

Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements

Department of Infrastructure, Transport, Regional Development and
Communications

National Indigenous Australians Agency

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Canberra ACT
23 April 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 in the Department of Infrastructure, Transport, Regional Development and Communications and the National Indigenous Australians Agency. The report is titled *Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements*. 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

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Contents

| | |
|---|-----------|
| Summary and recommendations..... | 7 |
| Background | 7 |
| Conclusion | 8 |
| Supporting findings..... | 8 |
| Recommendations..... | 9 |
| Summary of entity response..... | 10 |
| Key messages from this audit for all Australian Government entities | 11 |
| Audit findings..... | 13 |
| 1. Background | 14 |
| Introduction | 14 |
| 2009 National Partnership on Indigenous Economic Participation | 15 |
| Current intergovernmental initiatives with Aboriginal and Torres Strait Islander participation targets..... | 15 |
| 2017 Senate Inquiry into the Community Development Program | 17 |
| Rationale for undertaking the audit | 18 |
| Audit approach | 19 |
| 2. Coordinating participation targets..... | 20 |
| Are opportunities being identified for including participation targets in intergovernmental agreements? | 20 |
| Have frameworks been established for including participation targets in intergovernmental agreements? | 26 |
| Have jurisdictions implemented the Council of Australian Governments' commitments regarding participation target policies?..... | 31 |
| 3. Implementing participation targets | 34 |
| Are appropriate participation targets being negotiated for projects under intergovernmental agreements? | 35 |
| Have supply-side strategies been implemented to support the achievement of targets?..... | 39 |
| Have appropriate reporting arrangements been established? | 43 |
| Have entities established arrangements to gain appropriate assurance that participation targets are being met? | 47 |
| Appendices | 53 |
| Appendix 1 Entity responses | 54 |
| Appendix 2 Draft Indigenous Participation Framework..... | 56 |
| Appendix 3 Jurisdictional Aboriginal and Torres Strait Islander procurement policies | 57 |
| Appendix 4 2019 Land Transport Infrastructure Projects NPA projects and participation targets | 58 |
| Appendix 5 Northern Australia Roads Programs participation outcomes..... | 60 |



Audit snapshot

Auditor-General Report No.34 2019–20

Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements



Why did we do this audit?

- ▶ Over the past five years the Australian Government has increasingly included Aboriginal and Torres Strait Islander participation target requirements in intergovernmental agreements.
- ▶ The audit was undertaken to provide assurance that these requirements are being administered effectively for projects funded under these agreements.



What did we find?

- ▶ The administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements has been partially effective.
- ▶ An appropriate framework has been developed for the Land Transport Infrastructure Projects NPA.
- ▶ Further work is needed to finalise a framework for City and Regional Deals, public reporting mechanisms and appropriate risk-based assurance arrangements for agreements.



Key facts

- ▶ Current intergovernmental agreements with participation targets include:
 - Northern Australia Roads Programs;
 - City and Regional Deals;
 - 2019 Land Transport Infrastructure Projects National Partnership Agreements (NPA); and
 - 2019 Northern Territory Remote Housing NPA.



What did we recommend?

- ▶ The Auditor-General made three recommendations aimed at:
 - finalising a framework for City and Regional Deal participation targets;
 - establishing annual reporting on participation target outcomes; and
 - establishing appropriate risk-based assurance arrangements.
- ▶ Entities agreed to the recommendations.

\$33.5 billion

Funding expected to be delivered to states and territories under the 2019 Land Transport Infrastructure Projects NPA and City Deals from 2019–20 to 2022–23.

60%

Estimated proportion of NPA funding with Aboriginal and Torres Strait Islander participation target requirements from 2019.

1

Number of intergovernmental projects examined that had publicly reported on participation target outcomes.

Summary and recommendations

Background

1. Since 2009 the Australian Government has sought to generate economic opportunities for Aboriginal and Torres Strait Islander people through intergovernmental agreements with state and territory governments. Primarily this has occurred through national partnership agreements (NPAs) and project agreements negotiated under the 2009 *Intergovernmental Agreement on Federal Financial Relations*, or through initiatives delivered under such agreements.
2. Over the past five years, a common approach has been to incorporate minimum targets for Aboriginal and Torres Strait Islander participation. Such targets usually involve direct employment targets, targets for the use of Aboriginal and Torres Strait Islander businesses as suppliers, or a combination of both. Current intergovernmental initiatives with participation target requirements include:
 - the Northern Australia Roads and Beef Roads Programs (Northern Australia Roads Programs), City and Regional Deals, and the 2019 Land Transport Infrastructure Projects NPA, which are managed by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
 - the 2019 Northern Territory Remote Housing NPA, which is managed by the National Indigenous Australians Agency (NIAA).
3. In 2017 the Senate Finance and Public Administration References Committee held an inquiry into the Community Development Program. The committee recommended that the Australian National Audit Office (ANAO) conduct an audit of the use of, and compliance with, Aboriginal and Torres Strait Islander employment targets in state and territory contracts in remote locations where the Australian Government has made a funding contribution for a particular purpose.

Rationale for undertaking the audit

4. Aboriginal and Torres Strait Islander participation targets are increasingly being applied to major projects funded by the Australian Government through intergovernmental agreements. To achieve the government's policy objectives, effective frameworks are needed to coordinate the use of such targets, and entities implementing targets need to ensure they are set and monitored appropriately. It was timely to undertake an audit of the administration of participation targets as the number and geographical breadth of projects with target requirements are expected to grow in coming years due to the inclusion of target requirements in the 2019 Land Transport Infrastructure Projects NPA. The audit also included a focus on application of targets in remote areas, to address the Senate Finance and Public Administration References Committee's recommendation that the ANAO conduct an audit of the use of, and compliance with, employment targets in remote contracts.

Audit objective and criteria

5. The audit objective was to assess the effectiveness of the administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements in achieving policy objectives.

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

- Are participation target requirements for intergovernmental agreements being coordinated effectively?
- Are participation targets being effectively implemented in intergovernmental agreements?

Conclusion

7. The administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements has been partially effective in achieving policy objectives. Entities are increasingly using Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements. While administration of participation targets is improving, entities need to improve reporting and assurance arrangements to be effective.

8. Infrastructure's and NIAA's coordination of participation target requirements for intergovernmental agreements has become largely effective. Infrastructure, in consultation with NIAA and the Department of Education, Skills and Employment, established an appropriate Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA. This can be used as a model for other agreements that do not have appropriate frameworks, such as City and Regional Deals. NIAA has not implemented the Council of Australian Governments' commitment to report annually on the outcomes of jurisdictional procurement policies.

9. Infrastructure's and NIAA's implementation of participation targets in intergovernmental agreements is partially effective. Appropriate participation targets are being negotiated for agreements and there are early indications that entities are collaborating on supply-side strategies to support the achievement of targets. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA require more transparent reporting of outcomes. Further work is needed to establish public reporting mechanisms and appropriate risk-based assurance arrangements for agreements.

Supporting findings

Coordinating participation targets

10. While limited progress was made under the 2009 Indigenous Economic Participation NPA, since 2014 significant opportunities have been identified for including Aboriginal and Torres Strait Islander participation targets in intergovernmental agreements. After first implementing participation targets in certain infrastructure initiatives in remote and regional areas, from 2019 the government extended the scope of such targets to cover most major intergovernmental infrastructure projects receiving Australian Government funding.

11. Frameworks for including participation targets have been developed for some agreements but not all. An appropriate participation target framework has been established for the 2019 Land Transport Infrastructure Projects NPA, building on lessons learnt from the Northern Australia Roads Programs framework. Relevant frameworks are currently being developed for the 2019

Northern Territory Remote Housing NPA. An appropriate framework has not been established for City and Regional Deals.

12. Most jurisdictions have adopted Aboriginal and Torres Strait Islander procurement policies. In February 2018 the Council of Australian Governments agreed to publish jurisdictional policies and outcomes annually, but NIAA has not implemented this commitment.

Implementing participation targets

13. Infrastructure and NIAA are negotiating appropriate participation targets for projects under intergovernmental agreements. Targets have generally been agreed based on the Aboriginal and/or Torres Strait Islander working-age populations of the areas in which projects will be delivered. Infrastructure has agreed lower targets for some land transport infrastructure projects based on consideration of local factors and potential barriers to achieving outcomes.

14. There are early indications that entities are working together to identify supply-side strategies to support the achievement of participation targets. Frameworks developed for the Northern Australia Roads Programs and 2019 Land Transport Infrastructure Projects NPA reference supply-side strategies. Consideration has also been given to supply-side supports for City and Regional Deals and the 2019 Northern Territory Remote Housing NPA.

15. Appropriate reporting arrangements for intergovernmental agreements with participation targets have not yet been established. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA have committed to more transparent reporting of outcomes. However, for all agreements further work is needed to establish appropriate public reporting mechanisms, and to feed reported information into the Council of Australian Governments' annual reporting on outcomes from jurisdictional policies.

16. Appropriate assurance arrangements have not been established for the Northern Australian Roads Programs, City and Regional Deals and the 2019 Northern Territory Remote Housing NPA. The participation target framework developed for the 2019 Land Transport Infrastructure NPA has the potential to provide adequate assurance.

Recommendations

Recommendation no.1 Paragraph 2.35

Department of Infrastructure, Transport, Regional Development and Communications finalise a framework, in consultation with the National Indigenous Australians Agency and other relevant entities, to support the implementation of Aboriginal and Torres Strait Islander participation targets in City and Regional Deals.

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

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.2
Paragraph 2.53

National Indigenous Australians Agency implement the Council of Australian Governments' commitment to publish jurisdiction-specific procurement policies and Aboriginal and Torres Strait Islander employment and business outcomes annually.

National Indigenous Australians Agency response: *Agreed.*

Recommendation no.3
Paragraph 3.62

Department of Infrastructure, Transport, Regional Development and Communications and National Indigenous Australians Agency ensure appropriate risk-based assurance arrangements are in place for intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements.

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

National Indigenous Australians Agency response: *Agreed.*

Summary of entity response

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

Department of Infrastructure, Transport, Regional Development and Communications

The Department of Infrastructure, Transport, Regional Development and Communications (the Department) welcomes the ANAO report and agrees with the recommendations.

The report recognises that a commitment to Aboriginal and Torres Strait Islander participation targets has been included in all City and Regional Deals. The Department is well advanced in developing a principles based framework to support the implementation of these targets and risk based assurance of the commitments made.

City and Regional Deals are a genuine partnership between the three levels of government and the community to work towards a shared vision for productive and liveable cities and regions. City and Regional Deals work to align the planning, investment and governance necessary to accelerate growth and job creation, stimulate urban and regional renewal and drive economic reforms. The uniqueness and diversity of cities and regions across Australia means that we will get the best outcomes for each place by tailoring our approach to designing and delivering Deals. Given this, the specific arrangements for each City or Regional Deal and their component commitments may vary.

However, the Department recognises the benefit of a broad Framework for addressing Aboriginal and Torres Strait Islander participation targets.

The delivery mechanisms for Deal investments are also made in the context of constitutional and legal requirements around use of Commonwealth funds. Where appropriate, preference is given to using existing programs and/or intergovernmental arrangements, such as the Land Transport Infrastructure National Partnership Agreement (NPA), or programs through other agencies. The Framework and future targets established for City and Regional Deals will be developed in that context, using existing program arrangements where these are in place.

The Department is pleased to note the ANAO finding that the Indigenous Employment and Supplier-use Infrastructure Framework for the 2019 NPA should be used as a model for other intergovernmental agreements.

The Indigenous Employment and Supplier-use Infrastructure Framework is a result of three years of consultation with Indigenous stakeholders, including the Prime Minister's Indigenous Advisory Council, Indigenous representative bodies, land councils and businesses across Australia. It builds on the Department's earlier efforts from the Northern Australia Roads and Beef Roads Program, and the Western Sydney and Townsville City Deals.

The Department remains committed to closing the gap between Indigenous and non-Indigenous Australians by ensuring Indigenous Australians share in the economic opportunities created by Australia's infrastructure investment, including through the 10 year rolling Infrastructure Investment Program and City and Regional Deals.

National Indigenous Australians Agency

The National Indigenous Australians Agency (NIAA) welcomes the Australian National Audit Office (ANAO) report on Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements and supports the recommendations of the report.

It is pleasing to see the ANAO has highlighted the Indigenous Employment and Supplier-use Infrastructure Framework, jointly developed by the (now) NIAA and the (now) Department of Infrastructure, Transport, Regional Development and Communications for the National Partnership Agreement on Land Transport Infrastructure Projects, as a model for other agreements that do not have such frameworks in place.

In order to make good on the Agreements, all parties, including governments and the private sector, need to assist in developing the supply of Indigenous workers and businesses (where needed) and ensure effective assurance mechanisms are put in place.

Key messages from this audit for all Australian Government entities

18. 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.

Policy/program design

- When developing a social procurement policy, it is good practice to develop a framework that outlines: how the policy should be applied; how outcomes will be monitored and reported; expectations regarding compliance and assurance activities; and when and how the policy's effectiveness will be reviewed. For the 2019 Land Transport Infrastructure NPA, Infrastructure and NIAA (previously the Department of the Prime Minister and Cabinet) collaborated to develop an appropriate framework for applying Aboriginal and Torres Strait Islander participation targets to projects funded under the NPA (the Indigenous Employment and Supplier-Use Infrastructure Framework).

Performance and impact measurement

- For intergovernmental agreements negotiated under the Federal Financial Relations framework, governments have established key policy objectives relating to enhanced accountability and transparency. To meet these objectives, it is important to establish consistent, accessible public reporting on the achievement of outcomes and outputs.

Governance and risk management

- To ensure reporting on social procurement policies is correct and intended outcomes are achieved, entities should establish appropriate risk-based controls and assurance activities, such as:
 - outlining evidentiary requirements in policies (for example, processes for verifying the indigeneity of individuals and businesses) and resulting contracts;
 - requiring contractors to declare that reporting is accurate and communicating the consequences of making false or misleading declarations;
 - requesting documentation from contractors to support reported participation outcomes (to minimise burden, such requests could be made on a targeted or random basis); and
 - undertaking targeted or random compliance audits of contractors' records (to minimise cost, such audits could be combined with other contract management activities, such as site visits or financial audits).

