

Aboriginal Participation in Construction (APIC) Policy Review

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Executive summary

The Aboriginal Participation in Construction (**APIC**) Policy helps to deliver the NSW Government's commitment to increasing economic and employment participation for Aboriginal people through leveraging government construction procurement opportunities.

The Policy was introduced in 2015 and supports the NSW Government *OCHRE* (Opportunity, Choice, Healing, Responsibility and Empowerment) Plan and *Growing NSW's First Economy* framework to improve outcomes for Aboriginal people across all sectors of the community.

The Policy was updated in 2016 to include mandatory targets and requirements for construction procurement from 1 July 2016 and incorporated a requirement for the NSW Procurement Board, as part of its responsibilities in administering and monitoring the Policy, publish a yearly review of the Policy.

This Review of the APIC Policy (**the Review**) assessed the implementation and compliance of the Policy, its processes and stakeholders' understanding of the Policy from its mandated period from 1 July 2016. Compliance has been evaluated through data collected from NSW Government clusters on their construction projects subject to the APIC Policy.

Findings

The Review's key findings are outlined below:

- Since 1 July 2016, approximately \$135 million has been, or been committed to be, directed towards Aboriginal participation across 105 NSW Government construction projects;
 - 73 per cent of these projects were assigned the minimum 1.5 per cent contract spend target. 22 per cent of projects were assigned a higher target of up to 6.9 per cent
 - 5 per cent of projects did not meet the minimum target.
- There is a significant commitment across NSW Government and Industry to support the Policy objective to increase Aboriginal participation in construction.
- The indirect expenditure category is too broadly defined and causes conflicting interpretations by suppliers and agencies.
- It is unclear which Policy categories are subject to optional or mandatory requirements.
- The Policy does not outline consequences for failing to meet the requirements.

- There is support to incorporate further requirements in the Aboriginal Participation Plans and Reports to provide greater transparency and to allow for validation of outcomes.
- Prescribed reporting periods are too infrequent to allow for adequate monitoring of progress towards targets.
- The Policy does not address direct engagement of Aboriginal businesses and does not provide flexibility to directly engage prequalified Aboriginal businesses for lower value construction projects up to \$1 million primarily directed to Aboriginal communities.
- There is limited governance and transparency of indirect spend and spend directed to the approved organisations.
- Early engagement has been reported as an essential element to support increased awareness of project opportunities and the identification of qualified Aboriginal employees or Aboriginal owned businesses.
- Further guidance material and templates would assist agencies and suppliers in applying the Policy and its requirements.

Recommendations

This Review's key recommendations are outlined below:

- Apply the Policy requirements to all construction contracts valued above \$1 million eg requirements to be made mandatory for all Policy categories; 1, 2 and 3.
- Replace references to 'target project spend' and 'targeted project spend' with requirement/s in the Policy document.
- Replace the direct and indirect expenditure categories with a new eligible spend category.
- Where suppliers are unable to meet the requirement of distributing the relevant spend into eligible spend, the remaining spend is to be directed to the existing list of approved organisations with transparency and governance of contributions.
- Utilise existing ability for the NSW Procurement Board to set requirements against individual contracts, where appropriate, informed by opportunity assessment and identification by geography, spend, market supply and capacity.
- Encourage agencies to introduce incentives for suppliers exceeding requirements and consequences for not meeting requirements (financial and non-financial).
- Introduce more flexibility for agencies in support of the Policy objective including:

- Ability for direct engagement of Aboriginal owned businesses for contracts valued up to \$250,000
- Ability to run closed tenders with prequalified Aboriginal owned businesses for Category 1 projects valued up to \$1 million.
- Develop and maintain a reporting dashboard of information provided regularly by agencies and suppliers on compliance with requirements and progress towards Policy target.
- Revise reporting requirements to allow for more frequent reporting over the life of the project. Projects over \$10 million to report monthly. Projects over \$1 million to report quarterly.
- Introduce ad-hoc auditing of reporting and achievement of requirements to provide greater transparency and accountability.
- Embed the principles of early engagement with local Aboriginal communities in the Policy.
- Development of tools and support specifically directed to meet the needs of Aboriginal businesses, agencies and suppliers.
- Arrange and support information forums and networking opportunities aimed at improving policy awareness, encouraging partnerships and communicating procurement opportunities to suppliers and Aboriginal businesses and communities.

Introduction

1.1 About the Review

This Review forms part of the NSW Government Procurement Board (the Board) responsibilities to administer, monitor and report on the Policy including publishing a yearly review of the Policy.

The scope of the Review includes the assessment of compliance and implementation of the Policy, its targets, requirements and stakeholders' understanding of the Policy from its mandated period from 1 July 2016. This Review has identified opportunities to improve the Policy and its effectiveness to achieve its objectives.

1.2 Overview of the APIC Policy

The *Aboriginal Participation in Construction Guidelines* were published in 2007 to support greater participation by Aboriginal people in government construction projects across NSW. The guidelines were replaced with the implementation of the Policy on 1 May 2015.

On 1 July 2016, the Policy's project spend targets became mandatory for construction projects over \$10 million and for construction projects primarily directed to one or more Aboriginal communities. Agencies are able to set higher targets for employment and spend if considered appropriate and where opportunities exist.

The Policy applies to three construction project categories outlined below:

- **Category 1** – Projects nominated by an agency that are primarily directed to one or more Aboriginal communities. This includes projects where an Aboriginal community is the sole or predominant beneficiary, is a key user group or a predominant stakeholder.
- **Category 2** – All other construction projects where the estimated value is over \$10 million.
- **Category 3** – All other construction projects where the estimated value is over \$1 million.

The Policy applies to all relevant construction procurement of NSW Government departments, statutory authorities, trusts and other government entities (collectively referred to as 'agencies').

The Policy was a key deliverable under the *Aboriginal Economic Development Framework*, now referred to as the *Aboriginal Economic Prosperity Framework*. The framework is an *Opportunity, Choice, Healing, Responsibility and Empowerment (OCHRE) Plan* connected initiative, which seeks to further empower Aboriginal people, communities and businesses to drive stronger economic outcomes. This was released in December 2016 as part of *Growing NSW's First Economy*.

The Policy aims to leverage NSW Government construction procurement to assist in meeting its commitments and its progression of the OCHRE's objectives to:

- increase the number of Aboriginal people employed;
- increase the number of Aboriginal owned businesses;
- increase student transition from school to employment or tertiary education; and
- increase school attendance and retention.

Contractors for all projects covered by the Policy must provide an Aboriginal Participation Plan (Plan) to the contracting agency within 60 days of the contract being awarded.

An Aboriginal Participation Report (Report) must also be provided to the agency when the project reaches 90 per cent completion which should demonstrate how the Plan has been implemented.

Contractors for Category 1 and Category 2 projects are also required to provide their Plans and Reports to the Board for publication at the same time they are provided to the contracting agency to be published on a site determined by the Board and must remain on the site for at least two years from the conclusion of the project.

1.3 Review Report

This report provides an assessment of the implementation of the Policy. It does not include individual project analysis. This report summarises findings related to current gaps and opportunities to improve the Policy and its effectiveness to achieve its objectives.

2. Review Process

The Review process has been outlined below:

1. Initial data collection and analysis
2. Stakeholder engagement – surveys, individual stakeholder consultations and workshops
3. Collation and validation of data and findings
4. Development of recommendations

2.1 Initial data collection and analysis

A quantitative data collection exercise provided an overview of the distribution of APIC projects and outcomes dating from the post-mandated period from 1 July 2016 and gathered data on:

- Number of current APIC and non-APIC projects
- Total relevant contract spend allocated to mandated expenditure
- Construction categories and geographical spread of APIC projects
- Status of Plans and Reports per APIC project

Data was collected from the member agencies and clusters¹ of the NSW Government Construction Leadership Group (CLG)²:

- Department of Education and Training
- Department of Family and Communities Services
- Department of Finance, Services and Innovation
- Department of Industry, Skills and Regional Development
- Department of Justice
- Health Infrastructure
- Transport for NSW

¹ The Department of Planning and Environment's data was also collected. It had no relevant APIC projects.

² The CLG is an advisory group established to assist the NSW Procurement Board on construction procurement related matters.

The exercise utilised the NSW Government Contract Award Notices (CAN) register to filter for entries meeting the following criteria making them eligible for the application of the Policy:

- United Nations Standard Products and Services Code (UNSPC) categories relating to construction services and activities
- Contract value over \$1 million
- Contract start date from 1 July 2016

The agencies were provided a copy of their respective contract data to confirm entries and amend where necessary. This allowed agencies to correct the initial data which is limited by agencies' use of the NSW eTendering platform and any limitations in the CAN data and filtering conditions.

The quantitative data findings can be found in [Section 3.1](#).

2.2 Stakeholder Engagement

A range of stakeholders were engaged to provide input into the Review including NSW Government and Commonwealth agencies, construction companies of various size and expertise, Aboriginal owned businesses, construction industry bodies, Aboriginal industry bodies and not-for-profit organisations.

Stakeholders were engaged through the following activities:

- Online surveys
- Individual consultations
- Workshops

The results from the stakeholder engagement activities are found in the key findings and recommendations section of this report.

2.2.1 Stakeholder surveys to Government agencies and industry stakeholders

An anonymous survey was distributed to the members of the CLG, NSW Government agencies and industry stakeholders to gather qualitative data on their understanding and implementation of the Policy (Appendix A, Appendix B and Appendix C). Findings from the stakeholder surveys can be found in [Section 3.2](#). The anonymity of participants did not allow for follow-up consultations.

2.2.2 Discussions with approved indirect expenditure organisations

The Literacy for Life Foundation and the Master Builders Association NSW³ were consulted in their capacity as the Board's approved eligible organisations for indirect expenditure under the Policy (see [Section 3.3](#)).

2.2.3 Individual consultations with stakeholders

Individual consultations with a selection of government, industry and not-for-profit stakeholders unable to attend the provided additional findings in relation to the Policy (see [Section 3.4](#)).

2.2.4 Workshops with NSW Government agencies and industry, industry bodies and other external stakeholders

Two workshops were held to identify common concerns and opportunities for improvement of the Policy.

The first workshop targeted representatives from construction companies, Aboriginal businesses, construction industry bodies, Aboriginal industry bodies and not-for-profit organisations. The second workshop targeted NSW Government agencies involved in construction projects and other government bodies involved in Aboriginal affairs.

Each workshop focused on the four themes below:

- Targets
- Monitoring and reporting
- Internal and external engagement
- Tools and support

The workshop participants voted on their top five ideas and solutions to improve the effectiveness of the Policy (see [Section 3.5](#)).

2.3 Collation and validation of data and findings

The quantitative and qualitative data from the baseline data collection exercise and stakeholder engagement activities were collated and validated to develop the full set of findings.

2.4 Development of recommendations

The Review's recommendations have been identified within four themes: targets, monitoring and reporting, engagement, and tools and support. The recommendations

attempt to address common concerns and improvement areas identified during the Review process.

The development of the recommendations included consideration and inclusion of ideas and suggestions raised throughout the Review's stakeholder consultations.

The Review's recommendations were also informed by research conducted of policies in other jurisdictions. .

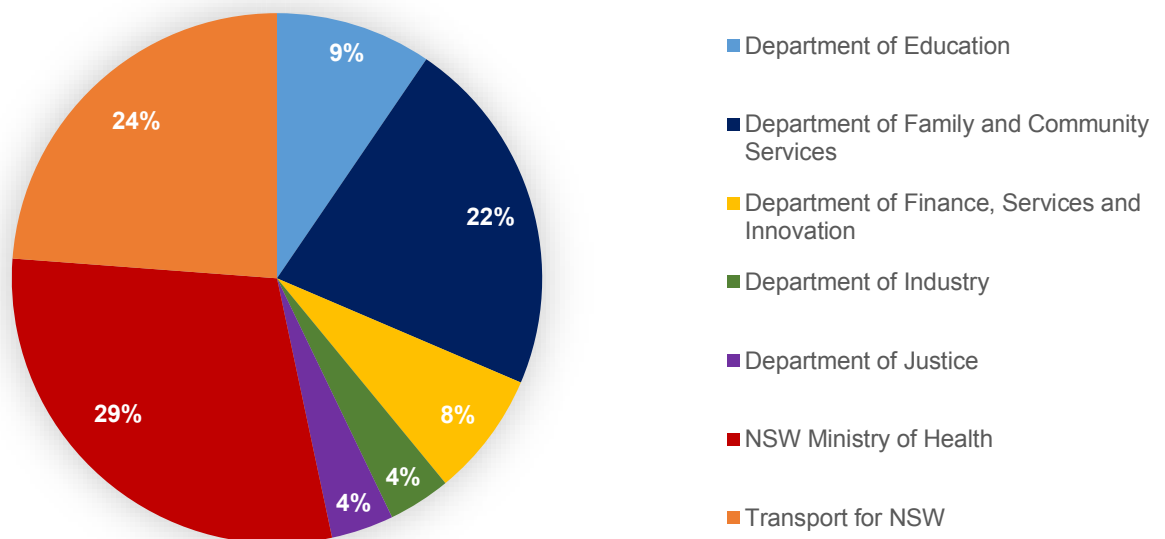
3. Findings

3.1 Quantitative data from NSW Government agencies

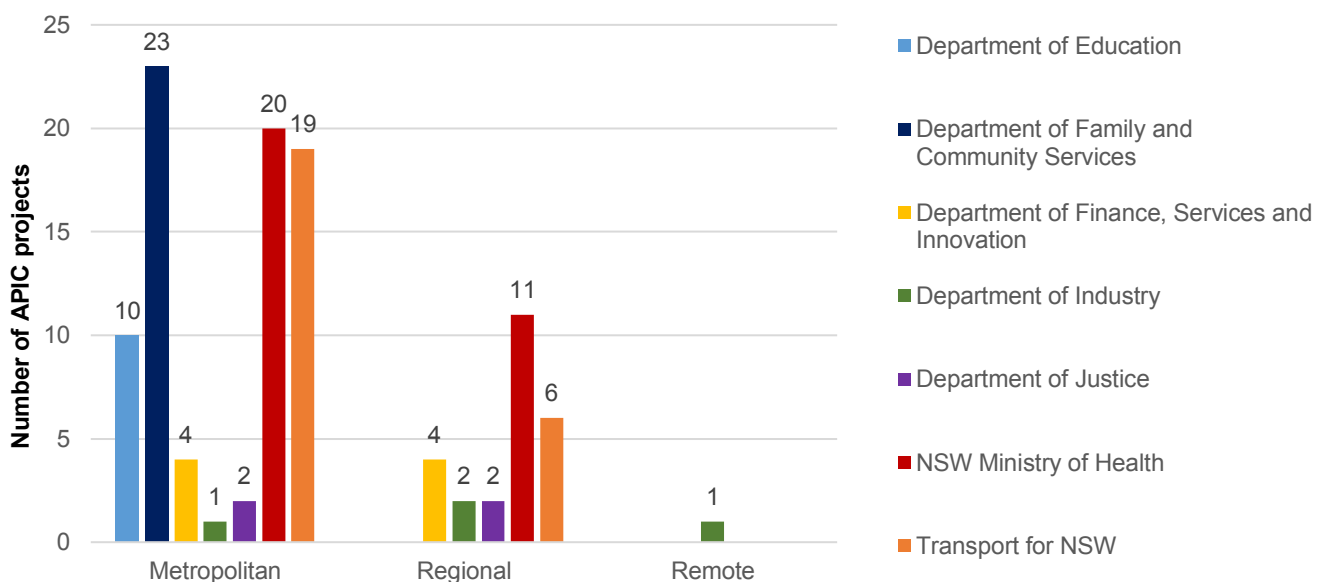
Data was collated from NSW Government agencies and clusters to provide a baseline for APIC projects that commenced from the Policy's mandated period after 1 July 2016. The data identifies performance against targets and the distribution of APIC projects across agencies and clusters, geographical location and Policy categories.

