghouse, Australian Institute of Health and Welfare and Australian Institute of Family Studies, Canberra and Melbourne, 2012, p. 1.

6 Department of Finance, *Statistics on Australian Government Procurement Contracts* [Internet], January 2019, available from: <https://www.finance.gov.au/government/procurement/statistics-australian-government-procurement-contracts> [accessed 22 November 2019]. Note: Australian Government entities are required to report the details of procurement contracts on AusTender over the following thresholds: \$10,000 or more for non-corporate Commonwealth entities; and \$400,000 or more for prescribed corporate Commonwealth entities listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014*.

7 The rules apply to officials in non-corporate Commonwealth entities and prescribed corporate Commonwealth entities.

8 Procurement-connected policies have been identified as a means for delivering various social or environmental outcomes. Current policies are the Black Economy policy, Indigenous Procurement Policy, Workplace Gender Equality Procurement Principles, Australian Industry Participation Policy and Building Code.

population who identified as Aboriginal and/or Torres Strait Islander was equal to or higher than the national average. For government contracts that met the value and geographic criteria, the 2011 IOP required tenderers to: develop an Indigenous Training, Employment and Supplier Plan; obtain approval of the plan from the IOP Administrator⁹; and, if awarded the contract, implement the plan and report annually to the policy owner on outcomes achieved.¹⁰ In addition to the IOP, in 2011 an 'Indigenous business exemption' was introduced into the CPRs that allowed officers to undertake a streamlined process for procurements over \$80,000, avoiding the need for an open tender if they directly approached Aboriginal and Torres Strait Islander businesses.¹¹

Indigenous Procurement Policy (2015–present)

1.7 In May 2015 the government introduced the Indigenous Procurement Policy (IPP). The objective of the IPP is to 'stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy'.¹² Under the IPP, since 1 July 2015 non-corporate Commonwealth entities have been required to:

- achieve annual targets for procuring goods and services from Aboriginal and Torres Strait Islander enterprises;
- 'set aside' all remote area procurements, and all non-remote area domestic procurements with a value of \$80,000 to \$200,000 (other than in certain exempt categories), to determine whether an Aboriginal and Torres Strait Islander business could deliver value for money before approaching the broader market; and
- apply mandatory minimum requirements (MMRs) for Aboriginal and Torres Strait Islander participation to high value contracts in certain industry categories.¹³

1.8 As a procurement-connected policy under the CPRs, compliance with the IPP is mandatory for non-corporate Commonwealth entities under sections 15 and 21 of the *Public, Governance, Performance and Accountability Act 2013*.

1.9 In February 2019 the Department of the Prime Minister and Cabinet (PM&C) reported that the IPP had resulted in 1,473 Aboriginal and Torres Strait Islander enterprises delivering 11,933 contracts worth over \$1.83 billion. Noting that the majority of the contracts won had been low value contracts, it announced the following updates to the IPP:

- from 1 July 2019, additional entity procurement targets based on a percentage of the value of contracts awarded, with new targets increasing from one per cent in 2019–20 to three per cent in 2027–28; and

9 From 2011 to 2013 the IOP Administrator was the then Department of Education, Employment and Workplace Relations, and from 2013 to 2015 it was PM&C.

10 Department of Education, Employment and Workplace Relations, *Indigenous Opportunities Policy – Guidelines 2011*, July 2014 version, pp. 11–12.

11 An Aboriginal and Torres Strait Islander business is a business with 50 per cent or more Aboriginal and Torres Strait Islander ownership.

12 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 6.

13 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015. Note that the Indigenous business exemption under the CPRs has also continued to apply.

- from 1 July 2020, expansion of the MMRs to cover additional industry categories.¹⁴

1.10 Responsibility for the IPP transferred from PM&C to the newly created National Indigenous Australians Agency (NIAA) on 1 July 2019 through a machinery-of-government change.

Mandatory minimum requirements for major procurements

1.11 The objective of the MMRs is to 'ensure that Indigenous Australians gain skills and economic benefit from some of the larger pieces of work that the Commonwealth outsources, including in Remote Areas'.¹⁵ Under the MMRs, for contracts with a value of \$7.5 million or above in specified industry categories (see Table 1.1), contractors must achieve over the term of the contract:

- an average of at least four per cent Aboriginal and Torres Strait Islander employment and/or supplier use for the project (contract-based); or
- an average of at least three per cent Aboriginal and Torres Strait Islander employment and/or supplier use across their organisation (organisation-based).

1.12 Contractors must specify how they plan to achieve the MMRs in an Indigenous Participation Plan, which forms a schedule to the resultant contract. Where a component of the contract will be delivered in a remote area, the contracting entity and contractor must also ensure the contract delivers 'significant Indigenous employment or supplier use outcomes in that area'.¹⁶

Table 1.1: MMR industry category coverage

Original MMR industry categories from 1 July 2015	Additional MMR services industry categories from 1 July 2020
1. Building, construction and maintenance services	9. Financial instruments, products, contracts and agreements
2. Transportation, storage and mail services	10. Mining and oil and gas services
3. Education and training services	11. Industrial production and manufacturing services
4. Industrial cleaning services	12. Environmental services
5. Farming, fishing, forestry and wildlife contracting services	13. Management, business professionals and administrative services ^a
6. Editorial, design, graphic and fine arts services	14. Engineering, research and technology based services
7. Travel, food, lodging and entertainment services	15. Financial and insurance services ^a
8. Politics and civil affairs services	16. Healthcare services
	17. Personal and domestic services
	18. National defence, public order, security and safety services ^a
	19. Organisations and clubs

Note a: Sub-category exclusions apply to these categories.

Source: PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015; PM&C, *Changes to the Indigenous Procurement Policy* [Internet], 13 February 2019.

14 PM&C, *Changes to the Indigenous Procurement Policy* [Internet], 13 February 2019, available from: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/changes-indigenous-procurement-policy> [accessed 22 November 2019].

15 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 32.

16 *ibid.*, p. 35.

Previous audit coverage

1.13 Auditor-General Report No.1 2015–16 *Procurement Initiatives to Support Outcomes for Indigenous Australians* examined the effectiveness of the 2011 IOP and Indigenous business exemption. Issues identified through the audit included:

- practical challenges in determining whether the ‘main contract activities’ were within an IOP region, particularly in cases where contracted activities occurred in multiple locations;
- entities not complying with the IOP requirements for procurements that met the value and geographic criteria;
- entities not being required to include suppliers’ IOP commitments in contracts or monitor their implementation; and
- challenges for the policy owner in centrally monitoring implementation of the IOP and Indigenous business exemption due to AusTender not holding data on the geographic location of procurements or use of the exemption.¹⁷

1.14 The ANAO made three recommendations, which were agreed by PM&C and supported by the Department of Finance, aimed at developing alternative models to the regional approach of the IOP, and better promoting and monitoring of the Indigenous business exemption.¹⁸

2017 Senate Inquiry into the Community Development Program

1.15 In 2017 the Senate Finance and Public Administration References Committee (the committee) held an inquiry into appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program. The Community Development Program is an employment program administered by NIAA that requires job seekers in remote areas to engage in ‘work-like activities that benefit their community’.¹⁹ The majority (around 84 per cent) of participants are Aboriginal and/or Torres Strait Islander people, often living in areas with few labour market opportunities.

1.16 Noting the importance of using Aboriginal and Torres Strait Islander employment targets in government procurement contracts as a tool for increasing economic activity in remote areas, the committee made the following recommendation relating to this issue:

Recommendation 17: The committee recommends that the Australian National Audit Office conduct an audit of Australian Government contracts that relate to service delivery in remote locations. This audit should have a specific focus on the use of, and compliance with, Indigenous Employment Targets. As part of this audit, the committee recommends that the Australian National Audit Office include state and territory government contracts where the Australian Government has made a funding contribution for a particular purpose. The audit should also report on how these contracts impact on Closing the Gap employment targets.²⁰

17 Auditor-General Report No.1 2015–16 *Procurement Initiatives to Support Outcomes for Indigenous Australians*, pp. 17–24.

18 *ibid.*, p. 25.

19 NIAA, *The Community Development Program (CDP)* [Internet], no date, available from: <https://www.niaa.gov.au/indigenous-affairs/employment/cdp> [accessed 22 November 2019].

20 Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, inquiry report, December 2017, p. 114.

Rationale for undertaking the audit

1.17 The MMRs are the Australian Government's principal mechanism for applying Aboriginal and Torres Strait Islander participation targets in major procurements. As the MMRs have been in operation since July 2015, and binding on contractors since July 2016, their administration by the policy owner (PM&C until June 2019 and NIAA since July 2019) and application by government entities should be relatively mature.

1.18 This audit was undertaken to provide assurance that the MMRs are being effectively administered and entities are complying with them. The audit includes a focus on the application of the MMRs in remote areas, to address the Senate Finance and Public Administration References Committee's recommendation that the ANAO conduct an audit of Australian Government contracts relating to service delivery in remote locations. The audit timing also presents an opportunity for NIAA to address any identified areas for improvement prior to expanding the MMRs to cover eleven additional industry categories from 1 July 2020.

Audit approach

Audit objective, criteria and scope

1.19 The audit objective was to assess the effectiveness of the administration of the MMRs for Aboriginal and Torres Strait Islander participation in major government procurements in achieving policy objectives.

1.20 To form a conclusion against the audit objective, the ANAO adopted the following high level audit criteria:

- Are the MMRs designed to achieve the government's policy objectives? (Chapter 2)
- Are the MMRs being implemented and monitored effectively? (Chapter 3)
- Are entities complying with the MMRs in major procurements? (Chapter 4)

1.21 While the scope of the audit includes examining the design, implementation and management of the MMRs, it does not include examining the operation of other components of the IPP; namely, the operation of the annual entity procurement targets, mandatory set aside and Indigenous business exemption.

1.22 The ANAO is also conducting a related performance audit examining the use of Aboriginal and Torres Strait Islander participation targets in intergovernmental agreements, which is due to be tabled in 2020. The related audit focuses on the use of participation targets for major intergovernmental infrastructure projects, particularly in remote locations, and the Australian Government's approach to coordinating procurement policies across jurisdictions.

Audit methodology

1.23 Six entities were selected for examination in the entity compliance component of the audit, based on the number and nature of MMR contracts they held: Department of Defence; Department

of Education; Department of Employment, Skills, Small and Family Business; Department of Home Affairs; Department of Infrastructure, Transport, Cities and Regional Development; and NIAA.²¹

1.24 The audit methodology included:

- conducting compliance testing of a representative sample of 139 major procurement contracts that had triggered the MMR criteria from the six selected entities;
- analysing relevant datasets and examining other entity documentation;
- interviewing entity personnel, including procuring officers and contract managers for MMR contracts; and
- interviewing external stakeholders, including contractors subject to the MMRs.

1.25 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$316,000.

1.26 The team members for this audit were Daniel Whyte, Lynette Tyrrell, Iain Gately, James Woodward and Deborah Jackson.

21 At the time of audit the Department of Education and Department of Employment, Skills, Small and Family Business were separate entities. From 1 February 2020 through a machinery-of-government change most functions dealt with by these entities were consolidated within the Department of Education, Skills and Employment. Further, the Department of Infrastructure, Transport, Cities and Regional Development became the Department of Infrastructure, Transport, Regional Development and Communications.

2. Policy design

Areas examined

This chapter examines whether the Department of the Prime Minister and Cabinet (PM&C) and National Indigenous Australians Agency (NIAA) have designed the mandatory minimum requirements (MMRs) to achieve the government's policy objectives.

Conclusion

The design of the MMRs supports the achievement of the government's policy objectives. The MMR policy settings are reasonable and supported by evidence.

Areas for improvement

The ANAO made one suggestion regarding extending coverage of the MMRs to Commonwealth corporate entities and companies.

2.1 The design of policy settings such as coverage and exemption criteria is important because inappropriate settings can lead to inconsistent application of the policy requirements, unintended consequences and failure to achieve desired policy outcomes. In order to assess whether the policy owner (PM&C until June 2019 and NIAA from July 2019) designed the MMRs to support the achievement of the Australian Government's policy objectives, the ANAO examined whether:

- the design aligned to the government's policy objectives;
- the design was informed by stakeholder views and previous experience;
- the coverage of the MMRs supports the objectives; and
- appropriate criteria have been established for setting Aboriginal and Torres Strait Islander participation targets against which to measure performance.

Was the design of the MMRs aligned to the Australian Government's policy objectives?

The design of the MMRs aligns with the government's policy objectives, which were to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

2.2 In late 2014, in response to the 2014 *Creating Parity – The Forrest Review* report²², the government decided to strengthen the Indigenous Opportunities Policy (IOP) by including MMRs in all contracts in regions with significant Aboriginal and Torres Strait Islander populations. Policy documents to support the government's decision provided limited detail on the policy settings for the MMRs, and noted that requirements would vary based on the value of the contract and potentially on the location and type of procurement.

2.3 The Minister for Indigenous Affairs and Minister for Finance agreed to the approach for implementing the policy in May 2015, and wrote a joint letter to the Prime Minister noting the approach was 'slightly broader' than what had been envisaged by the government. Refinements of the policy included: expanding the geographical coverage of the requirements to the whole of

22 A Forrest, *Creating Parity – The Forrest Review*, Department of the Prime Minister and Cabinet, 2014.

Australia; limiting coverage to eight specified industry categories; and applying a contract value threshold of \$7.5 million.

2.4 Policy documents for the Indigenous Procurement Policy (IPP), prepared in late 2014, indicate that the policy rationale was to close the gap in employment outcomes between Aboriginal and Torres Strait Islander and non-Indigenous Australians by driving growth in Aboriginal and Torres Strait Islander businesses and employment. The policy objective outlined in the IPP, released in May 2015, is to 'stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy'.²³ The IPP also notes 'Indigenous enterprises are around 100 times more likely to employ Indigenous people than non-Indigenous enterprises and strengthening the Indigenous business sector will also have a significant flow-on impact on Indigenous employment'.²⁴

2.5 The objective of the MMRs is to ensure Aboriginal and Torres Strait Islander people 'gain skills and economic benefit' from large projects outsourced by the government.²⁵ The MMRs also have the potential to lead to direct employment outcomes if contractors undertake actions they would not otherwise have taken to achieve a MMR employment target. As such, the design of the MMRs aligns with the government's policy objectives, which were to drive growth in Aboriginal and Torres Strait Islander businesses and employment.

Was the design of the MMRs informed by stakeholder views and previous experience?

The design of the MMRs was partially informed by stakeholder views and previous experience. The MMRs addressed concerns raised with the previous Indigenous Opportunities Policy, and PM&C consulted government entities with significant procurement activities. PM&C did not consult non-Indigenous businesses that would be affected by the MMRs and did not adequately consider previous experience with implementation challenges.

2.6 The Department of Finance's guidance on developing procurement-connected policies states that the policy owner must 'undertake appropriate consultation with affected stakeholders'.²⁶ Further, as there has been several previous procurement-connected policies to achieve Aboriginal and Torres Strait Islander economic outcomes, good practice would be to consider lessons learnt from previous experience with these policies in designing the MMRs. This section examines these two components of the design of the MMRs.

23 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 6.

24 *ibid.* Note: the statement that Aboriginal and Torres Strait Islander businesses are 100 times more likely to employ Aboriginal and Torres Strait Islander people comes from a 2014 research paper by the Centre for Aboriginal Economic Policy Research.

25 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 32.

26 Department of Finance, *Commonwealth Grants and Procurement Connected Policies*, Resource Management Guide No. 415, November 2016, p. 7.