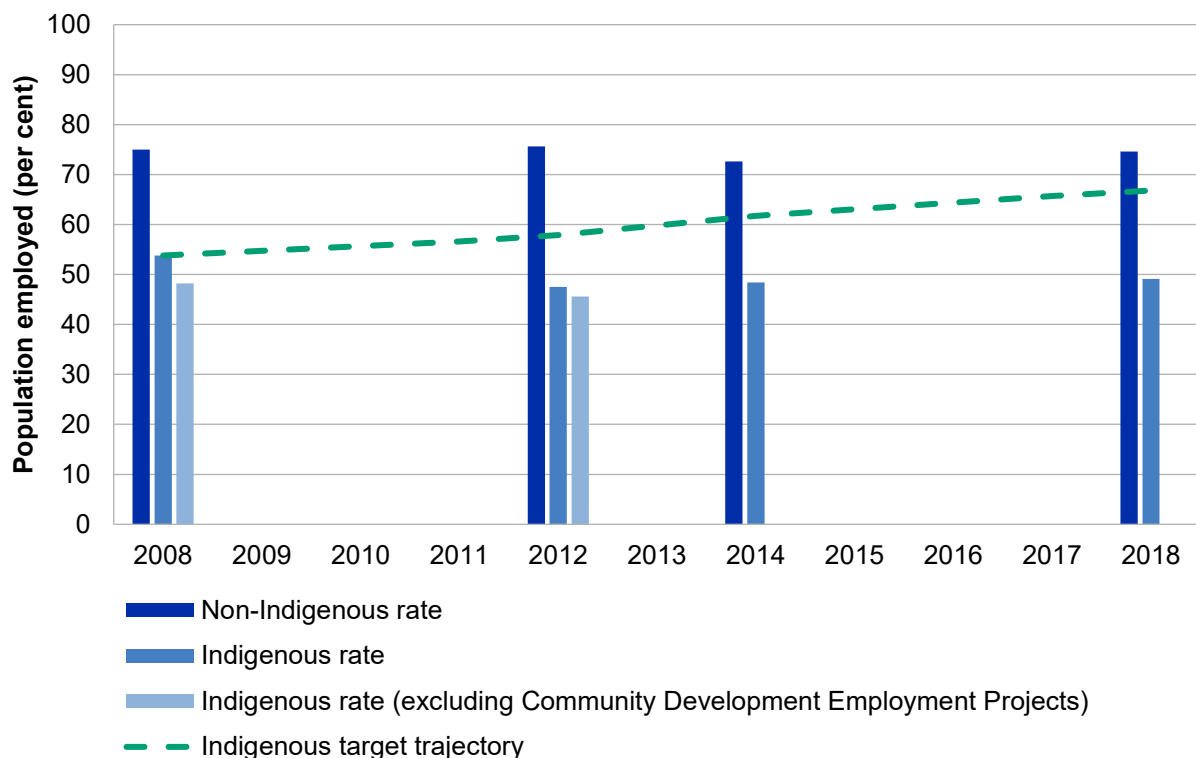
Audit findings

1. Background

Introduction

1.1 Reducing the disparity between Aboriginal and Torres Strait Islander¹ 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).²

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

1 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.

2 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'.³

1.3 Since 2009 the Australian Government has sought to generate economic opportunities for Aboriginal and Torres Strait Islander people through intergovernmental agreements with state and territory governments. Primarily this has occurred through national partnership agreements (NPAs) and project agreements negotiated under the 2009 *Intergovernmental Agreement on Federal Financial Relations*⁴, or through initiatives delivered under such agreements.

2009 National Partnership on Indigenous Economic Participation

1.4 In 2009, to contribute to COAG's target of halving the gap in employment outcomes by 2018, Australian governments committed to the Indigenous Economic Participation NPA. The NPA, which expired in June 2013, included four key elements:

- creating sustainable employment in areas of government service delivery that had previously relied on the Community Development Employment Projects program⁵;
- strengthening government procurement policies across all jurisdictions to maximise Aboriginal and Torres Strait Islander employment;
- incorporating Aboriginal and Torres Strait Islander workforce strategies into all new major COAG reforms contributing to the Closing the Gap targets; and
- reviewing all public sector Aboriginal and Torres Strait Islander employment and career development strategies to increase employment to reflect population share by 2015.⁶

Current intergovernmental initiatives with Aboriginal and Torres Strait Islander participation targets

1.5 Since the expiry of the NPA in 2013, a common approach to generating economic opportunities through intergovernmental agreements has been to incorporate minimum targets for Aboriginal and Torres Strait Islander participation. Such targets usually involve direct employment targets, targets for the use of Aboriginal and Torres Strait Islander businesses as

3 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.

4 NPAs provide for funding from the Australian Government to states and territories to support the delivery of specified outputs or projects, to facilitate reforms or to reward those jurisdictions that deliver on nationally significant reforms. Project agreements are a specific type of NPA for low value and/or low risk projects. In addition to NPAs, the Australian Government provides specific purposes payments to states and territories under National Agreements (such as the National Health Reform and Quality Schools funding). NPAs represent approximately 20 per cent of specific purposes payments to states and territories.

5 The Community Development Employment Projects program operated between 1977 and 2012, providing employment and training opportunities to job seekers in remote communities on community development projects. It was replaced by the Remote Jobs and Communities Program in 2012, which was replaced by the Community Development Program in 2015.

6 COAG, *National Partnership Agreement on Indigenous Economic Participation* [Internet], 2008, pp. 5–7, available from: http://www.federalfinancialrelations.gov.au/content/npa/skills/national-partnership/past/economic_participation_NP.pdf [accessed 2 December 2019].

suppliers, or a combination of both.⁷ Current intergovernmental initiatives with participation target requirements include:

- the Northern Australia Roads and Beef Roads Programs, City and Regional Deals, and the 2019 Land Transport Infrastructure Projects NPA, which are managed by the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure); and
- the 2019 Northern Territory Remote Housing NPA, which is managed by the National Indigenous Australians Agency (NIAA).⁸

Northern Australia Roads and Beef Roads Programs

1.6 The Australian Government's 2015 *Our North, Our Future: White Paper on Developing Northern Australia* stated that it would 'require Indigenous procurement targets for all road projects funded through this White Paper to drive Indigenous employment and supplier use'.⁹

1.7 The White Paper committed to two new roads programs:

- the Northern Australia Roads Program with \$600 million in funding over four years from 2016–17 to 2019–20 for priority projects in Northern Australia, including on the Great Northern Highway, Flinders Highway and Barkly Highway; and
- the Northern Australia Beef Roads Program with \$100 million in funding over four years from 2016–17 to 2019–20 to improve cattle supply chains in Northern Australia.

1.8 Under these programs, 37 projects are being funded across Queensland, Northern Territory and Western Australia. The 2018 Implementation Report for the White Paper noted: 'Through the inclusion of Indigenous employment and business use targets these projects are providing Indigenous Australians with greater opportunities to access employment opportunities or to start or expand businesses'.¹⁰

City and Regional Deals

1.9 As a component of the 2016 *Smart Cities Plan*, the Australian Government committed to negotiating City Deals with state, territory and local governments to 'deliver better outcomes through coordinated investment in cities of all sizes'.¹¹ In 2018 the government expanded the model to include Regional Deals for locations in regional and remote Australia.

1.10 As at February 2020, nine City and Regional Deals had been signed (the Townsville, Launceston, Western Sydney, Darwin, Hobart, Geelong and Adelaide City Deals and Barkly and Hinkler Regional Deals) and intentions to negotiate a further three deals have been announced (the Perth and South East Queensland City Deals and Albury-Wodonga Regional Deal). The nine deals

7 This report uses the term 'participation targets' to describe employment and supplier-use targets.

8 Prior to July 2019, the Department of the Prime Minister and Cabinet (PM&C) was the lead agency for Aboriginal and Torres Strait Islander Affairs and managed this NPA.

9 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, Commonwealth of Australia, 2015, p. 9.

10 Office of Northern Australia, *Developing Northern Australia – Implementation Report 2018*, Commonwealth of Australia, October 2018, p. 8.

11 PM&C, *Smart Cities Plan*, Commonwealth of Australia, 2016, p. 21.

signed to date have included Aboriginal and Torres Strait Islander participation target commitments.

2019 Land Transport Infrastructure Projects NPA

1.11 In July 2019 Australian governments entered into a new Land Transport Infrastructure Projects NPA, replacing the previous agreement that had been in place from 2014–2019. The agreement governs land transport infrastructure projects to which the Australian Government makes a contribution under the Infrastructure Investment Program.

1.12 The NPA includes the Indigenous Employment and Supplier-Use Infrastructure Framework, which applies to projects receiving \$7.5 million or more in Australian Government contributions (and some projects below \$7.5 million with strong potential to support participation outcomes). For projects subject to the framework, states and territories are required to develop Indigenous Participation Plans that include participation targets set to reflect the local Aboriginal and/or Torres Strait Islander working-age population.

2019 Northern Territory Remote Housing NPA

1.13 From 2008 to 2018 the Australian Government provided \$5.4 billion to state and territory governments under successive NPAs to provide remote housing for Aboriginal and Torres Strait Islander peoples. NIAA has reported that this contribution ‘delivered significant housing outcomes, including the construction of 4,000 new houses and another 7,500 existing houses refurbished across 300 remote Indigenous communities’.¹² Under these NPAs, the Australian Government provided over \$60 million in milestone payments to the Northern Territory, Queensland, South Australian and Western Australian governments for achievement of Aboriginal and Torres Strait Islander employment and supplier-use targets.

1.14 Following the expiry of the 2016–18 NPA, the Australian and Northern Territory governments entered into the 2019 Northern Territory Remote Housing NPA. The NPA provides \$1.1 billion in funding over 5 years from 2018–19 (\$550 million from each government) to improve housing outcomes for Aboriginal people living in remote communities. Works carried out under the NPA are, ‘to the maximum extent possible’, expected to be delivered by ‘local Aboriginal Territorians and their businesses’, with an initial minimum employment target of 40 per cent in 2019–20, rising to 46 per cent by 2022–23.¹³

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 the 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

12 NIAA, *National Partnership Agreement on Remote Indigenous Housing (2008-18)* [Internet], no date, available from: <https://www.niaa.gov.au/indigenous-affairs/land-and-housing/national-partnership-agreement-remote-indigenous-housing-2008-18> [accessed 2 December 2019].

13 NIAA, *National Partnership for Remote Housing Northern Territory (2018-23)* [Internet], no date, available from: <https://www.niaa.gov.au/indigenous-affairs/land-and-housing/national-partnership-remote-housing-northern-territory-2018-23> [accessed 2 December 2019].

in remote areas to engage in ‘work-like activities that benefit their community’.¹⁴ 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 two recommendations 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 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.

Recommendation 18: The committee recommends that the Australian Government review the guidelines for Indigenous employment and work closely with Council of Australian Governments in order to establish a uniform approach to the application of Indigenous Employment Targets to state, territory and Commonwealth contracts in remote locations. Such an approach should include a mandatory target that forms the basis of a key performance indicator which is then used to assess the performance of a contractor for a current contract and used to assess suitability for subsequent tenders.¹⁵

Rationale for undertaking the audit

1.17 Aboriginal and Torres Strait Islander participation targets are increasingly being applied to major projects funded by the Australian Government through intergovernmental agreements. To achieve the government’s policy objectives, effective frameworks are needed to coordinate the use of such targets, and entities implementing targets need to ensure they are set and monitored appropriately. It was timely to undertake an audit of the administration of participation targets as the number and geographical breadth of projects with target requirements are expected to grow in coming years due to the inclusion of target requirements in the 2019 Land Transport Infrastructure Projects NPA. The audit also included a focus on application of targets in remote areas, to address the Senate Finance and Public Administration References Committee’s recommendation that the ANAO conduct an audit of the use of, and compliance with, employment targets in remote contracts.

14 NIAA, *The Community Development Program (CDP)* [Internet], no date, available from: <https://www.niaa.gov.au/indigenous-affairs/employment/cdp> [accessed 2 December 2019].

15 Senate Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)* [Internet], 2017, Chapter 7, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report/c07 [accessed 11 December 2019].

Audit approach

Audit objective, criteria and scope

1.18 The audit objective was to assess the effectiveness of the administration of Aboriginal and Torres Strait Islander participation targets in intergovernmental funding agreements in achieving policy objectives.

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

- Are participation target requirements for intergovernmental agreements being coordinated effectively? (Chapter 2)
- Are participation targets being effectively implemented in intergovernmental agreements? (Chapter 3)

1.20 The audit focused on Infrastructure and NIAA's application of participation targets in four current intergovernmental initiatives: the Northern Australia Roads and Beef Roads Programs; City and Regional Deals; the 2019 Land Transport Infrastructure Projects NPA; and the 2019 Northern Territory Remote Housing NPA.

1.21 The ANAO also conducted a related performance audit examining the use of Aboriginal and Torres Strait Islander participation targets in major Australian Government procurements, which was tabled in February 2020.¹⁶ The related audit focused on the design, implementation and management of the mandatory minimum requirements for Aboriginal and Torres Strait Islander participation under the *Commonwealth Indigenous Procurement Policy*. These requirements apply to contracts with a value of \$7.5 million or above in specified industry categories.

Audit methodology

1.22 The audit methodology included:

- examining entity documentation;
- analysing relevant data, including documentation for projects being delivered under current intergovernmental agreements with participation target requirements; and
- interviewing officials, in Infrastructure, NIAA and relevant state and territory government entities, and other stakeholders, including contractors subject to participation target requirements.

1.23 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$283,000.

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

16 Auditor-General Report No.25 2019–20 *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*, 2020, available at: <https://www.anao.gov.au/work/performance-audit/aboriginal-and-torres-strait-islander-participation-targets-major-procurements> [accessed 17 April 2020].

2. Coordinating participation targets

Areas examined

This chapter examines whether the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the National Indigenous Australians Agency (NIAA) are effectively coordinating Aboriginal and Torres Strait Islander participation target requirements for national partnership agreements (NPAs) and other intergovernmental agreements.

Conclusion

Infrastructure's and NIAA's coordination of participation target requirements for intergovernmental agreements has become largely effective. Infrastructure, in consultation with NIAA and the Department of Education, Skills and Employment, established an appropriate Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA. This can be used as a model for other agreements that do not have appropriate frameworks, such as City and Regional Deals. NIAA has not implemented the Council of Australian Governments' commitment to report annually on the outcomes of jurisdictional procurement policies.

Areas for improvement

The ANAO made two recommendations aimed at: developing a framework for the application of participation targets for City and Regional Deals; and establishing a mechanism to report annually on jurisdictional procurement policy outcomes, including participation target outcomes.

2.1 To assess whether Infrastructure and NIAA are effectively coordinating Aboriginal and Torres Strait Islander participation target requirements for intergovernmental agreements, the ANAO examined whether:

- appropriate opportunities for including participation targets in intergovernmental agreements are being identified;
- adequate frameworks have been established for including participation targets in intergovernmental agreements; and
- jurisdictions have implemented the Council of Australian Governments' (COAG's) commitments regarding participation target policies.

Are opportunities being identified for including participation targets in intergovernmental agreements?

While limited progress was made under the 2009 Indigenous Economic Participation NPA, since 2014 significant opportunities have been identified for including Aboriginal and Torres Strait Islander participation targets in intergovernmental agreements. After first implementing participation targets in certain infrastructure initiatives in remote and regional areas, from 2019 the government extended the scope of such targets to cover most major intergovernmental infrastructure projects receiving Australian Government funding.

2.2 In February 2009 all Australian governments signed the Indigenous Economic Participation NPA, which included a commitment to incorporate Aboriginal and Torres Strait Islander workforce

strategies into all new major COAG reforms contributing to Closing the Gap targets. Following the expiry of the NPA in June 2013, the Australian Government 'identified infrastructure as an area that can help with Indigenous economic participation, due to the scale of opportunities to enhance employment and business capability in both urban and regional Australia'.¹⁷

2.3 The ANAO examined whether appropriate opportunities are being identified for including participation targets in intergovernmental agreements, focussing on: workforce strategies developed under the 2009 Indigenous Economic Participation NPA; and participation targets included in infrastructure initiatives since 2014.