The findings in this section represents data provided by seven clusters.

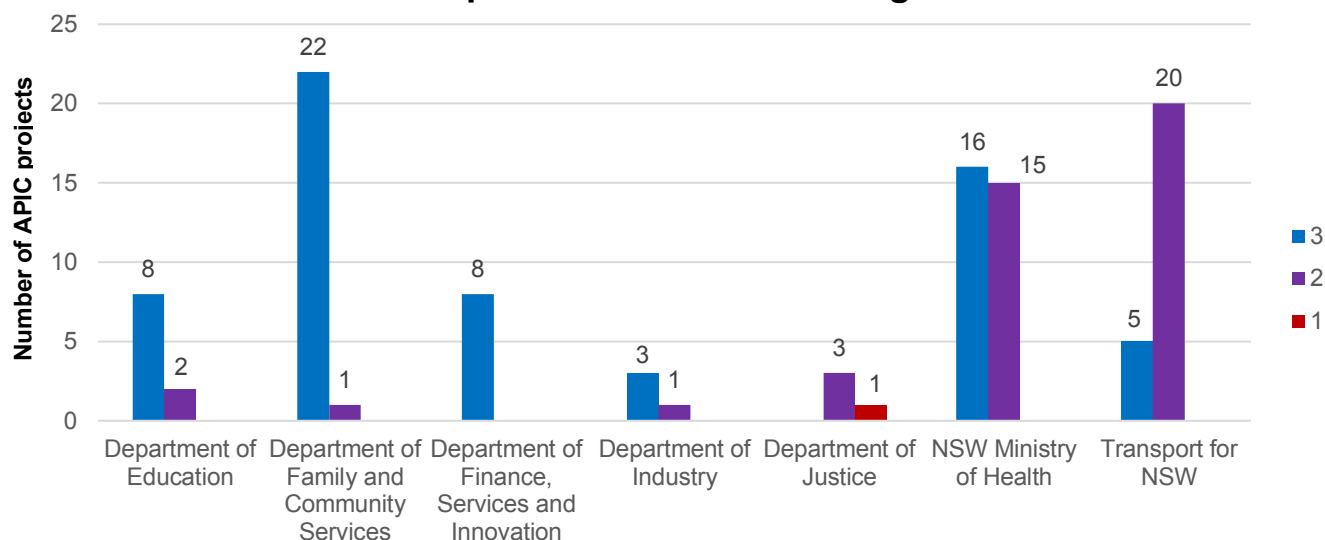
Graph 1: NSW Government Cluster Share



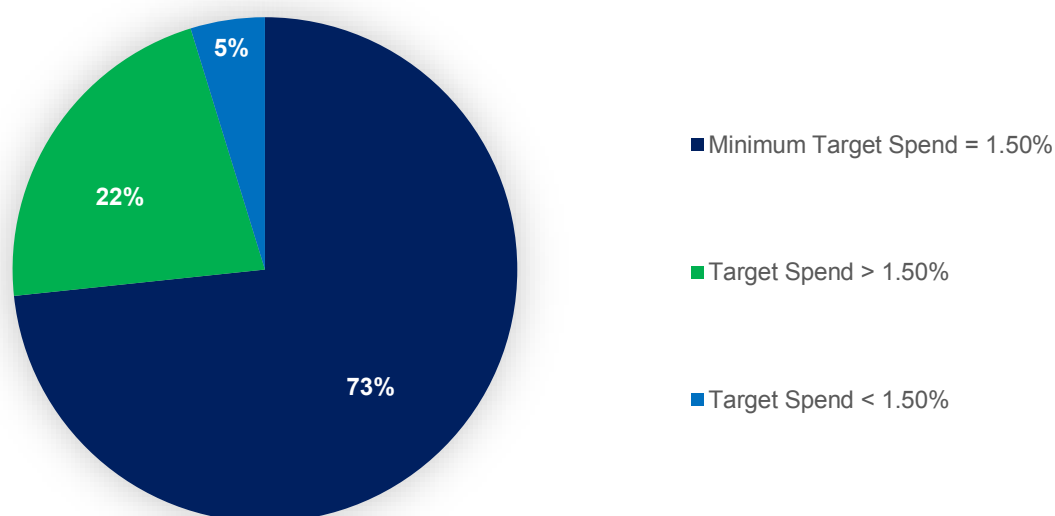
Graph 2: Geographic Distribution



Graph 3: Construction Categories



Graph 4: Target Spend Percentages



Limitations

The data from agencies and clusters reflect APIC projects that were provided for the purpose of this review and available as at October 2017.

Clusters were requested to review and correct data collected from the NSW eTendering platform and CAN register. Several clusters do not hold centralised records of APIC

⁴ **Category 1** – Projects nominated by an agency that are primarily directed to one or more Aboriginal communities. This includes projects where an Aboriginal community is the sole or predominant beneficiary, is a key user group or a predominant stakeholder. **Category 2** – All other construction projects where the estimated value is over \$10 million. **Category 3** – All other construction projects where the estimated value is over \$1 million.

projects by individual agencies within the cluster. As a result, it is possible that not all APIC projects have been captured.

3.2 Survey results and findings

Below are the key findings from the anonymous surveys to CLG members, NSW Government agencies and industry stakeholders.

Understanding and implementation of the Policy

- Majority of NSW Government and industry respondents reported a clear understanding of the Policy.
- Majority of industry respondents reported low levels of support provided by NSW Government in implementing the Policy.
- Majority of NSW Government respondents reported that their agencies provide above average assistance to their contractors in guiding them through the Policy's requirements.
- Majority of NSW Government respondents reported that they consider opportunities for Aboriginal businesses or labour, either 'sometimes' or 'always', when scoping APIC projects.
- Majority of NSW Government and industry respondents reported they actively engage and monitor the marketplace for emerging and existing Aboriginal businesses either through engagement with Aboriginal industry bodies or directly with Aboriginal businesses.

Policy compliance and targets

- Majority of NSW Government respondents indicated that they 'never' or 'rarely' set an APIC project's target spend percentage above the minimum 1.5 per cent.
- Majority of NSW Government respondents identified 'project aspects and constraints' as the main barrier preventing them from setting the target spend above the minimum 1.5 per cent.
- Majority of the NSW Government respondents reported that they apply various penalty measures as consequences of contractors not meeting the requirements (payment of the remaining per cent of spend to the approved list of organisations eligible for indirect expenditure, breach of contract or performance review).
- NSW Government respondents also identified projects' time frames in tenders as a barrier to increased Aboriginal participation.
- Some industry respondents reported difficulties in meeting targets due to a lack of availability of Aboriginal businesses and or employees in the supply market.

- Majority of NSW Government respondents reported that they ‘always’ or ‘often’ receive the Report from contractors at 90 per cent project completion.
- All industry respondents reported having met their reporting requirements under the Policy.

Proposed Policy improvements

- Majority of NSW Government respondents reported that improvements to the Policy should be directed at increasing consultation by NSW Government with the Aboriginal community and businesses to identify Aboriginal businesses or employment opportunities.
- All industry respondents reported that improvements to the Policy should focus on increased awareness and communication of the Policy. Other key improvements selected included more tools and templates, greater consultation with the Aboriginal community and businesses and clarification of targets and reporting requirements.

3.3 Consultation with approved indirect expenditure organisations

The findings from the consultation with indirect expenditure approved bodies are divided into themes below.

Supply and development of Aboriginal businesses and the Aboriginal workforce

Both organisations stressed the need and importance of developing Aboriginal businesses, Aboriginal employees and their skillsets to enable the success of the Policy. Both organisations also noted that achieving the Policy objectives would not be sustainable if the supply of an Aboriginal workforce did not meet the increasing demand of NSW Government construction projects.

Both organisations consider their function as an approved organisation for indirect expenditure subject to the Policy and their programs, as key avenues to assist in the development of Aboriginal people to participate in APIC projects and in the broader workforce.

Policy implementation and monitoring

The organisations identified the lack of guidance materials for the Policy’s implementation as a major risk and obstacle to its success, particularly in terms of reporting requirements and the evaluation of the Policy’s outcomes. The absence of accountability for compliance to the Policy was also raised as a significant risk to the Policy’s current and future ability to achieve meaningful results.

One organisation argued that stronger monitoring of the Policy is required and suggested that construction companies are generally not compliant with the Plans submitted to the agencies, particularly in the direct expenditure category. The same organisation suggested

more robust monitoring of Policy outcomes should be implemented focusing on sustained, long-term Aboriginal employment in the construction industry.

Both organisations raised the absence of governance and standardised monitoring of indirect expenditure by NSW Government agencies as a risk in achieving the Policy objectives.

The Policy's general lack of guidance was noted by both organisations as a pitfall for the implementation of the Policy by both agencies and contractors. One of the organisations suggested lack of implementation guidance as a potential reason for the limited amount of indirect expenditure directed to them under the Policy.

Both organisations advised that very limited funds have been directed to them as a result of the Policy. This suggests contractors are directing the indirect expenditure on APIC projects towards other programs or expenses as currently permitted under the Policy.

3.4 Individual consultations with stakeholders

The consultations conducted with government, industry and non-for-profit stakeholders provided the following findings:

- Stakeholders raised issues regarding the definition of what constitutes an Aboriginal business. Stakeholders identified the difficulties in meeting conflicting criteria set by Aboriginal peak and industry bodies.
- Stakeholders raised concerns about misrepresentation of Aboriginal businesses ('black-cladding') to the detriment of Aboriginal businesses.
- Stakeholders noted the challenges in identifying Aboriginal employees for reporting and data purposes as identification as an Aboriginal person is optional.
- Stakeholders requested greater clarity on the definition of construction projects subject to the Policy. Stakeholders in the construction design sector requested consideration and clarity of the Policy's applicability to the design sector.
- Stakeholders requested clarity on the Policy's application to construction projects funded by government grants.

3.5 Workshops with NSW Government agencies and industry, industry bodies and other external stakeholders

The workshop participants were asked to discuss and propose ideas in the context of the Policy within four themes; targets, monitoring and reporting, internal and external engagement, and tools and support.

The workshop participants were asked to vote on the preferred ideas and solutions to improve the effectiveness of the Policy.

Targets

Key findings

- Opposing views from participants in both industry and agency workshops on whether the 1.5 per cent target spend should remain at 1.5 per cent or increase to 3 per cent.
- Opposing views from participants in both industry and agency workshops on whether the indirect expenditure category should remain or be removed.
- Consensus across participants in both industry and agency workshops that the current definition of the indirect expenditure category is unclear needs to be revised and that spend with Aboriginal owned businesses should be included in the direct expenditure category as opposed to indirect expenditure category.
- Consensus across participants in both industry and agency workshops that penalties and incentives should apply where contractors fail to meet requirements or exceed requirements.
- Consensus across participants in both industry and agency workshops that, where possible, use of data to assess opportunity against each contract based on supply availability, capacity and geography should inform an appropriate target.

Ideas with highest number of votes

- Rewording of the Policy in relation to the minimum 1.5 per cent “target” to a “requirement”. All references to “targets” to be replaced by “requirement”.
- All Policy categories to be made mandatory.
- Penalties for not meeting targets and incentives for exceeding the minimum target.
- Greater clarification and guidance material for indirect and direct expenditure.

Monitoring and reporting

Key findings

- Consensus across participants in both industry and agency workshops for independent auditing of contracts.
- Consensus across participants in both industry and agency workshops for increased monitoring and reporting of compliance to the Policy, particularly where project targets are not met.
- Consensus across participants in both industry and agency workshops for regular and consistent reporting and evaluation against targets. Monthly reporting was identified as the preferred reporting frequency.

- Consensus across participants in both industry and agency workshops for upfront commitments by contractors for direct and indirect expenditure and regular monitoring of commitment to support meaningful outcomes of targeted spend.

Ideas with highest number of votes

- External or independent auditing of APIC projects for greater transparency and accountability.
- Centralised reporting and data analysis for consistency.
- More detailed and frequent reporting mechanisms.
- Co-designed reporting engaging contracting agencies, principal contractor and local Aboriginal communities (in relation to individual projects).

Internal and external engagement

Key findings

- Consensus across participants in both industry and agency workshops that local Aboriginal communities should be actively engaged during the pre-planning phase to understand opportunities and available capacity of Aboriginal workforce and Aboriginal owned businesses.
- Consensus across participants in both industry and agency workshops that NSW Government agencies and contractors should invest and support building the capacity of Aboriginal owned businesses.
- Opposing views from participants in both industry and agency workshops about who is responsible for identifying and connecting contractors to potential Aboriginal workforce and Aboriginal owned businesses.
- Consensus across participants in both industry and agency workshops for the development of a centralised digital information hub to communicate opportunities for Aboriginal participation.

Ideas with highest number of votes

- Development of a centralised digital information hub to communicate opportunities for Aboriginal employment and opportunities for Aboriginal owned businesses.
- Greater government engagement and cross-sector consistency.
- Need for pre-planning to understand available capacity and opportunity.
- Greater support and engagement for small and medium sized construction companies to implement the Policy.

Tools and support

Key findings

- Consensus across participants in both industry and agency workshops that there is a need for a centralised list or business directory of recognised Aboriginal owned businesses.
- Consensus across workshops that dedicated NSW Government resources are required to support agencies, contractors and Aboriginal owned businesses during tender activities.
- Consensus across participants in agency workshops that further clarification and guidance of the Policy targets is required including definitions for direct and indirect expenditure.
- Consensus across both workshops for a dedicated Policy website that enables contractors to access information and upload Plans and Reports.