Consultation with affected stakeholders

Consultation with government stakeholders

2.7 In developing the IPP, PM&C undertook targeted consultation within government through the Indigenous Procurement Cross Agency Working Group. The working group comprises senior executive officers from PM&C, the Department of Finance (Finance), the Treasury and government entities with significant procurement activities.²⁷ It has continued to meet since 2014 to consider aspects of the design of the IPP requirements, including the MMRs.

2.8 As a result of consultation with the Cross Agency Working Group, ministers agreed to: expanding the geographical coverage of the requirements to the whole of Australia; limiting coverage to eight specified industry categories; and applying a contract value threshold of \$7.5 million.

Consultation with stakeholders outside government

2.9 Stakeholders outside of government had been consulted in 2013 and 2014 to inform the *Creating Parity – The Forrest Review* report, and some provided submissions regarding procurement policy matters.²⁸ Between December 2014 and May 2015, the period during which the IPP was being developed, PM&C consulted Indigenous Business Australia, Supply Nation²⁹ and Aboriginal and Torres Strait Islander businesses about the IPP in general.

2.10 PM&C's implementation plan for the IPP, developed in December 2014, committed to testing the proposed approach for the MMRs and discussing compliance burden with non-Indigenous suppliers to government prior to finalising the policy settings. As a number of suppliers that would be affected by the MMRs had previously held IOP contracts, there would have been benefit in consulting suppliers or their representative bodies on the proposed policy settings. However, consultation with non-Indigenous businesses that would be affected by the MMRs did not occur.

Previous experience with procurement-connected policies to achieve Aboriginal and Torres Strait Islander economic outcomes

Previous experience with the IOP

2.11 The *Creating Parity* review found the IOP had 'failed to deliver meaningful results' and 'lacked any kind of accountability, sanctions or incentives to compel agencies or their contracted suppliers to comply'.³⁰ To address this, the review team made a series of recommendations about government procurement, including that government entities require non-Indigenous contractors to commit to meeting minimum Aboriginal and Torres Strait Islander participation targets.³¹

27 Government entities with significant procurement activities have included the Department of Defence, Department of Foreign Affairs and Trade and Australian Taxation Office.

28 A Forrest, *Creating Parity – The Forrest Review*, Department of the Prime Minister and Cabinet, 2014.

29 Supply Nation is a non-government organisation that receives funding from the Australian Government to provide a national directory of verified Aboriginal and Torres Strait Islander businesses.

30 A Forrest, *Creating Parity – The Forrest Review*, Department of the Prime Minister and Cabinet, 2014, p. 184.

31 *ibid.*, p. 186.

Components of the 2014 *Creating Parity* review's recommendations that were integrated into the design of the MMRs include:

- requiring contracting entities to include targets in contracts and enforce compliance;
- setting higher targets in remote areas, having regard to the local Aboriginal and/or Torres Strait Islander population; and
- factoring contractors' prior MMR performance into future procurement decisions.

2.12 The changes from the IOP to the MMRs also addressed Recommendation No.1 of Auditor-General Report No.1 2015–16 that PM&C review the regional approach of the IOP and advise the government on alternative models for applying minimum participation requirements.³²

Previous experience with implementation challenges

2.13 While the design of the MMRs responded to previous experience with the IOP, and directly addressed issues identified in the *Creating Parity* report and Auditor-General Report No.1 2015–16, procurement-connected policies to promote Aboriginal and Torres Strait Islander economic development have historically experienced implementation challenges.

- A 1996 evaluation of the procurement-connected policies arising from the 1991 Royal Commission into Aboriginal Deaths in Custody found they had been unsuccessful due to implementation problems, including a lack of accountability, insufficient monitoring and enforcement, and inadequate awareness and understanding of the requirements.³³
- The effectiveness of the 2011 IOP was undermined by entities not understanding or complying with the requirements, and challenges experienced by the policy owner in monitoring compliance and outcomes.³⁴

2.14 PM&C's implementation plan for the IPP was developed in December 2014, before the detailed policy settings for the MMRs were agreed, and did not contain any detail on implementation and monitoring arrangements for the MMRs. PM&C did not subsequently develop an updated implementation plan after the MMR policy details had been settled. Further, its planning did not adequately address how implementation challenges that had been experienced with previous policies would be managed for the MMRs.³⁵

32 Auditor-General Report No.1 2015–16 *Procurement Initiatives to Support Outcomes for Indigenous Australians*, p. 54.

33 P Daffen, *Securing a Better Future: Evaluation of Commonwealth Procurement Policies Arising Out of the Royal Commission into Aboriginal Deaths in Custody*, February 1996, commissioned by the Department of Administrative Services, pp. 17-18.

34 Auditor-General Report No.1 2015–16 *Procurement Initiatives to Support Outcomes for Indigenous Australians*, p. 18-19

35 Implementation of the MMRs, including implementation planning, is discussed in Chapter 3.

Does the coverage of the MMRs support the achievement of policy objectives?

The industry coverage criteria and contract value threshold for the MMRs support the government's policy objectives by achieving broad coverage while limiting compliance burden. Categories for exempting or excluding contracts from the MMRs are appropriate. Applying the policy to Commonwealth corporate entities and companies would broaden opportunities for Aboriginal and Torres Strait Islander people to gain skills and economic benefit from large government projects.

2.15 Coverage is an important consideration in developing regulatory policies. If coverage is too broad, a regulation can impose unnecessary compliance burden on businesses with limited capacity to achieve the policy objectives. If coverage is too narrow, a regulation will fail to deliver its intended outcomes. This section examines the coverage of the MMRs, focusing on:

- specified industry sectors;
- the contract value threshold;
- exemption and exclusion criteria; and
- Commonwealth corporate entities and companies.

Specified industry sectors

2.16 When government entities undertake procurements through AusTender, the category of goods or services procured is recorded using the United Nations Standard Products and Services Code (UNSPSC). There is no requirement to record the location where goods or services will be used or delivered, and in many cases supply chains span various locations. Consequently, limiting the coverage of the MMRs by industry category rather than by location presents practical benefits, as it is easier to identify if contracts trigger the requirements.

2.17 In March 2015 PM&C proposed applying the MMRs to industry categories that 'present strong opportunities for Indigenous participation'.³⁶ It initially suggested five UNSPSC categories that had high levels of Aboriginal and Torres Strait Islander employment or businesses, based on 2011 Census data. Through consultation with the Cross Agency Working Group, the categories were revised to the eight included in the May 2015 IPP (see Table 1.1).

2.18 The IPP states that MMR contracts will be 'reviewed each year to ensure that the targeted group of contracts are achieving the intended outcome'.³⁷ While such reviews did not occur for the first two years of the IPP³⁸, in 2018 PM&C commissioned a 'third year' evaluation of the IPP that considered this question. The draft evaluation report provided to PM&C in November 2018 noted that 'it cannot be confirmed that the MMR is delivering intended increased business to Indigenous businesses' due to data limitations.³⁹ Nevertheless, the evaluation team recommended expanding

36 PM&C, 'Indigenous Procurement Policy: Minimum Requirements for Contracts in Areas of Significant Indigenous Population', agenda paper, Cross Agency Working Group meeting, 18 March 2015.

37 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 32.

38 PM&C commissioned a 'year one' review of the IPP in 2016, but the MMRs were out of scope as the requirement to meet MMR targets did not commence until 1 July 2016.

39 Deloitte, *Third Year Evaluation of the Indigenous Procurement Policy*, August 2019, p. 51. A draft of this report was provided to PM&C in November 2018.

the MMRs to cover all industry categories on the basis that Aboriginal and Torres Strait Islander businesses had demonstrated growth in a broad range of industries.

Expansion of industry coverage from mid-2020

2.19 In late 2018 the government agreed to increase the number of UNSPSC categories relating to the procurement of services that trigger the MMRs from 1 July 2020, with final details to be determined by the ministers for Indigenous Affairs and Finance in the first half of 2019. PM&C analysed AusTender data and consulted with government entities through the Cross Agency Working Group in early 2019, and in April 2019 the Indigenous Affairs and Finance ministers agreed to expand the MMRs to cover 19 of the 20 UNSPSC services categories used by AusTender. Based on consultation with procuring entities, one services category was excluded in full (public utilities and public sector related services) and sub-category exclusions were agreed for three other categories. Appendix 2 provides a full list of UNSPSC categories covered by the MMRs from July 2015 and July 2020.

2.20 Table 2.1 shows the proportion of AusTender contract notices from 2017–18 and 2018–19 that fall within the original eight UNSPSC categories and the expanded set of 19 UNSPSC categories by number and value. This analysis indicates the expansion of industry coverage from 2020 could more than double the number of contracts triggering the MMRs and triple the value of procurement covered. Around half of contracts triggering the MMRs fall within the Defence portfolio (analysis by portfolio is at Appendix 3).

Table 2.1: Number and total value of 2017–18 and 2018–19 AusTender contracts triggering the 2015 and 2020 MMR industry coverage criteria^a

	Number of contracts		Total value of contracts	
	2015 MMR categories	2020 MMR categories	2015 MMR categories	2020 MMR categories
Contracts over \$7.5 million	176	453	\$9,145,683,296	\$29,946,808,572
Proportion of all contracts	0.15%	0.38%	10.18%	33.34%

Note a: Some of these contracts will be exempt from the MMRs for reasons discussed later in this chapter.

Source: ANAO analysis of non-corporate Commonwealth entity AusTender contract notice data.

Contract value threshold

2.21 The 2014 *Creating Parity* review recommended including minimum participation requirements in all government contracts. In developing the MMRs in consultation with the Cross Agency Working Group, PM&C proposed a \$7.5 million contract value threshold to achieve the greatest ‘bang for buck’. Its analysis of AusTender data demonstrated that a \$7.5 million threshold would capture a relatively small proportion of contracts that account for a large proportion of government procurement expenditure. The \$7.5 million threshold was agreed by the ministers for Finance and Indigenous Affairs in May 2015. As shown in Table 2.1, the 176 contracts (0.15 per cent of all contracts) that triggered the MMRs in 2017–18 and 2018–19 account for 10.18 per cent of the total value of contracts. This demonstrates that the contract value threshold achieves broad coverage, which supports the achievement of the government’s policy objectives, while limiting the compliance burden.

Exemption and exclusion criteria

2.22 The 2015 IPP outlines one explicit exemption from the MMRs for contracts that are subject to paragraph 2.6 of the Commonwealth Procurement Rules (CPRs). This relates to procurements:

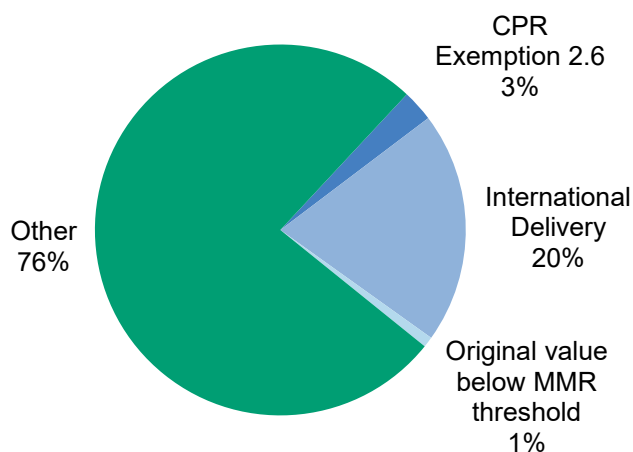
... necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value.⁴⁰

2.23 The IPP also states that the MMRs apply only to new contracts from non-corporate Commonwealth entities, which are delivered in Australia, and where the approach to market occurred after 1 July 2015. This creates four additional categories of contracts that are not covered by the MMRs:

- contracts that have an original value below the MMR threshold but subsequently meet the threshold through a contract variation (as these are not new contracts);
- contracts held by Commonwealth corporate entities or companies;
- contracts that are delivered outside Australia; and
- contracts resulting from approaches to market that pre-date the policy requirement.

2.24 In developing the IPP Reporting Solution, an online monitoring system for the IPP launched in 2018 (discussed in more detail in Chapter 3), PM&C built in five categories for exempting or excluding contracts from the MMRs: CPR exemption 2.6; original value below MMR threshold; non-mandated agency; international delivery; and other (which can be used to exclude procurements that pre-date the requirement). As at 30 June 2019, entities had used four of these categories to exempt or exclude 109 contracts from the MMRs through the system, with the majority (76 per cent) using the 'other' category (see Figure 2.1).

Figure 2.1: Exemption and exclusion categories used by entities, as at 30 June 2019



Source: ANAO analysis of data from the IPP Reporting Solution

40 Department of Finance, *Commonwealth Procurement Rules*, Commonwealth of Australia, 2019, p. 6.

2.25 The categories in the IPP Reporting Solution for exempting or excluding contracts from the MMRs are reasonable and supported by the policy.⁴¹

Commonwealth corporate entities and companies

2.26 Commonwealth corporate entities and companies do not currently have mandated targets for procuring goods and services from Aboriginal and Torres Strait Islander businesses. Under the IPP, annual supplier use targets apply only to non-corporate Commonwealth entities. The IPP states:

Prescribed corporate Commonwealth entities listed in section 30 of the *Public Governance, Performance and Accountability Rule 2014* and Commonwealth entities that are not required to comply with the Commonwealth Procurement Rules are encouraged to use best endeavours to apply this policy.⁴²

2.27 Based on a review of the 2017–18 annual reports of Commonwealth corporate entities and companies, only one (Australian Postal Corporation) had a published commitment to an Aboriginal and Torres Strait Islander supplier use target.

2.28 Further, Commonwealth corporate entities and companies do not currently have mandated targets for Aboriginal and Torres Strait Islander employment. On 1 July 2015 the Australian Public Service Commission implemented a whole-of-government Aboriginal and Torres Strait Islander employment strategy, which aimed to ‘increase the representation of Indigenous employees across the Commonwealth public sector to three per cent by 2018’.⁴³ The strategy, which applied to all corporate and non-corporate Commonwealth entities and any other bodies that employed staff under the *Public Service Act 1999*, expired at the end of 2018.

2.29 Requiring Commonwealth corporate entities and companies to achieve Aboriginal and Torres Strait Islander participation targets, both for procurement and employment, would broaden opportunities for Aboriginal and Torres Strait Islander people to gain skills and economic benefit from large government projects (the government’s objective for the MMRs). Further, if the government establishes a Commonwealth company to deliver a project within the MMR categories rather than outsourcing it to a contractor, an anomaly of the current arrangements is that the Commonwealth company would not have to meet the MMRs.

2.30 Accordingly, NIAA should provide advice to the government on how the policy requirements could be extended to Commonwealth corporate entities and companies. Such advice should have regard to the capacity of the Aboriginal and Torres Strait Islander business sector to respond to increased demand.

41 Guidance on complying with the MMRs, including on how to apply exemption and exclusion categories, is discussed in Chapter 3 (paragraphs 3.11 to 3.16). The ANAO’s compliance testing of selected entities application of exemption and exclusion categories is discussed in Chapter 4 (paragraph 4.9 to 4.12).

42 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 7. Note that prescribed corporate Commonwealth entities are required to comply with the CPRs. As at September 2019, there were 24 prescribed corporate Commonwealth entities.

43 Australian Public Service Commission, *Commonwealth Aboriginal and Torres Strait Islander Employment Strategy* [Internet], available at: <https://www.apsc.gov.au/commonwealth-aboriginal-and-torres-strait-islander-employment-strategy> [accessed 22 November 2019].