Workforce strategies under 2009 Indigenous Economic Participation NPA

2.4 The 2009 Indigenous Economic Participation NPA stated:

The Commonwealth and the States and Territories are investing significantly in capital development, procurement and service delivery through the full range of COAG reforms. Incorporating Indigenous workforce strategies into all new major COAG reforms emerging from the reform agenda, including in infrastructure construction projects agreed through the COAG Infrastructure Working Group, will leverage this investment to drive employment outcomes.¹⁸

2.5 At that time the Department of Education, Employment and Workplace Relations (DEEWR) was responsible for Aboriginal and Torres Strait Islander employment policy and managed the implementation of the NPA.¹⁹ DEEWR issued a COAG Indigenous Reform Circular in 2010 to relevant Australian, state and territory government entities outlining how the workforce strategy principle should be applied. The circular stated that the 'Indigenous workforce strategy principle is to be applied broadly across all National Partnership Agreements and is not limited to only those agreements that directly relate to Indigenous Australians'.²⁰

2.6 A July 2010 progress assessment for the Indigenous Economic Participation NPA noted that 'jurisdictions cited the delay in the release of the Commonwealth guidelines on Indigenous workforce strategies' as contributing to delays in fully implementing workforce strategies.²¹ DEEWR responded to the progress assessment in December 2011, stating that the principle had now been embedded in NPA templates and processes and it had published a guide to incorporating workforce strategies in NPAs.²²

2.7 Nevertheless, few NPAs or project agreements signed between February 2009 and July 2013 (the period covered by the Indigenous Economic Participation NPA) explicitly included Aboriginal

17 PM&C, 'Chapter Five: Economic Development' from *Closing the Gap Report 2018* [Internet], 2018, available from: <https://www.pmc.gov.au/sites/default/files/reports/closing-the-gap-2018/economic-development.html> [accessed 3 December 2019].

18 COAG, *National Partnership Agreement on Indigenous Economic Participation* [Internet], 2008, pp. 6–7, available from: http://www.federalfinancialrelations.gov.au/content/npa/skills/national-partnership/past/economic_participation_NP.pdf [accessed 3 December 2019].

19 Responsibility for Aboriginal and Torres Strait Islander employment policies transferred through machinery of government changes from DEEWR to PM&C in September 2013 and from PM&C to NIAA in July 2019.

20 DEEWR, 'Applying the Indigenous Workforce Strategy principle into all major COAG reforms', COAG Indigenous Reform Circular, 2010, p. 2.

21 COAG Reform Council, *National Partnership Agreement on Indigenous Economic Participation: Early assessment of progress*, COAG, July 2010, p. 13.

22 DEEWR, *Final Report: Actions taken to meet the COAG Reform Council's Recommendations*, COAG, December 2011, p. 4.

and Torres Strait Islander workforce strategies or participation targets. As outlined in Table 2.1, nine out of 179 agreements included workforce strategies, of which two included participation targets. The NPAs that included participation targets are outlined in Box 1.

Table 2.1: NPAs and project agreements with Aboriginal and Torres Strait Islander workforce strategies or participation targets, February 2009 to July 2014

| Partnership type | Total number of agreements | Number with workforce strategies | Number with participation targets |
|--------------------|----------------------------|----------------------------------|-----------------------------------|
| NPAs | 72 | 8 | 2 |
| Project agreements | 107 | 1 | 0 |
| Total | 179 | 9 | 2 |

Source: ANAO analysis of agreements published on the COAG Council on Federal Financial Relations' website (<http://federalfinancialrelations.gov.au/content/npa/default.aspx>).

Box 1: NPAs from 2009–2014 with Aboriginal and Torres Strait Islander participation targets

Remote Housing NPAs

Since 2008 successive Remote Housing NPAs have provided \$5.4 billion for construction and maintenance of housing in remote areas. The NPAs involved different approaches to applying Aboriginal and Torres Strait Islander participation targets. The 2008–2016 NPA applied a 20 per cent employment target for all jurisdictions. The 2016–2018 NPA applied different employment targets for each jurisdiction, with payments tied to achievement of targets.

NPAs to fund services for remote Northern Territory communities

Since the 2007 Northern Territory Emergency Response the Australian and Northern Territory governments have signed three NPAs providing \$2 billion for services for Aboriginal peoples in remote Northern Territory communities: 2009–2012 Closing the Gap in the Northern Territory NPA; 2012–2015 Stronger Futures in Northern Territory NPA; and 2016–2022 Northern Territory Remote Aboriginal Investment NPA. These NPAs have included various strategies and measures to support Aboriginal participation, including employment targets for certain professions (for example, interpreters and police officers) and projects (for example, capital works).

Participation targets in infrastructure initiatives since 2014

2.8 Responsibility for Aboriginal and Torres Strait Islander policy, programs and service delivery (including employment policy) transferred to the Department of the Prime Minister and Cabinet (PM&C) through a machinery of government change that occurred in September 2013. From 2014 PM&C sought opportunities to include Aboriginal and Torres Strait Islander participation targets in infrastructure initiatives being delivered through intergovernmental agreements. Initial opportunities identified were: the Cape York Region Package; Northern Australia Roads and Beef Roads Programs (Northern Australia Roads Programs); and City and Regional Deals.

Cape York Region Package

2.9 In 2014–15 the Australian Government committed \$208.4 million to the \$260.5 million Cape York Region Package, which was primarily focussed on improving the Peninsula Developmental

Road to increase the accessibility of Cape York in Far North Queensland. In late 2014 PM&C started engaging with Infrastructure and relevant Queensland Government entities to ensure the package included minimum Aboriginal and Torres Strait Islander participation requirements and to support the involvement of Aboriginal and Torres Strait Islander businesses. Starting from 2015–16 (its second year) the package included ‘key result areas’ relating to Aboriginal and Torres Strait Islander employment, supplier use and training, with targets adjusted annually based on experience in the prior year.

Northern Australia Roads Programs

2.10 In May 2015 the government introduced the *Commonwealth Indigenous Procurement Policy*, which included mandatory minimum Aboriginal and Torres Strait Islander participation requirements for high value contracts in certain industry categories.²³ In June 2015 the government released *Our North, Our Future: White Paper on Developing Northern Australia*, which included a number of initiatives to support Aboriginal and Torres Strait Islander economic development.²⁴

2.11 At a late stage of the policy development process, PM&C gained agreement to mandate Aboriginal and Torres Strait Islander participation targets for road projects funded through the White Paper, building on the Indigenous Procurement Policy approach. This commitment applied to two roads programs delivered in remote areas: the \$600 million Northern Australia Roads Program; and \$100 million Northern Australia Beef Roads Program. The White Paper stated that employment and supplier use targets would be agreed with jurisdictions and reflect local Aboriginal and Torres Strait Islander populations.

2.12 From 2016 to 2017 Infrastructure and PM&C developed a framework to support the application of participation targets to projects under the Northern Australian Roads Programs. The framework was agreed by participating jurisdictions in September 2017.

City and Regional Deals

2.13 The 2016 *Smart Cities Plan*, which initiated the Australian Government’s program of City and Regional Deals with local, state and territory governments, did not include a commitment to applying Aboriginal and Torres Strait Islander participation targets. The plan noted that deals would be ‘structured around nationally and locally informed objectives, with a focus on economic growth, jobs creation, housing affordability, and environmental outcomes’.²⁵

2.14 In 2016 and 2017 PM&C led the negotiation of early City Deals. Building on the Northern Australia Roads Programs and Indigenous Procurement Policy approaches, it started working to ensure deals included participation targets based on the local Aboriginal and/or Torres Strait Islander population. The Townsville City Deal, signed in December 2016, was the first deal and

23 PM&C, *Commonwealth Indigenous Procurement Policy*, Commonwealth of Australia, 2015, p. 6. Note that the ANAO conducted a related performance audit examining the administration of the mandatory minimum requirements policy, Auditor-General Report No.25 2019–20 *Aboriginal and Torres Strait Islander Participation Targets in Major Procurements*, which tabled on 20 February 2020.

24 Australian Government, *Our North, Our Future: White Paper on Developing Northern Australia*, Commonwealth of Australia, 2015. Other initiatives included: \$17 million for township leases in the Northern Territory; and \$12.4 million for Indigenous Ranger groups in Northern Australia.

25 PM&C, *Smart Cities Plan*, Commonwealth of Australia, 2016, p. 21.

included a 6.6 per cent employment and supplier-use target (based on the local working-age population) for its primary infrastructure project: construction of North Queensland Stadium.²⁶

2.15 From December 2017 responsibility for City Deals transferred from PM&C to Infrastructure. Infrastructure continued to work with PM&C (subsequently NIAA from July 2019) and other entities to include participation targets in City and Regional Deal projects. The Western Sydney Deal, signed in March 2018, was the first deal to commit to broader Aboriginal and Torres Strait Islander employment and supplier-use targets for all construction projects funded under the deal.

2.16 As at February 2020 nine City and Regional Deals had been signed and intentions to negotiate a further three deals announced. Table 2.2 outlines Aboriginal and Torres Strait Islander participation target commitments for these deals.

Table 2.2: City and Regional Deals Aboriginal and Torres Strait Islander participation commitments, as at February 2020

| Location | Date signed | Duration | Participation targets |
|-----------------------|---------------|-----------|---|
| City Deals | | | |
| Townsville | December 2016 | 2016–2031 | 6.6% employment and supplier-use target for certain projects (incl. North Queensland Stadium) |
| Launceston | April 2017 | 2017–2027 | Commitment to develop targets for infrastructure projects and infrastructure-related services based on local working-age population |
| Western Sydney | March 2018 | 2018–2038 | 2.4% employment and 3% supplier-use targets for construction projects |
| Darwin | November 2018 | 2018–2028 | 8.8% employment and 3% supplier-use targets for all funded projects |
| Hobart | February 2019 | 2019–2029 | No public target commitment, but projects funded under the 2019 Land Transport Infrastructure Projects NPA will include targets |
| Geelong | March 2019 | 2019–2029 | 1% employment and 1% supplier-use targets for two specified projects |
| Adelaide | March 2019 | 2019–2029 | 1.4% employment and 3% supplier-use targets for all City Deal projects |
| Regional Deals | | | |
| Barkly | April 2019 | 2019–2029 | Commitment to develop targets, but details yet to be determined |
| Hinkler | January 2020 | 2020–2024 | Commitment to develop targets, but details yet to be determined |

Source: ANAO analysis of published City and Regional Deal information.

2019 Land Transport Infrastructure Projects NPA

2.17 In mid-2016 PM&C identified encouraging other portfolios to achieve Aboriginal and Torres Strait Islander outcomes and working more effectively with states and territories as key priorities.

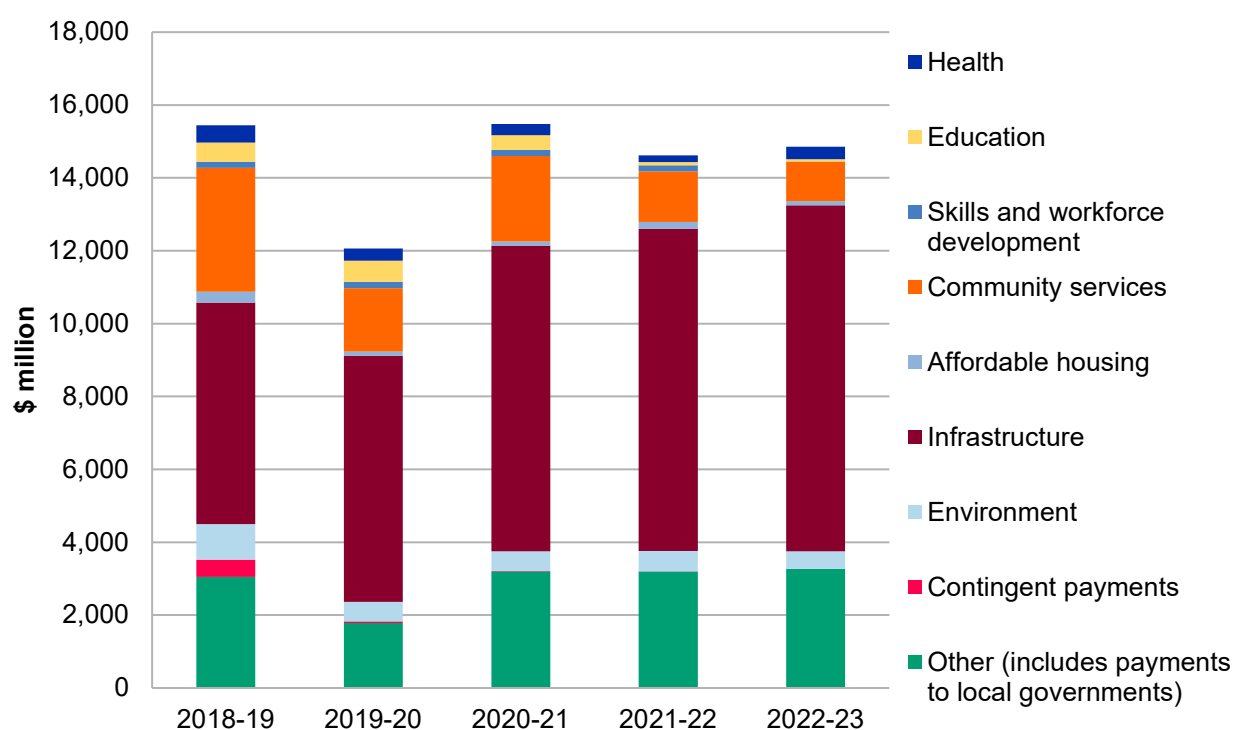
²⁶ Infrastructure informed the ANAO that it is working to include employment and supplier-use targets in additional infrastructure projects delivered under the Townsville City Deal.

A key component of this was encouraging Infrastructure to include Aboriginal and Torres Strait Islander employment and supply-chain targets through its primary funding mechanism, the Infrastructure Investment Program, which was to have a renewed approach from 2019–20 with the renegotiation of the Land Transport Infrastructure Projects NPA.

2.18 In 2016 the government agreed to develop an Indigenous Employment and Supplier-Use Infrastructure Framework for the new NPA, and from 2016 to 2018 Infrastructure led the development of the framework in close consultation with PM&C. The framework, which was finalised in February 2019, applies to most projects with over \$7.5 million in Australian Government funding delivered under the 2019 Land Transport Infrastructure Projects NPA.²⁷

2.19 Funding delivered under the NPA is estimated to rise from \$6.8 billion in 2019–20 to \$9.5 billion in 2022–23, and represents around 60 per cent of Australian Government payments to states and territories under NPAs over this period (see Figure 2.1). As a result, since 2019 the introduction of the new Indigenous Employment and Supplier-Use Infrastructure Framework has significantly extended the scope of application of Aboriginal and Torres Strait Islander participation targets in intergovernmental agreements.

Figure 2.1: Total Australian Government NPA payments to states and territories by category, 2018–19 to 2022–23



Source: Australian Government, Budget Paper No. 3, *Federal Financial Relations 2019-20*, May 2019, Table 2.2, p. 16; and *Mid-Year Economic and Fiscal Outlook 2019-20*, December 2019, Annex A.

27 Under the framework, jurisdictions may seek an exemption to Aboriginal and Torres Strait Islander participation requirements for a specific project where there is strong justification. In addition, sub-programs of the Infrastructure Investment Program (such as Roads to Recovery and Black Spots) are not covered.

2.20 There are a few smaller-scale existing NPAs that could include Aboriginal and Torres Strait Islander participation targets but do not. These NPAs pre-date the government's decision to expand the application of targets in intergovernmental agreements.

Have frameworks been established for including participation targets in intergovernmental agreements?

Frameworks for including participation targets have been developed for some agreements but not all. An appropriate participation target framework has been established for the 2019 Land Transport Infrastructure Projects NPA, building on lessons learnt from the Northern Australia Roads Programs framework. Relevant frameworks are currently being developed for the 2019 Northern Territory Remote Housing NPA. An appropriate framework has not been established for City and Regional Deals.