Ideas with highest number of votes

- Allocation of dedicated resources in NSW Government.
- Development of tools to support Aboriginal owned businesses, NSW Government agencies and principal contractors in the tender process.
- Creation of an Aboriginal owned business directory which ranks supplier services based on proven track record.
- Dedicated Policy website with specific tools and guidance material.

3.6 Overall Review Findings

3.6.1 Targets

It is evident there is a significant commitment across government and industry to support the Policy objective to increase Aboriginal participation in construction.

As a demonstration of this commitment, it was identified during the stakeholder engagement process that a large construction company has voluntarily adopted the Policy target across all of their construction contracts, regardless of whether it is a NSW Government construction contract.

NSW Government data provides an overview of the Policy outcomes:

- approximately \$135 million has been, or has been committed to be directed to Aboriginal participation across 105 NSW Government construction projects since 1 July 2016.

- 73 per cent of APIC projects were assigned the minimum 1.5 per cent contract spend target.
- 22 per cent of APIC projects were assigned a higher target of up to 6.9 per cent.
- 5 per cent of APIC projects did not meet the minimum target.

a) Targeted contract spend

Stakeholders suggested that the term “target” be replaced with “requirement” to emphasise compliance requirement.

Targets and requirements must consider the capacity and availability of Aboriginal owned businesses and the Aboriginal workforce to meet this requirement.

The Policy states that agencies may set a higher target spend percentage for projects, if and where appropriate. However, there are no identified incentives or rewards for contractors to exceed the minimum target.

Majority of stakeholders supported the 1.5 per cent minimum targeted contract spend and a number of stakeholders suggested the target should be increased. Both industry and government stakeholders suggested the Policy should allow for flexibility to set targets subject to project size and spend, geography and capacity specific opportunities.

b) Expenditure – direct and indirect

Stakeholders raised concerns that indirect expenditure is too broadly defined and causes conflicting interpretations by suppliers and agencies.

The broad criteria for direct expenditure under the Policy gives contractors significant flexibility in meeting the minimum 50 per cent of allocated targeted contract spend as it includes various expenses relating to engagement and training of Aboriginal employees and Aboriginal businesses.

The Policy does not address direct engagement of Aboriginal owned businesses. Agency stakeholders also raised the limitation of the Policy in providing flexibility to directly engage prequalified Aboriginal owned businesses for lower value construction projects up to \$1 million, particularly for projects primarily directed to Aboriginal communities including building Aboriginal housing in regional areas.

Stakeholders raised the discrepancy in the Policy and the Plan template regarding engagement of Aboriginal businesses as sub-contractors. The Policy states “expenses relating to the goods and services from recognised Aboriginal businesses by the contractors in the planning, design and delivery of the project” is defined as an eligible indirect expenditure. The Plan template lists goods / services sourced from Aboriginal businesses as a type of direct expenditure.

Review stakeholders agreed goods and services sourced from Aboriginal owned businesses should be defined as direct expenditure.

Stakeholders provided suggestions in relation to improvement of the indirect expenditure category to better support meaningful outcomes of targeted spend. This included the removal of indirect expenditure to encourage greater utilisation of direct expenditure, no cap on indirect expenditure for engagement of Aboriginal owned businesses and more robust governance and transparency of indirect expenditure.

c) Policy categories

The Policy is unclear in relation to which construction project categories are subject to optional and mandatory requirements.

The introduction of the Policy explicitly states that Category 1 and Category 2 projects are mandatory (with no reference to Category 3 projects). However, page 6 of the Policy states that Category 1 and 2 projects are mandatory and Category 3 projects are exempt from reporting requirements until 1 July 2016 with no reference to optional or mandatory. Despite this ambiguity, Category 3 projects make up the majority of the APIC projects since 1 July 2016.

d) Consequences for failing to meet the requirements

The Policy does not specify consequences of non-compliance by contractors and does not provide guidance to contracting agencies on how to address non-compliance.

Findings from stakeholder consultations and survey responses indicate consequences are applied inconsistently across government from no consequences to applying breach of contract and financial penalties for failing to meet the targets. Both industry and government stakeholders supported the introduction of penalties and incentives to address non-compliance and to reward and acknowledge contractors that exceed targets.

3.6.2 Monitoring and reporting

The Review found some inconsistencies in compliance to and quality of the Policy reporting requirements.

The data available in the submitted Plans includes limited information on how indirect expenditure was to be directed and does not allow for adequate monitoring and reporting of compliance to Plans and assessment of outcomes.

Both industry and government stakeholders supported the introduction of more detailed and frequent reporting as well as auditing of progress and achievement of targets.

a) Data quality, reporting templates and frequency

The prescribed reporting periods are too infrequent to allow for adequate monitoring of progress towards targets. Some agencies have adopted more frequent supplier reporting requirements and integrated the Policy requirements into their contract management systems and other reporting tools.

As at 10 October 2017, the Policy's ProcurePoint webpage lists 37 Plans have been received and published with five Reports published against these Plans.

An assessment of how many Reports should have been received against the 37 Plans at the time of the Review is limited by the lack of data available in the Plans of estimated start and end dates of the relevant projects and an indication of when a project has reached 90 per cent completion. This could be addressed by improvements in the templates of both reporting deliverables to include fields for contract award date and estimated project completion date. Stakeholders also indicated the templates for reporting deliverables are generic and prescriptive, often limiting the collection of useful information and data.

A significant portion of the available Plans on ProcurePoint are not completed in the prescribed Policy template. The Plans completed by contractors which were not in the Policy template provided greater detail, particularly in regard to resources to be engaged and proposed actions.

Industry stakeholders reported challenges in meeting reporting and compliance measures due to the lack of consistency in various agencies reporting templates.

3.6.3 Engagement

Throughout the Review, stakeholders expressed the importance of engagement such as pre-planning and early engagement by contractors and agencies. Benefits cited include increased awareness of project opportunities and identification of qualified Aboriginal employees or Aboriginal owned businesses.

Industry stakeholders advised that in the absence of a prescribed engagement process, many are developing their own style of engagement as encouraged in the Policy. The Policy explicitly states that contractors can consult and engage Aboriginal owned businesses, including local Aboriginal Land Councils, Supply Nation and the Indigenous Chamber of Commerce, in relation to the planning, design or delivery of construction projects. The engagement will vary according to the size of the company and location and scope of the project. Contractors who perform work in regional areas have advised their style is traditionally 'hands on' and normally undertaken by a Human Resource staff member. The approach includes extensive travel at the earliest possible stage to promote opportunities and identify potential Aboriginal businesses, including forming partnerships with local Aboriginal Land Councils. Larger construction companies generally have a dedicated person or team responsible for Aboriginal engagement and participation and engagement is undertaken at an early stage and partnerships are formed with relevant Aboriginal communities and businesses.

Stakeholder consultations with Aboriginal businesses indicated varied levels of successful engagement with contractors and agencies. An Aboriginal owned employment and labour hire business reported to have successfully formed partnerships with three large construction companies to undertake pre-employment and labour hire and mentoring. However, another Aboriginal owned labour hire and recruitment business engaged on a large construction project reported to have had limited success in placing Aboriginal people on the project. A national Aboriginal owned business which reported they have successfully

been awarded contracts in other jurisdictions has not been awarded a contract in NSW despite their efforts to engage with NSW Government agencies.

Stakeholders have noted the importance of investment in building and sustaining commercially viable Aboriginal owned businesses and a work-ready workforce. Stakeholders recognised that these outcomes can be achieved where partnerships are formed involving agencies, contractors, Aboriginal owned businesses and Aboriginal communities.

Networking, mentoring and regular and ad-hoc forums were also highlighted by stakeholders as an opportunity to learn, share and work together. Many stakeholders supported the sharing of case studies and best practice examples to illustrate how successful engagement has been achieved and the outcomes it has delivered.

3.6.4 Tools and support

The Policy has limited guidance material on the ProcurePoint website to support implementation. There is a need for improved and consistent tools and support to be provided to NSW Government agencies, contractors and Aboriginal owned businesses.

The former *Aboriginal Participation in Construction Guidelines* included more extensive and informative guidance material for agencies and contractors. Some stakeholders recommended that these tools be re-introduced to better support agencies and contractors in applying the Policy and its requirements.

Some stakeholders also recommended dedicated NSW Government resources are required to provide support to agencies and contractors during procurement planning stages and over the life of the contract. The redesign of the Plan and Report templates was recommended by stakeholders to improve the quality of data and measurement of outcomes. Stakeholders supported embedding the principles of co-design in this process.

Stakeholders suggested tools and support specifically directed to Aboriginal owned businesses should be developed to assist in their bid preparation and identification of partnering opportunities.

Stakeholders suggested agencies should be able to directly engage with pre-qualified Aboriginal owned businesses for construction work with a threshold of up to \$1 million to increase participation of Aboriginal owned businesses in government construction projects

Meaningful employment and education pathways were highlighted as key steps in supporting local Aboriginal communities. Stakeholders highlighted the importance of long-term retention and support of Aboriginal people including opportunities for skill development, career progression and business development and growth for Aboriginal owned businesses.

Stakeholders recommended an Aboriginal business directory be developed for agencies in identifying suitable businesses.

4. Recommendations

4.1 Targets

- i. Apply the Policy requirements to all construction contracts valued above \$1 million eg requirements to be made mandatory for all Policy categories 1, 2 and 3.
- ii. Replace references in the Policy document to 'target project spend' and 'targeted project spend' with 'requirement/s' in the Policy document.
- iii. Maintain mandatory minimum 1.5 per cent spend requirement across all three Policy categories.
- iv. Encourage agencies to introduce incentives for suppliers exceeding requirements and consequences for not meeting requirements (financial and non-financial). Replace the direct and indirect expenditure categories with a new eligible spend category.
- v. All targeted spend to be directed towards Aboriginal employment, approved formal training, or engagement of Aboriginal owned businesses.
- vi. Where suppliers are unable to meet the minimum requirements, the remaining spend is to be directed to the existing list of approved organisations with transparency and governance of contributions.
- vii. Utilise existing ability for the NSW Procurement Board to set requirements and targets, where appropriate, against individual contracts informed by opportunity assessment and identification by geography, spend, market supply and capacity.
- viii. Introduce more flexibility for agencies in support of the Policy objective including:
 - Ability for direct engagement of Aboriginal owned businesses for contracts valued up to \$250,000
 - Ability to run closed tenders with prequalified Aboriginal owned businesses for Category 1 projects valued up to \$1 million.

4.2 Monitoring and Reporting

- i. Develop and maintain a reporting dashboard of information provided regularly by agencies and suppliers on compliance with requirements and progress towards the Policy's targets.

- ii. Revise reporting requirements to allow for more frequent reporting over the life of the project. Projects over \$10 million to report monthly. Projects over \$1 million to report quarterly.
- iii. Introduce greater accountability by agencies and suppliers to provide regular and accurate reporting.
- iv. Introduce ad-hoc auditing of reporting and achievement of targets to provide greater transparency and accountability.

4.3 Engagement

- i. Embed the principles of early engagement with local Aboriginal communities in the Policy.
- ii. Provide guidance to agencies and suppliers on how to engage with local Aboriginal communities.
- iii. Support agencies and suppliers to engage with local Aboriginal communities to provide contact and leads to recruiting local Aboriginal workers.
- iv. Arrange information forums and networking opportunities aimed at improving awareness of the Policy, encouraging partnerships and communicating procurement opportunities to suppliers and Aboriginal businesses and communities.

4.4 Tools and support

- i. Provide additional guidance and support to agencies, suppliers and Aboriginal communities during the tender process and project lifecycle.
- ii. Improve the webpage for the Policy with increased resources and guidance material and contacts for support.
- iii. Develop tools and support specifically directed to meet the needs of Aboriginal businesses, agencies and suppliers.
- iv. Develop an Aboriginal business directory available to NSW Government agencies.
- v. Publish case studies and share learnings.

Glossary

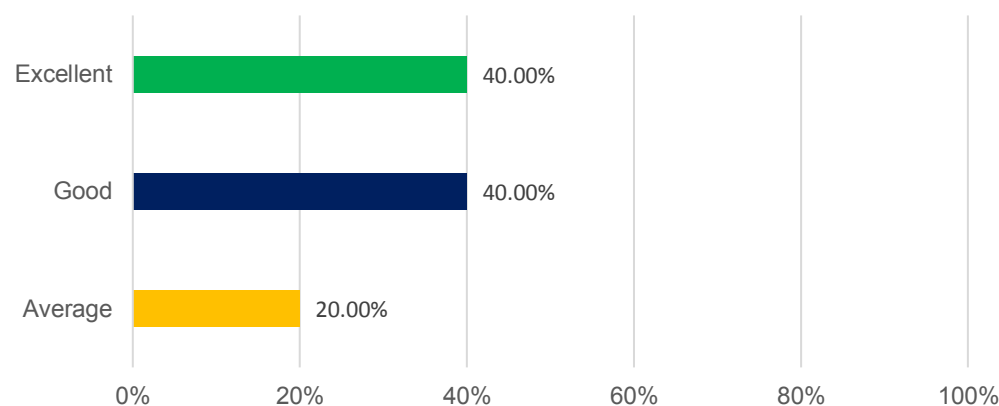
Aboriginal owned business	<p>a business that:</p> <ul style="list-style-type: none"> is certified as an Aboriginal and Torres Strait Islander business by Supply Nation or the NSW Indigenous Chamber of Commerce; or meets the definition of an Indigenous enterprise used in the definition of the Commonwealth's Indigenous Procurement Policy.
Aboriginal Participation Plan (Plans)	document that outlines how Contractors intend on directing the targeted project spend to Aboriginal employment or education opportunities; to be provided within 60 days of contract being awarded.
Aboriginal Participation Report (Reports)	document that demonstrates how Contractors directed the targeted project spend to Aboriginal employment or education opportunities; to be provided upon 90% of project completion.
Agency	collectively refers to all NSW Government departments, statutory authorities, trusts and other government entities.
Construction Leadership Group	governance body that supports the NSW Procurement Board in the development and improvement of Government-wide construction-related procurement strategies and policies.
Direct expenditure	spend by contractors on employment and education activities that directly relate to the construction project's planning, design or delivery.
Head Contractor	person who carries out construction work or supply related goods and services for the principal under a construction contract (the main contract) and for whom construction work is to be carried out or related goods and services supplied under a construction contract as part of or incidental to the work or goods and services carried out or supplied under the main contract. ⁵
Indirect expenditure	<p>spend by contractors on employment and education activities that indirectly relate to the construction project's planning, design or delivery;</p> <ul style="list-style-type: none"> expenses related to aboriginal cultural awareness/mentoring programs for the benefit of their employees, or for their subcontractor's employees; and/or expenses related to the procurement of goods and services from Aboriginal businesses by the contractor in the planning, design and delivery of the project.
Subcontractor	person who carries out construction work or supplies related goods and services under a construction contract otherwise than as head contractor
NSW eTendering	an online procurement portal for NSW Government tenders and contracts.
NSW Procurement Board	the governance body of the NSW Government established in Section 165 of the <i>Public Works and Procurement Act 1912</i> to oversee the development and improvement of Government-wide procurement strategies and policies.

