

National Indigenous Australian Agency - Indigenous Procurement Policy (IPP) Reform Discussion Paper

The Northern Australia Indigenous Reference Group (IRG) welcomes the opportunity to provide input to the National Indigenous Australians Agency's Indigenous Procurement Policy (IPP) Reform Discussion Paper – and welcome the opportunity through further consultation.

Northern Australia Indigenous Reference Group

The IRG is an expertise-based advisory group comprised of Indigenous people with experience in Indigenous economic development in Northern Australia. Current IRG members were appointed in 2019 to provide policy advice to the Minister for Northern Australia and the Minister for Indigenous Australians on practical actions to enhance the economic prosperity of Indigenous Australians. Brief IRG members biographies are presented at **Attachment A**.

Northern Australia

Northern Australia comprises 53 per cent of Australia's landmass, defined as all of the Northern Territory, as well as the Northern parts of Queensland and Western Australia that intersect with the Tropic of Capricorn, including the Indian Ocean Territories (see Figure 1).



Figure 1- Northern Australia¹

The region is abundant with untapped potential and talented people. Northern Australia has a competitive advantage in resources, energy, agriculture, aquaculture and tourism and its proximity to Asia and the Pacific creates trade potential to drive Australia's economic growth over the next decade and beyond. This continues on established trade between Indigenous Australians and South East Asian peoples over millennia. Northern Australia is mineral rich with deposits of lithium and rare earth metals that will be vital to the electrification of the country as we move toward a net zero future.² It is on the frontline of the nation's defence; border protection and biosecurity and it is home to a young and growing Indigenous population which will play an increasing role in its growth. Unlocking the north's potential is key to the development of the nation as a whole.

¹ Office of Northern Australia. (2021) *Developing Northern Australia* Retrieved from ona-developing-northern-australia-fact-sheet-final.pdf (infrastructure.gov.au) (p.1)

² Invest Northern Territory. (2022) *Minerals*. Accessed on 24/10/2022. Retrieved from <https://invest.nt.gov.au/infrastructure-and-key-sectors/key-sectors/minerals>.

Developing the north, however, is not without its challenges. Northern Australia is home to only 1.3 million people or around 5.3 per cent of the Australian population.³ Its sparse population, the vast distances between major centres and extreme weather conditions can make it difficult, and costly, to do business and to provide adequate social and economic infrastructure. Housing shortages and higher costs of living can make attracting and retaining a skilled workforce difficult⁴. This leads to a prevalence of fly-in, fly-out workers which results in the benefits of economic activity being siphoned away to southern centres.

Indigenous Australians have significant assets to bring to the Northern Australia development agenda. Indigenous people comprise 16 per cent of the Northern Australian population, far greater than their three per cent share of the national population, and maintain rights or interests in around 78 per cent of the land mass in Northern Australia.⁵ The Indigenous population is younger and growing at a faster rate than the rest of the Australian population.⁶ Indigenous Australians are projected to constitute approximately half of the working age population of Northern Australia by 2050.⁷ Outside of major population centres in Northern Australia this is already the case.⁸

Submission

The IRG play a crucial role in promoting economic development and helping create procurement opportunities for Indigenous businesses throughout Northern Australia. The group provides advice on many of the challenges and issues that hinder or obstruct the participation of First Nations businesses in the northern economy.

The National Indigenous Australian Agency NIAA recognise the value of consulting with the group and approached the IRG to provide their recommendations through consultation. Face to face consultation occurred during an IRG meeting in Mount Isa on Wednesday 21 February 2024. Therefore, this submission advocates the IRG's original position, and advocates that further consideration be given to the points shared during that consultation.

The Indigenous Procurement Policy (IPP) plays a crucial role in promoting economic empowerment and social inclusion for Indigenous communities. The policy aims to increase the participation of Indigenous businesses in government contracts and procurement processes.

³ Office of Northern Australia. (2021) *Developing Northern Australia*. Accessed on 29/10/2022. Retrieved from ona-developing-northern-australia-fact-sheet-final.pdf (infrastructure.gov.au) (p.1)

⁴ Ibid

⁵ Ibid

⁶ Australian Bureau of Statistics (2017) in Australian Venture Consultants Pty Ltd, (2020) *A new framework for accelerated development of the Northern Australian Indigenous economy*, provided. Accessed on 26/10/2022. (p.38).

⁷ Joint Select Committee on Northern Australia (2014) in Australian Venture Consultants Pty Ltd, (2020) *A new framework for accelerated development of the Northern Australian Indigenous economy*, provided. Accessed on 26/10/2022. (p.38).

⁸ Australian Bureau of Statistics (2017) in Australian Venture Consultants Pty Ltd, (2020) *A new framework for accelerated development of the Northern Australian Indigenous economy*, provided. Accessed on 26/10/2022. (p.38).

IRG recognise that by prioritising the engagement of First Nations businesses, the policy creates opportunities for these enterprises to grow and prosper. This not only contributes to the economic development of Indigenous communities but also helps in addressing socio-economic disparities that have historically marginalised our people.