2.21 The guidance on developing NPAs and project agreements states:

... establishing linkages between policy initiatives and agreements is an important consideration in developing new agreements, to ensure that a whole-of-government approach is maintained and that related agreements work together in a consistent and complementary manner towards a shared objective.²⁸

2.22 Over the past five years, to achieve the shared objective of improving Aboriginal and Torres Strait Islander employment and business outcomes, participation targets have been increasingly included in intergovernmental agreements. To ensure there are consistent and complementary approaches to applying targets in specific contexts, good practice would be to establish frameworks to govern the application of participation targets. Such frameworks could be principles-based and provide flexibility about whether and how targets are to be applied.

2.23 The ANAO examined a draft National Indigenous Participation Framework developed by COAG in 2016 and whether frameworks for including participation targets have been developed for existing intergovernmental agreements.

National Indigenous Participation Framework

2.24 In December 2015 COAG agreed to develop a strategic framework for Aboriginal and Torres Strait Islander economic participation. At its next meeting in April 2016 COAG agreed in principle to a draft high-level framework developed by the Northern Territory (see the draft National Indigenous Participation Framework at Appendix 2), noting that jurisdictions would undertake further consultation on the framework with Aboriginal and Torres Strait Islander leaders and communities. However, this work did not progress and the framework was not finalised.

Northern Australia Roads Programs

2.25 As noted at paragraph 2.12, in 2016 and 2017 Infrastructure and PM&C developed a framework to support the application of Aboriginal and Torres Strait Islander participation targets to road infrastructure projects funded under the Northern Australia Roads Programs. Following

28 Council on Federal Financial Relations, *Developing National Partnerships under the Federal Financial Relations Framework*, Federal Finances Circular No. 2015/01, August 2015, pp. 6-7, available from: http://www.federalfinancialrelations.gov.au/content/circulars/Circular_2015-01.pdf [accessed 9 December 2019].

agreement from the Northern Territory, Queensland and Western Australia governments, the *Framework to maximise Indigenous employment and business opportunities in Northern Australia* was finalised in September 2017.

2.26 PM&C briefed the Minister for Indigenous Affairs on the framework in September 2017, seeking his final agreement. However, in October 2017 the Minister indicated he did not agree to the framework, commenting that:

... I will not agree to the Framework in its current form, due to concerns about the enforceability of the targets. A stronger accountability framework is needed to ensure that States/Northern Territory and contractors understand that Indigenous employment/supplier use is a standard that must be met.

The Minister's concerns related to the framework's approach to public reporting, which required jurisdictions to publicly report only at an aggregate level and lacked reputational or financial consequences for contractors that did not meet targets.

2.27 Infrastructure did not make any further changes and continued to use it as a 'non-binding guiding framework' for assessing and approving Aboriginal and Torres Strait Islander participation targets for Northern Australia Roads Programs projects. In briefing its Minister, Infrastructure noted that the framework represented a compromise reached after months of negotiation with jurisdictions.

2.28 Under the 'guiding framework', targets proposed by jurisdictions for specific roads projects were to be agreed by both the Infrastructure Department and the Minister for Indigenous Affairs. In March 2018, after the Minister for Indigenous Affairs had rejected targets for six Northern Territory projects, the Minister for Infrastructure agreed to approve participation targets going forward to avoid significant delays to the delivery of roads projects.

2019 Land Transport Infrastructure Projects NPA

2.29 Between 2016 and 2018, while developing the guiding framework for the Northern Australia Roads Programs, Infrastructure and PM&C also developed an Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA. The framework was finalised in February 2019 and published on Infrastructure's website in July 2019.

2.30 The 2019 framework built on the earlier Northern Australia Roads Programs framework. Table 2.3 shows key elements of both frameworks, including elements that remained the same across both (principally, the calculation of targets and 'local first' principle). Two key areas of difference, addressing issues experienced with the Northern Australia Roads Programs, were:

- *Public reporting* — The Northern Australia Roads Programs framework requires jurisdictions to publicly report on Aboriginal and Torres Strait Islander participation target outcomes at an aggregate level. The new framework requires public reporting on a project-by-project basis as projects are completed.
- *Approval of targets* — Under the new framework participation targets are approved by the minister responsible for transport infrastructure, rather than the Minister for Indigenous Australians. The framework states that Infrastructure may seek advice from relevant entities in developing its advice for the Minister on the approval of targets.

Table 2.3: Comparison of frameworks for applying Aboriginal and Torres Strait Islander participation targets to intergovernmental infrastructure projects

| Element | Northern Australia Roads Programs guiding framework (2017) | Indigenous Employment and Supplier-Use Infrastructure Framework (2019) |
|----------------------------|---|---|
| Calculation of targets | Baseline is the local Aboriginal and/or Torres Strait Islander working-age population (as a proportion of the total population) Flexibility to adjust targets up or down based on local conditions | Same as Northern Australia Roads Programs framework |
| Approval of targets | Reductions in targets below the baseline subject to agreement by the Minister for Indigenous Affairs | Indigenous Participation Plans, including targets, subject to agreement by minister responsible for transport infrastructure |
| Local community engagement | 'Local first' principle — employees and business goods and services sourced from within the local area where possible Requirement that jurisdictions develop community engagement plans | Same 'local first' principle as Northern Australia Roads Programs framework Requirement that jurisdictions document approach to local engagement in Indigenous Participation Plans |
| Supply-side supports | Commitment that jurisdictions provide information on projects to the Australian Government as soon as practicable to facilitate supply-side consideration | Jurisdictions should engage with relevant Australian Government entities in developing Indigenous Participation Plans to allow supply-side gaps to be identified |
| Internal reporting | Quarterly reporting on a project-by-project basis in a template | Monthly reporting through standard Infrastructure Investment Program process |
| Public reporting | Requirement that jurisdictions publicly report participation target outcomes at an aggregate level | Requirement that jurisdictions publicly report participation targets and outcomes on a project-by-project basis at project completion |
| Assurance/compliance | Nil | Outlines approach to verifying indigeneity of businesses and individuals Requirement that jurisdictions maintain effective records |
| Review | Commitment to review framework (but no timeframe given) | Commitment to an interim review after 2 years and a substantive review after 3-4 years to inform the next NPA |

Source: Infrastructure & PM&C, *Northern Australia Roads programs – Framework to maximise Indigenous employment and business opportunities in Northern Australia*, 2017; and Infrastructure, *Indigenous Employment and Supplier-Use Infrastructure Framework*, February 2019.

2.31 The Indigenous Employment and Supplier-Use Infrastructure Framework includes an appropriate level of information to support effective implementation of Aboriginal and Torres Strait Islander participation targets for NPA projects.

City and Regional Deals

2.32 Infrastructure has not developed an overarching framework or strategic plan to inform its approach to negotiating City and Regional Deals with state, territory and local governments. Infrastructure informed the ANAO that each deal is a bespoke product designed to reflect the

priorities of a particular area. As shown in Table 2.2 above, this flexible approach to developing deals has extended to the application of Aboriginal and Torres Strait Islander participation targets.

2.33 Where deals have committed to participation targets, insufficient consideration has been given to administrative arrangements to support their implementation (such as arrangements for reporting, supply-side supports, compliance and assurance, and/or review). In September 2019, responding to an invitation from the Minister for Population, Cities and Urban Infrastructure to collaborate on upcoming City Deals, the Minister for Indigenous Australians wrote:

I understand that collaboration between officers from our respective agencies has begun and that good working relationships are being established. Building on this I would be interested in exploring with you and the Minister for Employment, Skills Small and Family Business, Senator the Hon Michaelia Cash, the development of a framework to coordinate action between our agencies. This would aim to ensure a consistent and yet tailored approach to the planning of priorities that we would apply to these and future city and regional deals.

2.34 Infrastructure and NIAA informed the ANAO that they have commenced work on the development of a framework. Infrastructure expects the framework to be finalised in the second quarter of 2020. Establishing an appropriate framework has the potential to support effective implementation of Aboriginal and Torres Strait Islander participation targets in City and Regional Deals by establishing key principles up front and helping to coordinate the actions of relevant entities. Infrastructure could use the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA as a model when developing the framework.

Recommendation no.1

2.35 Department of Infrastructure, Transport, Regional Development and Communications finalise a framework, in consultation with the National Indigenous Australians Agency and other relevant entities, to support the implementation of Aboriginal and Torres Strait Islander participation targets in City and Regional Deals.

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

2.36 *The Department notes the work already underway in relation to Aboriginal and Torres Strait Islander participation targets in City and Regional Deals, and the successes identified in the report through Aboriginal and Torres Strait Islander participation targets, including direct employment, and Aboriginal and Torres Strait Islander business suppliers, already included in Deals and specific projects within Deals. As City and Regional Deals are based on genuine partnerships between the three levels of government, it will be necessary to tailor targets within Deals and relating to specific projects to meet local circumstance, needs and the broader objectives that are negotiated and agreed between parties to the Deal.*

National Indigenous Australians Agency response: *Agreed.*

2019 Northern Territory Remote Housing NPA

2.37 At the conclusion of the 2016–2018 Remote Housing NPA in June 2018, the Australian Government's position was that states were responsible for housing in remote communities. In

2018–19 the government made final remote housing payments to Western Australia (\$121 million) and South Australia (\$37.5 million). In addition, in May 2019 the government committed \$105 million for remote housing in Queensland. These payments have not involved commitments from states to Aboriginal and Torres Strait Islander participation targets.

2.38 The 2019 Northern Territory Remote Housing NPA is the only remaining long-term Australian Government funding commitment for housing in remote Aboriginal and Torres Strait Islander communities. The NPA was signed in March 2019 and involves Australian Government funding of \$550 million over five years, matched by the Northern Territory Government to create a \$1.1 billion joint investment. As noted at paragraph 1.14, the NPA specifies an Aboriginal employment target of 40 per cent in 2019–20, rising to 46 per cent by 2022–23.

2.39 The NPA commits the Northern Territory to delivering three outputs:

- construction of a minimum of 1950 bedrooms providing an equivalent of 650 three bedroom houses;
- implementation of an agreed employment and procurement framework to maximise local Aboriginal jobs and business outcomes; and
- implementation of an agreed reporting framework for all investments and outcomes.²⁹

2.40 At its first meeting in August 2019 the NPA's Joint Steering Committee³⁰ endorsed the Northern Territory Government's 2019–20 Capital Works Plan. On the basis of this endorsement, in September 2019 the Minister for Indigenous Australians agreed to make an initial milestone payment under the NPA of \$38.7 million to the Northern Territory Government.

2.41 At its August 2019 meeting the Joint Steering Committee also endorsed:

- an Aboriginal employment and business enterprise development framework — which outlines three key result areas and strategies for achieving them³¹; and
- a procurement framework — which provides an overview of the Northern Territory's procurement rules and policies and how procurement for the NPA will be managed to achieve Aboriginal employment and business outcomes.

2.42 At its second meeting in November 2019 the Joint Steering Committee noted a draft reporting framework. The draft framework indicates that progress against the NPA's Aboriginal employment targets will be reported monthly through an online public dashboard, along with information on the proportion and value of contracts awarded to Aboriginal businesses.

2.43 The Northern Territory Department of Local Government, Housing and Community Development informed the ANAO that the reporting framework could also outline assurance

29 Commonwealth of Australia and the Northern Territory, *National Partnership for Remote Housing Northern Territory* [Internet], 2019, p. 5, available from: http://federalfinancialrelations.gov.au/content/npa/housing/national-partnership/NPA_remote_housing_NT.pdf [accessed 2 January 2020].

30 The Joint Steering Committee oversees the implementation of the NPA and is comprised of representatives from NIAA, the Northern Territory Government and the four Northern Territory Aboriginal Land Councils.

31 The key result areas are: (1) increase the proportion of (preferentially local) Aboriginal staff who are employed through the program; (2) build Aboriginal Business Enterprise capacity to be able to independently deliver remote housing works and services; and (3) collaborate with other Northern Territory and Australian government and non-government agencies to support a coordinated approach to building Aboriginal employment and business opportunities in remote Northern Territory communities.

arrangements. A working group has been established to finalise the framework, which is expected to be presented to the Joint Steering Committee by June 2020.

Have jurisdictions implemented the Council of Australian Governments' commitments regarding participation target policies?

Most jurisdictions have adopted Aboriginal and Torres Strait Islander procurement policies. In February 2018 the Council of Australian Governments agreed to publish jurisdictional policies and outcomes annually, but NIAA has not implemented this commitment.

2.44 The 2009 Indigenous Economic Participation NPA included commitments from the Australian, state and territory governments to strengthen procurement policies with a focus on including 'Indigenous training, employment and supplier strategies' in contracts for major construction, maintenance, cleaning and infrastructure projects.³² In December 2016 COAG agreed to 'consider establishing state-specific whole-of-government Indigenous procurement policies, Indigenous employment and indigenous business targets and reporting mechanisms, and making policies easier to find and understand'.³³ In February 2018 COAG agreed to 'publish jurisdiction specific procurement policies, and Indigenous employment and business outcomes annually'.³⁴

2.45 The ANAO examined whether jurisdictions have implemented COAG's commitments regarding: establishing jurisdictional Aboriginal and Torres Strait Islander procurement policies; and annually reporting on outcomes.

Jurisdictional Aboriginal and Torres Strait Islander procurement policies

2.46 As shown in Table 2.4, most jurisdictions have implemented procurement policies to encourage entities to procure goods and services from Aboriginal and Torres Strait Islander businesses. Many jurisdictions have also implemented policies to promote Aboriginal and Torres Strait Islander participation in major projects, such as large infrastructure or construction projects. Appendix 3 provides more detail on jurisdictional policies.

32 COAG, *National Partnership Agreement on Indigenous Economic Participation* [Internet], 2008, p. 6, available from: http://www.federalfinancialrelations.gov.au/content/npa/skills/national-partnership/past/economic_participation_NP.pdf [accessed 3 December 2019].

33 COAG, *COAG meeting Communique, 9 December 2016* [Internet], 2016, available from: <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communique-9-december-2016> [accessed 9 December 2019].

34 COAG, *COAG meeting Communique, 9 February 2018* [Internet], 2018, available from: <https://www.coag.gov.au/meeting-outcomes/coag-meeting-communique-9-february-2018> [accessed 9 December 2019].

Table 2.4: Aboriginal and Torres Strait Islander procurement policies by jurisdiction

| Jurisdiction | Aust. Govt. | ACT | NSW | NT | Qld | SA | Tas. | Vic. | WA |
|--|-------------|-----|-----|----|-----|----|------|------|----|
| Policy to encourage procurement from Aboriginal and Torres Strait Islander businesses? | ✓ | ✓ | ✓ | a | ✓ | ✓ | a | ✓ | ✓ |
| Minimum targets for procurement from Aboriginal and Torres Strait Islander businesses? | ✓ | ✓ | ✓ | – | ✓ | – | – | ✓ | ✓ |
| Policy to promote Aboriginal and Torres Strait Islander participation in major projects? | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ | – | ✓ | – |
| Minimum targets for Aboriginal and Torres Strait Islander participation in major projects? | ✓ | – | ✓ | – | – | b | – | – | – |

Note a: The Northern Territory and Tasmania have committed to developing policies, which as at February 2020 were under development.

Note b: South Australia's policy requires 15 per cent of labour force hours on construction contracts valued above \$50 million to be performed by nominated groups, including Aboriginal jobseekers.

Source: ANAO analysis.

2.47 As outlined at paragraphs 1.15 and 1.16, in 2017 the Senate Finance and Public Administration References Committee (the committee) recommended that the government:

... review the guidelines for Indigenous employment and work closely with Council of Australian Governments in order to establish a uniform approach to the application of Indigenous Employment Targets to state, territory and Commonwealth contracts in remote locations.³⁵

2.48 The government noted the committee's recommendation. In responding to the recommendation the government commented that the Minister for Indigenous Affairs had encouraged states and territories to take up policies similar to the *Commonwealth Indigenous Procurement Policy* and most jurisdictions had implemented policies 'albeit with varying degrees of stretch targets and requirements'.³⁶ It also commented that COAG's current focus was 'improving reporting and delivery on Indigenous procurement and employment policies'.³⁷

35 Senate Finance and Public Administration References Committee, *Appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)* [Internet], 2017, Chapter 7, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Report/c07 [accessed 11 December 2019].