Have appropriate criteria been established for setting participation targets?

The criteria established under the MMRs for setting participation targets are appropriate. The minimum target requirements allow contractors flexibility to choose targets appropriate to their situation. The criteria for remote targets allow flexibility to set targets above the minimum requirements that are appropriate to the services being procured and the remote area in which they will be delivered.

2.31 In developing regulatory policies, entities should ensure requirements are designed to achieve policy objectives while also allowing sufficient flexibility to account for the varying circumstances of regulated parties. This section examines the appropriateness of the criteria for setting minimum targets and remote area targets.

Criteria for setting minimum targets

2.32 For MMR contracts, over the course of the contract contractors must commit to achieving:

- an average of at least four per cent Aboriginal and Torres Strait Islander employment and/or supplier use for the project (contract-based); or
- an average of at least three per cent Aboriginal and Torres Strait Islander employment and/or supplier use across their organisation (organisation-based).

2.33 The ability to choose between these two options, and to split the target across employment and supplier-use targets, allows contractors the flexibility to nominate targets appropriate to their situation. Contractors interviewed by the ANAO indicated they appreciated having this flexibility, describing situations where it would have been challenging to meet either contract-based or organisation-based targets (for example, where the contract required a small number of staff with specific skills, such as fluency in Mandarin or Arabic, or where there were limitations on suppliers that could be used).

2.34 Box 1 provides two scenarios that illustrate the flexibility of the MMR targets.

Box 1: Options for setting MMR targets

Scenario 1 — Delivery of specialist training services

- An entity procures specialist training services in a sector and location where there is limited scope to engage Aboriginal and/or Torres Strait Islander employees or suppliers. It engages a multinational company with offices in Brisbane, Sydney and Melbourne.
- The contractor opts for an organisation-based target, with an employment target of 2 per cent and supplier-use target of 1 per cent. Targets only apply to its Australian-based operations.
- It has an Australian-based workforce of 80 full-time equivalent staff, so it needs to employ at least 1.6 full-time equivalent Aboriginal and/or Torres Strait Islander staff over the contract period. It already has one Aboriginal employee, and meets the target by engaging an additional Torres Strait Islander employee.

- Its annual supplier expenditure is around \$20 million within Australia, so it needs to spend around \$200,000 each year over the contract period on goods or services from Aboriginal and Torres Strait Islander suppliers. It meets the target by engaging various suppliers, including cleaning, catering and management consulting businesses.

Scenario 2 — Major construction project

- An entity needs to build a new training facility in Adelaide. It engages a specialist construction management business. The contractor has a team of four project managers working on the project and engages subcontractors to complete the majority of the work.
- The contractor opts for a contract-based target, with an employment target of 3 per cent and supplier-use target of 1 per cent. It can meet the targets through subcontracts.
- It sets a 3 per cent employment target for its subcontractor packages. It collects information from subcontractors about the workers they engage onsite. Over the duration of the project, the workforce averages 34 full-time equivalent staff each month, of which Aboriginal and/or Torres Strait Islander workers represented an average of 2 full-time equivalent staff. It exceeds its target, achieving a result of 5.9 per cent.
- The total contract value is \$8 million, so the managing contractor needs to spend \$80,000 on goods or services from Aboriginal and Torres Strait Islander suppliers. It meets the target by engaging an Aboriginal electrical services subcontractor.

Criteria for setting remote area targets

2.35 When the ministers for Indigenous Affairs and Finance approved the approach to implementing the policy in May 2015, it was decided that entities and contractors would need to agree targets higher than the minimum requirements where a part of the contract will be delivered in a remote area. In line with this, the IPP states that, where a component of an MMR contract will be delivered in a remote area, the contracting entity and contractor must ensure the contract delivers ‘significant Indigenous employment or supplier use outcomes in that area’ and targets should ‘have regard to the size of the local Indigenous population relative to the non-Indigenous population and the nature of the contracted goods and services’.⁴⁴

2.36 These criteria provide substantial flexibility to contracting entities and contractors to agree targets greater than the minimum requirements that are appropriate to the services being procured and the remote area in which they will be delivered.⁴⁵

44 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 35.

45 Guidance on complying with the MMRs, including on agreeing remote area targets, is discussed in Chapter 3 (paragraphs 3.11 to 3.16). The ANAO’s testing of compliance with remote area requirements is discussed in Chapter 4 (paragraph 4.26 to 4.29).

3. Policy implementation and monitoring

Areas examined

This chapter examines whether the Department of the Prime Minister and Cabinet (PM&C) and National Indigenous Australians Agency (NIAA) have implemented and monitored the mandatory minimum requirements (MMRs) effectively.

Conclusion

The MMRs have not been implemented and monitored effectively due to inadequate implementation planning and delays in establishing a centralised monitoring system. While the policy owner has publicised the MMRs, it has not provided entities and contractors sufficient guidance on complying with the MMRs. The current regime for enforcing compliance with MMR reporting requirements is not operating effectively and, as a result, the policy outcomes have not been evaluated.

Areas for improvement

The ANAO made three recommendations aimed at: improving guidance available to entities on operationalising the MMRs; increasing compliance with MMR reporting requirements; and developing an appropriate evaluation strategy.

3.1 To implement and monitor a procurement-connected policy effectively, the policy owner should:

- develop an appropriate implementation plan;
- effectively communicate the policy requirements to support implementation;
- establish appropriate mechanisms for monitoring compliance and reporting on implementation; and
- regularly review the policy's effectiveness in achieving its stated purpose and outcomes.⁴⁶

3.2 This chapter examines whether the policy owner (PM&C until June 2019 and NIAA from July 2019) has addressed these elements in implementing and monitoring the MMRs.

Was an appropriate implementation plan developed for the MMRs?

PM&C did not develop an appropriate implementation plan for the MMRs in 2015. NIAA has developed an implementation plan for the 2020 expansion of the MMRs.

3.3 Implementation planning is an essential part of the policy design process. The MMRs impose regulatory requirements on contractors delivering a significant volume of services to the Australian Government (approximately 10 per cent of the goods and services procured by non-corporate Commonwealth entities by value). Further, policy owners have previously experienced challenges implementing similar procurement-connected policies to promote Aboriginal and Torres Strait

46 Department of Finance, *Commonwealth Grants and Procurement Connected Policies*, Resource Management Guide No. 415, November 2016, pp. 6-7. PM&C, *Policy Implementation* [Internet], no date, available at: <https://www.pmc.gov.au/government/policy-implementation> [accessed 22 November 2019].

Islander economic outcomes. Accordingly, PM&C should have developed an appropriate implementation plan for MMRs that covered:

- project phases, deliverables, timeframes and resources;
- implementation challenges, risks and mitigation strategies;
- key stakeholders and communication activities;
- governance arrangements; and
- mechanisms for monitoring and evaluating outcomes.⁴⁷

3.4 PM&C developed an implementation plan for the Indigenous Procurement Policy (IPP) in December 2014. As the plan was developed before the detailed policy settings for the MMRs were agreed, it did not contain detail on implementation and monitoring arrangements for the MMRs. PM&C did not subsequently develop an updated implementation plan after the MMR policy details had been settled. Insufficient implementation planning, particularly regarding communicating detailed requirements and establishing a central monitoring system, undermined the effectiveness of the implementation and monitoring of the MMRs.

3.5 In mid-2019 PM&C announced that the MMRs would be expanded by eleven industry categories to cover a total of nineteen services industry categories. The expansion is expected to significantly increase the regulatory scale of the MMRs — more than doubling the number of contracts covered each year, and expanding coverage of non-corporate Commonwealth entity procurement to approximately 30 per cent by value.

3.6 In deciding to expand the MMRs, the government agreed that the ministers for Indigenous Affairs and Finance would develop an implementation approach for applying the expanded MMRs by mid-2019, including identifying the industry categories that would be covered. While the ministers agreed to the expansion of industry category coverage, an implementation approach was not developed.

3.7 In December 2019 NIAA developed an implementation plan to support the expansion of the MMRs from 1 July 2020 that covers the components outlined in paragraph 3.3 and includes implementation activities that address the recommendations in this chapter.

47 PM&C, *The Australian Government Guide to Regulation* [Internet], March 2014, available at: https://www.pmc.gov.au/sites/default/files/publications/Australian_Government_Guide_to_Regulation.pdf [accessed 22 November 2019], p. 50.

Have the MMRs been effectively communicated to support implementation?

Current arrangements for communicating the MMRs are partially effective. PM&C and NIAA have promoted awareness of the MMRs to relevant stakeholders through their communication activities. However, they have provided ineffective guidance and advice to entities and contractors on how to comply with the MMRs throughout the contract lifecycle to ensure intended outcomes are achieved.

3.8 To support the implementation of a policy requirement, it is good practice for the policy owner to identify who the key stakeholders are, what information they need and how best to communicate with them. If stakeholders lack awareness or understanding of what they need to do to comply with the policy, compliance will be low and intended policy outcomes will not be realised. This section examines the policy owners' communication of the MMRs.

3.9 Since the launch of the IPP in May 2015, PM&C and NIAA have used various mechanisms to promote awareness and understanding of its requirements, which are outlined in Box 2. While communication activities have primarily focussed on the IPP as a whole, they have generally also included high-level coverage of the MMRs.

Box 2: Communication activities for the IPP

Online guidance information

Guidance material for the IPP has been published on PM&C's and NIAA's websites, including fact sheets, policy guides and model clauses for the MMRs.

Social media and electronic mailing lists

PM&C and NIAA have used social media channels and electronic mailing lists to publicise IPP events and policy updates. In particular, they have regularly included items in the Department of Finance's monthly electronic procurement bulletin to entities.

Formal consultative arrangements

Cross Agency Working Group: Since late 2014 PM&C and NIAA have consulted with Australian Government entities through the Indigenous Procurement Cross Agency Working Group.

National Indigenous Business Trade Fairs: Since 2017 Supply Nation has been funded through an Indigenous Advancement Strategy grant to run a series of trade fair events in Australian capital cities and regional locations, designed to connect Australian Government and corporate buyers with Aboriginal and Torres Strait Islander businesses and other support services. These events have included components designed to support businesses with MMR contracts in meeting their employment and supplier use targets.

Informal processes

PM&C and NIAA have maintained a shared email inbox for the IPP, which they have used to respond to stakeholder queries and requests for guidance. They have also held ad hoc meetings with stakeholders.

3.10 PM&C commissioned a review of the IPP after its first year of operation (2015–16) and an evaluation after its third year (2017–18). Both the ‘year one’ review and ‘third year’ evaluation noted the need for increased education and training for government procuring officers, non-Indigenous suppliers and Aboriginal and Torres Strait Islander businesses. The integration of MMR components into the National Indigenous Business Trade Fair program was designed to address this suggestion, and has been well received by attendees.

3.11 As at October 2019 NIAA’s website provided guidance information on:

- the start date, industry category coverage and contract value threshold for the MMRs;
- steps entities need to follow when undertaking MMR procurements and managing MMR contracts;
- model clauses for inclusion in approaches to market and contracts; and
- how contractors can determine contract-based or organisation-based MMR targets and report against them.

3.12 While the guidance information explains policy requirements and processes at a high-level, it is difficult to navigate and not well tailored for different audiences. For example, all of the IPP information is grouped together with no indication of which guidance is relevant to particular stakeholders and there are no links on the website to guidance on the IPP Reporting Solution.

3.13 As the policy owner, NIAA is accountable for ensuring that the MMRs operate effectively and entities and contractors comply with their obligations. Procuring officers, contract managers and contractors interviewed by the ANAO felt they lacked understanding of the policy requirements and would have benefited from additional guidance. Based on this feedback, and the ANAO’s finding that entities have not been adequately complying with the MMRs (discussed in Chapter 4), specific areas where additional guidance is needed to increase compliance and support effective implementation of the MMRs are outlined in Table 3.1.

Table 3.1: Topics requiring additional guidance for the MMRs

Entity procuring officers	Entity contract managers	Contractors
<ul style="list-style-type: none"> • Determining if procurements are covered by the MMRs • Assessing Indigenous Participation Plans and past performance to determine whether contractors have developed credible plans to achieve targets • Considering Indigenous Participation Plans as a component of the tender evaluation • Negotiating remote area targets with contractors 	<ul style="list-style-type: none"> • Managing MMR performance reporting through the IPP Reporting Solution • Building checks into existing contract management processes to gain assurance of MMR performance reporting • Undertaking risk-based compliance and enforcement activities (such as site visits or desktop audits) 	<ul style="list-style-type: none"> • Setting targets appropriate for the location and nature of the services being delivered • Identifying Aboriginal and Torres Strait Islander suppliers and labour hire organisations • Varying MMR targets during the contract period • Submitting quarterly performance reports through the IPP Reporting Solution • Documentation that should be retained as evidence of reported MMR performance

Source: ANAO analysis.

3.14 The ANAO also identified instances where PM&C provided inconsistent or incorrect guidance information and advice about the MMRs, which has caused confusion for stakeholders or led to cases of non-compliance.

- The IPP states the MMRs apply to contracts that meet the coverage criteria 'where the Approach to Market commences after 1 July 2015'.⁴⁸ However, guidance for the IPP Reporting Solution developed in 2018 stated the MMRs apply to contracts that commence 'on or after 1 July 2016', which was inconsistent with the policy.⁴⁹ This caused confusion for one of the selected entities for this audit, which had several MMR contracts that commenced before 1 July 2016.
- While the IPP states the MMRs cover contracts within the 'education and training services' industry category, a factsheet published in 2015 (and available on PM&C's website until 2017) omitted a key sub-category. This error led one of the selected entities to not comply with the MMRs for two education and training services contracts valued over \$100 million.
- The IPP only includes one exemption category for the MMRs: for contracts subject to paragraph 2.6 of the Commonwealth Procurement Rules (CPRs). However, the ANAO identified one instance when PM&C advised an entity that contracts with Commonwealth, state and territory entities are not covered by the MMRs, which led to contracts being incorrectly excluded.

3.15 To increase compliance and achieve policy outcomes, NIAA needs to develop a more comprehensive set of MMR guidance information that is tailored to key stakeholder groups and includes coverage of the topics identified in Table 3.1. It should also ensure that its advice to entities and contractors is consistent with the policy requirements and associated guidance information. In developing revised guidance, there is scope for NIAA to further leverage off the Department of Finance's existing mechanisms for communicating procurement requirements under the CPRs.

3.16 In September 2019 NIAA advised the ANAO that it is working to develop new guidance information for specific stakeholder groups. It will be important to consult with entities and contractors to ensure the guidance meets their needs, and incorporate case studies and worked examples on how the requirements can be operationalised in different contexts.

Recommendation no.1

3.17 National Indigenous Australians Agency develops tailored guidance on managing the MMRs throughout the contract lifecycle in consultation with entities and contractors.

National Indigenous Australians Agency response: Agreed.

3.18 *The NIAA will publish a revised IPP policy document and new guidance materials during the first quarter of 2020. This will include tailored guidance on the implementation of the mandatory minimum requirements for Commonwealth entities, major contractors and Indigenous businesses, developed in consultation with stakeholders.*

48 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 34.

49 PM&C, *IPP Overview* [Internet], 2018, available at: <https://www.pmc.gov.au/ipprs/ipp-overview> [accessed 22 November 2019]. NIAA corrected the guidance on 10 December 2019.

Have appropriate mechanisms been established to monitor compliance and report on implementation?