⁵ *Building and Construction Industry Security of Payment Act 1999 No 46, Part 1, Section 4*

Appendix B

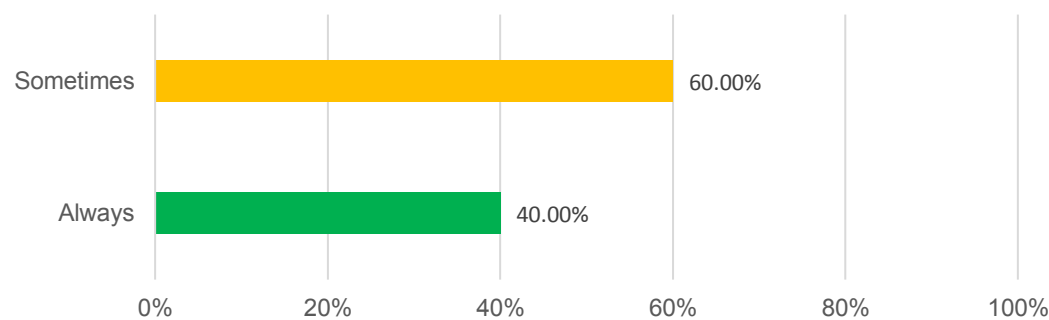
The graphs below are the results from the survey distributed to members of the CLG.

Q1: How would you rate your agency's understanding of the APIC Policy and its requirements?



6

Q2: To what extent does your agency consider the opportunities for Aboriginal businesses/labour when scoping APIC eligible projects?

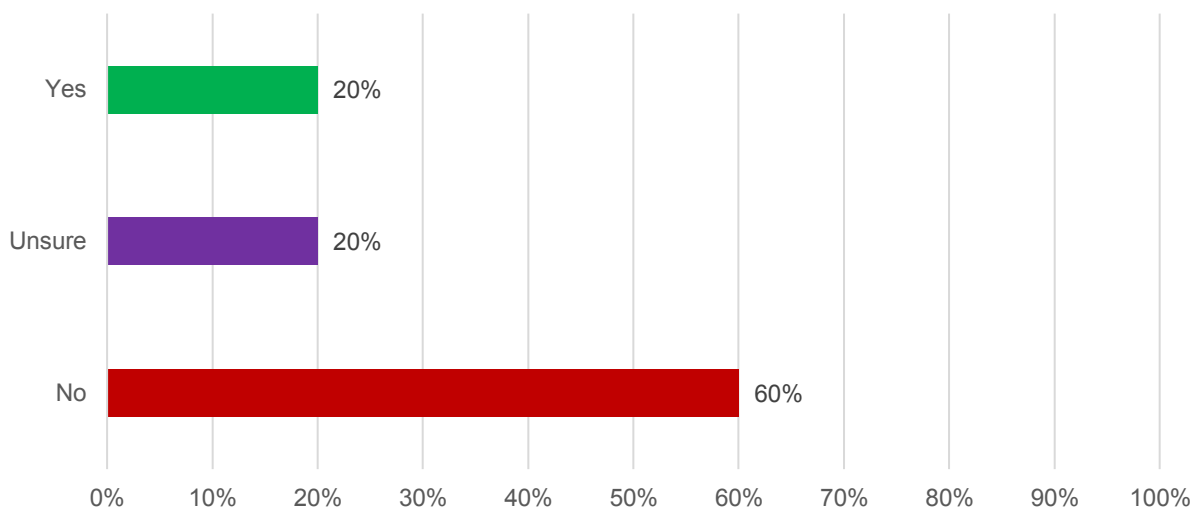


7

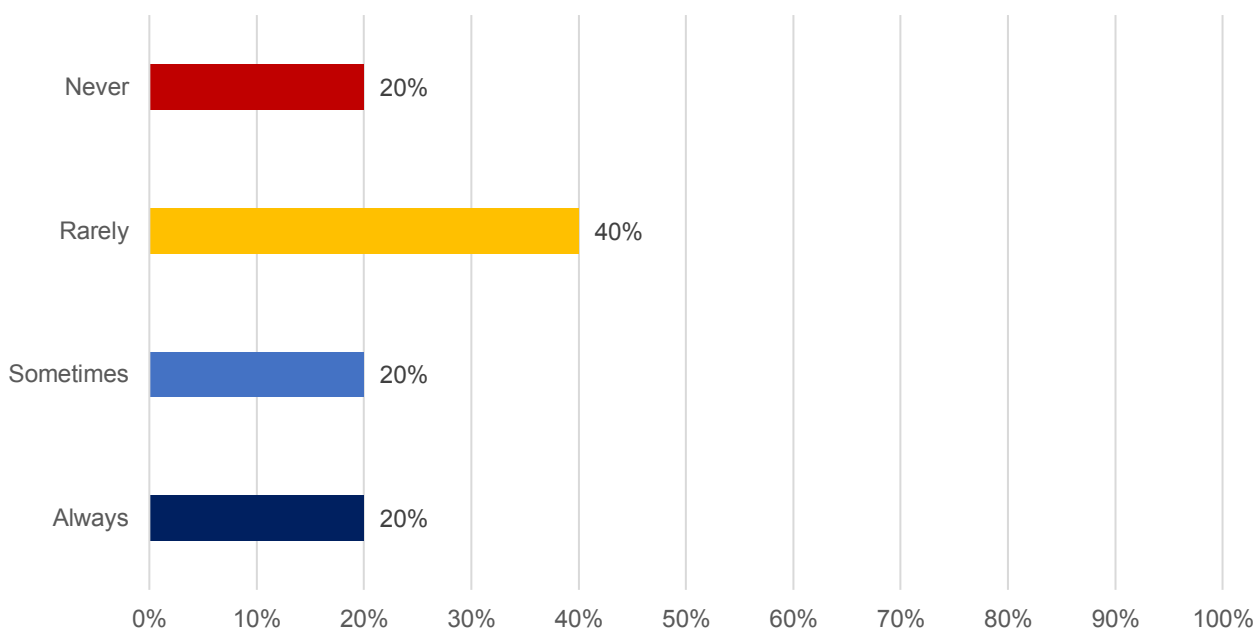
⁶ There were nil responses received for the 'Very poor' and 'poor' options.

⁷ There were nil responses received for the 'Often', 'Rarely' and 'Never' options.

Q3: For each project, does your agency identify and assess additional project costs associated with the Policy's requirement?



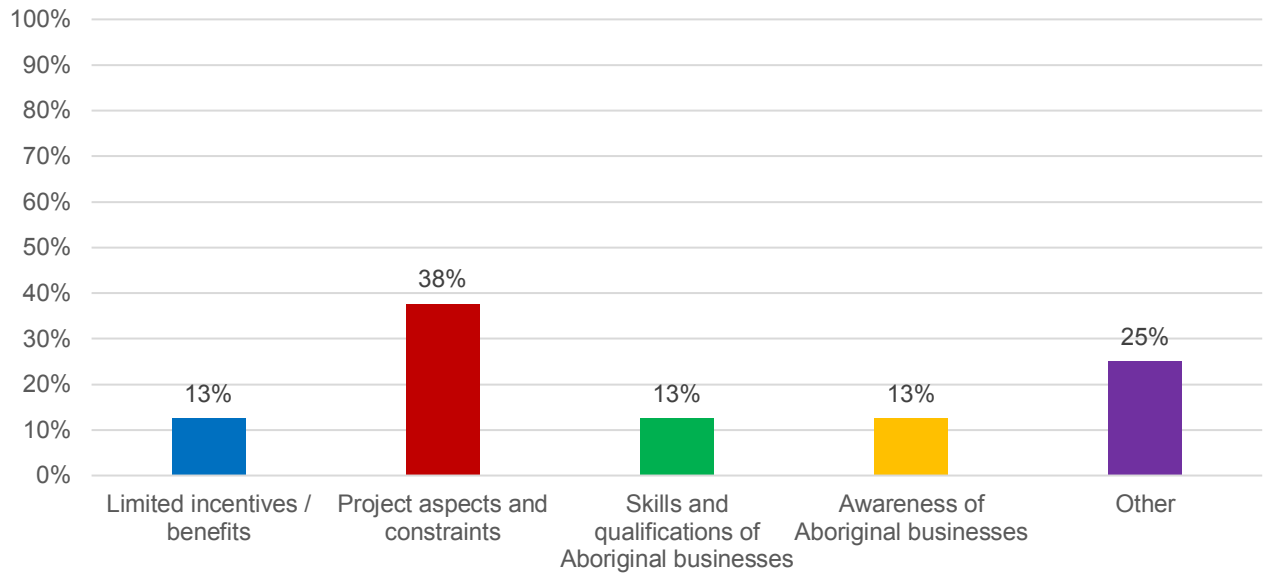
Q4: How often does your agency set an eligible project's targeted spend above the minimum requirement of 1.5 per cent?



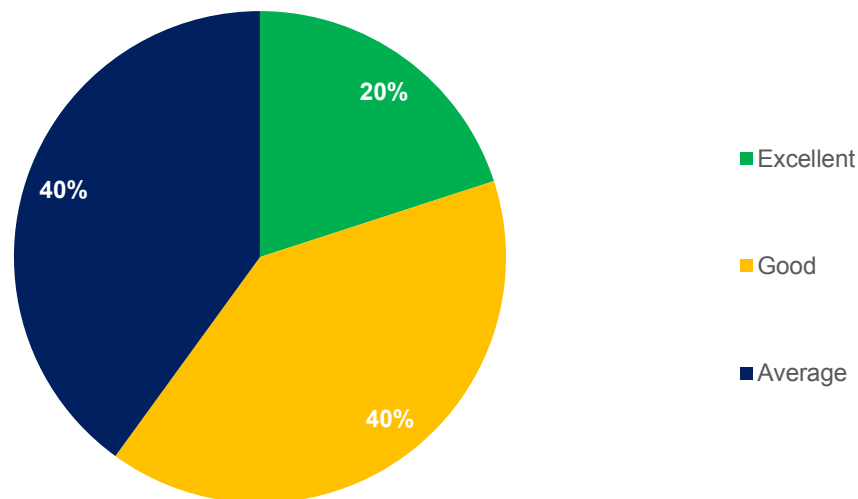
8

⁸ There were nil responses received for the 'Often' option.

Q5: What are the main barriers to setting an eligible project's target spend above the minimum requirement of 1.5 per cent? You may choose more than one answer for this question.



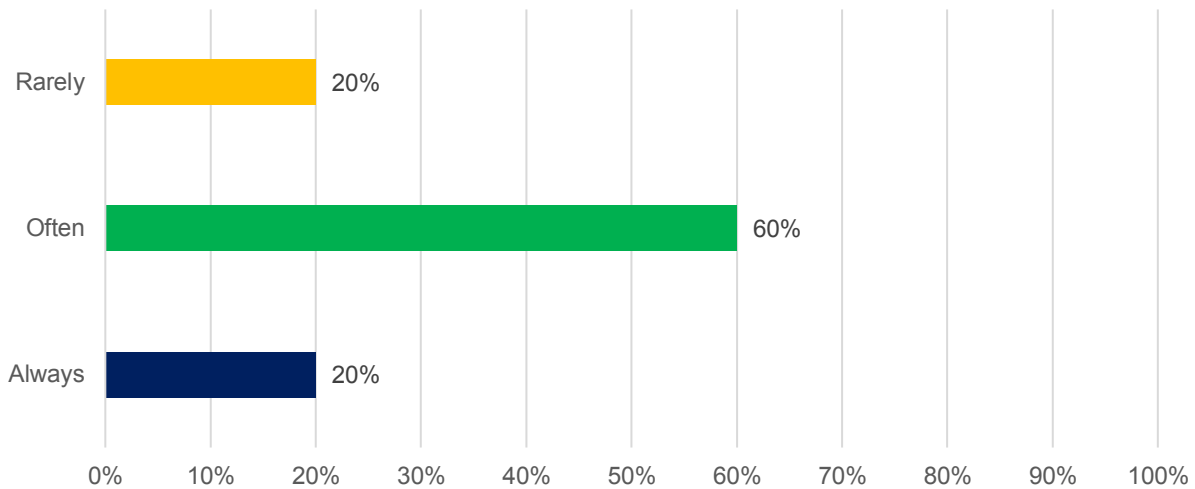
Q6: How would you rate your agency's assistance to contractors in guiding them through the Policy's requirements?



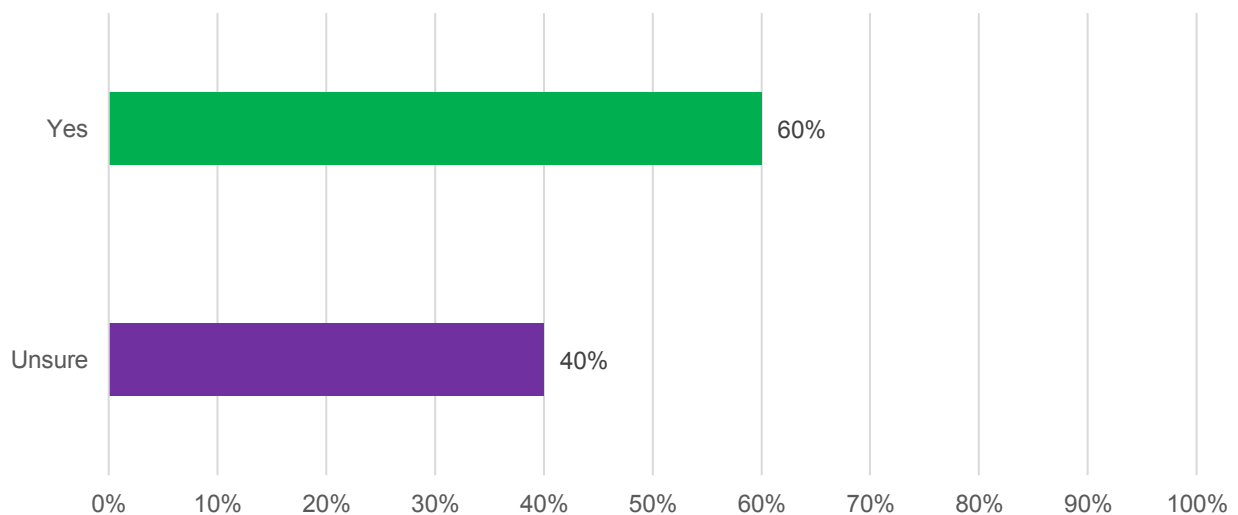
9

⁹ There were nil responses received for the 'Poor' and 'Very poor' options.