A key benefit of the IPP is that it provides a platform for Indigenous businesses to showcase their capabilities and compete on an equal footing with other suppliers. This promotes fair competition and encourages diversity within government supply chains.

Moreover, by awarding government contracts to First Nations businesses, the policy fosters job creation within these communities. This leads to increased employment opportunities and ultimately improves the overall well-being of individuals and families.

The IPP was introduced with the aim of promoting economic empowerment and increasing opportunities for Indigenous businesses in Australia. However, like any policy, it is not without its challenges and issues.

The following recommendation sets out principles established by the IRG to guide discussions with governments to improve First Nations outcomes from the implementation of government Indigenous procurement policies (IPPs)⁹.

The IRG recommends the National Indigenous Australian Agency seek to improve First Nations business participation through the following principles:

Principle 1. Consistent and effective procurement. Ensure government procurement maximises the positive effect on Indigenous businesses and communities, provides genuine opportunities for market participation and addresses 'black cladding'¹⁰ through:

- Consistently applying the definition of an Indigenous business as, at a minimum, 51 per cent Indigenous owned and controlled¹¹.

⁹ For the purposes of this document, 'governments' includes Commonwealth and State and Territory Governments as well as Government entities and statutory authorities such as, but not limited to, the Northern Australia Infrastructure Facility, Indigenous Business Australia, the Indigenous Land and Sea Council and Supply Nation.

¹⁰ Black cladding refers to the situation where large non-indigenous corporations enter into disingenuous partnership with Indigenous businesses and over-represent the involvement and control indigenous businesses have in order to appear more attractive in procurement selection processes.

¹¹ Indigenous controlled organisations are variably defined as those that can demonstrate that Aboriginal and Torres Strait Islander people are involved in the daily operation of the enterprise and have effective control at least equal to the degree of ownership Indigenous. Indigenous control could include control at Board and executive level with a minimum number of Indigenous directors on the board, a minimum quorum of majority Indigenous Directors at Directors' meeting, and/or the Board chair to be Indigenous.

- Consideration of a tiered level of Indigenous ownership in the selection of businesses and contractors in end-to-end procurement processes. A tiered approach could apply preferences such as:
 - First preference: 100 per cent Indigenous owned and controlled.
 - Second preference: more than 51 per cent Indigenous owned and controlled.
 - Traditional owner/Place Based Indigenous ownership.
- Applying IPP requirements to the full supply chain, including head contractors, sub-contractors and suppliers, of significant government contracts.

Principle 2. Representative and authentic procurement. Maximise First Nations outcomes from government procurement by increasing procurement targets and ensuring the authenticity of Indigenous business ownership and control by:

- Increasing Commonwealth IPP targets to a minimum of four per cent of the number and value of contracts being awarded to Indigenous businesses to better align with population parity¹².
- Introducing local, Indigenous-led certification processes to confirm the Indigeneity of Indigenous business owners and verify Indigenous control of businesses. It is preferred that jurisdictional certification feed into three national database and be the certifying authorities, with SN maintaining a database maintenance role only. This respects Aboriginal led processes that are place based.
- Jurisdictional IPP targets should reflect population parity.

Principle 3. Transparent and accountable procurement. Improve transparency and accountability for First Nations outcomes from government procurement by:

- Strengthening monitoring and compliance measures in funding agreements and procurement contracts between the Commonwealth and the States and Territories and between governments and contractors.
- Applying financial and other penalties in funding agreements when stated Indigenous procurement outcomes are not met.
- Funding an Audit Office or Compliance Officers to ensure the mandatory minimum requirements have been applied to contracts. In addition to reporting non-compliance, the auditor will also have the authority to enact penalties for non-compliance.

¹² As at 30 June 2021 Aboriginal and Torres Strait Islander people represented 3.8 per cent of the Australian population. Retrieved from <https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples>

Principle 4. Innovative and flexible procurement. Incentivise innovation and flexibility in IPPs to allow for different ways to improve Indigenous business and community outcomes by:

- Inclusion of bonus payments for achievement or exceeding of targets. Allowing /providing for a budget for Indigenous participation on projects.
- Considering the potential for broader and longer term of benefits to Indigenous communities through procurement contracts. For example, skills and capability development, legacy infrastructure and equipment, and improved resilience and liveability.

Consultation Discussion

The IRG request the National Indigenous Australian Agency also consider the following:

Family owned business the policy recommendation states:

'51% First Nations ownership if it is a partnership – each class of partnership interest must be First Nations owned and shown in the partnership agreement'.

Further consideration should be given in circumstances where owners of the business are married, where one partner is Indigenous and the other non-Indigenous. There needs to be a way to apply this recommendation with good judgment.

One innovative solution, of which we are aware, was put in place by a Townsville couple who found themselves unable to access government support due to the application of the 51% rule. To meet the 51% First Nations ownership criteria, the couple set up a trust fund in their child's name and gifted 1% each of the business to the child resulting in the couple maintaining equal share and the business meeting the funding criteria.