PM&C has established a central database, the IPP Reporting Solution, which has the potential to monitor compliance and report on implementation of the MMRs. However, the system has not delivered on this potential due to delays in its rollout and low levels of uptake by entities and contractors. As a result, information in the system for MMR contracts is incomplete and cannot be used to assess contractors' previous MMR performance or report on implementation.

3.19 The Department of Finance's guidance on developing procurement-connected policies states that such policies 'must be monitored and have an appropriate regime for addressing non-compliance'.⁵⁰ This section examines:

- PM&C's development of a central database for the MMRs, the IPP Reporting Solution;
- entity and contractor compliance with MMR reporting obligations; and
- the effectiveness of the system in facilitating assessment of contractors' previous MMR performance and reporting on the implementation of the MMRs.

Development of the IPP Reporting Solution

3.20 PM&C's March 2015 discussion paper to the Cross Agency Working Group, which outlined the proposed policy settings for the MMRs, included the following statements about the need for an efficient and effective monitoring system for the MMRs:

Effective enforcement of the [MMRs] will rely on agencies assessing Indigenous participation as part of the RFT process, and taking past performance into account. To do this efficiently, there will need to be a central database where contract managers can record performance against the contractual requirements, so that other agencies can assess past performance.

It is proposed that this central database be developed over the 2015-16 FY, so that it becomes available from 1 July 2016...

Agencies will be responsible for monitoring compliance and for entering information into a central database. The system will hinge on how effectively agencies do this.⁵¹

3.21 PM&C started planning the development of a central monitoring system for the MMRs in mid-2016 and briefed the Cross Agency Working Group on options in September 2016. Options considered at that time included: capturing MMR data in an Excel spreadsheet; developing a MMR reporting module through SAP (a software package many entities use for financial reporting); modifying a database used for Indigenous Opportunities Policy; and developing a custom database through PM&C's Information Services Branch.

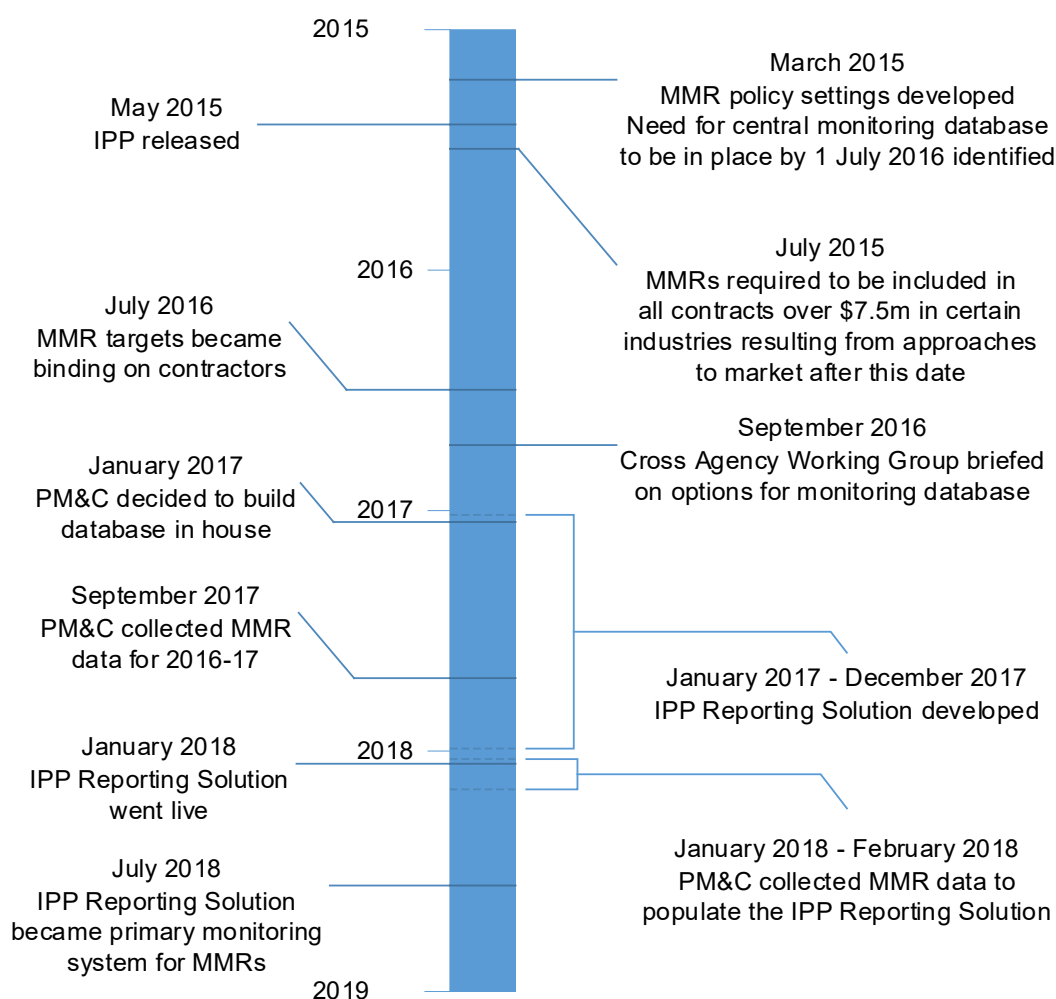
3.22 In January 2017 PM&C decided to build a custom database in house to automate the IPP reporting process, including for MMR contracts. It allocated \$2 million funding over 2016–17 and 2017–18 for its development. The database, called the IPP Reporting Solution, was developed

50 Department of Finance, *Commonwealth Grants and Procurement Connected Policies*, Resource Management Guide No. 415, November 2016, pp. 6-7.

51 PM&C, 'Indigenous Procurement Policy: Minimum Requirements for Contracts in Areas of Significant Indigenous Population', agenda paper, Cross Agency Working Group meeting, 18 March 2015, p. 5.

during 2017 and launched in January 2018. A timeline of key milestones in its development is at Figure 3.1.

Figure 3.1: Timeline of IPP Reporting Solution development, 2015–2018



Source: ANAO analysis.

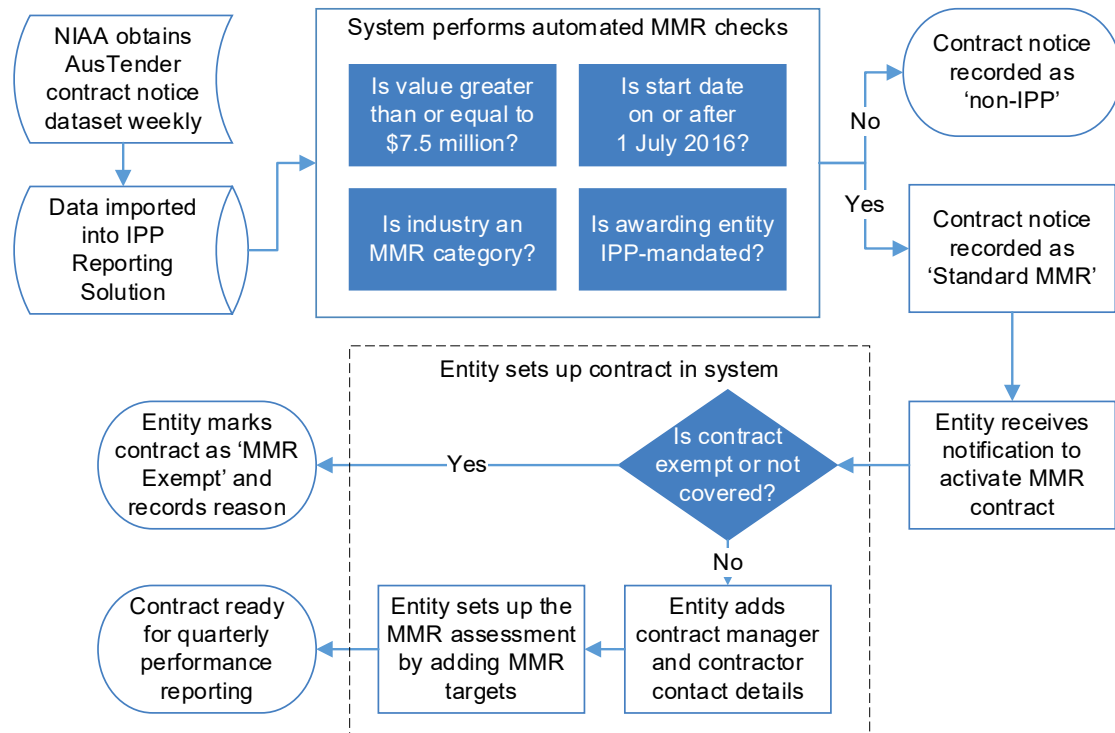
3.23 As shown in Figure 3.1, there were two spreadsheet-based data collections for the MMRs in 2017 and 2018. In September 2017, prior to the implementation of the IPP Reporting Solution, PM&C collected 2016–17 MMR reporting data from entities for aggregate public reporting. In December 2017 PM&C asked entities to submit quarterly reports for July 2016 to December 2017, which were entered into the system in January and February 2018. The quality of the reporting received from entities was inconsistent. From mid-2018, two years after the reporting requirement was established, entities were requested to use the IPP Reporting Solution for MMR reporting. The significant delays in establishing the system impacted on levels and quality of compliance with reporting obligations.

Compliance with MMR reporting obligations

3.24 NIAA uses the IPP Reporting Solution to identify Australian Government contracts that have triggered the MMRs and establish what targets have been agreed between entities and contractors.

As outlined in Figure 3.2, the process primarily involves: automated system checks of AusTender contract notice data; and entities setting up their MMR contracts in the system.

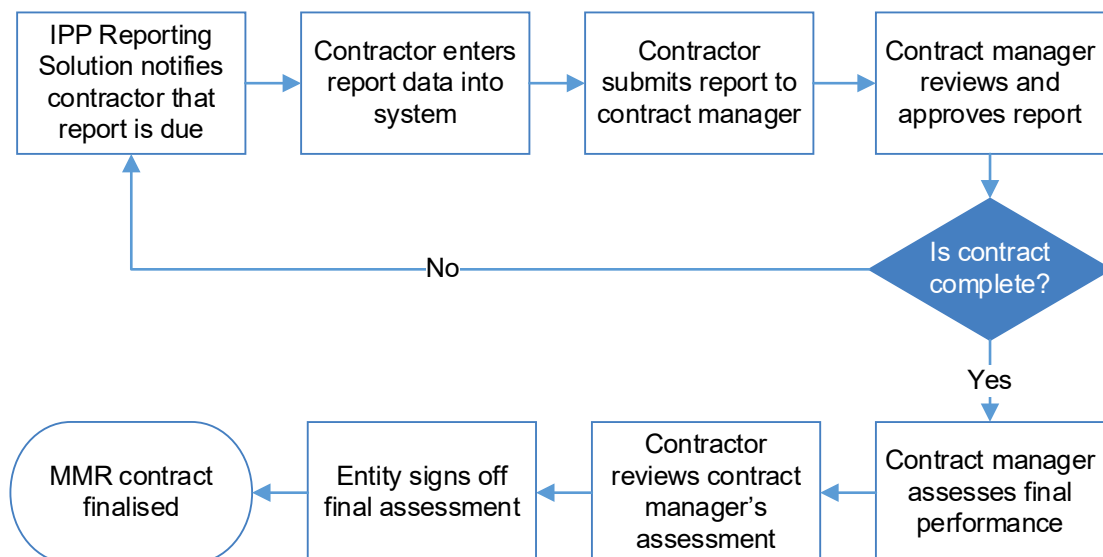
Figure 3.2: Process for setting up MMR contracts



Source: ANAO analysis of IPP Reporting Solution documentation.

3.25 The IPP Reporting Solution also includes a Contractor Portal through which contractors need to submit quarterly performance reports outlining performance against their MMR targets for entity approval. When a MMR contract ends, the contracting entity needs to sign off a final assessment of compliance against the MMR participation targets. Figure 3.3 outlines this process.

Figure 3.3: Process for managing MMR performance reporting



Source: ANAO analysis of IPP Reporting Solution documentation.

3.26 There have been three key issues with the implementation of the IPP Reporting Solution that have limited its effectiveness for monitoring the MMRs:

- automated system checks not identifying all potential MMR contracts;
- entities not setting up or excluding contracts within the system; and
- entities and contractors not using the system to report on MMR performance.

Automated system checks are not identifying all potential MMR contracts

3.27 The ANAO obtained a data extract from the IPP Reporting Solution as at 30 June 2019 and tested its completeness and accuracy. No issues were identified with the completeness or accuracy of data imported from AusTender. However, two issues were identified relating to the automated system tests (see Box 3). As a result of these issues, contracts labelled as 'Standard MMR' within the IPP Reporting Solution as at 30 June 2019 were not a complete record of contracts that had triggered the MMR criteria.

Box 3: Issues with IPP Reporting Solution automated MMR checks

Start date check based on incorrect premise

The MMRs apply to all contracts meeting the coverage criteria with an approach to market after 1 July 2015, but targets did not become binding until 1 July 2016. The IPP Reporting Solution does not record the approach to market date for contracts. The IPP Reporting Solution has an automated MMR check that only captures notices with a contract start date on or after 1 July 2016. Consequently, the IPP Reporting Solution does not identify MMR contracts with a start date before 1 July 2016.

There are 87 contracts with a total combined value of \$6.3 billion that commenced in 2015–16 and potentially meet the MMR coverage criteria. Any that meet the coverage criteria are currently not included in NIAA's dataset. To resolve this issue, NIAA could revise the IPP Reporting Solution's automated MMR check to capture contracts with a start date on or after 1 July 2015, then request entities to exclude any contracts not covered.

Contracts with incomplete data incorrectly labelled as 'non-IPP'

Through data matching with procurement system datasets from selected entities⁵², the ANAO identified 28 contracts (which commenced in 2016–17, 2017–18 or 2018–19) with a combined total value of \$2.4 billion that were incorrectly labelled as 'non-IPP' contracts within the IPP Reporting Solution. This represents approximately 10 per cent of the total number and value of contracts that triggered the MMR value threshold and industry coverage criteria over that period. The system failed to identify these contracts as 'Standard MMR' contracts because the AusTender contract notice data was incomplete when it was first imported.

After the ANAO informed NIAA of this issue, NIAA indicated it had developed a report within the system that will enable it to identify any similar issues in the future and manually fix them. It stated that it would run a report after each import of data from AusTender.

52 The six selected entities were: Department of Defence; Department of Education; Department of Employment, Skills, Small and Family Business; Department of Home Affairs; Department of Infrastructure, Transport, Cities and Regional Development; and NIAA.

Entities are not setting up or excluding contracts within the system

3.28 As at 30 June 2019 there were 265 contracts that commenced in 2016–17, 2017–18 or 2018–19 classified as ‘Standard MMR’ contracts in the IPP Reporting Solution. Of these, 109 had been exempted or excluded by entities and 156 were active MMR contracts. Of the 156 active MMR contracts, 87 (56 per cent) were at the ‘activate MMR contract’, ‘contract details’ or ‘assessment setup’ stages, which means they had not been set up or excluded by entities in the system as at 30 June 2019.

3.29 This finding indicates that most contracts within entities are not responding to automated system notifications requesting that they set up or exclude potential MMR contracts within the system.