Q7: Overall, how frequently does your agency receive the Aboriginal Participation Plan per project within 60 days of the contract being awarded?

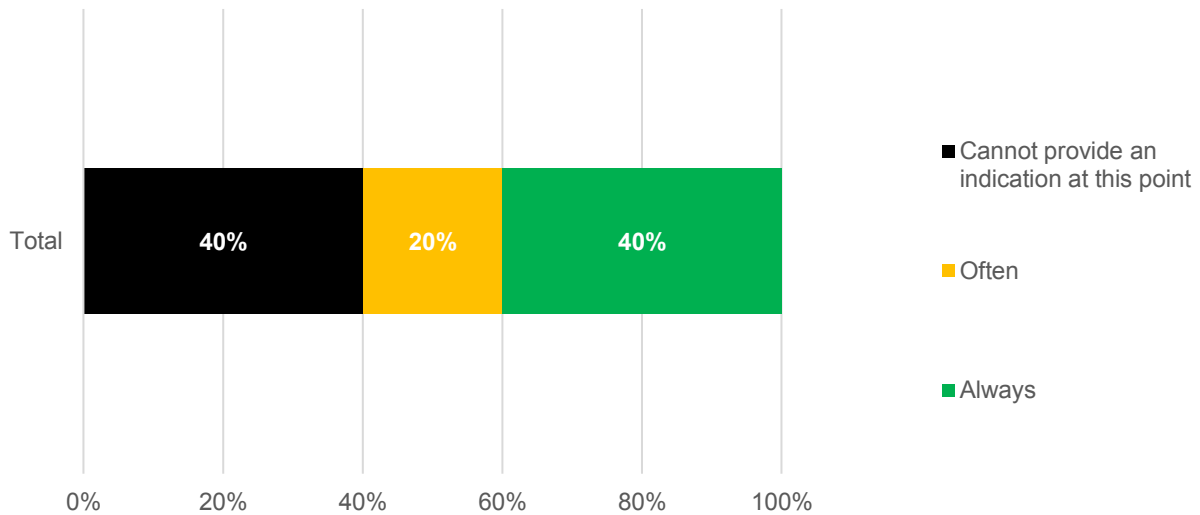


Q8: Does your agency monitor contractors' compliance between receiving the Aboriginal Participation Plan and the Aboriginal Participation Report?

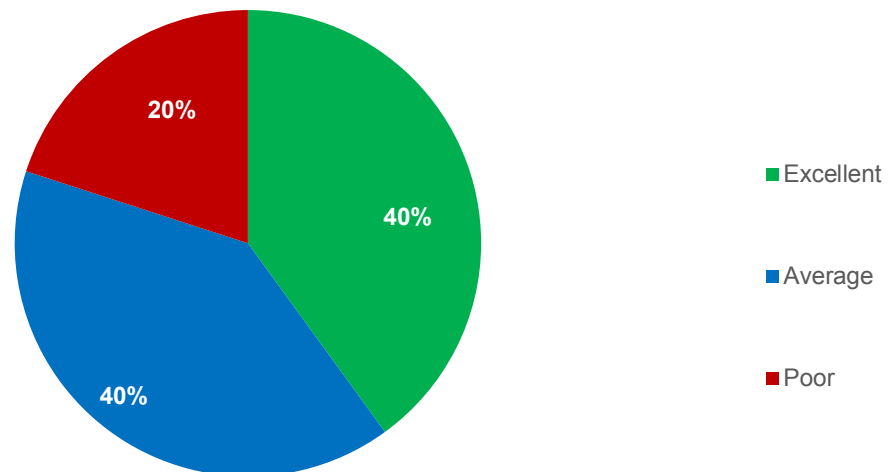


¹⁰ There were nil responses received for the 'Often' option.

Q9: Overall, how frequently does your agency receive the Aboriginal Participation Report per project at the 90 per cent completion stage?



Q10: How would you rate your agency's monitoring of Aboriginal Participation Plans and Aboriginal Participation Reports?



11

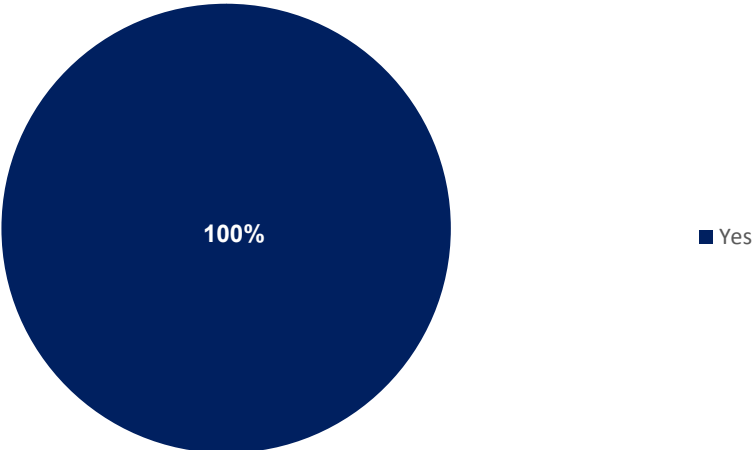
¹¹ There were nil responses received for the 'Poor' and 'Very poor' options.

Appendix C

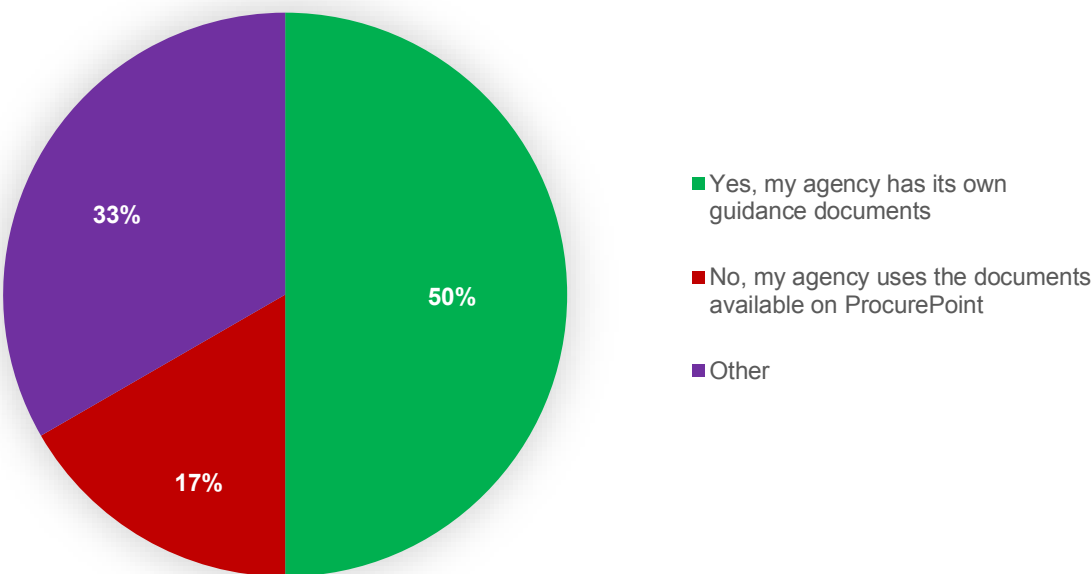
The images below are the results from the surveys distributed to NSW Government agencies.

NSW Government agencies

Q1: Has your agency implemented the APIC Policy?



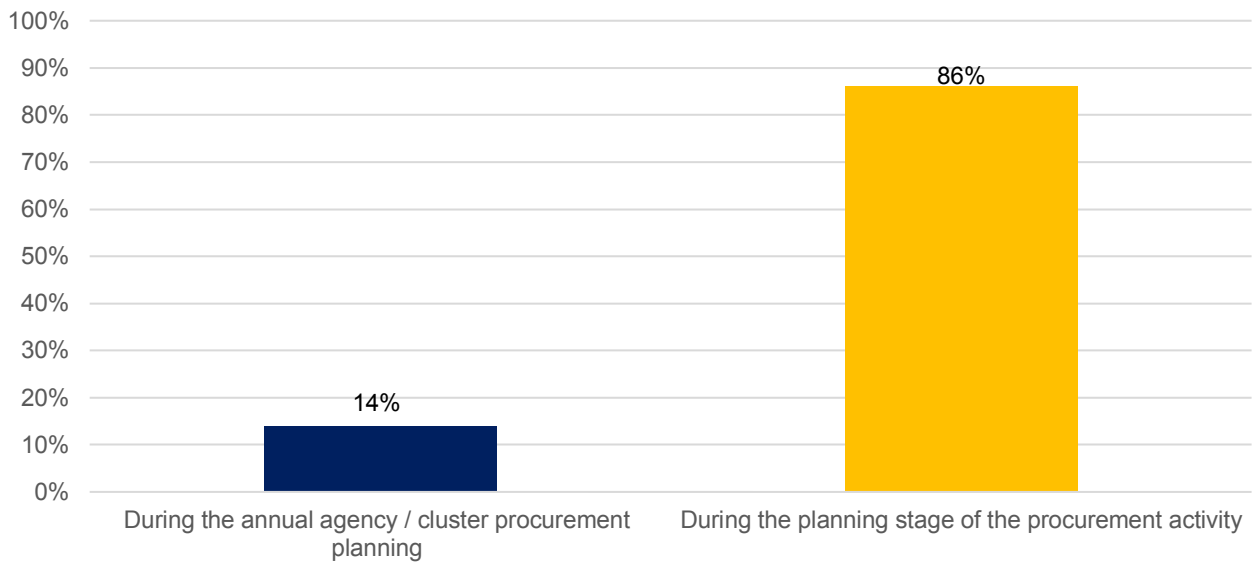
Q2: Does your agency have its own internal and external guidance documents to support implementation of the APIC Policy?



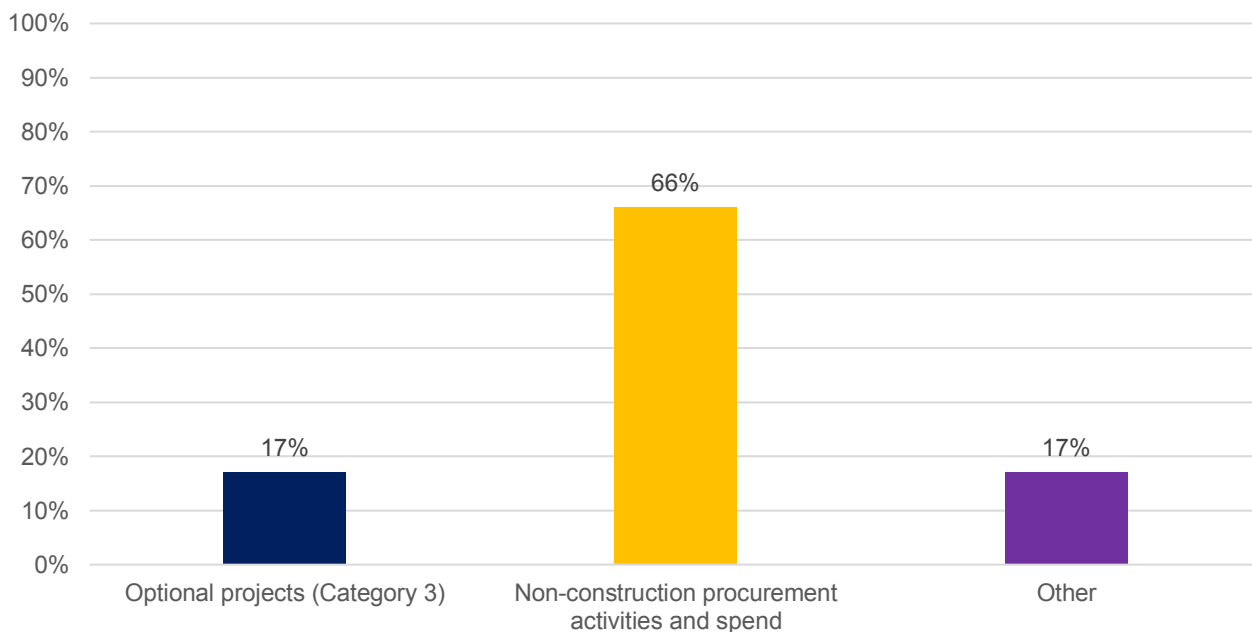
12

¹² One respondent commented with their selection of ‘Other’ that their agency also required monthly reports from contractors.

Q3. How does your agency identify procurement activities that are covered by the APIC Policy?



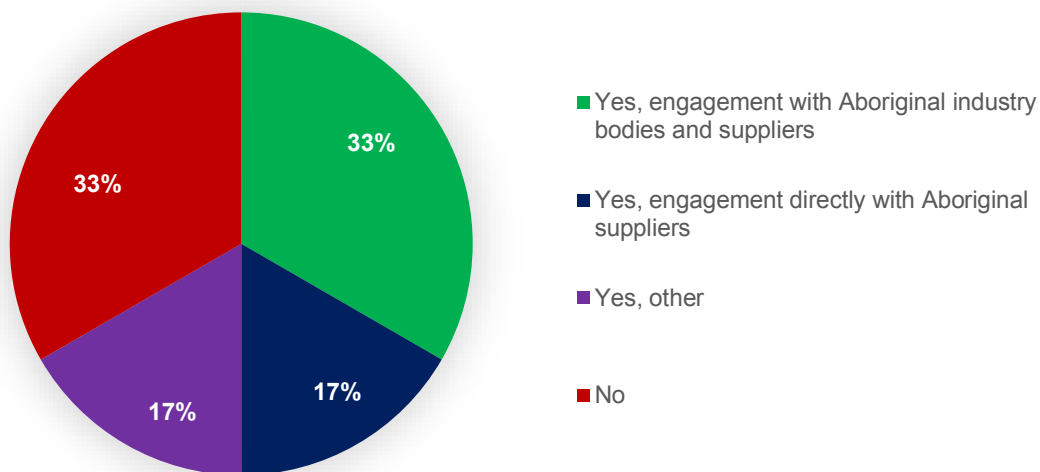
Q4: What procurement activities / expenses does your agency exclude from relevant APIC spend?