Owned, Managed and Controlled the policy recommends:

That the overarching 51% owned and controlled First Nations majority also apply to Management – As in, 51% managed by First Nations people'.

Further consideration should be given to 'mature' First Nations businesses, where, for example, in cases where First Nations business owners may no-longer manage operational needs of the business, and therefore have delegated management responsibility to staff. In these circumstances they may not be able to maintain a 51% majority of First Nations managers. Yet they are able to retain 51% ownership and control of the business.

As well, it is not clear what 51% First Nations managed resemble. How is this figure derived? Is it based on staff to management ratios? If so, then who is setting those benchmarks?

Subsequently, if of the trilogy of benchmarks, i.e. *'owned, controlled and managed'*, if managed is not met does this mean the business will lose access to funding, contracts and other privileges afforded to First Nations businesses under the IPP policy?

Prioritise Indigenous Businesses the NIAA discussion paper recognises that:

'The IPP does not currently prioritise any specific type of First Nations business or organisations'.

However, goes on to state that:

'Consideration is being given to the concept that Aboriginal and Torres Strait Islander community-controlled organisations should be prioritised over other First Nations businesses or organisations (where value for money is met) to support building the community-controlled sector'.

Rather than *'Rob Peter to Pay Paul'* let the tender for the contract stand on its merits. The idea is to increase First Nations participation, not to add another hurdle.

The IRG suggest that the NIAA consider the development of a strategy to give all Indigenous businesses and community-controlled organisations the first opportunity for contracts.

First Nations business support the IRG recommends that:

The NIAA develop strategies and create a plan to invest in the capabilities of Indigenous business owners and procurement officials. Capability building is essential for First Nations businesses to secure contracts successfully. By investing in skills development, training, and infrastructure, Indigenous businesses can enhance their capacity to compete effectively in the market.

With a focus on capability building, First Nations businesses can demonstrate their expertise and reliability to potential clients. This not only increases their chances of winning contracts but also helps in establishing long-term partnerships based on trust and quality service delivery.

Access to capital the discussion paper acknowledges:

Indigenous Business Australia (IBA) as a way for First Nations entrepreneurs to access capital to help finance their business venture. The IRG acknowledge IBA's role in providing these services, however, there are still unique barriers that First Nations people and communities face when applying for financial assistance. For example, a majority of First Nations people and communities do not have the means to accumulate large capital holdings, to be used as collateral/deposit for a business loan, there are also issues navigating overwhelming bureaucratic processes when applying for assistance.

For those reasons, the NIAA should consider advocating for inclusive policies and support systems that could be used in creating a more equitable environment for First Nations entrepreneurs to thrive.

Mandate Indigenous Reporting Requirements the IRG recommend that:

NIAA consider developing reporting mechanisms for Indigenous employment levels and sub-contracting activities.

It is essential to develop reporting mechanisms for Indigenous employment levels and sub-contracting activities to ensure transparency, accountability, and progress towards goals.

By tracking Indigenous employment levels, organisations can measure their commitment to diversity and inclusion. Reporting on sub-contracting activities involving Indigenous businesses promotes economic empowerment and opportunities for Indigenous communities.

These reporting mechanisms not only showcase a company's dedication to Indigenous engagement but also drive positive change by fostering partnerships, supporting local economies, and creating sustainable employment opportunities.

Attachment A

IRG members

- **Mr Colin Saltmere**, Chair - Managing Director of the Indjalandji-Dhidhanu Aboriginal Corporation, the Myuma and Rainbow Gateway companies, and Adjunct Professor with the University of Queensland's Aboriginal Environments Research Centre.
- **Ms Tara Craigie** – Managing Director of J&T Craigie Pty Ltd, Indigenous Engagement Consultant at AAM Investment Group, and President at Northern Cowboys Association and Founder of Territory Rodeo Services.
- **Mr Jerome Cubillo** - Chief Executive Officer of the Northern Territory Indigenous Business Network, Chairperson of Larrakia Nation Aboriginal Corporation (LNAC), and on the Board of Ironbark Aboriginal Corporation representing LNAC.
- **Mr Troy Fraser** - Chief Executive Officer at Doomadgee Aboriginal Shire Council and formerly worked as Community, Youth and Economic Development Manager at the Aboriginal Development Benefits Trust.
- **Mr Peter Jeffries** - Chief Executive Officer of Murujuga Aboriginal Corporation and has formerly worked with the WA Police Force, Rio Tinto, the Yamatji Marlpa Aboriginal Corporation, Woodside and his own business offering consulting services and Aboriginal cultural tourism.
- **Ms Gillian Mailman** - Managing Director of Fibre Optics NQ, Chief Executive Officer of MJB Solutions Pty Ltd, Director of Indigenous Wealth Hub, and Director of Illuminate FNQ.
- **Ms Ninielia Mills** - CEO of Nyamba Buru Yawuru (NBY) and is a Traditional owner from Yawuru country which includes Broome.