36 Australian Government, *Australian Government response to the Senate Finance and Public Administration References Committee inquiry report: The appropriateness and effectiveness of the objectives, design, implementation and evaluation of the Community Development Program (CDP)* [Internet], 2018, p. 15, available from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/CDP/Government_Response [accessed 11 December 2019].

37 *ibid.*

Annual reporting on jurisdictional procurement policy outcomes

2.49 The 2018 regulation impact statement for the Indigenous Employment and Supplier-Use Infrastructure Framework outlined the following concerns, which were raised through stakeholder consultation, with jurisdictional Aboriginal and Torres Strait Islander participation policies:

- a lack of transparency – policies are difficult to find
- a lack of accountability for results – results are published on an ad hoc basis
- an inconsistency of approaches and reporting requirements across jurisdictions, meaning that companies operating across state boundaries need to adjust their practices for projects operating across different jurisdictional policies.³⁸

2.50 At its February 2018 meeting COAG agreed to:

- devise a framework for reporting to COAG annually on jurisdictional-specific performance against Aboriginal and Torres Strait Islander employment, procurement and supplier-use targets; and
- publish a jurisdictional-specific performance table annually on the COAG website.

2.51 In late 2018 PM&C prepared a draft jurisdictional-specific performance table, but it was not provided to COAG or published on the COAG website. In January 2020 NIAA informed the ANAO that it intends to update the table and publish it in early 2020.

2.52 Implementation of COAG's annual reporting commitments may help to address some of the issues identified in the 2018 regulation impact statement. As performance data relating to jurisdictional procurement policies and intergovernmental agreements with participation targets may be published more frequently on entity websites, NIAA should consider linking to these sources from the jurisdictional-specific performance table to allow stakeholders to access up-to-date information.

Recommendation no.2

2.53 National Indigenous Australians Agency implement the Council of Australian Governments' commitment to publish jurisdiction-specific procurement policies and Aboriginal and Torres Strait Islander employment and business outcomes annually.

National Indigenous Australians Agency response: *Agreed.*

2.54 *NIAA is currently working with jurisdictions to complete this COAG commitment as soon as practicable.*

38 Infrastructure, 'Improving Indigenous Employment and Supplier-Use in the Delivery of Government Funded Land Transport Infrastructure', unpublished regulation impact statement, 2018, p. 8.

3. Implementing participation targets

Areas examined

This chapter examines whether the Department of Infrastructure, Transport, Regional Development and Communications (Infrastructure) and the National Indigenous Australians Agency (NIAA) are effectively implementing Aboriginal and Torres Strait Islander participation targets in relevant national partnership agreements (NPAs) and other intergovernmental agreements.

Conclusion

Infrastructure's and NIAA's implementation of participation targets in intergovernmental agreements is partially effective. Appropriate participation targets are being negotiated for agreements and there are early indications that entities are collaborating on supply-side strategies to support the achievement of targets. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA require more transparent reporting of outcomes. Further work is needed to establish public reporting mechanisms and appropriate risk-based assurance arrangements for agreements.

Areas for improvement

The ANAO made one recommendation aimed at ensuring appropriate risk-based assurance arrangements are established for agreements with participation target requirements.

The ANAO also suggested that Infrastructure and NIAA work to ensure publicly reported participation target results feed into the Council of Australian Governments' (COAG's) annual reporting on outcomes from jurisdictional policies.

3.1 At the time of this audit, Aboriginal and Torres Strait Islander participation targets are being applied to projects under: the Northern Australia Roads and Beef Roads Programs (Northern Australia Roads Programs); certain City and Regional Deals; the 2019 Land Transport Infrastructure Projects NPA; and the 2019 Northern Territory Remote Housing NPA. To assess whether Infrastructure and NIAA are effectively implementing participation targets in these agreements, the ANAO examined whether:

- appropriate participation targets are being negotiated for projects;
- supply-side strategies have been implemented to support the achievement of targets;
- appropriate reporting arrangements have been established; and
- entities are gaining appropriate assurance that participation targets are being met.

Are appropriate participation targets being negotiated for projects under intergovernmental agreements?

Infrastructure and NIAA are negotiating appropriate participation targets for projects under intergovernmental agreements. Targets have generally been agreed based on the Aboriginal and/or Torres Strait Islander working-age populations of the areas in which projects will be delivered. Infrastructure has agreed lower targets for some land transport infrastructure projects based on consideration of local factors and potential barriers to achieving outcomes.

3.2 The intended outcomes of including participation targets in intergovernmental agreements are to ensure Aboriginal and Torres Strait Islander people gain employment and business opportunities from major government-funded projects. Research suggests that setting arbitrary or overly ambitious targets that are not grounded in evidence of local capacity can undermine the achievement of intended outcomes and strengthen opposition to social procurement efforts.³⁹

3.3 For current intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements, the ANAO examined whether appropriate targets are being negotiated that account for local conditions and barriers to achieving outcomes.

Northern Australia Roads Programs

3.4 The 'non-binding guiding framework' for applying participation targets under the Northern Australia Roads Programs (discussed at paragraphs 2.25 to 2.28) outlined a methodology for determining targets for specific roads projects. The framework stated that targets needed to include a combination of employment and supplier-use targets that added to an agreed baseline target (see Figure 3.1). For example, if the baseline target was 21 per cent, the project could adopt an employment target of 18 per cent and a supplier-use target of 3 per cent (which add to 21 per cent).

Figure 3.1: Methodology for calculating participation targets for Northern Australia Roads Programs projects



Source: Infrastructure & Department of the Prime Minister and Cabinet (PM&C), *Northern Australia Roads programs – Framework to maximise Indigenous employment and business opportunities in Northern Australia*, 2017, p. 2.

3.5 To maximise economic participation outcomes, the default baseline target was determined based on the Aboriginal and/or Torres Strait Islander working-age population in project areas (as a

39 Bourne, K., *Public Procurement and Regional Development: Briefing Note* [Internet], 2018, The Regional Australia Institute, Canberra, p. 12, available from: http://www.regionalaustralia.org.au/home/wp-content/uploads/2018/12/2018_Final_Public-Procurement-and-Regional-Development-Briefing-Note.pdf [accessed 20 December 2019].

proportion of the total working-age population). Northern jurisdictions (Queensland, Northern Territory and Western Australia) could request adjusted baseline targets by providing clear justification to the Australian Government.⁴⁰ Under the framework, any reductions to baseline targets required approval from the Minister for Indigenous Affairs. As noted at paragraph 2.28, the approval requirements were changed in March 2018 after the Minister rejected targets for six Northern Territory projects.

3.6 The ANAO analysed participation targets for 48 work packages approved for funding under the Northern Australia Roads Programs between 2017 and 2019.⁴¹ As shown in Table 3.1, 52 per cent of work packages adopted targets higher than the default baseline (based on the local working-age population) and 48 per cent adopted lower targets. For work packages approved after the guiding framework was finalised, jurisdictions provided justification for all but two approved work packages with targets lower than the default baseline.

Table 3.1: Participation targets for Northern Australia Roads Programs, 2017–2019

| Jurisdiction | NT | Qld | WA | All |
|---|-----------|-----------|----------|-----------|
| Number of work packages with targets equal to or higher than default baseline | 5 | 17 | 3 | 25 |
| Number of work packages with targets lower than default baseline | 12 | 9 | 2 | 23 |
| Total number of work packages | 17 | 26 | 5 | 48 |

Source: ANAO analysis.

2019 Land Transport Infrastructure Projects NPA

3.7 Using the same approach as the Northern Australia Roads Programs, the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA requires participation targets to be set based on the local Aboriginal and/or Torres Strait Islander working-age population (the baseline). Jurisdictions can propose adjustments up or down from the baseline by providing appropriate justification in the Indigenous Participation Plan that they submit to Infrastructure. Factors considered by Infrastructure in adjusting targets are:

- the scale, value and location of the project, skills and capabilities required for delivery, and capacity of the local employment market and suppliers;
- availability of supply-side support to build the capacity of Aboriginal and Torres Strait Islander businesses and job-seekers; and
- existing jurisdictional policies.

3.8 As at February 2020 28 projects had been approved under the new framework. As shown in Table 3.2, the majority (82 per cent) of approved projects had adopted participation targets equal to or higher than the baseline (see Appendix 4 for a list of these projects and associated

40 The guiding framework states that in assessing jurisdictions' justification for adjusted targets the Australian Government would consider various criteria, including local labour force statistics and the extent to which Aboriginal and Torres Strait Islander businesses have the service reach to contribute to the project.

41 Most Northern Australian Roads Programs projects were divided into multiple work packages, which were conducted in stages. Aboriginal and Torres Strait Islander participation targets were applied to individual work packages, rather than to the project as a whole.

participation targets). In the five cases where lower targets were approved, jurisdictions provided a rationale in the submitted Indigenous Participation Plan. For the one project with a significantly lower participation target, Infrastructure consulted with NIAA, which confirmed that the target was appropriate due to the location of the works and project delivery by an Aboriginal and Torres Strait Islander joint venture. It is expected that jurisdictions will submit around 60 to 80 proposals each year that trigger the participation target requirement.

Table 3.2: Participation targets for projects approved under the 2019 Land Transport Infrastructure Projects NPA, as at February 2020

| Jurisdiction | NSW | NT | Qld | Tas. | Vic. | WA | All |
|--|----------|----------|-----------|----------|----------|----------|-----------|
| Number of projects with targets equal to or higher than default baseline | 3 | 3 | 11 | – | 2 | 4 | 23 |
| Number of projects with targets lower than default baseline | 1 | – | – | 3 | – | 1 | 5 |
| Total number of approved projects | 4 | 3 | 11 | 3 | 2 | 5 | 28 |

Source: ANAO analysis.

City and Regional Deals

3.9 Where City and Regional Deals have included specific participation targets, target setting has generally followed a consistent approach:

- employment targets have been set to reflect the Aboriginal and/or Torres Strait Islander working-age population (as a proportion of the total working-age population) in the local government areas covered by the deals; and
- supplier-use targets have generally been set to align with the three per cent procurement target under the *Commonwealth Indigenous Procurement Policy*.⁴²

3.10 The application of employment targets based on working-age population and separate supplier-use targets has meant targets for some City Deals are higher than would be required under the Land Transport Infrastructure Projects NPA (for example, the Adelaide City Deal targets represent a combined target of 4.4 per cent, which is significantly higher than the working-age population of 1.2 per cent).

42 Non-corporate Commonwealth entities are required to meet the three per cent target by 2027–28. PM&C, *Changes to the Indigenous Procurement Policy* [Internet], 2018, available from: <https://www.niaa.gov.au/resource-centre/indigenous-affairs/changes-indigenous-procurement-policy> [accessed 2 January 2020].

Table 3.3: City Deal employment targets and local Aboriginal and/or Torres Strait Islander working-age population proportions

| City Deal | Townsville ^a | Western Sydney | Darwin | Geelong ^b | Adelaide |
|---|-------------------------|----------------|--------|----------------------|----------|
| Employment target for City Deal projects (%) | 6.6 | 2.4 | 8.8 | 1.0 | 1.4 |
| Supplier-use targets for City Deal projects (%) | | 3.0 | 3.0 | 1.0 | 3.0 |
| Combined target (%) | 6.6 | 5.4 | 11.8 | 2.0 | 4.4 |
| Local Aboriginal and/or Torres Strait Islander working-age population (%) | 6.7 | 2.4 | 7.3 | 1.0 | 1.2 |

Note a: For Townsville City Deal projects with participation target requirements, the working-age population target can be met through a combination of employment and supplier-use targets.

Note b: Participation targets apply to the Geelong Convention Centre Precinct and Shipwreck Coast Master Plan.

Source: Australian Bureau of Statistics, *Estimates of Aboriginal and Torres Strait Islander Australians, June 2016*, cat. no. 3238.0.55.001, Australian Government, Canberra, 2018.

2019 Northern Territory Remote Housing NPA

3.11 As noted in Box 1 in Chapter 2, various approaches to negotiating participation targets have been employed for successive Remote Housing NPAs. The 2016–18 Remote Housing NPA established a minimum Aboriginal and Torres Strait Islander employment target of 30 per cent by the end of the agreement, with jurisdictions committing to more detailed targets in their implementation plans. Rather than reflecting local conditions, targets were chosen to build on targets from the previous NPA. Under the 2016–18 Remote Housing NPA, the Northern Territory Government committed to Aboriginal employment targets of 30 per cent from July 2016 to March 2017 and 35 per cent from April 2017 to July 2018. It reported that it exceeded these targets, achieving 55 per cent from July 2016 to March 2017 and 51 per cent from April 2017 to July 2018.

3.12 For the 2019 Northern Territory Remote Housing NPA, the Australian and Northern Territory governments agreed to Aboriginal employment targets of 40 per cent in 2019–2020, increasing by two per cent each year for the duration of the NPA (see Table 3.4). While the NPA encourages the engagement of Aboriginal businesses ‘to the maximum extent possible’, it does not include a supplier-use target.⁴³ The Australian Government agreed to make milestone payments of \$7.5 million each year to the Northern Territory Government if it meets the employment targets under the NPA.

43 Commonwealth of Australia and the Northern Territory, *National Partnership for Remote Housing Northern Territory* [Internet], 2019, p. 3, available from: http://federalfinancialrelations.gov.au/content/npa/housing/national-partnership/NPA_remote_housing_NT.pdf [accessed 2 January 2020].

Table 3.4: Aboriginal employment targets under the 2019 Northern Territory Remote Housing NPA

| Financial year | 2019–20 | 2020–21 | 2021–22 | 2022–23 |
|------------------------------|---------|---------|---------|---------|
| Aboriginal employment target | 40% | 42% | 44% | 46% |

Source: Commonwealth of Australia and the Northern Territory, *National Partnership for Remote Housing Northern Territory* [Internet], 2019, p. 20, available from: http://federalfinancialrelations.gov.au/content/npa/housing/national-partnership/NPA_remote_housing_NT.pdf [accessed 2 January 2020].

3.13 Working-age population did not form the basis for negotiating the 2019 Northern Territory Remote Housing NPA employment targets. Nevertheless, the final target of 46 per cent is close to the proportion of working-age Aboriginal people in remote areas of the Northern Territory (outside of greater Darwin), which was 50 per cent in June 2016.

Have supply-side strategies been implemented to support the achievement of targets?

There are early indications that entities are working together to identify supply-side strategies to support the achievement of participation targets. Frameworks developed for the Northern Australia Roads Programs and 2019 Land Transport Infrastructure Projects NPA reference supply-side strategies. Consideration has also been given to supply-side supports for City and Regional Deals and the 2019 Northern Territory Remote Housing NPA.

3.14 The application of participation targets in intergovernmental agreements is a demand-side strategy that aims to increase demand for Aboriginal and Torres Strait Islander employees and suppliers from businesses delivering major government-funded projects. Research suggests such procurement initiatives are more effective when they are complemented with supply-side strategies designed to increase the capacity of local job seekers and suppliers.⁴⁴

3.15 For current intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements, the ANAO examined whether supply-side strategies have been implemented to support the achievement of targets.