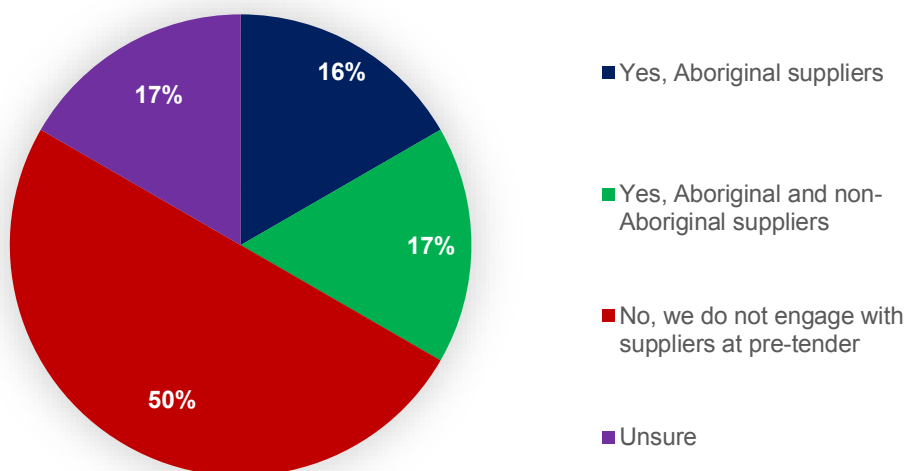
13

¹³ One respondent commented with their selection of 'Other' that their agency excludes "low value construction contracts and low value consultancy/supply agreements".

Q5: Does your agency actively monitor the marketplace for emerging and existing Aboriginal businesses to assist in achieving the APIC Policy objectives? If so, how?

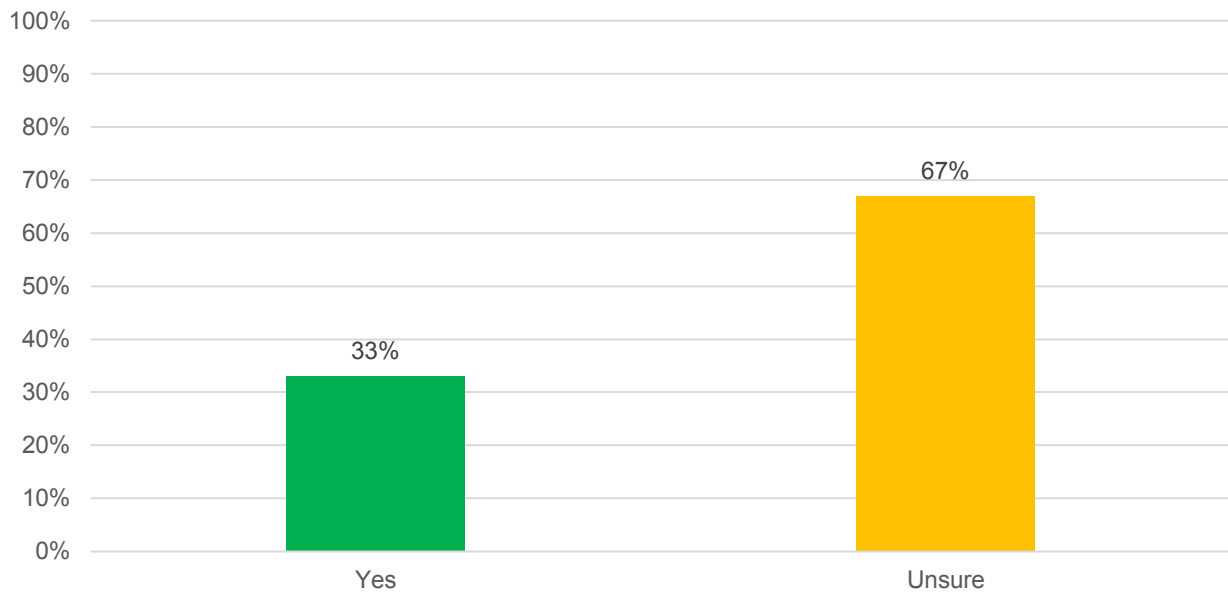


Q6: Does your agency engage with suppliers regarding the APIC Policy requirements and targets pre-tender?

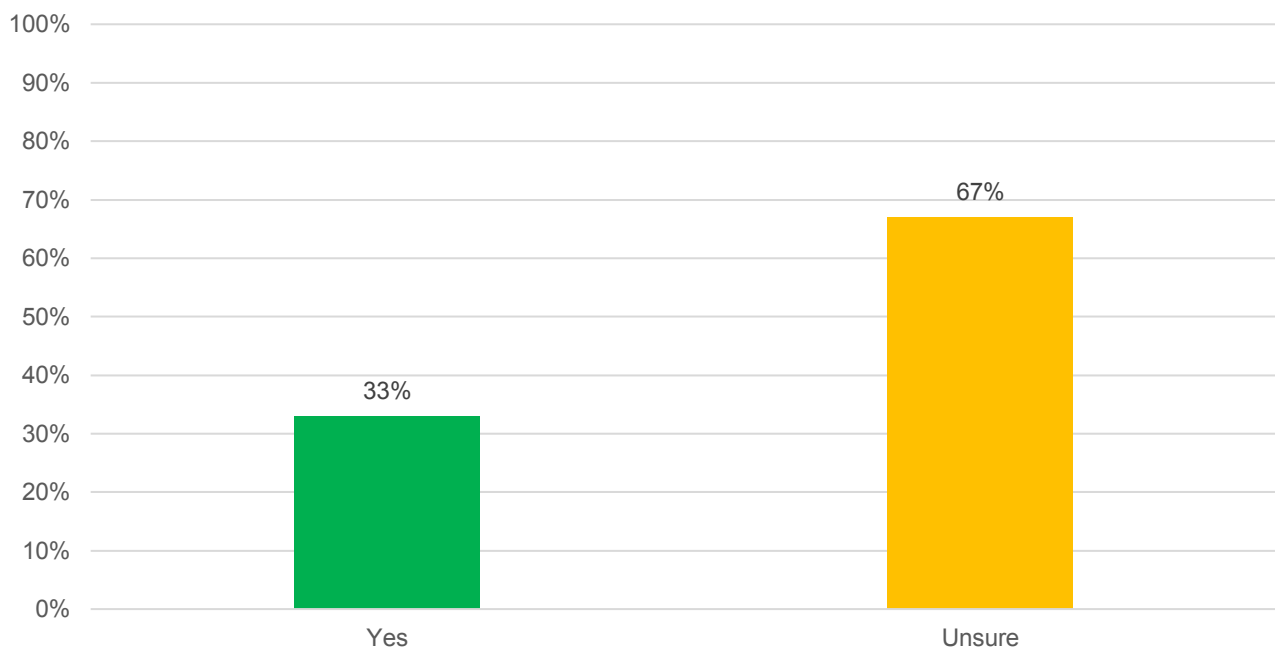


¹⁴ One respondent that selected 'Yes' commented that their agencies monitor the marketplace for emerging and existing Aboriginal suppliers through contractor engagement and procurement. Another respondent commented that their agency often engages reactively rather than proactively to engagement with Aboriginal suppliers.

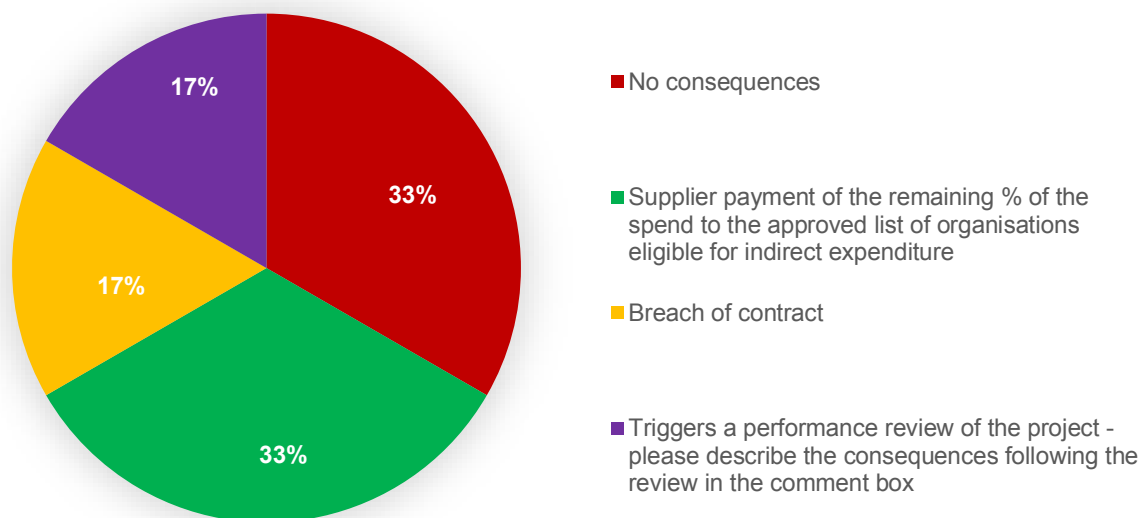
Q7: Is your agency aware of the approved list of organisations / programs eligible for indirect expenditure?



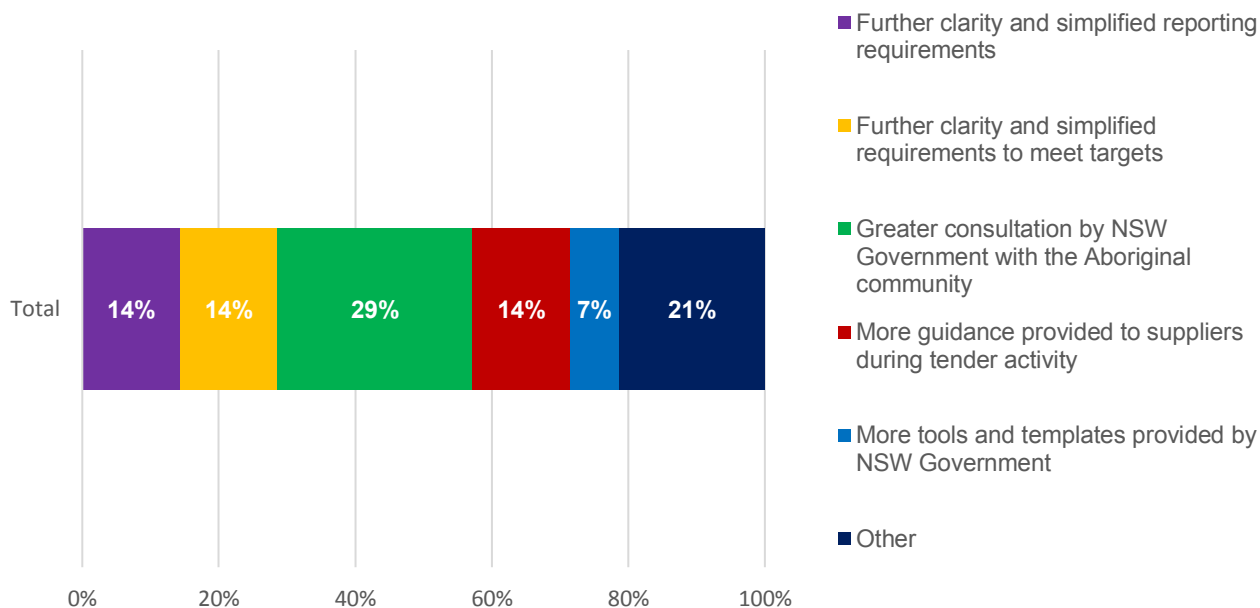
Q8: Does your agency ensure that the indirect expenditure for a specific project is spent on the list of approved organisations eligible for indirect expenditure?



Q9: What are the consequences when contractors do not achieve targets set out in the Aboriginal Participation Plan?



Q10: What amendments should be made to improve the effectiveness of the APIC Policy?



16 17

¹⁵ There were nil responses received for the 'Financial or other penalties' option.

¹⁶ There were multiple selections for this question. Respondents that selected 'Other' recommended the introduction of progressive reporting (as opposed to the Report at 90 per cent of project completion), higher minimum targets, requirement for draft Plans to be submitted with Request for Tender documents and discussions with local Aboriginal communities to identify opportunities.

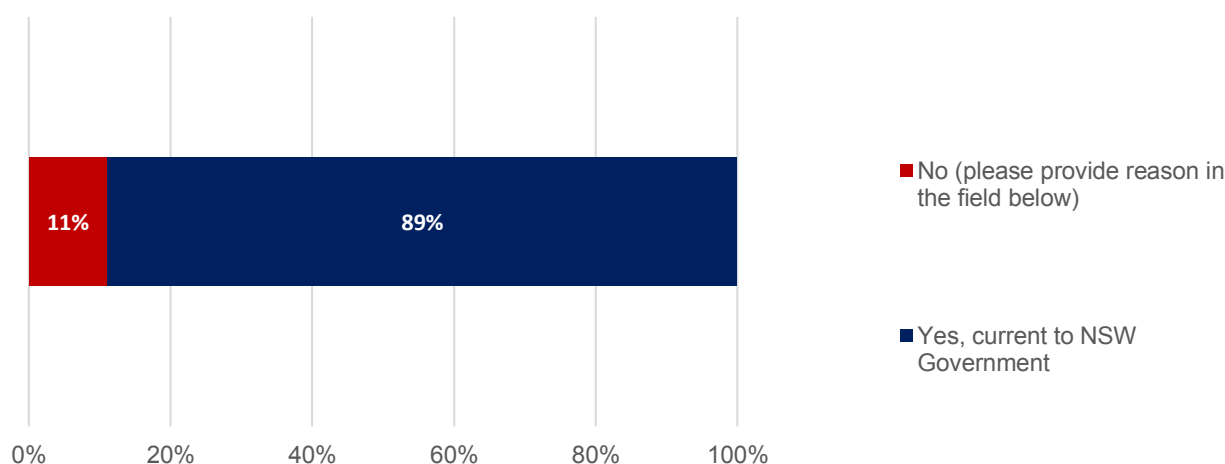
¹⁷ One respondent raised the issue of the number of Aboriginal people directly working on APIC projects and recommended that the Policy's requirements be more rigid or the minimum target be based on the number of Aboriginal people working on the project.

Appendix D

The images below are the results from the surveys distributed to industry and industry groups.