Entities and contractors are not using the system to report on MMR performance

3.30 From mid-2018 PM&C required entities to use the IPP Reporting Solution for MMR performance reporting. Based on analysis of the 69 contracts that had been set up in the system as at 30 June 2019, the ANAO found:

- 21 contracts (30 per cent) had at least one quarterly report with performance data recorded in the system;
- nine contracts (13 per cent) had reached their contract end date, but none of them had been finalised within the IPP Reporting Solution; and
- five contracts (seven per cent) had their most recent quarterly report submitted on time.

3.31 These results demonstrate that entity contract managers and contractors have not been using the system. Therefore, it has not been functioning effectively as a reporting portal. In many cases contractors have been submitting MMR reporting outside the IPP Reporting Solution, through bespoke reporting templates developed by entities. Where this has been occurring, contract managers have not been entering performance information into the IPP Reporting Solution. Selected entities’ reporting arrangements for the MMRs are discussed in more detail in Chapter 4.

Assessing contractors’ previous performance and reporting on implementation

3.32 The IPP Reporting Solution has the potential to monitor compliance and report on implementation of the MMRs. However, due to the incompleteness of the reporting data, the IPP Reporting Solution cannot currently fulfil two of its primary purposes:

- providing a database of contractor performance against the MMRs, which could be used to inform tender evaluations for future procurements that trigger the MMRs; and
- enabling NIAA to report on the number and value of contracts with MMR targets and Aboriginal and Torres Strait Islander participation outcomes resulting from these contracts.

3.33 While entities and contractors have a requirement to comply with MMR reporting requirements, it is also clear from the low level of contract set-up, performance reporting and contract finalisation that the current regime for managing compliance is not operating effectively.

3.34 Since mid-2019 NIAA has contacted portfolio managers within entities to prompt them to set up contracts in the system and invested in system upgrades to the IPP Reporting Solution in response to user feedback. Building on these actions, NIAA needs to consult entities and contractors

to understand what factors are contributing to the high levels of non-compliance and develop a strategy to address these.

Recommendation no.2

3.35 National Indigenous Australians Agency implements a strategy to increase entity and contractor compliance with MMR reporting requirements to ensure information in the IPP Reporting Solution is complete.

National Indigenous Australians Agency response: *Agreed.*

3.36 *In the first half of 2020 the NIAA will review the IPP Reporting Solution (IPPRS) workflow and work with Commonwealth entities and contractors to identify strategies to improve data entry processes, while minimising compliance costs for entities and businesses.*

3.37 *The NIAA will continue to offer training and information resources to Commonwealth buyers and major contractors to support users to upload reporting data to the IPPRS.*

3.38 *In the first half of 2020 the NIAA will introduce a systematic approach to monitoring of Commonwealth entities and major contractors reporting of MMR requirements and usage of the IPPRS. The Cross Agency Working Group will routinely receive updates on the reporting performance of mandated portfolio agencies.*

3.39 *The NIAA will aim to drive improvements in MMR reporting compliance to a level that is consistent with broader Commonwealth procurement reporting compliance rates (e.g. compliance with AusTender reporting requirements).*

Is the contribution of the mandatory minimum requirements to Closing the Gap being measured?

The most recent evaluation of the IPP was completed in 2019. It did not evaluate the MMRs or assess their contribution to closing the gap in Aboriginal and Torres Strait Islander and non-Indigenous economic outcomes due to the lack of monitoring data on MMR contracts.

3.40 Entities managing procurement-connected policies 'are required to conduct annual reviews of their policy's effectiveness in achieving its stated purpose and outcomes'.⁵³

3.41 In recommending that the ANAO conduct an audit of 'the use of, and compliance with, Indigenous Employment Targets', the Senate Finance and Public Administration References Committee stated that the audit 'should also report on how these contracts impact on Closing the Gap employment targets'.⁵⁴

3.42 The IPP has been reviewed twice since it was introduced in 2015.

53 Department of Finance, *Commonwealth Grants and Procurement Connected Policies*, Resource Management Guide No. 415, November 2016, pp. 6-7.

54 Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)*, inquiry report, December 2017, p. 114.

- A 'year one' review was commissioned in 2016. The MMRs were out of scope for this review.
- A 'third year' evaluation was commissioned in 2018. The evaluation, which was completed in August 2019, noted that:
... performance of the MMR sub-policy cannot be comprehensively evaluated... To date, as only one contract has had a final assessment, and the majority of contracts have not delivered a quarterly performance report, it cannot be confirmed that the MMR is delivering intended increased business to Indigenous businesses.⁵⁵

3.43 As discussed in paragraph 2.4, the policy rationale for the IPP was to close the gap in employment outcomes between Aboriginal and Torres Strait Islander and non-Indigenous Australians by driving growth in Aboriginal and Torres Strait Islander businesses and employment. However, neither the first year review nor the third year evaluation considered the contribution of the MMRs to the Closing the Gap employment target.

3.44 Due to the incompleteness of the performance data reported by entities and contractors for the MMRs, the effectiveness of the policy has not been reviewed. Even with better performance data it would be difficult to measure the impact of the MMRs, due to the challenge of attributing outcomes to the policy (as contractors may have engaged Aboriginal and Torres Strait Islander staff or suppliers without the MMR targets). Nevertheless, it is possible to devise evaluation methodologies to address this.⁵⁶

3.45 To ensure that it can review the effectiveness of the MMRs in achieving their stated purpose and outcomes, NIAA should develop and implement an appropriate evaluation strategy for the MMRs. This could form part of a broader strategy to evaluate the IPP as a whole.

Recommendation no.3

3.46 National Indigenous Australians Agency implements an evaluation strategy for the MMRs that outlines an approach to measuring the impact of the policy on Aboriginal and Torres Strait Islander employment and business outcomes.

National Indigenous Australians Agency response: *Agreed.*

3.47 *By the end of 2020 the NIAA will develop an evaluation strategy for the MMR. The strategy will feed into a review of IPP implementation that will occur in 2021, and a full evaluation of the IPP in 2022-23.*

⁵⁵ Deloitte, *Third Year Evaluation of the Indigenous Procurement Policy*, August 2019, p. 67.

⁵⁶ See G Peersman, *Impact evaluation* [Internet], available at: http://www.betterevaluation.org/themes/impact_evaluation [accessed 22 November 2019]

4. Entity compliance in major procurements

Areas examined

This chapter examines selected entities' compliance with the mandatory minimum requirements (MMRs) in the procurement and contract management phases of major procurements.

Conclusion

Selected entities' compliance with the MMRs fell short of the standard required for managing major procurements. In the procurement phase, while selected entities mostly recognised when the MMRs applied, they failed to comply with all required steps. In the contract management phase, entities have not established appropriate performance reporting arrangements. Where reporting has been occurring, entities have not gained appropriate assurance over reported performance.

Areas for improvement

The ANAO made three recommendations aimed at: increasing compliance with MMR steps in the procurement phase; increasing compliance with MMR reporting requirements; and establishing appropriate assurance activities. The ANAO also suggested that entities update their internal procurement guidance and templates and processes for managing MMR contracts.

4.1 Managing procurements effectively requires attention across the procurement lifecycle: commencing in the procurement phase with effective planning, tender evaluation and contract negotiation, and progressing to active management of contractors' performance and compliance in the contract management phase.⁵⁷ To assess whether entities are managing the MMRs effectively in major procurements, the ANAO examined whether selected entities:

- provide appropriate guidance to staff on the MMRs;
- comply with the MMRs in the procurement phase;
- agree appropriate participation targets;
- establish appropriate performance reporting arrangements; and
- gain appropriate assurance over reported results.

4.2 Entities selected for the compliance assessment were: Department of Defence (Defence); Department of Education (Education); Department of Employment, Skills, Small and Family Business (Employment); Department of Home Affairs (Home Affairs); Department of Infrastructure, Transport, Cities and Regional Development (Infrastructure); and National Indigenous Australians Agency (NIAA).⁵⁸

57 Department of Finance, *Australian Government Contract Management Guide*, July 2019, p.2

58 At the time of audit the Department of Education and Department of Employment, Skills, Small and Family Business were separate entities. From 1 February 2020 through a machinery-of-government change most functions dealt with by these entities were consolidated within the Department of Education, Skills and Employment. Further, the Department of Infrastructure, Transport, Cities and Regional Development became the Department of Infrastructure, Transport, Regional Development and Communications.

Have entities provided appropriate guidance to staff on complying with the MMRs?

Selected entities mostly provide appropriate guidance to staff on complying with the MMRs. Once NIAA has updated its guidance information on the MMRs, there is scope for central procurement teams within entities to provide greater support to officers managing MMR procurements to ensure they comply with requirements.

4.3 To effectively embed compliance with the MMRs within procurement practices, entities should provide appropriate guidance to staff on the specific requirements that must be addressed throughout the contract lifecycle. This is particularly important as contracts that trigger the MMRs occur infrequently for most entities, so procuring officers and contract managers need to be alert to the risks that come with undertaking an unfamiliar process.

4.4 The ANAO examined the internal guidance information and advice provided by selected entities' central procurement teams, to determine whether the MMRs were adequately covered. The results of this testing are presented in Table 4.1.

Table 4.1: Selected entities' internal guidance and support on the MMRs

Test	Defence	Education	Employment	Home Affairs	Infrastructure	NIAA
Did the entity's guidance and/or templates for conducting and managing procurements...						
Reference the MMRs?	◆	◆	◆	◆	◆	◆
Include the Indigenous Procurement Policy (IPP) model clauses relevant to the MMRs?	◆	■	◆	▲	▲	▲
Has the entity's central procurement team...						
Promoted the IPP internally?	◆	◆	◆	◆	◆	◆

Key: ◆ Yes ▲ Partial ■ No

Source: ANAO analysis of entity documentation.

4.5 At the time of assessment, all entities provided guidance that outlined when the MMRs applied to procurements. The guidance correctly listed the contract value threshold for the MMRs, as well as the relevant industry categories. Two entities (Defence and Employment) had accurately included the IPP model clauses for the MMRs in their guidance and/or templates. Other entities either included out-of-date model clauses or did not include the model clauses.

4.6 All entities had promoted the IPP to staff through internal communication, although most entities did not specifically reference the MMRs. Defence had taken steps to promote the MMRs through internal communication, including through a national roadshow in 2019 on Aboriginal and Torres Strait Islander procurement for Defence staff involved in procurement activities. In addition, there was evidence that central procurement areas were available to provide advice to procuring officers on applying the MMRs to major procurements upon request.

4.7 As discussed in paragraphs 3.12 to 3.16, to promote consistent approaches to implementing the MMRs and build on entities' experiences to date, NIAA needs to consult with entities and contractors about developing guidance information to manage the MMRs through the procurement lifecycle (see Recommendation no.1 at paragraph 3.17). Once this guidance is developed, entities should update their internal guidance, templates and processes to ensure procuring officers and contract managers involved with MMR procurements receive appropriate operational support.

Have entities complied with the MMRs in the procurement phase?

None of the selected entities fully complied with the MMRs during the procurement phase. Entities generally recognised the need to apply the MMRs to major procurements but did not comply with all required steps. Key compliance issues identified were: excluding contracts for invalid reasons; and not creating a contractual requirement to meet targets.

4.8 The ANAO conducted compliance testing on a representative sample of 139 major procurement contracts from selected entities, including 70 excluded contracts and 69 active MMR contracts.⁵⁹ This section outlines the testing results for these two categories.

Exempt or excluded contracts

4.9 Of the 139 contracts in the compliance testing sample, 51 contracts had been excluded by entities in the IPP Reporting Solution. For these contracts, the ANAO examined procurement documentation and reviewed reasons recorded in the system to determine whether contracts had been validly excluded. In addition, the ANAO identified 19 active contracts that had not been excluded by entities (because the contracts had not been set up in the system), but had a valid reason for exclusion. No contracts in the sample met the MMR exemption criterion. The compliance testing results for the 70 contracts are outlined in Table 4.2.

59 The sample was selected from 265 'Standard MMR' contracts recorded in the IPP Reporting Solution as at 30 June 2019. The sample comprised the population of contracts for Education, Employment, Home Affairs, Infrastructure and NIAA, and a randomly selected sample of 80 contracts for Defence (from a total of 115). Responsibility for 26 contracts in the sample transferred from Education to Employment or Home Affairs following machinery-of-government changes announced in May 2019.

Table 4.2: Compliance testing results for excluded contracts

Description	Defence	Education	Employment	Home Affairs	Infrastructure	NIAA	Total
Excluded by entity for valid reason	18	1	0	4	2	0	24
Excluded by entity for incorrect reason; valid reason identified by ANAO	13	5	0	0	0	0	19
Not excluded by entity; valid reason identified by ANAO	17	0	0	2	0	0	19
Excluded by entity for invalid reason	1	4	0	1	2	0	8
Total	49	10	0	7	4	0	70

Note: Results are reported based on the entity that was responsible for the contract at the time of exclusion.

Source: ANAO analysis of entity documentation.

4.10 Selected entities excluded eight contracts in the testing sample for invalid reasons. Education misapplied valid exclusion reasons for three contracts, incorrectly stating that two contracts were not within MMR industry sectors and one was under the contract value threshold. In five cases entities used the following reasons for exclusion, which are not covered by the policy:

- the contract resulted from a whole-of-government panel arrangement that pre-dated the policy requirement;
- contracts were with Australian or state government entities (three cases); and
- the contract was delivered in Australia by an international organisation.

4.11 As discussed in paragraphs 3.12 to 3.16, clearer guidance is needed on how to apply exclusion categories for the MMRs, and the Department of the Prime Minister and Cabinet (PM&C) has previously provided incorrect advice to entities that the MMRs do not apply to Commonwealth, state and territory entities. Addressing these issues (in line with Recommendation no.1) should help entities to avoid excluding contracts for invalid reasons.

4.12 There were valid reasons to exclude the other 62 contracts in the testing sample. In most cases the approach to market was before 1 July 2015, or it was an additional contract notice or contract variation for a Defence capital works project (see Box 4). Other valid reasons for exclusion were international delivery, use of mandated whole-of-government procurement arrangements, and data entry errors in AusTender that meant contracts incorrectly triggered the MMRs.

Box 4: Defence's use of AusTender for capital works projects

A high proportion of Defence's contracts that have triggered the MMRs are large-scale capital works projects. Defence has had two practices for managing these projects in AusTender that can affect the accuracy of IPP Reporting Solution data.

- Defence's major capital works projects progress through multiple phases. Defence has historically created new contract notices in AusTender for each phase of a project rather than recording these as amendments to the 'parent' contract.⁶⁰ Defence advised the ANAO that it has taken action to address this issue.
- Some of Defence's larger capital works projects use a managing contractor arrangement, whereby a managing contractor is engaged to coordinate project delivery and a trust account established to pay subcontractors. This arrangement can result in multiple separate contract notices: one for the managing contractor's fees; one for the trust account; and others for subcontracts.

The IPP Reporting Solution identifies the additional contract notices resulting from these practices as 'Standard MMR' contracts, which leads to multiple MMR contract notices for one project. Defence chooses one contract as the 'reporting contract' and excludes the others. Defence advised the ANAO that it aims to choose the contract that best fits the timeframes and value of the overall project.

Due to these practices, the full value of Defence's capital works projects that are subject to the MMRs may not be accurately recorded in the IPP Reporting Solution. NIAA and Defence should continue working together to resolve this issue.

Active MMR contracts

4.13 For active MMR contracts, the 2015 IPP outlines steps entities must follow to comply with the MMRs in the procurement phase.