Northern Australia Roads Programs

3.16 The *Framework to maximise Indigenous employment and business opportunities in Northern Australia* for the Northern Australia Roads Programs included a section on supply-side strategies. It noted that the Australian Government would invest in coordination and support, and outlined existing programs such as the Community Development Program, Vocational Training and Employment Centres and the Indigenous Entrepreneurs Fund (see Box 2). The framework also stated that jurisdictions would work with the Australian Government as early as is practicable ‘to provide information relevant to effective planning such as project skill profiles, staffing numbers and potential supplier use opportunities to service providers and Australian Government officers’.⁴⁵

44 Bourne, K., *Public Procurement and Regional Development: Briefing Note* [Internet], 2018, The Regional Australia Institute, Canberra, p. 15, available from: http://www.regionalaustralia.org.au/home/wp-content/uploads/2018/12/2018_Final_Public-Procurement-and-Regional-Development-Briefing-Note.pdf [accessed 20 December 2019].

45 Infrastructure & PM&C, ‘Northern Australia Roads programs – Framework to maximise Indigenous employment and business opportunities in Northern Australia’, 2017, p. 4.

Box 2: Examples of Australian Government supply-side initiatives provided by NIAA

Employment support services

Community Development Program: The government's remote employment and community development service. Providers are required to be responsive to local labour market conditions and opportunities, and use this information to tailor job seekers' training, job plans and activities.⁴⁶

Tailored Assistance Employment Grants: Available to support Aboriginal and Torres Strait Islander job seekers to address barriers to recruitment or retention, employers to engage and retain job seekers, and secondary and university students to gain work experience.

Vocational Training and Employment Centres: Provide Aboriginal and Torres Strait Islander job seekers with work readiness and vocational training, followed by a 26-week job placement.

Business support services

Indigenous Entrepreneurs Fund: A three-year \$90 million program, which ended on 30 June 2019, that provided Aboriginal and Torres Strait Islander businesses in regional and remote Australia access to capital for plant and equipment.

Indigenous Business and Employment Hubs: 'One-stop-shop' services established in major cities to provide business advice and support to Aboriginal and Torres Strait Islander businesses, and facilitate training employment opportunities for job seekers.

Many Rivers Microfinance Ltd: The Australian Government, in partnership with Many Rivers Microfinance Ltd, provides microenterprise and community support to regional and remote Aboriginal and Torres Strait Islander businesses and community groups to develop and pursue economic development opportunities.

Indigenous Business Australia: Provides various forms of support to Aboriginal and Torres Strait Islander businesses, including workshops and business finance.

3.17 While there was no requirement under the Northern Australia Roads Programs framework for jurisdictions to outline supply-side strategies in project proposals, the Queensland Department of Main Roads and Transport developed a template that included a section for this. Twenty-six of the forty-eight project proposals reviewed by the ANAO outlined supply-side strategies, of which for twenty-one this only involved consulting NIAA's Regional Network or relevant jurisdictional entities to identify Aboriginal and Torres Strait Islander businesses.

3.18 Based on interviews with contractors engaged on Northern Australia Roads Programs projects, common supply-side issues encountered on remote road projects include:

- identifying local Aboriginal and Torres Strait Islander suppliers — contractors reported that Aboriginal and Torres Strait Islander business registers (such as Supply Nation and

46 The ANAO conducted a performance audit of the Community Development Program in 2017. Auditor-General Report No.14 of 2017–18 *The Design and Implementation of the Community Development Programme* [Internet], 2017, available at: <https://www.anao.gov.au/work/performance-audit/design-and-implementation-community-development-programme> [accessed 9 January 2020].

- jurisdictional registers) do not have comprehensive listings of local suppliers in remote areas and they often need to rely on contacts and word of mouth to identify suppliers;
- Aboriginal and Torres Strait Islander business capacity — some contractors noted challenges finding local businesses that were appropriately certified or had capacity to deliver the services required; and
 - work readiness of Aboriginal and Torres Strait Islander employees — contractors reported issues with employees failing compulsory drug and alcohol tests, not returning to work after rostered days off, or lacking requisite skills despite being certified.

3.19 Feedback to the ANAO from contractors and jurisdictions indicates that there have been challenges, but there have also been examples of positive engagement with Infrastructure and NIAA on supply-side issues, such as visiting project sites to gain an understanding of challenges and referring contractors to local Community Development Program providers.

2019 Land Transport Infrastructure Projects NPA

3.20 The Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA refers to the importance of supply-side support to achieving participation targets, and canvasses the range of Australian Government support available. Further, as noted in Table 2.3 above, the framework states that jurisdictions should engage early with relevant Australian Government entities⁴⁷ on the development of their Indigenous Participation Plans to identify appropriate supports and allow supply-side gaps to be identified.⁴⁸

3.21 Infrastructure developed a template for Indigenous Participation Plans that includes a section for jurisdictions to outline the supply-side supports needed for the project. The template states that the Australian Government will consider partnering with jurisdictions to establish employment or business project hubs in strategic locations, and provides contact details for the NIAA Regional Network for help in tailoring a supply-side strategy.

3.22 The ANAO examined jurisdictions' responses to the supply-side support section for the 28 Indigenous Participation Plans approved under the framework as at February 2020 and found:

- 19 plans referred to the use of Aboriginal and Torres Strait Islander business registers;
- six referred to using Tailored Assistance Employment Grants (discussed in Box 2 above);
- seven referred to community consultation as a supply-side support; and
- six did not outline any proposed supply-side strategies.⁴⁹

3.23 Five of the 28 participation plans indicated that engagement with relevant Australian Government entities had taken place. A further 14 plans stated that the jurisdiction would seek to engage with NIAA to source potential Aboriginal and Torres Strait Islander suppliers or develop an Aboriginal and Torres Strait Islander engagement strategy.

47 Relevant entities are: NIAA, which manages remote employment programs; and the Department of Education, Skills and Employment, which manages employment programs outside of remote areas.

48 Infrastructure, *Indigenous Employment and Supplier-Use Infrastructure Framework* [Internet], February 2019, pp. 6–7, available from: https://investment.infrastructure.gov.au/files/Indigenous_Employment_and_Supplier-use_Infrastructure_Framework.pdf [accessed 3 January 2020].

49 Note that numbers do not total to 28 as some plans referred to multiple supports.

3.24 As at February 2020 Infrastructure had held three workshops, in Brisbane, Hobart and Darwin, to facilitate engagement with relevant Australian Government entities. NIAA and the Department of Education, Skills and Employment delivered presentations at the workshops to inform jurisdictions of the support available from the Regional Network, and provide advice on building supply.

City and Regional Deals

3.25 As noted at paragraphs 2.33 and 2.34, work has only recently commenced on developing a strategic framework to coordinate the actions of relevant entities in implementing Aboriginal and Torres Strait Islander participation targets for City and Regional Deals. Nevertheless, there have been examples of Infrastructure and NIAA working together to develop supply-side supports for certain City Deals.

- For the Townsville City Deal, the NIAA Regional Network assisted the primary contractor for the North Queensland Stadium to access a Tailored Assistance Employment Grant. The grant was to deliver a mentoring program for Aboriginal and Torres Strait Islander staff, with the aim of improving employee retention rates for the project.
- For the Launceston City Deal, NIAA and the Department of Education, Skills and Employment are working with the Tasmanian Government to connect businesses, apprentices and job seekers with opportunities created through the deal.
- The Barkly Regional Deal commits to initiatives focussing on supply-side issues, including a regional workforce strategy, an economic growth strategy, and improvements to the delivery of the Community Development Program within the region.
- The NIAA has also been working to establish Indigenous Business and Employment Hubs in City Deal locations. In June 2018 the Minister for Indigenous Affairs approved an Indigenous Advancement Strategy grant of \$12.5 million over four years to establish a hub in Western Sydney. In February 2019 a grant of \$3 million over three years was approved for an additional hub in Adelaide.

3.26 Developing an appropriate framework that establishes key principles and coordinates the actions of relevant entities, in line with Recommendation no.1, should help to facilitate a more strategic approach to supply-side supports.

2019 Northern Territory Remote Housing NPA

3.27 An Aboriginal employment and business enterprise development framework for the 2019 Northern Territory Remote Housing NPA was endorsed by the Joint Steering Committee at its August 2019 meeting. The framework outlines three supply-side strategies for the NPA:

- working with local communities to identify opportunities for Aboriginal businesses to train and employ Aboriginal people (preferably local) and referring businesses to relevant entities for information, support and funding;
- building the capacity and capability of local Aboriginal business to deliver housing works and services by undertaking initial capacity assessments, providing ongoing information, tools and support, and building capability through five-year agreements; and

- collaborating with other Northern Territory and Australian government entities and non-government organisations to support a coordinated approach to building Aboriginal employment and business opportunities in remote communities.

3.28 NIAA advised the ANAO that the coordination and implementation of supply-side supports under the 2019 Northern Territory Remote Housing NPA will be the responsibility of the Northern Territory Department of Local Government, Housing and Community Development. NIAA also noted that it would contribute to the provision of supply-side supports through its Regional Network and programs such as the Community Development Program.

Have appropriate reporting arrangements been established?

Appropriate reporting arrangements for intergovernmental agreements with participation targets have not yet been established. The 2019 Land Transport Infrastructure Projects NPA and Northern Territory Remote Housing NPA have committed to more transparent reporting of outcomes. However, for all agreements further work is needed to establish appropriate public reporting mechanisms, and to feed reported information into the Council of Australian Governments' annual reporting on outcomes from jurisdictional policies.

3.29 A key objective for intergovernmental agreements negotiated under the Federal Financial Relations framework is 'enhanced accountability of governments to the public through performance reporting on outcomes'.⁵⁰ Accordingly, all NPAs are required to 'include a performance reporting framework that specifies how progress towards objectives and outcomes or the achievement of project milestones will be measured'.⁵¹ The ANAO's 2018 performance audit of the effectiveness of NPA monitoring found 'more consistent, centralised public reporting of achievement of outcomes and outputs under all NPAs is required to meet the transparency and accountability objectives'.⁵²

3.30 The ANAO examined whether appropriate reporting arrangements have been established for current intergovernmental agreements with participation target requirements.

Northern Australia Roads Programs

3.31 Reporting for Northern Australia Roads Programs work packages occurs quarterly through a template. The reports provided to the Australian Government outline progress against project milestones, and the levels of Aboriginal and Torres Strait Islander employment and supplier-use.

3.32 As at December 2019, 30 work packages had been completed. As outlined in Table 3.5, performance against targets has been mixed, with jurisdictions reporting that less than a quarter of work packages had met both employment and supplier-use targets. For five of Queensland's

50 Council on Federal Financial Relations, *Federal Finances Circular No. 2015/01* [Internet], p. 14, available from: http://www.federalfinancialrelations.gov.au/content/circulars/Circular_2015_01_v2.pdf [accessed 19 December 2019].

51 *ibid.*, p. 16.

52 Auditor-General Report No.42 2017–18 *Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements* [Internet], 2018, paragraph 13, available from: <https://www.anao.gov.au/work/performance-audit/national-partnership-agreement-payments-state-and-territory-governments> [accessed 19 December 2019].

completed packages no performance data was reported. See Appendix 5 for a list of completed packages and reported performance against participation targets.⁵³

Table 3.5: Number of completed Northern Australia Roads Programs work packages that met Aboriginal and Torres Strait Islander participation targets

| Jurisdiction | NT | Qld | WA | All |
|--|----------------|-----------|----------|-----------|
| Both employment and supplier-use target met | 2 | 4 | 0 | 6 |
| Only employment target met | 0 | 5 | 1 | 6 |
| Only supplier-use target met | 3 | 3 | 2 | 8 |
| Neither employment nor supplier-use target met | 5 ^a | 0 | 0 | 5 |
| No data reported | 0 | 5 | 0 | 5 |
| Total completed work packages | 10 | 17 | 3 | 30 |

Note a: Four of the Northern Territory work packages had no target for supplier-use.

Source: ANAO analysis.

3.33 Meeting participation targets is not linked to any milestone payments for Northern Australia Roads Programs projects. The only consequences of underperformance are reputational, through public reporting of outcomes. The *Framework to maximise Indigenous employment and business opportunities in Northern Australia* states that jurisdictions will publicly report on Aboriginal and Torres Strait Islander participation targets outcomes 'at an aggregate level (either by district, region or state program level)'.⁵⁴ As at February 2020 no public reporting had occurred.

2019 Land Transport Infrastructure Projects NPA

3.34 Under the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA, jurisdictions are required to provide monthly progress reports for funded projects, including performance reporting against Aboriginal and Torres Strait Islander participation requirements where relevant. Milestone payments for projects funded under the NPA are not linked to performance against participation targets.⁵⁵ Infrastructure advised the ANAO that jurisdictions are only required to report for NPA projects when progress has occurred and, as at February 2020, jurisdictions had not had to report on participation targets for any NPA projects.

3.35 In addition to business-as-usual reporting requirements, the Indigenous Employment and Supplier-Use Infrastructure Framework commits jurisdictions to 'report publicly on Indigenous

53 Individual work packages are not identified in Appendix 5. Infrastructure informed the ANAO that identifying individual work packages would be detrimental to its relationships with jurisdictions because the *Framework to maximise Indigenous employment and business opportunities in Northern Australia* did not commit to public reporting at this level. In contrast, the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA commits to project-by-project reporting.

54 Infrastructure & PM&C, *Northern Australia Roads programs – Framework to maximise Indigenous employment and business opportunities in Northern Australia*, 2017, p. 6.

55 Infrastructure informed the ANAO that, with agreement from the Minister for Infrastructure, it can withhold payments or not agree to future project delivery milestones for non-compliance with the NPA, including failure to report on Aboriginal and Torres Strait Islander participation.

participation on a project-by-project basis, including performance against targets for all projects'.⁵⁶ The framework sets out the following requirements and guidelines for public reporting:

- performance against targets must be reported at the completion of a project at a minimum (jurisdictions can report more frequently at their discretion);
- reporting should state the target, indicate whether or not it was met, and include information about factors that contributed to the outcome;
- to be respectful, jurisdictions should undertake appropriate consultation with Aboriginal and Torres Strait Islander stakeholders and contractors prior to reporting; and
- while jurisdictions can decide the most appropriate channel to publicly report information, they must confirm public reporting has occurred in post-completion reports.⁵⁷

3.36 As at February 2020 no projects funded under the new NPA had been completed, and therefore no public reporting against participation targets had occurred.

3.37 While the requirements in the new Land Transport Infrastructure Projects NPA framework provide greater transparency than the aggregated reporting arrangements for the Northern Australia Roads Programs, jurisdictions using different channels has the potential to make the information less accessible to stakeholders. To mitigate this risk, Infrastructure should also establish a mechanism to compile outcomes reported by jurisdictions and feed the information into COAG's annual reporting of Aboriginal and Torres Strait Islander employment and business outcomes from jurisdictional participation targets (see Recommendation no.2, paragraph 2.53).

City and Regional Deals

3.38 As discussed at paragraph 2.33, insufficient consideration has been given to reporting arrangements for Aboriginal and Torres Strait Islander participation targets under City and Regional Deals. For deals that have committed to targets, in most cases key technical details (such as whether employment targets are based on the number of employees or hours worked, or supplier-use targets are based on the number or value of contracts) are still to be determined. No milestone payments have been attached to meeting participation targets for City and Regional Deals.