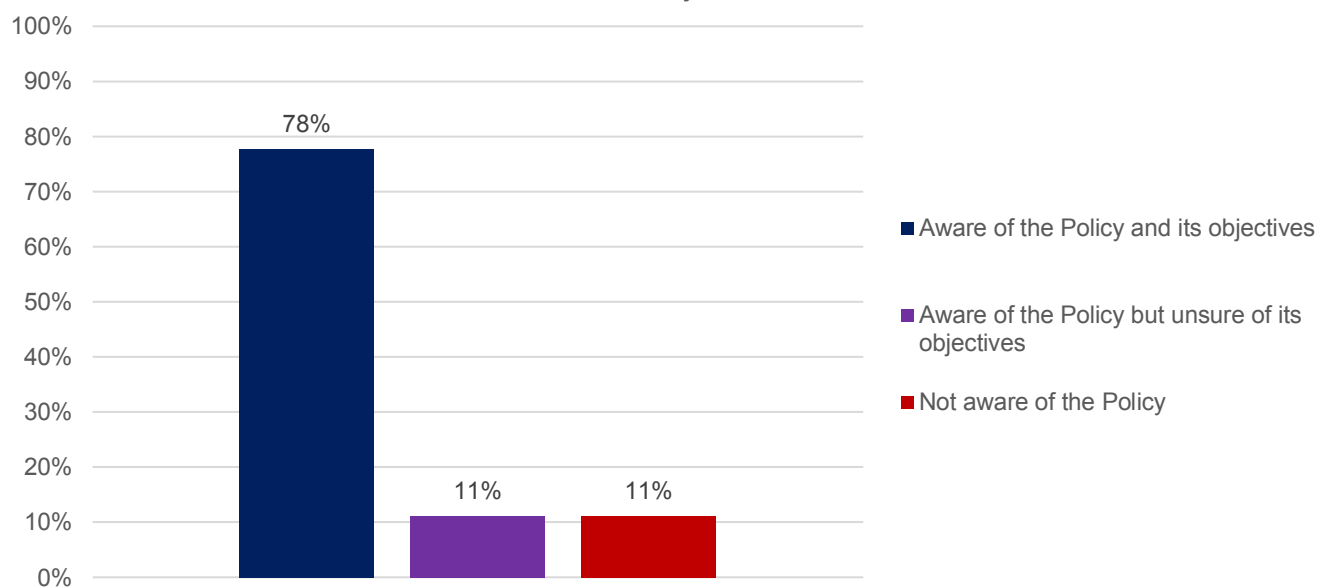
Industry

Q1: Has your organisation supplied to NSW Government?



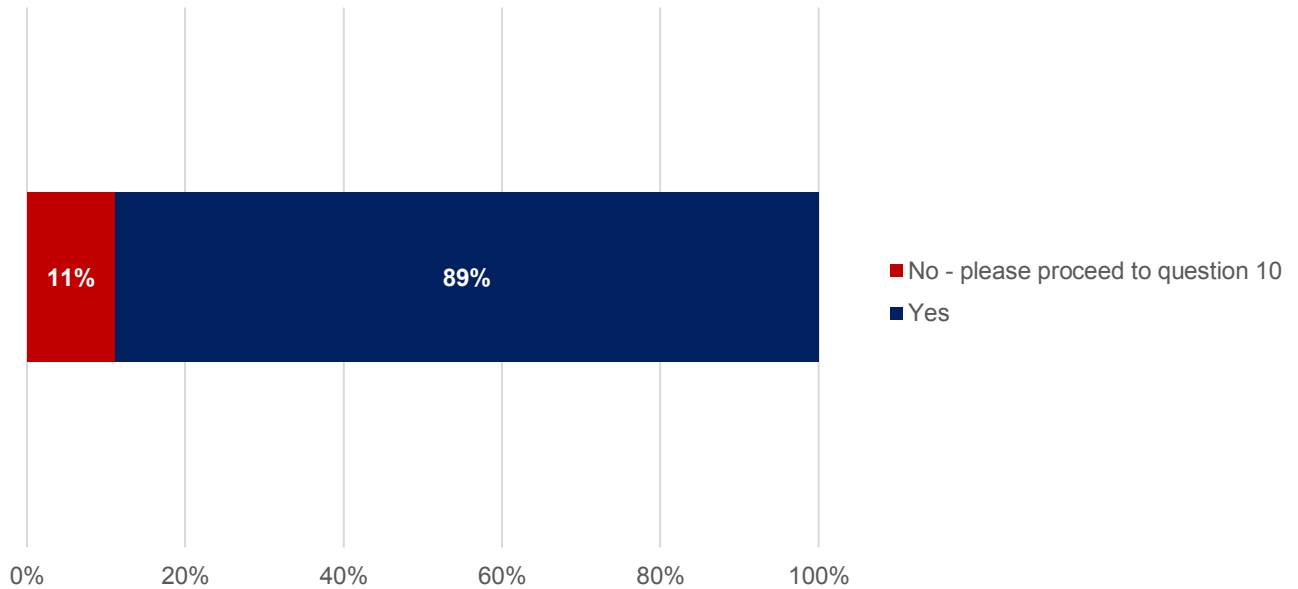
18

Q2: What is your level of awareness of the NSW Government APIC Policy and its objectives?



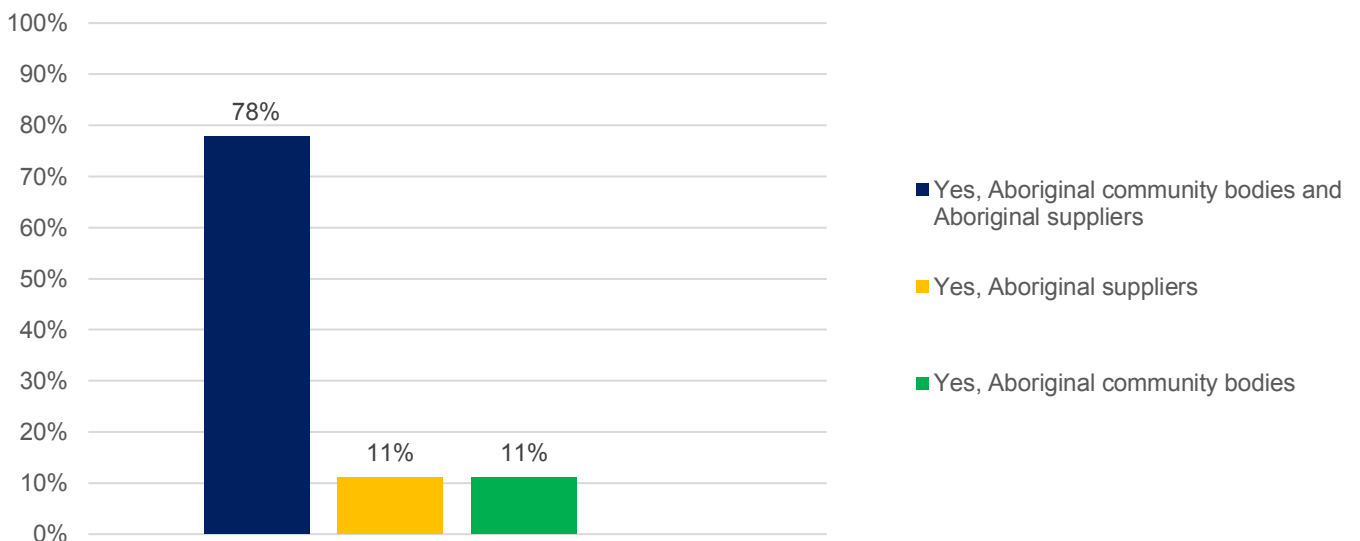
¹⁸ There were nil responses received for the 'Yes, have supplied but not currently' option. No comments were provided for the 'No' option.

Q3: Has your organisation implemented / been subject to the targets in the APIC Policy in any of its projects / contract?



19

Q4: Did your organisation engage with Aboriginal community bodies and/or Aboriginal suppliers in the development of Aboriginal Participation Plan/s?

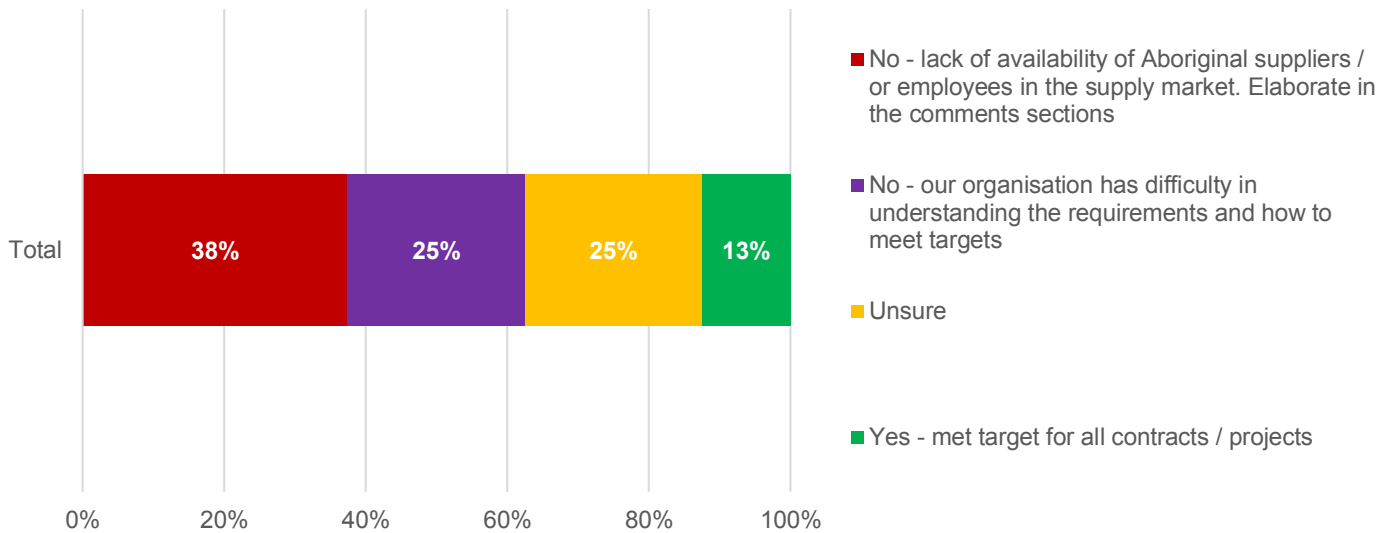


20

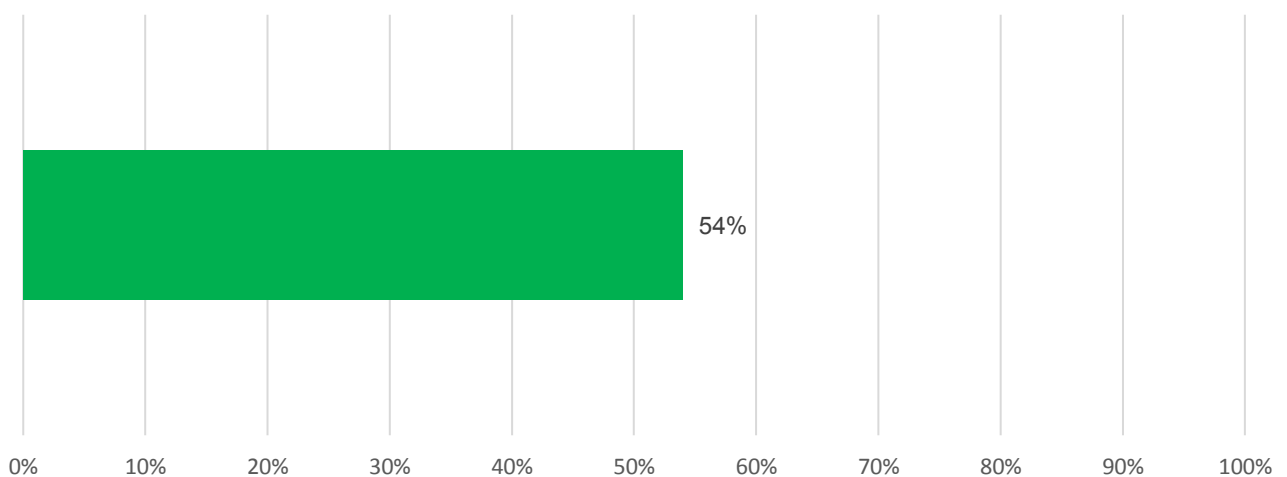
¹⁹ There were nil responses received for the 'Not applicable' option.

²⁰ There were nil responses received for the 'No' option.

Q5: Did you meet your APIC targets for direct and indirect spend?



Q6: What has been your organisation's highest percentage of the total APIC Policy target, identified as 'direct spend'?

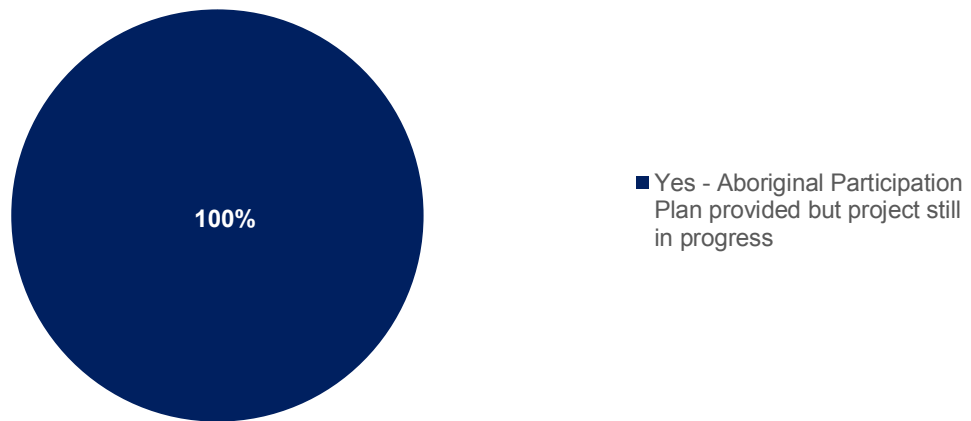


²¹ There were nil responses received for the 'Not applicable' option.

²² There were nil responses received for the 'Yes – exceeded target for all contracts / projects' option.

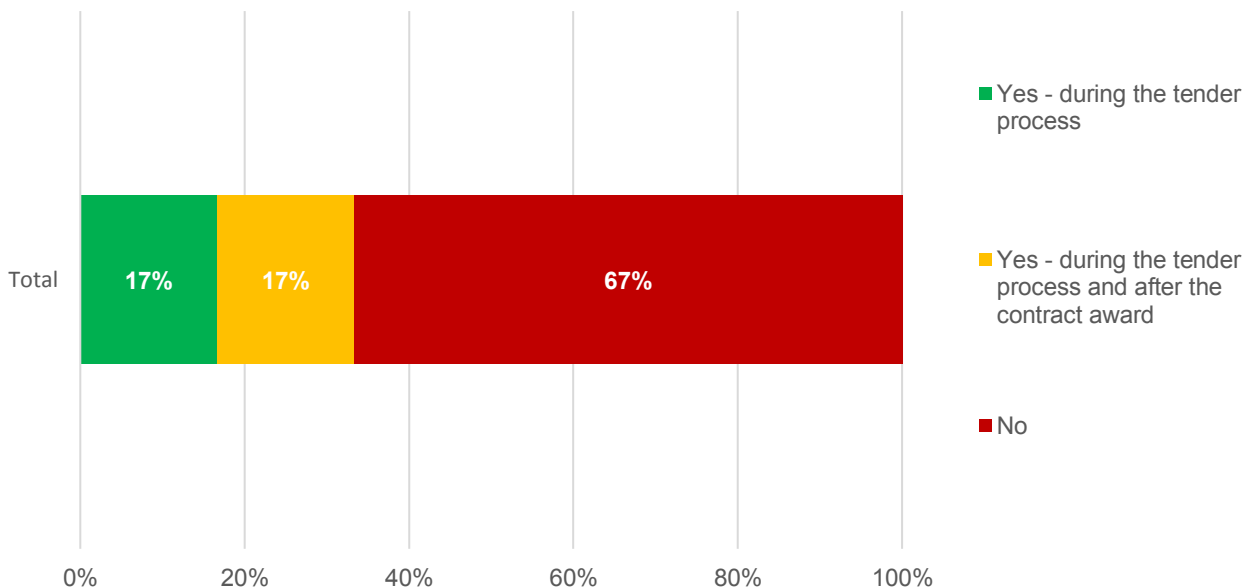
²³ This graph is the average of industry respondents' highest percentage of direct expenditure under the Policy. The highest percentage provided was 100 per cent and the lowest percentage was 5 per cent.