- Entities must incorporate the MMRs in approach to market documentation, including requirements for tenderers to: submit an Indigenous Participation Plan setting out how they will meet the MMRs; and outline past experience in increasing Aboriginal and Torres Strait Islander participation, including performance against any previous MMR contracts.
- Entities must assess tenderers' Indigenous Participation Plans and past performance in increasing Aboriginal and Torres Strait Islander participation as part of tender evaluations.
- Following selection of a contractor, entities must ensure the resultant contract includes the contractor's Indigenous Participation Plan.⁶¹

4.14 For the 69 active MMR contracts, the ANAO examined procurement documentation to determine whether entities had complied with the MMR steps in the procurement phase.⁶² The compliance testing results for the 69 active MMR contracts are outlined in Table 4.3. The key compliance test was whether contracts created a contractual requirement to meet MMR targets.

60 Auditor-General Report No.19 2017–18 *Australian Government Procurement Contract Reporting*, p. 55.

61 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, pp. 36-37.

62 See Appendix 4 for information about these contracts.

Table 4.3: Compliance testing results for active MMR contracts

	Defence	Education	Employment ^a	Home Affairs ^a	Infrastructure	NIAA	Total
Contractual requirement to meet MMR targets	22	8	1	1	2	2	36
Entity fully complied with the MMRs	3	0	0	0	0	0	3
Contract included compliant plan, but tender evaluation did not document consideration of plan and/or past performance	17	7	1	1	1	2	29
Contract did not include compliant plan, but created requirement to meet MMR targets	2	1	0	0	1	0	4
No contractual requirement to meet MMR targets	9	0	11	13	0	0	33
Contract did not include compliant plan or create requirement to meet MMR targets, but compliant plan developed outside of contract	6	0	7	6	0	0	19
Contractor has not developed compliant plan	3	0	4	7	0	0	14
Total	31	8	12	14	2	2	69

Note a: Education was responsible for the procurement phase for all 12 of Employment's active MMR contracts and 11 of Home Affairs' 14 active MMR contracts. Responsibility for these contracts transferred from Education to Employment or Home Affairs following machinery-of-government changes announced in May 2019.

Source: ANAO analysis of entity documentation.

4.15 Selected entities met the key compliance test for 36 (52 per cent) of the 69 active MMR contracts. However, the majority of these contracts (33 of 36) did not comply with all MMR steps. Key steps not followed were: documenting the tender evaluation panel's assessment of tenderers' Indigenous Participation Plans and past performance in relation to increasing Indigenous participation; and including the contractor's Indigenous Participation Plan in the resulting contract.

4.16 Selected entities did not meet the key compliance test for 33 of the 69 active MMR contracts (48 per cent).

- For 19 contracts, contractors had developed Indigenous Participation Plans that included compliant MMR targets, but they were not contractually required to meet them.
- In nine cases contractors had developed non-compliant plans that did not include targets, and in four cases targets did not meet the minimum requirements. In one case the contractor had not developed a plan.

4.17 The majority of non-compliant contracts (24 of 33) were held by Employment and Home Affairs. Education had managed the procurement process for 22 of these non-compliant contracts, and 20 had resulted from a single procurement activity conducted by Education in 2016 for the Adult Migrant English Program (AMEP) and Skills for Education and Employment (SEE) program (see Case Study 1).

Case study 1. Education's management of 2016 AMEP and SEE procurement

AMEP delivers English language tuition to eligible new migrants and SEE delivers language, literacy and numeracy tuition to eligible job seekers. Education undertook a combined procurement process for AMEP and SEE in 2016, with the aim of aligning the programs and reducing administrative burden and cost. The procurement was undertaken while Education had a shared services arrangement with Employment, under which a central procurement team in the Shared Services Centre provided advice to procuring officers in Education and Employment.

The approach to market documentation Education developed for the AMEP and SEE procurement did not include a requirement that tenderers submit Indigenous Participation Plans. Consequently, the resultant contracts did not include Indigenous Participation Plans and were thus non-compliant with the MMRs. Due to a misunderstanding about how to apply the MMRs, the contracts included model clauses designed for non-MMR contracts.

After the contracts had commenced, Education asked AMEP and SEE providers to submit Indigenous Participation Plans. For four of the contracts, the plans submitted included targets that did not meet the minimum requirements. For four additional contracts, plans did not commit to any targets. Education did not assess any of the submitted plans or provide feedback to providers on whether they had been accepted. As a result, there was no contractual requirement for AMEP and SEE contractors to meet MMR targets.

4.18 To increase levels of compliance, central procurement teams within entities need to ensure procuring officers undertaking major procurements that trigger the MMRs receive appropriate support prior to the approach to market and follow all required steps. While only three selected entities (Defence, Employment and Home Affairs) hold contracts in the sample that did not create contractual requirements to meet MMR targets, all selected entities did not comply with required MMR steps for all or most of their MMR procurements. Consequently, all entities need to review their current protocols to ensure procuring officers comply with these steps.

Recommendation no.4

4.19 All audited entities review and update their procurement protocols to ensure procuring officers undertaking major procurements that trigger the MMRs comply with required steps in the procurement process.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

4.20 *The department has reviewed and updated its procurement protocols in regards to major procurements that trigger MMR requirements. Protocols will continue to be reviewed and updated in line with guidance provided by the policy owner.*

Department of Home Affairs response: *Agreed.*

4.21 *The Department of Home Affairs will review and update its existing suite of procurement guidance and templates to ensure officers undertaking major procurements have the appropriate information available to comply with the MMRs.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

4.22 *The Department will review its current protocols with a view to strengthening future compliance.*

National Indigenous Australians Agency response: *Agreed.*

Have entities agreed appropriate MMR participation targets?

Entities agreed MMR participation targets that met or exceeded the minimum levels for most assessed contracts. For contracts that included a remote delivery component, entities did not comply with the requirement to ensure targets deliver significant participation outcomes.

4.23 As discussed in paragraph 2.33, the MMRs allow entities and contractors substantial flexibility in determining appropriate participation targets. In addition, entities can voluntarily choose to apply such targets in procurements not covered by the policy. This section examines whether selected entities are:

- agreeing targets that meet or exceed the minimum requirements;
- agreeing appropriate remote area targets; and
- voluntarily applying participation targets to other procurements.

Agreeing targets that meet or exceed the minimum requirements

4.24 For most contracts (80 per cent) in the compliance testing sample, contractors had submitted Indigenous Participation Plans with MMR targets that met or exceeded the mandatory minimum levels.

- For 13 contracts (19 per cent), contractors' submitted plans did not include targets or included targets that were below the mandatory minimum levels.

- For one contract (one per cent), the contractor did not submit a plan as the entity (Defence) had not included the MMR requirements in the approach to market.

4.25 Of the 68 Indigenous Participation Plans assessed by the ANAO, six provided a methodology for setting targets and 19 clearly indicated that targets were informed by prior experience, consultation or other evidence.

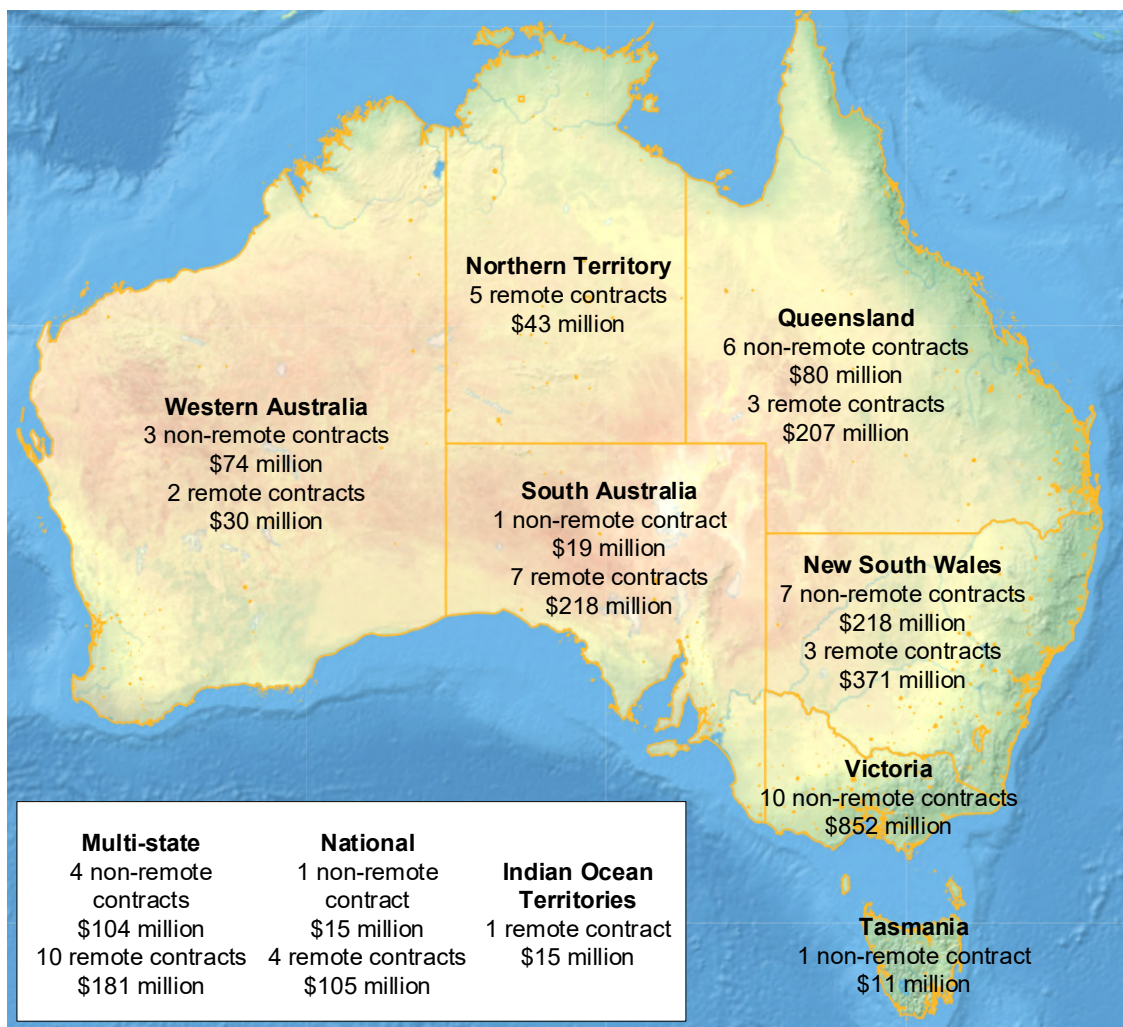
Agreeing appropriate remote employment targets

4.26 Where a component of an MMR contract will be delivered in a remote area, the contracting entity and contractor must ensure the contract delivers 'significant Indigenous employment or supplier use outcomes in that area', and agreed participation targets should 'have regard to the size of the local Indigenous population relative to the non-Indigenous population and the nature of the contracted goods and services'.⁶³

4.27 Of the 69 active MMR contracts in the compliance testing sample, 35 contracts (51 per cent) with a total value of \$1.2 billion included a remote area delivery component. Figure 4.1 shows the distribution of remote and non-remote contracts by state or territory. Further information about which contracts included a remote component is at Appendix 4.

63 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 35.

Figure 4.1: Geographical distribution of active MMR contracts



Source: ANAO analysis of entity documentation.

4.28 Based on a review of procurement documentation, compliance with MMR requirements was poor for the 35 remote area MMR contracts in the testing sample. In almost all cases, entities and contractors did not adequately document how agreed targets would provide significant participation outcomes.

- For 16 contracts (46 per cent) entities did not clearly identify that procurements involved remote area delivery components, and for 18 contracts (51 per cent) they did not include the relevant remote area IPP model clauses.
- Only one Indigenous Participation Plan outlined how the contract would deliver significant participation outcomes, and no plan included consideration of the size of the local Aboriginal and Torres Strait Islander population.

4.29 As outlined in Table 3.1, NIAA needs to provide clearer instruction to entities and contractors on how to set appropriate targets that maximise participation outcomes for Aboriginal and Torres Strait Islander peoples in remote areas. Entities also need to ensure procuring officers undertaking major procurements that trigger the MMRs comply with required steps in the procurement process (see Recommendation no.4 at paragraph 4.19).

Voluntarily applying participation targets to other procurements

4.30 Entities can voluntarily apply Aboriginal and Torres Strait Islander participation targets to procurements not covered by the policy. The IPP Reporting Solution includes a contract type of 'Voluntary Reporting' to enable such contracts to be set up for performance reporting. As at 30 June 2019, there were four contracts recorded in the system with this contract type, although none had commenced reporting. For example, Defence has a contract with a value of \$3.4 billion to provide health services at Defence bases and establishments, including in regional and remote areas, which includes MMR targets.

Have entities established appropriate reporting arrangements for MMR contracts?

Entities have not established appropriate performance reporting arrangements, as less than half of the contractors that are required to report on their compliance with the MMRs have been doing so. Contractors have not been using the IPP Reporting Solution for reporting.

4.31 Under the IPP, entities must ensure MMR contracts 'include a requirement for the contractor to report on compliance with the Indigenous Participation Plan at least quarterly'. In addition, contract managers are required to record contractors' performance in a central database that could be accessed by other Australian Government procuring officers. As discussed in paragraph 3.23, from mid-2018 entities and contractors were required to use the IPP Reporting Solution for MMR reporting.

4.32 For the 69 active MMR contracts, the ANAO examined contractual documentation and performance reporting to determine whether entities and contractors were complying with their MMR reporting requirements. The results are outlined in Table 4.4.

Table 4.4: Compliance testing results for reporting requirements

	Defence	Education	Employment ^a	Home Affairs ^a	Infrastructure	NIAA	Total
Number of active MMR contracts	31	8	12	14	2	2	69
Tests for MMR reporting requirements							
Number of contracts with contractual requirements to meet MMR targets and report at least quarterly	22	8	1	1	2	2	36
Number contracts for which the contractor has been complying with reporting requirements	7	7	0	1	1	2	18
Number of contracts for which the contractor or entity has been reporting using the IPP Reporting Solution	2	0	0	1	0	0	3

Note a: Education was responsible for the procurement phase for all 12 of Employment's active MMR contracts and 11 of Home Affairs' 14 active MMR contracts. Responsibility for these contracts transferred from Education to Employment or Home Affairs following machinery-of-government changes announced in May 2019.

Source: ANAO analysis of entity documentation.

4.33 As Table 4.4 shows, selected entities and contractors are largely not complying with reporting requirements. Of the 18 contracts for which contractors were complying with their contractual reporting requirements, only three were actively reporting using the IPP Reporting Solution. This means 4.3 per cent of the 69 tested contracts were actively reporting in the system as at 30 June 2019. Other contractors were reporting as part of their broader contractual reporting mechanisms or using bespoke reporting templates developed by entities.

4.34 As discussed in paragraph 3.23, there were significant delays in establishing a centralised database for monitoring the MMRs. As a result, different approaches were developed to manage reporting, which introduced inconsistencies and contributed to non-compliance. For example, for Defence, five contracts only reported against a supply-use target despite also having employment targets, and one contract only reported on employment outcomes despite also having supply-use target.

4.35 These findings also indicate that entities have not been appropriately enforcing contractor compliance with reporting requirements.

4.36 NIAA needs to establish a strategy for addressing entity and contractor non-compliance with MMR reporting requirements (see Recommendation no.2 at paragraph 3.35). However, entities also need to take greater responsibility for managing their own compliance and their contractors' compliance with the MMR reporting requirements.