3.39 Currently, the primary form of reporting that occurs for City and Regional Deals is through annual progress reports, which are published on Infrastructure's website. As at February 2020 the Townsville City Deal was the only deal to have publicly reported on participation target outcomes. While its 2019 Annual Progress Report did not include reporting against the target, its 2018 Annual Progress Report stated:

The North Queensland Stadium continues to deliver jobs and opportunities for local businesses and industry with over 99 percent of construction hours completed by local subcontractors. In addition, 42 of the 52 trade packages released so far have been let to locals and the total number

56 Infrastructure, *Indigenous Employment and Supplier-Use Infrastructure Framework* [Internet], February 2019, p. 14, available from: https://investment.infrastructure.gov.au/files/Indigenous_Employment_and_Supplier-use_Infrastructure_Framework.pdf [accessed 6 January 2020].

57 *ibid.*, pp. 14–15.

of Aboriginal and Torres Strait Islander construction employees represents 15.9 percent of the total workforce, exceeding the target of 6.6 percent that was set for the project.⁵⁸

3.40 Performance reporting for the North Queensland Stadium was managed by Queensland Department of Housing and Public Works, which reported cumulative progress against the employment target on its project website (the update from November 2019 stated that the percentage of the construction workforce identifying as Aboriginal and Torres Strait Islander was 12.2 per cent).⁵⁹ The Department of Housing and Public Works also reported more detailed information for the target on an internet portal accessible only to Queensland Government officials.

3.41 The Western Sydney City Deal has released one progress report, which noted that ongoing work would be undertaken to embed participation targets in major infrastructure projects. As at February 2020 reporting arrangements for Western Sydney City Deal projects had not been finalised, although the New South Wales Government indicated it plans to utilise the NIAA's Indigenous Procurement Policy Reporting Solution for reporting against participation targets. Other City Deals with participation targets are yet to release an annual progress report.

3.42 Infrastructure has established an internet-based National Cities Performance Framework Dashboard⁶⁰ to support cities policy development and programs such as City Deals. The dashboard reports levels of Aboriginal and Torres Strait Islander unemployment in cities with City Deals in place, but does not contain reporting against City Deal participation targets. There is currently no combined national performance reporting for City and Regional Deal commitments.

3.43 In developing a strategic framework for City and Regional Deals, in line with Recommendation no.1 (paragraph 2.35), Infrastructure should establish key principles, roles and responsibilities for reporting against Aboriginal and Torres Strait Islander participation targets. Infrastructure should also consider how City and Regional Deals reporting will feed into COAG's annual reporting of Aboriginal and Torres Strait Islander employment and business outcomes from jurisdictional participation targets (see Recommendation no.2, paragraph 2.53).

2019 Northern Territory Remote Housing NPA

3.44 Under the previous 2016–2018 Remote Housing NPA jurisdictions reported on progress against Aboriginal and Torres Strait Islander employment targets to receive milestone payments. All jurisdictions reported their overall results as a percentage, but different methods were used to determine the percentage (with some jurisdictions using number of employees and others using

58 Australian Government, City of Townsville and Queensland Government, *Townsville City Deal – Annual Progress Report* [Internet], April 2019, p. 11, available from: <https://www.infrastructure.gov.au/cities/city-deals/townsville/files/townsville-city-deal-2018-progress-report.pdf> [accessed 6 January 2020].

59 Queensland Department of Housing and Public Works, *North Queensland Stadium project updates and timelines* [Internet], November 2019, available from: <https://www.hpw.qld.gov.au/about/initiatives/north-qld-stadium/timelines> [accessed 6 January 2020]. Note that the reported result is for a different period to the result reported in the 2018 Annual Progress Report.

60 Infrastructure, *National Cities Performance Framework Dashboard* [Internet], no date, available from: <https://smart-cities.dashboard.gov.au/all-cities/overview> [accessed 6 January 2020].

hours worked). This issue was raised in a 2017 review of the NPA, which noted it was difficult ‘to make direct comparisons or adequately assess performance against the benchmark’.⁶¹

3.45 The 2019 Northern Territory Remote Housing NPA states that reporting requirements will be outlined in a reporting framework developed by the Northern Territory Government and approved by the Joint Steering Committee. The Committee noted a draft reporting framework at its second meeting in November 2019. The framework indicates that progress against the NPA’s Aboriginal employment targets will be reported monthly through an online public dashboard, along with information on the proportion and value of contracts awarded to Aboriginal businesses. As at February 2020 the reporting framework had not been finalised and no performance information had been reported publicly.

3.46 The Australian Government has committed to providing milestone payments of \$7.5 million each year to the Northern Territory Government if it achieves the NPA’s employment targets. As at February 2020 no milestone payments had been made under the NPA for achievement of employment targets.

3.47 As with other intergovernmental agreements with participation targets, NIAA should ensure reporting against the target feeds into COAG’s annual reporting of Aboriginal and Torres Strait Islander employment and business outcomes from jurisdictional participation targets (see Recommendation no.2, paragraph 2.53).

Have entities established arrangements to gain appropriate assurance that participation targets are being met?

Appropriate assurance arrangements have not been established for the Northern Australian Roads Programs, City and Regional Deals and the 2019 Northern Territory Remote Housing NPA. The participation target framework developed for the 2019 Land Transport Infrastructure NPA has the potential to provide adequate assurance.

3.48 Performance against Aboriginal and Torres Strait Islander participation targets is now a common criterion assessed in tender evaluations for major government procurements.⁶² This creates a positive incentive for contractors to increase levels of Aboriginal and Torres Strait Islander participation on projects. At the same time, it introduces a risk that participation levels are misreported. To mitigate this risk, entities managing projects with participation targets should establish appropriate controls and assurance activities to ensure reporting against targets is accurate and policy outcomes are achieved. Entities responsible for participation target policies should also provide clear advice on appropriate controls and assurance activities, and undertake reviews to check that these arrangements have been implemented. The potential consequences of this risk being realised are that a well-intentioned policy may be discredited and outcomes for

61 PM&C, *Remote Housing Review: A review of the National Partnership Agreement on Remote Indigenous Housing and the Remote Housing Strategy (2008-2018)* [Internet], 2017, p. 56, available from: <https://www.niaa.gov.au/sites/default/files/publications/review-of-remote-housing.pdf> [accessed 6 January 2020].

62 For example, the mandatory minimum requirements under the *Commonwealth Indigenous Procurement Policy* require entities to consider tenderers’ past performance and proposed future performance in evaluating tenders. PM&C, *Commonwealth Indigenous Procurement Policy* [Internet], 2015, p. 37, available from: <https://www.niaa.gov.au/sites/default/files/publications/indigenous-procurement-policy.pdf> [accessed 2 January 2020].

Aboriginal and Torres Strait Islander peoples not achieved. Box 3 below provides an example of when this risk was realised for a jurisdictional policy.

Box 3: Northern Territory's Indigenous Employment Provisional Sum

The Northern Territory Government established the Indigenous Employment Provisional Sum (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'.⁶³ As a consequence, the IEPS was suspended in August 2017.

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 \$200,000.⁶⁴

3.49 To assess whether these risks are being managed for current intergovernmental agreements with participation target requirements, the ANAO examined whether entities have established arrangements to gain appropriate assurance.

Northern Australia Roads Programs

3.50 As noted in Table 2.3, the *Framework to maximise Indigenous employment and business opportunities in Northern Australia* does not include any compliance and assurance requirements. Infrastructure informed the ANAO that jurisdictions are responsible for gaining assurance over reported levels of Aboriginal and Torres Strait Islander participation.

3.51 The ANAO examined the Northern Territory and Queensland governments' assurance arrangements for Northern Australia Roads Programs projects.

- The Northern Territory Department of Infrastructure, Planning and Logistics has a dedicated compliance team that undertakes assurance checks on all infrastructure projects valued over \$5 million with Indigenous Development Plans in place. The team conducts site visits and examines whether contractors have adequate records to support reported participation target results.
- The Queensland Department of Main Roads and Transport informed the ANAO that it does not undertake assurance checks on the numbers reported against participation targets for Northern Australia Roads Programs projects (stating that it felt project managers would be able to identify if figures were falsified).

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

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

3.52 Infrastructure has not sought any information from jurisdictions on their levels of assurance over reported results. Further, Infrastructure's 2018–19 assurance and compliance program for the Northern Australia Roads Programs did not review controls or assurance arrangements for participation target reporting.

2019 Land Transport Infrastructure Projects NPA

3.53 Through consultation undertaken in 2017 and 2018 to inform the development of the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA, several stakeholder groups raised the need for regular audits to verify reported levels of Aboriginal and Torres Strait Islander participation. In particular, Aboriginal and Torres Strait Islander construction firms claimed that fraudulent activity was taking place on larger scale projects. Accordingly, Infrastructure outlined relevant measures within the new framework.

- The framework outlines processes for verifying the indigeneity of individuals and businesses. It allows jurisdictions to exercise discretion about approaches used, but suggests that individuals provide a statutory declaration or a confirmation of indigeneity and that businesses should be registered with Supply Nation or the Office of the Registrar of Indigenous Corporations or be able to provide other satisfactory evidence.⁶⁵
- Jurisdictions are also required under the framework 'to keep effective records on the performance of contractors against their Indigenous participation requirements'.⁶⁶

3.54 Infrastructure has also established an Infrastructure Investment Risk and Assurance Program for the Land Transport Infrastructure Projects NPA, which includes conducting site visits and documentation reviews for a sample of funded projects. Infrastructure informed the ANAO that Aboriginal and Torres Strait Islander participation target requirements would be incorporated into this program as a key risk from the 2020–21 assessment cycle.

3.55 In addition, the Indigenous Employment and Supplier-Use Infrastructure Framework outlines that Infrastructure will undertake two reviews of its operation: an interim review after 2 years; and a substantive review after 3–4 years to inform the next NPA. Infrastructure should ensure that these reviews examine whether jurisdictions have implemented required controls and are undertaking appropriate assurance activities.

City and Regional Deals

3.56 The only deal for which reporting against a participation target has occurred is the Townsville City Deal. Stakeholders in the North Queensland Stadium project interviewed by the ANAO raised concerns about the robustness of reported levels of Aboriginal and Torres Strait Islander employment. Infrastructure informed the ANAO that the Queensland Government receives regular reporting from the contractor on employment levels and has access rights to audit this reporting but has not had cause to do so to date.

3.57 For other City and Regional Deals, assurance arrangements have not been established. Infrastructure informed the ANAO that it would consider assurance arrangements in developing the

65 Infrastructure, *Indigenous Employment and Supplier-Use Infrastructure Framework* [Internet], February 2019, pp. 9–10, available from: https://investment.infrastructure.gov.au/files/Indigenous_Employment_and_Supplier-use_Infrastructure_Framework.pdf [accessed 6 January 2020].

66 *ibid.*, p. 13.

framework for City and Regional Deal participation targets (see Recommendation no.1, paragraph 2.35).

2019 Northern Territory Remote Housing NPA

3.58 Under the 2016–2018 Remote Housing NPA, the Australian Government made milestone payments to jurisdictions when they met agreed Aboriginal and Torres Strait Islander employment targets. The ANAO’s 2018 audit of the effectiveness of monitoring and payment arrangements for NPAs found there was no evidence that PM&C (which managed the NPA at that time) validated reported results for employment targets before authorising milestone payments.⁶⁷

3.59 As noted at paragraph 2.43, the Northern Territory Department of Local Government, Housing and Community Development informed the ANAO that the reporting framework for the NPA could also outline assurance arrangements. In addition, the NPA notes that a monitoring role will be established for Northern Territory Aboriginal Land Councils, which could include reporting on compliance and assurance matters.

Risk-based assurance arrangements

3.60 In addition to stakeholder concerns about levels of assurance over reported participation, the consultation undertaken in 2017 and 2018 to inform the development of the Indigenous Employment and Supplier-Use Infrastructure Framework also revealed that most jurisdictions felt they do not have capacity to conduct assurance audits to verify reported information.

3.61 Given the risk outlined at paragraph 3.48, Infrastructure and NIAA need to assess whether appropriate risk-based assurance arrangements are in place for current intergovernmental agreements with participation target requirements. Such arrangements should involve: providing clear advice to jurisdictions on what constitutes appropriate controls and assurance activities; and conducting periodic reviews that check that jurisdictions have implemented these assurance arrangements.

67 Auditor-General Report No.42 of 2017–18 *Effectiveness of Monitoring and Payment Arrangements under National Partnership Agreements* [Internet], 2018, paragraph 3.14, available at: <https://www.anao.gov.au/work/performance-audit/national-partnership-agreement-payments-state-and-territory-governments> [accessed 8 January 2020].

Recommendation no.3

3.62 Department of Infrastructure, Transport, Regional Development and Communications and National Indigenous Australians Agency ensure appropriate risk-based assurance arrangements are in place for intergovernmental agreements with Aboriginal and Torres Strait Islander participation target requirements.

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

3.63 *The Department notes the importance of instituting risk-based assurance measures where intergovernmental agreements include Aboriginal and Torres Strait Islander participation targets. The work underway to develop a framework for City and Regional Deals will incorporate these processes and measures as appropriate.*

3.64 *The Department welcomes the Auditor-General's finding that the Indigenous Employment and Supplier-use Infrastructure Framework developed for the 2019 Land Transport Infrastructure Projects National Partnership Agreement (NPA) has the potential to provide adequate assurance.*

3.65 *The Department has established an Infrastructure Investment Risk and Assurance Program as part of the NPA, which allows the Department to conduct evaluation and assurance activities for projects funded under the Infrastructure Investment Program. Projects with participation targets set under the Indigenous Employment and Supplier-use Infrastructure Framework and the Northern Australia Roads and Beef Roads programs will be incorporated into the Risk and Assurance program.*

National Indigenous Australians Agency response: *Agreed.*

3.66 *The NIAA appreciates the analysis of the National Partnership Agreement (NPA) on Remote Housing Northern Territory and the ANAO's recognition that implementation of this Agreement is at an early stage, with some key frameworks still under development.*

3.67 *The NIAA also notes the opportunity to ensure the Reporting Framework currently under development (para 3.59 refers) provides a vehicle to establish a risk-based assurance framework for the National Partnership Agreement (NPA) on Remote Housing Northern Territory.*



Grant Hehir
Auditor-General

Canberra ACT
23 April 2020

Appendices

Appendix 1 Entity responses



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

Secretary
Simon Atkinson

Mr Grant Hehir
Auditor-General for Australia
GPO Box 707
CANBERRA ACT 2601

Dear Mr Hehir

Auditor-General Report on Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements

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

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 Ms Justine Potter, Executive Director, People, Governance and Parliamentary, on 02 6274 6439 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

Simon Atkinson

27 March 2020

Encl.

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Australian Government
National Indigenous Australians Agency

Chief Executive Officer
 Ray Griggs AO, CSC

Reference: EC20-000262

Mr Grant Hehir
 Auditor-General
 Australian National Audit Office

Dear Mr Hehir

Grant,

Thank you for the opportunity to respond to the proposed Australian National Audit Office (ANAO) report on Aboriginal and Torres Strait Islander Participation Targets in Intergovernmental Agreements. The National Indigenous Australians Agency (NIAA) supports the recommendations of the report.

I am pleased to see the ANAO has highlighted the Indigenous Employment and Supplier-use Infrastructure Framework, jointly developed by the (now) NIAA and the (now) Department of Infrastructure, Transport, Regional Development and Communications for the National Partnership Agreement on Land Transport Infrastructure Projects, as a model for other agreements that do not have such frameworks in place.

In order to make good on the Agreements, all parties, including governments and the private sector, will need to assist in developing the supply of Indigenous workers and businesses and ensure effective assurance mechanisms are put in place. This will be particularly important in the current economic conditions facing Australia and the world.

The NIAA is currently working with all jurisdictions to implement the Council of Australian Governments' (COAG) commitment to publish jurisdiction-specific procurement policies and Aboriginal and Torres Strait Islander employment and business outcomes annually. A reporting framework has been agreed and input from jurisdictions has begun to be received. We will endeavour to publish this information as soon as practicable.

Please also find enclosed the NIAA's summary response and our responses to the recommendations, as requested.

Yours sincerely

Ray Griggs

RAY GRIGGS

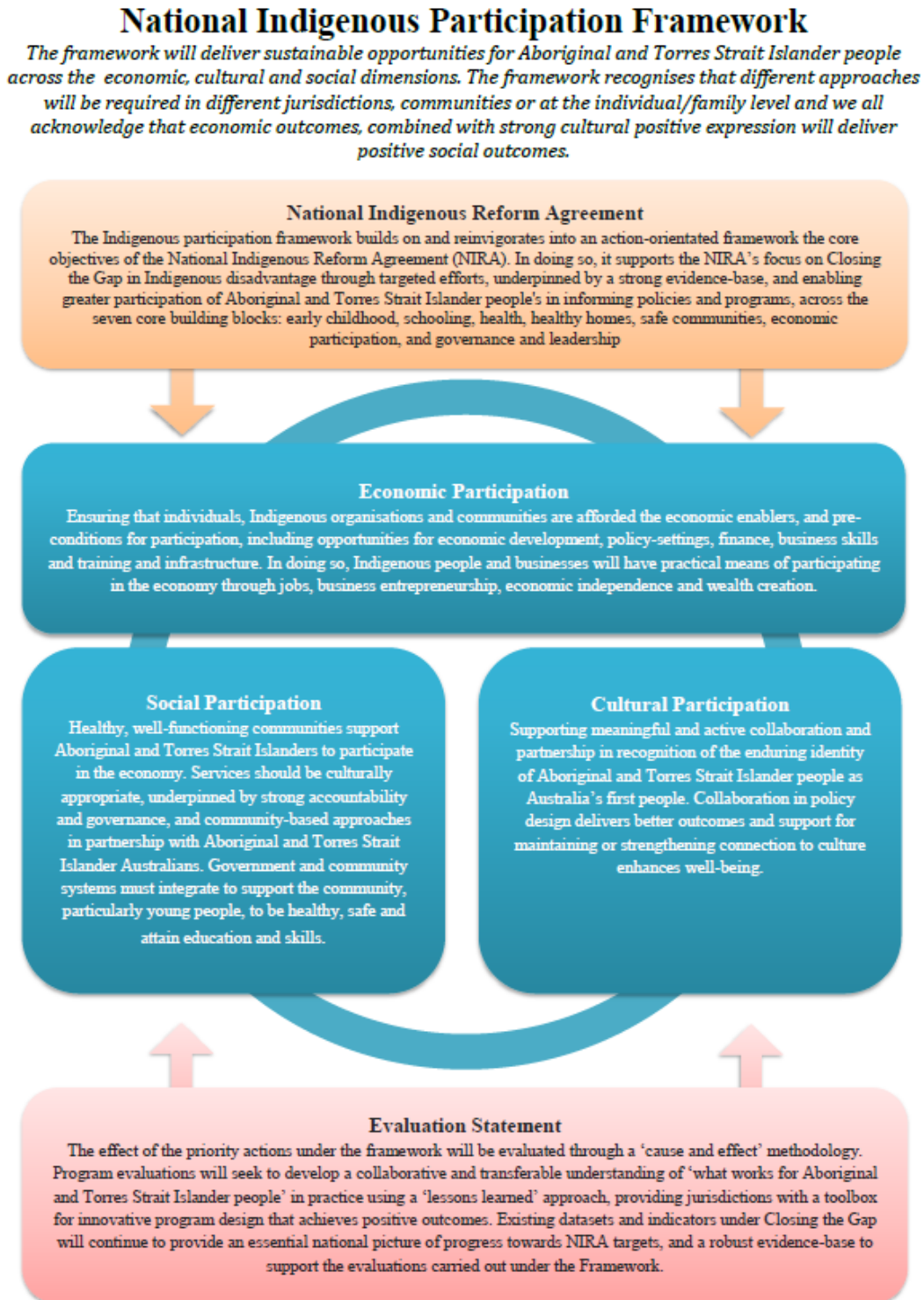
Chief Executive Officer

27 March 2020

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Appendix 2 Draft Indigenous Participation Framework

Figure A.1: Draft framework agreed in principle by COAG in April 2016



Appendix 3 Jurisdictional Aboriginal and Torres Strait Islander procurement policies

Table A.1: Aboriginal and Torres Strait Islander procurement policies, by jurisdiction

| Jurisdiction | Policy | Commenced | Website ^a |
|------------------------------|---|-------------------|---|
| Australian Government | Indigenous Procurement Policy | July 2015 | https://www.niaa.gov.au/indigenous-affairs/economic-development/indigenous-procurement-policy-ipp |
| Australian Capital Territory | Aboriginal and Torres Strait Islander Procurement Policy | July 2019 | https://www.procurement.act.gov.au/policy-and-resources/procurement-from-aboriginal-and-torres-strait-islander-organisations |
| New South Wales | Aboriginal Procurement Policy | July 2018 | https://www.procurepoint.nsw.gov.au/policy-and-reform/goods-and-services-procurement-policies/aboriginal-procurement-policy |
| | Aboriginal Participation in Construction Policy | July 2018 | https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy-apic |
| Northern Territory | Aboriginal Contracting Framework | Under development | N/A |
| | Indigenous Participation on Construction Projects Policy | August 2015 | https://dipl.nt.gov.au/industry/indigenous-participation-in-construction-projects |
| Queensland | Queensland Indigenous Procurement Policy | September 2017 | https://www.datsip.qld.gov.au/publications-governance-resources/policy-governance/queensland-indigenous-procurement-policy |
| | Queensland Government Building and Construction Training Policy | July 2014 | https://desbt.qld.gov.au/training/employers/trainingpolicy |
| South Australia | Industry Participation Policy | March 2018 | https://innovationandskills.sa.gov.au/industry/south-australian-industry-participation-policy |
| | Workforce Participation in Government Construction Procurement Policy | December 2018 | https://www.dpti.sa.gov.au/wpgcp |
| Tasmania | Indigenous Procurement Policy | Under development | N/A |
| Victoria | Tharamba Bugheen: Victorian Aboriginal Business Strategy 2017–2021 | March 2017 | https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-10/Tharamba-Bugheen-Victorian-Aboriginal-Business-Strategy-2017-2021.pdf |
| | Victoria's Social Procurement Framework | April 2018 | https://buyingfor.vic.gov.au/social-procurement-victorian-government-approach |
| Western Australia | Aboriginal Procurement Policy | July 2018 | https://www.wa.gov.au/government/publications/aboriginal-procurement-policy |

Note a: Accessed on 6 January 2020.

Source: ANAO analysis.

Appendix 4 2019 Land Transport Infrastructure Projects NPA projects and participation targets

Table A.2: Approved 2019 Land Transport Infrastructure Projects NPA projects, as at February 2020

| Project name | State/ Territory | Working-age population (%) ^a | Employment target (%) | Supplier-use target (%) | Combined target (%) |
|---|---------------------|--|--------------------------|----------------------------|------------------------|
| Central Coast Roads Package | NSW | 3.7 | 0.0 | 3.0 | 3.0 |
| Cessnock Road – Testers Hollow ^b | NSW | 4.2 | 0.0 | 4.2 | 4.2 |
| Newell Highway (Mungle Back Creek–Boggabilla) | NSW | 12.9 | 13.0 | 3.0 | 16.0 |
| Nowra Bridge | NSW | 3.2 | 8.0 | 1.5 | 9.5 |
| Central Arnhem Road (Goyder) | NT | 28.4 | 26.0 | 3.0 | 29.0 |
| Mango Industry Roads (Litchfield) | NT | 10.8 | 10.0 | 3.0 | 13.0 |
| Tanami Road (Alice Springs–Halls Creek Corridor) | NT | 28.4 | 26.0 | 3.0 | 29.0 |
| Bowen Basin Service Link (Walkerston Bypass) | Qld | 4.4 | 2.4 | 2.0 | 4.4 |
| Bruce Highway (Caboolture-Bribie Island Road–Steve Irwan Way) | Qld | 2.5 | 1.0 | 2.0 | 3.0 |
| Bruce Highway (Cooroy–Curra) | Qld | 3.0 | 1.0 | 2.0 | 3.0 |
| Bruce Highway (Deception Bay Road) | Qld | 1.9 | 1.0 | 2.0 | 3.0 |
| Bruce Highway (Maroochydore Road) | Qld | 1.9 | 1.0 | 2.0 | 3.0 |
| Bruce Highway (Saltwater Creek Bridge) | Qld | 4.2 | 1.2 | 3.0 | 4.2 |
| Cooktown to Weipa Corridor | Qld | 20.5 | 7.5 | 17.5 | 25.0 |
| M1 Exit 41 | Qld | 2.2 | 1.0 | 1.2 | 2.2 |
| M1 Pacific Motorway (Eight Mile Plains–Daisy Hill) | Qld | 2.0 | 0.5 | 1.5 | 2.0 |
| M1 Pacific Motorway (Varsity Lakes–Tugun) | Qld | 1.9 | 0.7 | 1.4 | 2.1 |
| Stanage Bay Road | Qld | 5.8 | 5.8 | 0.0 | 5.8 |
| Hobart–Sorell Corridor | Tas. | 4.5 | 4.0 | 0.0 | 4.0 |
| Midland Highway (Melton Mowbray–North of Lovely Banks) | Tas. | 4.5 | 4.0 | 0.0 | 4.0 |

| Project name | State/ Territory | Working-age population (%) ^a | Employment target (%) | Supplier-use target (%) | Combined target (%) |
|--|---------------------|--|--------------------------|----------------------------|------------------------|
| Midland Highway (Spring Hill) | Tas. | 4.5 | 4.0 | 0.0 | 4.0 |
| Commuter Car Park Upgrades (Croydon) | Vic. | 0.5 | 0.1 | 0.4 | 0.5 |
| Commuter Car Park Upgrades (Ringwood) | Vic. | 0.5 | 0.1 | 0.4 | 0.5 |
| Armadale Road Bridge | WA | 1.7 | 10.0 | 2.0 | 12.0 |
| Bellevue Depot Relocation ^c | WA | 2.2 | 0.0 | 2.6 | 12.0 |
| Karratha–Tom Price | WA | 11.5 | 13.0 | 15.0 | 28.0 |
| Leach Highway (High Street) ^c | WA | 1.0 | 0.0 | 2.4 | 3.0 |
| Outback Way (Great Central Road) | WA | 54.0 | 20.0 | 3.0 | 23.0 |

Key:  Combined targets greater than or equal to working-age population  Combined targets less than working-age population

Note a: Proportion of the working-age population identifying as Aboriginal and/or Torres Strait Islander calculated by the Australian Bureau of Statistics under memorandum-of-understanding with the Department of Infrastructure, Transport, Cities and Regional Development.

Note b: Project adopted the NSW Government's Aboriginal Participation in Construction policy requirements, which can be achieved by a targeted project spend directed towards Aboriginal employment, engagement of Aboriginal owned business, education and training, and engagement or consultation with Aboriginal organisations.

Note c: Projects adopted the Western Australia Government's Aboriginal Procurement Policy targets, which are based on a proportion of the number of awarded contracts rather than a proportion of the total supplier contract value.





Source: ANAO analysis.

Appendix 5 Northern Australia Roads Programs participation outcomes

Table A.3: Participation outcomes for completed Northern Australia Roads Program work packages, as at December 2019

| Work package name ^a | Working-age population (%) ^b | Employment target (%) | Employment result (%) | Supplier-use target (%) | Supplier-use result (%) |
|---------------------------------------|---|-----------------------|-----------------------|-------------------------|-------------------------|
| Northern Australia Roads Program | | | | | |
| Work package 1 | 52.9 | 100.0 | 44.0 | 100.0 | 100.0 |
| Work package 2 | 52.9 | 28.0 | 12.0 | – | – |
| Work package 3 | 8.8 | 12.0 | 11.5 | – | – |
| Work package 4 | 8.8 | 16.0 | 14.1 | – | – |
| Work package 5 | 52.9 | 20.0 | 19.0 | – | – |
| Work package 6 | 38.0 | 26.0 | 16.0 | 1.0 | 0.0 |
| Work package 7 | 38.0 | 16.0 | 22.0 | 1.0 | 7.0 |
| Work package 8 | 38.0 | 16.0 | 35.0 | 1.0 | 10.0 |
| Work package 9 | 16.3 | 5.0 | 19.9 | 5.0 | 2.0 |
| Work package 10 | 7.1 | 9.0 | 11.7 | 4.4 | 9.8 |
| Work package 11 | 6.2 | 5.0 | 14.4 | – | – |
| Work package 12 | 42.4 | 38.0 | 27.0 | 4.5 | 7.2 |
| Work package 13 | 42.4 | 38.0 | 35.8 | 4.5 | 20.6 |
| Work package 14 | 13.7 | 5.0 | 5.7 | 2.5 | 1.2 |
| Northern Australia Beef Roads Program | | | | | |
| Work package 1 | 64.2 | 26.0 | 22.0 | 1.0 | 5.0 |
| Work package 2 | 64.2 | 30.0 | 16.0 | 1.0 | 1.0 |
| Work package 3 | 15.3 | 8.0 | no data | 2.0 | no data |
| Work package 4 | 15.3 | 8.0 | no data | 2.0 | no data |

| Work package name ^a | Working-age population (%) ^b | Employment target (%) | Employment result (%) | Supplier-use target (%) | Supplier-use result (%) |
|--------------------------------|---|-----------------------|-----------------------|-------------------------|-------------------------|
| Work package 5 | 5.3 | 6.3 | 6.1 | 1.0 | 1.0 |
| Work package 6 | 3.6 | 3.0 | 5.5 | 1.0 | 0.0 |
| Work package 7 | 5.3 | 6.3 | no data | 1.0 | no data |
| Work package 8 | 22.6 | 5.0 | 20.2 | 5.0 | 6.2 |
| Work package 9 | 24.4 | 8.0 | 20.8 | 2.0 | 3.7 |
| Work package 10 | 11.6 | 8.0 | 19.0 | 2.0 | 0.0 |
| Work package 11 | 11.6 | 8.0 | no data | 2.0 | no data |
| Work package 12 | 11.6 | 8.0 | no data | 2.0 | no data |
| Work package 13 | 6.4 | 6.0 | 11.9 | 2.0 | 0.0 |
| Work package 14 | 6.4 | 6.0 | 14.3 | 2.0 | 5.4 |
| Work package 15 | 9.2 | 9.5 | 1.6 | 1.0 | 1.1 |
| Work package 16 | 4.2 | 6.6 | 5.8 | 1.0 | 4.3 |

Key:  Combined targets greater than or equal to working-age population
 Combined targets less than working-age population
 Actual result equal to or exceeded participation target
 Actual result less than participation target

Note a: Individual work packages are not identified in this table. Infrastructure informed the ANAO that identifying individual work packages would be detrimental to its relationships with jurisdictions because the *Framework to maximise Indigenous employment and business opportunities in Northern Australia* did not commit to public reporting at this level. In contrast, the Indigenous Employment and Supplier-Use Infrastructure Framework for the 2019 Land Transport Infrastructure Projects NPA commits to project-by-project reporting.

Note b: Proportion of the working-age population identifying as Aboriginal and/or Torres Strait Islander calculated by the ANAO, based on Australian Bureau of Statistics 2016 Census data for the region(s) in which the work package was implemented.

Source: ANAO analysis.