Recommendation no.5

4.37 All audited entities establish processes, or update existing processes, to ensure contract managers and contractors regularly use the IPP Reporting Solution for MMR reporting.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

4.38 *The department will establish processes to ensure contract managers and contractors regularly use the IPP Reporting Solution. Processes will be developed based on guidance provided from the policy owner.*

Department of Home Affairs response: *Agreed.*

4.39 *The Department of Home Affairs will update its existing guidance and processes to ensure contract managers and contractors regularly use the IPP Reporting Solution for MMR reporting.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

4.40 *The Department has commenced IPP Reporting Solution training for relevant contract managers, and will review existing processes to ensure that contractors and contract managers effectively utilise the reporting solution for MMR reporting.*

National Indigenous Australians Agency response: *Agreed.*

Have entities gained appropriate assurance over reported results?

Entities have not established appropriate controls and risk-based assurance activities to gain assurance over contractors' reported MMR performance.

4.41 Entities managing procurement contracts should establish appropriate controls and assurance activities to ensure contractors comply with contractual obligations and performance reporting is accurate and complete.⁶⁴ With regard to Aboriginal and Torres Strait Islander participation targets, the importance of establishing appropriate controls is highlighted by the Northern Territory Government's experience with the Indigenous Employment Provisional Sum (IEPS) (see Box 5).

64 Department of Finance, *Australian Government Contract Management Guide*, July 2019, pp. 25 & 35.

Box 5: Northern Territory's Indigenous Employment Provisional Sum

The Northern Territory Government established the IEPS in October 2014 as part of its Indigenous Participation in Construction Projects policy. The IEPS provided incentive payments to contractors and subcontractors that employed Aboriginal and/or Torres Strait Islander people on government-funded construction projects valued over \$500,000.

The Northern Territory Auditor-General's Office conducted an audit of the IEPS in 2017 that found an absence of effective controls, which exposed the government to significant financial risk, and 'evidence to suggest that some contractors had deliberately claimed payments under the IEPS to which they were not entitled'.⁶⁵ Subsequent investigations have led to criminal proceedings against IEPS contractors, and in April 2019 a contractor was sentenced to four years imprisonment for defrauding the IEPS of more than \$200,000.⁶⁶

4.42 Under the MMRs, entity contract managers are responsible for ensuring contractors comply with their Indigenous Participation Plans and gaining assurance over reported results. The IPP states that, in addition to the requirement to report at least quarterly, MMR contracts must include:

such other reporting, documentation, review and auditing rights and requirements as the Commonwealth entity considers necessary for it to determine whether the contractor is compliant with the Indigenous Participation Plan.⁶⁷

4.43 The ANAO examined assurance arrangements for the 69 active MMR contracts. In most cases (94 per cent), contracts included generic documentation review and auditing rights that could be used to enforce compliance and undertake assurance checks for reported MMR performance. No contract specified what documentation contractors should retain as evidence of their reported performance against MMR participation targets.

4.44 Selected entities could not provide evidence that they had enforced contractual compliance when contractors were not meeting their MMR reporting requirements. Where reporting has been occurring, there was no evidence that entities had sought additional documentation to confirm contractors' reported performance against MMR targets.

4.45 As a minimum, entities should integrate occasional reviews of MMR documentation into their existing contract management control frameworks. Documentation that could be specified as acceptable evidence of MMR performance includes:

- timesheets and payslips that demonstrate hours worked by staff on the project;
- evidence that staff have self-identified as Aboriginal and/or Torres Strait Islander;
- invoices from suppliers or subcontractors; and
- evidence that suppliers or subcontractors are Aboriginal and Torres Strait Islander businesses.

65 Auditor-General for the Northern Territory, *November 2018 Report to the Legislative Assembly*, 2018, p.37.

66 C Walsh, 'Four-year sentence for Darwin builder who swindled \$200,000 from Indigenous jobs program', ABC News, 10 April 2019 [Internet] <https://www.abc.net.au/news/2019-04-10/jail-time-for-darwin-builder-who-swindled-indigenous-program/10989510> [accessed 22 November 2019].

67 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 37.

4.46 Contractors face reputational and financial risks if they underperform against targets. If contractors do not believe there is a credible threat that misreporting will be identified, there is a risk that such behaviour may be incentivised. Consequently, entities need to take appropriate steps to mitigate this risk.

4.47 As outlined in Table 3.1, NIAA needs to provide additional guidance to entities on building checks into existing contract management processes to gain assurance of MMR performance reporting and undertaking risk-based assurance activities. This guidance should include advice to entities and contractors about how to request evidence of identification from staff and suppliers in a culturally appropriate manner. Once this guidance has been developed, entities need to integrate it into their contract management control frameworks.

Recommendation no.6

4.48 After guidance has been provided by the policy owner, all audited entities establish appropriate controls and risk-based assurance activities for active MMR contracts.

Department of Defence response: *Agreed.*

Department of Education, Skills and Employment response: *Agreed.*

4.49 *The department will establish appropriate controls and risk based assurance activities for active contracts. Controls will be developed based on guidance provided by the policy owner.*

Department of Home Affairs response: *Agreed.*

4.50 *The Department of Home Affairs will re-examine internal guidance and processes for consistency once additional guidance from the National Indigenous Australians Agency has been received.*

Department of Infrastructure, Transport, Regional Development and Communications response: *Agreed.*

4.51 *The Department considers that the development of comprehensive tailored guidance by the policy owner on managing the MMRs throughout the contract lifecycle will better support entities in determining appropriate controls and risk-based assurance activities for active MMR contracts.*

National Indigenous Australians Agency response: *Agreed.*



Grant Hehir
Auditor-General

Canberra ACT
20 February 2020

Appendices

Appendix 1 Entity responses

National Indigenous Australians Agency



Australian Government
National Indigenous Australians Agency

Chief Executive Officer
Ray Griggs AO, CSC

Reference: EC19-001410

Mr Grant Hehir
Auditor-General for Australia
Australian National Audit Office
OfficeoftheAuditorGeneralPerformanceAudit@anao.gov.au

Dear Mr Hehir

Grant,

Thank you for your email of 5 December 2019 regarding the proposed section 19 audit report of *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*.

The National Indigenous Australians Agency (NIAA) welcomes the proposed report. It is pleasing the ANAO has concluded that the policy design of the mandatory minimum requirements (MMR) supports the achievement of the government's objectives and that the settings are reasonable and supported by evidence.

The Indigenous Procurement Policy (IPP) is driving long term behavioural change

The IPP is a key plank of the Government's approach to driving growth in Aboriginal and Torres Strait Islander businesses and employment. The IPP creates opportunities for businesses owned by Indigenous Australians to enter the government's supply chain. The MMR is one of three components of the IPP, along with the contract volume and value targets and the mandatory set-aside for contracts delivered in remote areas and all contracts valued between \$80,000 and \$200,000.

The NIAA considers the audit would have benefited from greater acknowledgement of the scale of the reform. The policy not only achieves outcomes for Indigenous Australians, but also produces long lasting change in the mindset and attitudes of APS officers towards Indigenous Australians and their businesses.

The IPP is a significant change to how the Australian Government procures goods and services. It challenges procurement officers to step outside often deeply ingrained and, in some cases, rigid procurement processes to consider how they could preference their procurement activities to benefit Aboriginal and Torres Strait Islander people while still achieving value for money for the Government.

The policy pushes up against the perceptions and unconscious bias of many stakeholders, built over decades of deficit messages so often associated with Indigenous affairs. Effective implementation relies

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on recognising the capabilities of Aboriginal and Torres Strait Islander job seekers and businesses that exist in all industries sectors throughout Australia.

The IPP is delivering outcomes for Indigenous Australians

The IPP has made a substantial positive impact in a relatively short period of time. It has attracted the attention of many governments in Australia and abroad. Since 1 July 2015 (to 6 January 2020) the IPP has generated \$2.59 billion in economic activity. A total of 16,767 contracts have been awarded to 1,779 Indigenous businesses.

The MMR component of the IPP, which came into effect on 1 July 2016, is designed to ensure that Indigenous Australians benefit from large Commonwealth contracts in certain industries, through increased subcontracting and employment opportunities, allowing the Indigenous business sector to grow in size and capability over time.

A renewed focus on compliance

The NIAA acknowledge that the underuse of the IPP Reporting Solution (IPPRS) by the entities managing contracts has hampered our ability to report fully on the impact of the MMR. However, our Agency stands by the IPPRS as an effective tool to manage the MMR. We are committed to seeing it continually evolve as lessons are learnt and new technology is released.

The ANAO's final report indicates that 4.3 per cent of sampled contracts were actively reporting in the IPPRS as at 30 June 2019. The NIAA reports that the rate of compliance has improved, with 24 per cent of MMR contracts in the IPPRS having reported (as at 6 January 2020), but acknowledges more needs to be done.

In order to drive further improvements in compliance, the NIAA will:

- Upgrade the IPPRS to reduce the deficit in reporting rates. We have started upgrading the IPPRS to simplify the MMR reporting process by enabling contractors to bulk upload employment and supplier use information. This will make reporting easier than the existing process where contractors enter each separate procurement.
- Continue to offer training and information resources to Commonwealth buyers and major contractors to support users to upload reporting data to the IPPRS.
- Introduce a systematic monitoring of the status of MMR reporting in the IPPRS that will increase transparency of the status of MMR reporting. This will include active follow-up with portfolio agencies where reporting is not up to date.

Communicating and engaging with our stakeholders

The NIAA does not accept the characterisation that we have simply "publicised" the MMR requirements (e.g. Chapter 3 Conclusion).

As noted in Paragraph 3.11 and Box 2 of the final report, the NIAA has used various mechanisms to promote awareness and understanding of the requirements for managing MMR contracts and in the use

of the IPPRS. These mechanisms have been accessed by all portfolios and many contractors on multiple occasions. In addition to these activities, the NIAA is also providing information through:

- A dedicated IPP policy mailbox and a team of NIAA officers available to meet with Indigenous businesses, contractors and public servants on request.
- A dedicated IPPRS Help Desk which includes a dedicated mailbox and phone line managed by an IT specialist.
- The automatic provision of advice through the IPPRS to contract managers and to contractors when activity is required. This advice outlines what users are required to do and who they can contact if they need support.
- IPP information sessions at Indigenous business trade fairs, including the MMR component. Since September 2017, NIAA officers have promoted the IPP at 13 trade fairs across the country, mainly in capital cities but also at Karratha in Western Australia and Dubbo in New South Wales. The trade fairs have been attended by more than 2,785 officers from across the public and private sectors.
- Training sessions on the IPPRS for procurement officers, contract managers and contractors. NIAA has delivered around 30 training and information sessions in Canberra since 2017. These included training sessions tailored for individual agencies and major contractors in the use of the IPPRS, including the contractor portal. More general training and information sessions have also been held to cater for a broader APS audience.
- Communication mechanisms available through the Department of Finance, to inform procurement officers and Commonwealth buyers of the IPP, including the expansion of the MMR. This includes:
 - articles in the monthly Procurement Bulletin, circulated to around 2,500 government officials involved in procurement;
 - six monthly presentations to the Senior Procurement Officials Reference Group (SPORG), comprising senior officials from all agencies subject to the Commonwealth Procurement Rules;
 - coverage of IPP-related issues in the Department of Finance monthly outreach sessions with portfolio agencies; and
 - inclusion of IPP related content into the Department of Finance procurement clause bank.

While the NIAA acknowledges more can always be done to promote the policy and build compliance with reporting requirements, we maintain that the approach taken to date amounts to far more than simple or passive publicising of the MMR. The NIAA will continue to build on our current efforts and work closely with portfolio entities, major contractors and Indigenous businesses to enhance compliance with the MMR requirements.

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As a Procurement-Connected Policy linked to the Commonwealth Procurement Rules, all Commonwealth officers are bound to comply with the IPP. It is incumbent on all participants in the system, particularly Commonwealth officers, to seek continuous improvement in this large scale and generational change that will benefit all Australians, and particularly Aboriginal and Torres Strait Islander people.

Moving forward

The NIAA agrees with each of the recommendations and will increase implementation efforts in the lead up of the expansion of the MMRs from 1 July 2020. Detail on the actions to be taken are outlined in the NIAA's response to each of the recommendations.

Yours sincerely



RAY GRIGGS
Chief Executive Officer

14 January 2020

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Department of Defence



Australian Government

Department of Defence

PO Box 7900 CANBERRA BC ACT 2610

EC20-000070

Mr Grant Hehir
Auditor-General
PO BOX 707
CANBERRA ACT 2601

Dear Mr Hehir

Australian National Audit Office (ANAO) Section 19 Proposed Report: Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

Thank you for your correspondence of 5 December 2019, which contained the Proposed Report for the ANAO performance audit – *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*.

Defence appreciates the opportunity to review and comment on the Proposed Report.

Defence acknowledges the findings contained in the audit report on *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements* and has agreed to the recommendations. Overall, Defence considers the findings presented by the ANAO are weighted toward observations of non-compliance with limited consideration given to better practice. The Defence Indigenous Procurement Strategy outlines Defence's commitment and pathway to delivering Indigenous Procurement Policy outcomes. As the Commonwealth's largest procurer, Defence continues to exceed portfolio targets for contracts awarded to Indigenous suppliers. A number of Defence contracts voluntarily include mandatory minimum requirements, despite being exempt or categorised outside of a specified industry sector. Inclusion of this information would present a more balanced view of Defence's management of Aboriginal and Torres Strait Islander participation targets in major procurements.

Defence is proud to have been awarded the 2017 and 2019 Supply Nation Government Member of the Year award, in recognition of its significant commitment towards supporting the long term growth and sustainability of the Indigenous business sector. Defence will continue working with National Indigenous Australians Agency (NIAA) to improve the implementation and monitoring of the Mandatory Minimum Requirements (MMRs).

Attached to this letter are Defence's Proposed Amendments, Editorials and Comments at Annex A, Response to Potential Recommendations at Annex B and Defence Summary Response at Annex C. These constitute Defence's formal response to the Proposed Report.

2

Defence remains committed to assisting you with the successful completion of this audit. We look forward to the upcoming tabling of the Final Report.

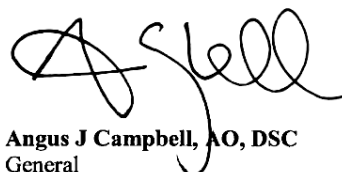
Our point of contact is ANAO Liaison Officer, [REDACTED], who can be contacted by telephone on [REDACTED] or email: [REDACTED].

Yours sincerely



Greg Moriarty
Secretary

10 January 2020



Angus J Campbell, AO, DSC
General
Chief of the Defence Force

10 January 2020

Annexes:

- A. Defence's Proposed Amendments, Editorials and Comments
- B. Defence's Response to the Proposed Recommendations
- C. Defence Summary Response

Department of Education, Skills and Employment



Australian Government
**Department of Education,
Skills and Employment**

Our Ref: EC19-005173

Secretary
Dr Michele Bruniges AM

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Grant
Dear Mr Hehir

Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

Thank you for the opportunity to respond to the proposed Australian National Audit Office (ANAO) audit report on the Aboriginal and Torres Strait Islander Participation Targets in Major Procurements. I would like to thank the review team of the ANAO for their work and acknowledge the collaboration between both departments in the drafting of this report.

I am pleased to advise that work has commenced in my department to address recommendations made within this report. This audit has provided the department with the opportunity to reflect on the strategies and policies that enable us to deliver on our commitment to increasing our engagement with Indigenous owned businesses. The department, through the Indigenous Procurement Policy and our Reconciliation Action Plan, is committed to effectively leveraging procurement activities to drive demand for Indigenous goods and services, stimulate Indigenous economic development and grow the Indigenous business sector.

I have enclosed the department's summary response and responses to recommendations as requested.

If you would like further information on the department's response, please contact Craig Boyd, Chief Financial Officer, on (02) 6240 9384.

Yours sincerely

Michele Bruniges

Dr Michele Bruniges AM
/ February 2020

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Department of Home Affairs



Australian Government
Department of Home Affairs

Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
Canberra ACT 2601

Dear Mr Hehir

Thank you for the opportunity to provide comments on the Australian National Audit Office's (ANAO) report on *Aboriginal and Torres Strait Islander Employment Targets in Major Procurement*.

The Department of Home Affairs (the Department) welcomes this ANAO performance audit and acknowledges the valuable role the ANAO plays in providing independent insights into potential areas of further improvement.

As noted in the report, there is scope for central procurement teams to increase the level of guidance and support provided to officers managing MMR procurements. The Department agrees with the three recommendations made to audited entities aimed at increasing compliance with the MMRs.

In line with the recommendations, the Department will update its guidance and processes to support compliance with the MMRs in both the procurement and contract management phase. The Department will also promote the requirements and ensuing guidance through various internal communications channels.

In terms of the 11 of 14 audited Contracts which were transferred from the Department of Education to the Department after the procurement phase was completed, the Department will aim to ensure that all MMR requirements are complied with when they are re-tendered in the coming years.

The Department would like to thank the ANAO for its collaborative approach throughout the audit process. We will continue to progress implementation of the recommendations as a priority.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Brown'.

Mark Brown
Chief Audit Executive

3 January 2020

Department of Infrastructure, Transport, Regional Development and Communications⁶⁸



Australian Government
Department of Infrastructure, Transport,
Cities and Regional Development

Acting Secretary
Pip Spence

PDR ID: EC19-001154

Mr Grant Hehir
Auditor-General
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

Auditor-General Proposed Audit Report on Aboriginal and Torres Strait Islander Participation Targets in Major Procurements

Thank you for providing the Department of Infrastructure, Transport, Cities and Regional Development (the Department) with the opportunity to comment on the Australian National Audit Office's (ANAO's) proposed audit report on Aboriginal and Torres Strait Islander Participation Targets in Major Procurements.

The Department acknowledges the ANAO's overall conclusions and welcomes the recommendations. The Department's summary response and response to each of the recommendations is attached.

Please contact Mr Brad Medland, Chief Financial Officer on 02 6274 6260 if you would like to discuss this response.

I would like to thank the ANAO for the cooperation of the audit team and the professional manner in which the audit was conducted.

Yours sincerely

Pip Spence

10 January 2020

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⁶⁸ Note: the department's name changed through a machinery-of-government change on 1 February 2020, after its response was received.

Appendix 2 MMR industry coverage

Table A.1: 2015 and 2020 MMR industry category coverage

UNSPSC	Description
MMR categories for contracts resulting from approaches to market from 1 July 2015	
70000000	Farming and fishing and forestry and wildlife
72000000	Building and Facility Construction and Maintenance Services
76000000	Industrial cleaning services
78000000	Transportation, storage and mail services
82000000	Editorial and design and graphic and fine art services
86000000	Education and training services
90000000	Travel and food and lodging and entertainment services
93000000	Politics and civic affairs services
MMR categories for contracts commencing from 1 July 2020	
64000000	Financial instruments, products, contracts and agreements
71000000	Mining and oil and gas services
73000000	Industrial production and manufacturing services
77000000	Environmental services
80000000	Management and business professionals and administrative services*
81000000	Engineering and research and technology based services
84000000	Financial and insurance services*
85000000	Healthcare services
91000000	Personal and domestic services
92000000	National defence and public order and security and safety services*
94000000	Organisations and clubs
* sub-categories exempt from the MMRs	
80131500	Lease and rental of property or building
80131501	Land leases
80131503	Residential rental
84130000	Insurance and retirement services
84131800	Retirement funds
92110000	Military services and national defence
92111700	Military science and research

Source: PM&C, *United Nations standard products and service codes* [Internet], 26 November 2018, available from: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/united-nations-standard-products-and-service-codes> [accessed 22 November 2019]; and PM&C, *Changes to the Indigenous Procurement Policy* [Internet], 13 February 2019, available from: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/changes-indigenous-procurement-policy> [accessed 22 November 2019].

Appendix 3 MMR coverage by portfolio

Table A.2: Number and total value of 2017–18 and 2018–19 AusTender contracts triggering the 2015 and 2020 MMR industry coverage criteria by portfolio^a

Portfolio	Number of contracts		Total value of contracts	
	2015 MMR categories	2020 MMR categories	2015 MMR categories	2020 MMR categories
Agriculture	2	9	\$29,902,793	\$208,486,993
Attorney-General's	2	6	\$32,699,074	\$85,364,745
Communications and the Arts	–	–	–	–
Defence	86	207	\$6,183,455,204	\$16,177,412,927
Education	3	9	\$47,393,883	\$175,091,486
Employment, Skills, Small and Family Business	11	12	\$132,515,266	\$177,615,266
Environment and Energy	5	13	\$55,245,099	\$147,027,515
Finance	5	13	\$113,303,912	\$302,897,743
Foreign Affairs and Trade	16	41	\$609,213,438	\$1,906,320,265
Health	5	17	\$172,897,253	\$3,940,764,300
Home Affairs	10	32	\$262,312,396	\$2,218,694,958
Industry, Innovation and Science	2	5	\$145,019,217	\$203,780,567
Infrastructure, Transport, Cities and Regional Development	5	15	\$69,026,449	\$258,690,580
Parliamentary Departments	1	1	\$45,978,936	\$45,978,936
Prime Minister and Cabinet	4	5	\$36,522,804	\$45,846,896
Services Australia	6	29	\$441,938,208	\$2,490,354,103
Social Services	5	10	\$580,055,627	\$645,573,028
Treasury	8	23	\$188,203,738	\$828,987,863
Veterans' Affairs	–	6	–	\$87,920,403
Total	176	453	\$9,145,683,296	\$29,946,808,572

Note a: Some contracts will be exempt from the MMRs for reasons discussed in Chapter 2.

Source: ANAO analysis of non-corporate Commonwealth entity AusTender contract notice data.

Appendix 4 ANAO compliance testing sample

Table A.3: Active MMR contracts included in the ANAO's compliance testing

Reference	Project description	Start date	End date	Value	Remote?
Defence					
CN3384573	Larrakeyah Barracks – Redevelopment and Facilities to Support Naval Operations in the North	10/10/2016	1/01/2019	\$9,943,897	Yes
CN3396435	Puckapunyal Military Area – High Voltage Upgrade Project	13/12/2016	30/08/2019	\$29,488,828	No
CN3428226	LAND 17 Phase 1B/1C – Storage and Simulator Facilities (Works Package 2 and 3)	26/05/2017	30/06/2020	\$25,206,316	No
CN3432938	LAND 17 Phase 1B/1C – Storage and Simulator Facilities (Works Package 1)	6/06/2017	23/06/2020	\$30,747,188	Yes
CN3442425	Cultana Training Area – Redevelopment Phase 1	7/07/2017	30/09/2019	\$61,640,559	Yes
CN3455664	JP500 Phase 2a – Electronic Warfare Operational Support Facility	7/09/2017	1/12/2019	\$19,160,939	No
CN3455684	Centralised Processing Facilities Project	7/09/2017	31/12/2019	\$10,472,156	Yes
CN3461374	Woomera Range – Safety and Control System Remediation Project	26/09/2017	1/05/2019	\$44,709,063	Yes
CN3461492	Gallipoli Barracks – Electrical Remediation Works	5/10/2017	28/05/2019	\$11,039,427	No
CN3461539	LAND 155 Enhanced Gap Crossing Capability Facilities Project (Works Package 2)	4/10/2017	29/06/2018	\$12,149,430	Yes
CN3461555	Shoalwater Bay Training Area – Road Maintenance	5/10/2017	31/05/2019	\$8,621,374	No
CN3468382	Carbarlah & Oakey Bases – Electrical and Infrastructure Works	2/11/2017	31/05/2018	\$10,176,265	No
CN3479738	LAND 500 Phase 1 – Remediation of Tactical Land Electronic Warfare Facilities	8/09/2017	30/06/2019	\$13,760,417	No
CN3484516	HMAS Cerberus – Redevelopment Project	19/12/2017	31/12/2026	\$509,410,000	No
CN3496615	Woomera – Works Package	22/03/2018	28/05/2020	\$11,995,323	Yes
CN3505681	Army Technical Trades Training	7/05/2018	30/06/2023	\$86,066,027	No

Reference	Project description	Start date	End date	Value	Remote?
CN3533629	Hobart Class Guided Missile Destroyer Training Services	18/07/2018	30/09/2022	\$19,959,000	No
CN3554337	SEA 1654 Phase 3 – Maritime Operational Support Capability (Sydney Facility Works)	8/10/2018	30/06/2021	\$26,521,000	No
CN3555081	Defence Childcare Program	30/07/2018	31/12/2025	\$17,291,624	Yes
CN3559094	Joint Health Command Garrison Facilities Upgrade Project (Albury-Wodonga Health Centre)	9/11/2018	23/12/2023	\$15,846,118	No
CN3559927	Robertson Barracks – WONCO Wing Demountable Replacement	20/11/2018	26/05/2020	\$8,247,598	Yes
CN3559993	Joint Health Command Garrison Facilities Upgrade Project (Holsworthy Health Centre)	9/11/2018	1/01/2020	\$43,062,309	No
CN3562032	Lone Pine Barracks – Building Refurbishment and Maintenance Works	30/11/2018	26/05/2020	\$9,900,393	No
CN3562047	Joint Health Command Garrison Facilities Upgrade Project (Campbell Health Centre)	9/11/2018	1/12/2021	\$17,212,305	No
CN3565165	HMAS Creswell – Mess and Building Works	10/01/2019	25/05/2021	\$12,395,572	No
CN3567423	Woomera – Civil Works (Edinburgh Defence Precinct)	22/01/2019	26/05/2020	\$18,168,206	Yes
CN3569632	Shoal Water Bay Training Area – Australia-Singapore Military Training Initiative Facilities Project	8/08/2018	30/06/2027	\$28,976,233	No
CN3573607	RAAF Curtin – Defence Fuel Installation Remediation	21/02/2019	26/05/2022	\$10,272,897	Yes
CN3575308	Borroloola – Transitional Accommodation Project	14/02/2019	16/07/2020	\$7,994,689	Yes
CN3590263	Robertson Barracks – Rowell Centre Remediation Works	6/05/2019	26/05/2021	\$8,614,999	Yes
CN3596853	AIR 2025 – Jindalee Operational Radar Network Facilities Project	3/05/2019	31/07/2021	\$48,923,600	Yes
Education					
CN3356794	Inclusion Development Fund Manager	1/07/2016	30/09/2021	\$15,378,458	No
CN3356796	Inclusion Agency – NSW & ACT	1/07/2016	30/09/2021	\$73,443,377	Yes
CN3356797	Inclusion Agency – WA	1/07/2016	30/09/2021	\$20,579,858	Yes
CN3356798	Inclusion Agency – NT	1/07/2016	30/09/2019	\$8,674,428	Yes

Reference	Project description	Start date	End date	Value	Remote?
CN3356800	Inclusion Agency – SA	1/07/2016	30/09/2021	\$16,272,204	Yes
CN3356801	Inclusion Agency – Qld	1/07/2016	30/09/2021	\$41,854,656	Yes
CN3356802	Inclusion Agency – Vic.	1/07/2016	30/09/2021	\$47,312,263	No
CN3584447	High Achieving Teachers Program	26/03/2019	31/12/2023	\$16,423,000	Yes
Employment					
CN3436765	Skills for Education and Employment (SEE) – Various locations in NT, Qld and WA	1/07/2017	30/06/2020	\$13,746,311	Yes
CN3436768	SEE – Various locations in Qld	1/07/2017	30/06/2020	\$52,511,005	Yes
CN3436786	SEE – Various locations in SA and distance education	1/07/2017	30/06/2020	\$19,479,389	Yes
CN3436801	SEE – Various locations in Vic.	1/07/2017	30/06/2020	\$21,417,267	No
CN3436802	SEE – Various locations in Qld	1/07/2017	30/06/2020	\$9,879,682	No
CN3436804	SEE – Various locations in Vic.	1/07/2017	30/06/2020	\$17,302,136	No
CN3436806	SEE – Various locations in ACT, NSW, Qld, SA, Tas., Vic. and WA	1/07/2017	30/06/2020	\$27,442,503	No
CN3436808	SEE – Various locations in NSW	1/07/2017	30/06/2020	\$47,138,572	No
CN3436809	SEE – Various locations in NSW	1/07/2017	30/06/2020	\$25,918,445	No
CN3560813	Skills Checkpoint for Older Workers Program	23/11/2018	30/06/2022	\$7,958,203	Yes
CN3582604	Trade Recognition Australia Skills Assessment Services	27/02/2019	30/06/2022	\$12,410,713	No
CN3582605	Trade Recognition Australia Skills Assessment Services	28/02/2019	30/06/2022	\$61,831,945	Yes
Home Affairs					
CN3435408	Adult Migrant English Program (AMEP) – Various locations in Tas.	1/07/2017	30/06/2020	\$11,370,657	No
CN3435410	AMEP – Perth South	1/07/2017	30/06/2020	\$23,293,884	No
CN3435411	AMEP – Various locations in Vic.	1/07/2017	30/06/2020	\$37,263,838	No
CN3435423	AMEP – Various locations in NT, Qld and WA	1/07/2017	30/06/2020	\$8,842,103	Yes
CN3436769	AMEP – Various locations in NSW and distance education	1/07/2017	30/06/2020	\$46,755,465	Yes
CN3436785	AMEP – Various locations in SA	1/07/2017	30/06/2020	\$45,845,151	Yes
CN3436794	AMEP – Various locations in NSW and Tas.	1/07/2017	30/06/2020	\$76,285,892	No

Reference	Project description	Start date	End date	Value	Remote?
CN3436795	AMEP – Various locations in Vic.	1/07/2017	30/06/2020	\$123,382,934	No
CN3436796	AMEP – Perth North	1/07/2017	30/06/2020	\$33,609,147	No
CN3436798	AMEP – Various locations in Qld	1/07/2017	30/06/2020	\$113,456,818	Yes
CN3436799	AMEP – Various locations in NSW and distance education	1/07/2017	30/06/2020	\$250,891,633	Yes
CN3447371	Brisbane Immigration Transit Accommodation Facility Upgrade	20/07/2017	28/08/2018	\$12,096,462	No
CN3474594	Melbourne Immigration Transit Accommodation Redevelopment Project	20/11/2017	24/09/2019	\$38,391,432	No
CN3561773	Return and Reintegration Assistance Program	1/10/2018	30/09/2020	\$9,955,603	Yes
Infrastructure					
CN3423888	Indian Ocean Territories Airport Management Services	1/10/2017	30/09/2022	\$15,884,900	Yes
CN3437108	Remote Air Services Subsidy Scheme	1/08/2017	31/07/2019	\$8,147,088	Yes
NIAA					
CN3411671	Low Aromatic Fuels – Production, Transport and Storage	1/07/2017	30/06/2020	\$9,339,000	Yes
CN3411717	Low Aromatic Fuels – Production, Transport and Storage	20/05/2017	30/06/2020	\$31,233,400	Yes

Source: IPP Reporting Solution.