Q7: Did your organisation meet your reporting requirements under the APIC Policy? NB Contractors are required to provide the Aboriginal Participation Plan (60 days after contract award) and Aboriginal Participation Report (at 90% project completion)



24

Q8: Did you receive sufficient guidance on the requirements, targets and how to implement the APIC Policy from the contracting agency, or another NSW Government agency?

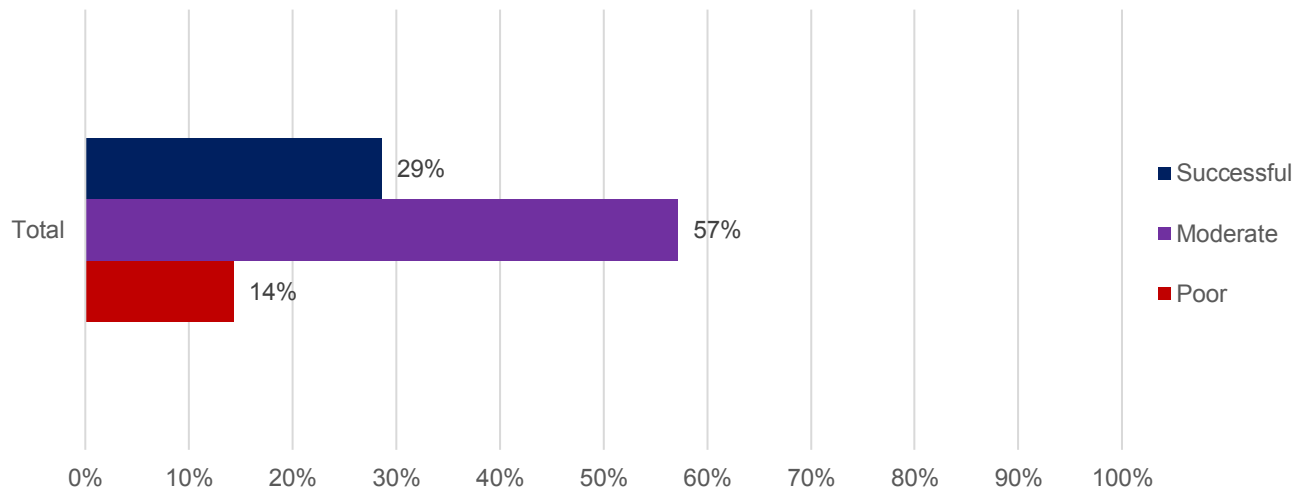


25

²⁴ There were nil responses received for the 'No' and 'Yes – Plans and Reports have been submitted' options.

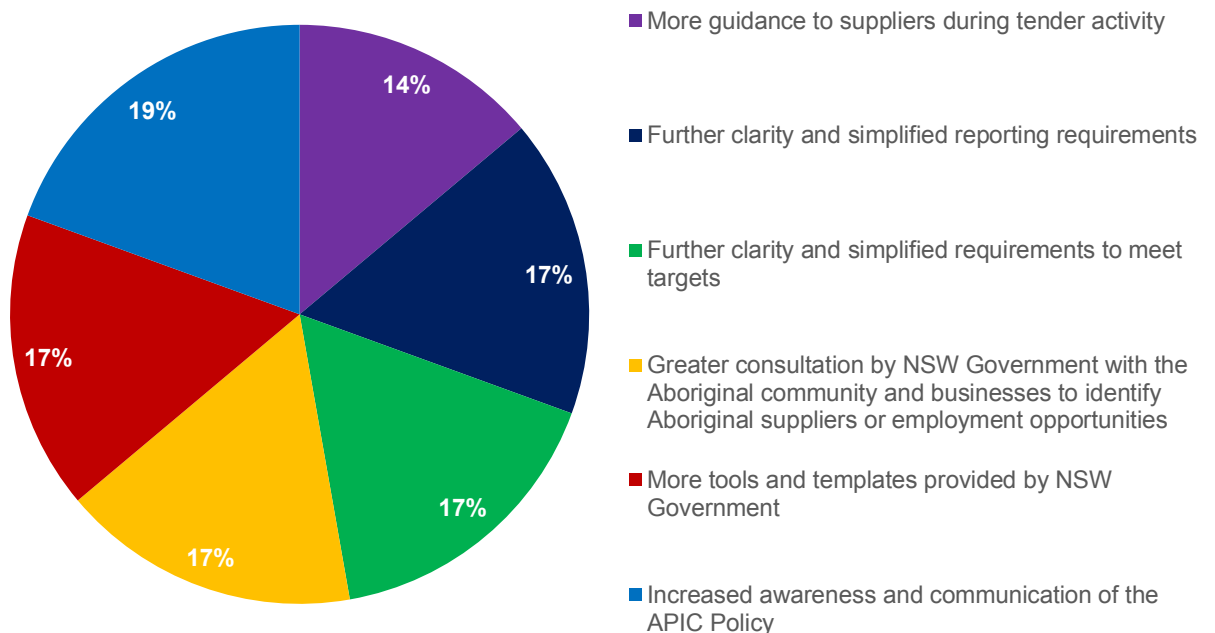
²⁵ There were nil responses received for the 'Yes – after contract award' option.

Q9: To what extent do you believe the Aboriginal Participation Plans and Aboriginal Participation Reports have been helpful in meeting the APIC Policy targets?



26

Q10: What amendments should be made to improve the effectiveness of the APIC Policy? NB More than one option may be selected



27

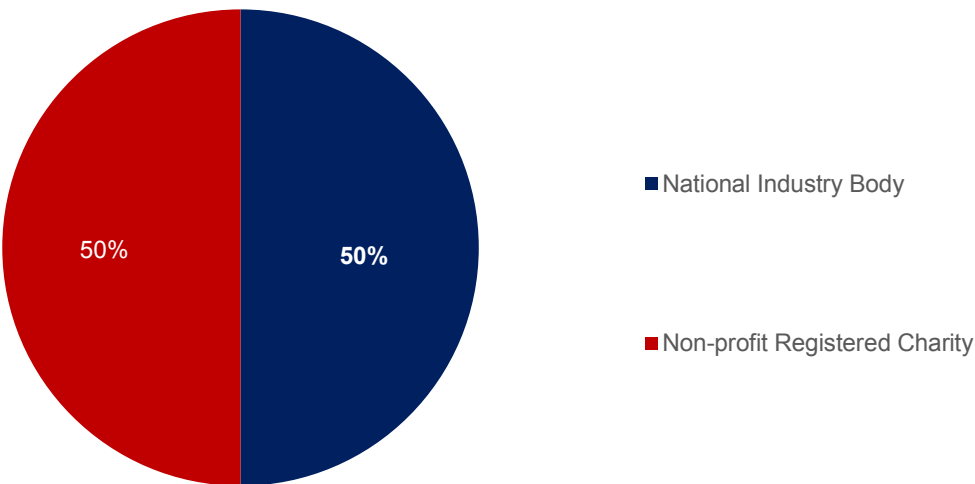
²⁶ There were nil responses received for the 'Highly successful' and 'Nil impact' options.

²⁷ Multiple options were selected for this question.

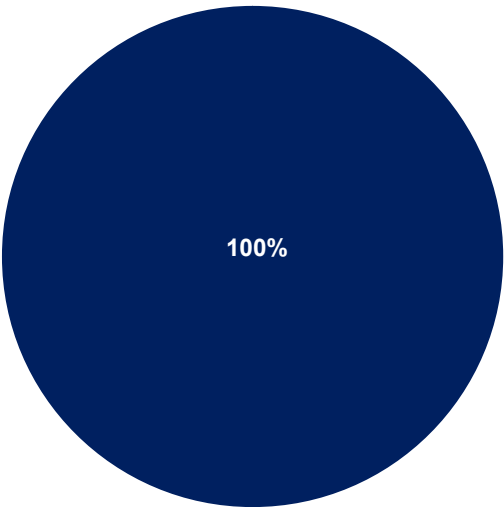
Industry groups²⁸

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Q1: Please select the type of organisation you work for



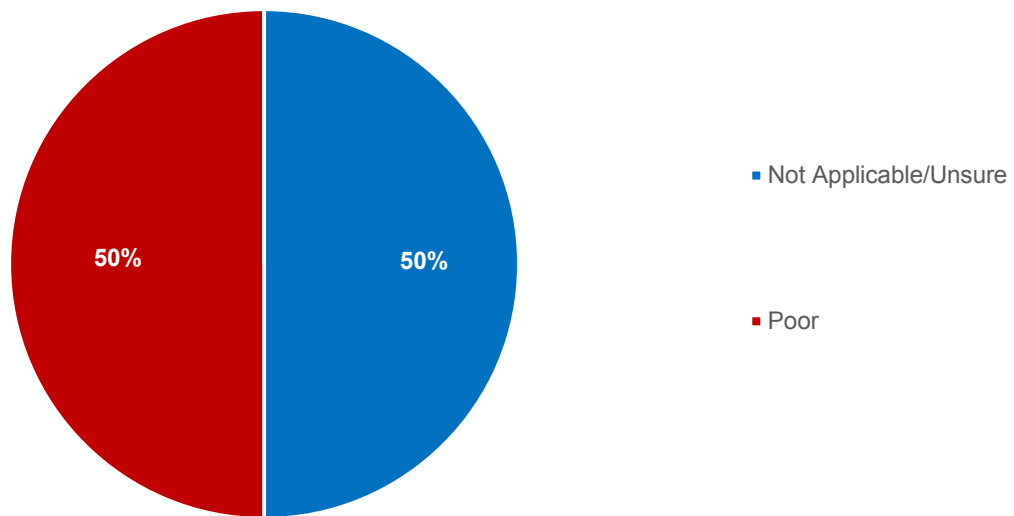
Q2: What is your level of awareness of the NSW Government APIC Policy and its objectives?



²⁸ There were only two respondents for this survey.

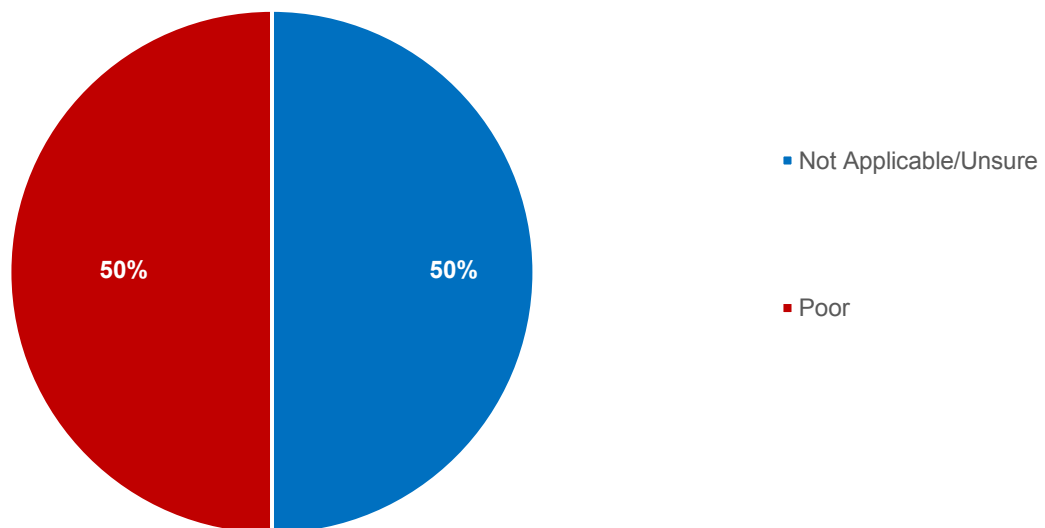
²⁹ There were nil responses received for the 'NSW industry body', 'National peak body' and 'NSW peak body' options.

Q3: To what extent do you believe the APIC Policy has achieved its objective in increasing employment outcomes for Aboriginal people?



30

Q4: To what extent do you believe the APIC Policy has achieved its objectives in improving educational outcomes for Aboriginal people?

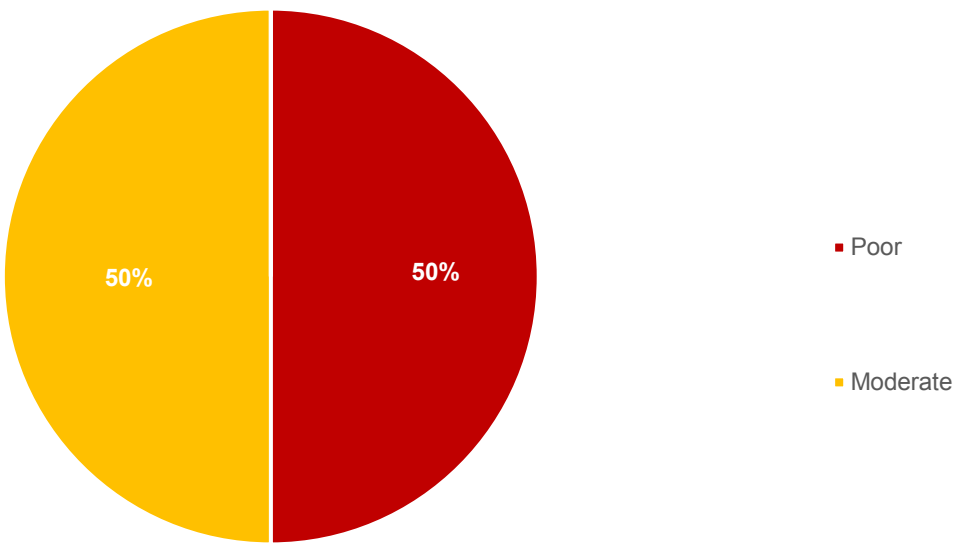


31

³⁰ There were nil responses received for the 'Nil impact', 'Moderate', 'Successful' and 'Highly successful' options.

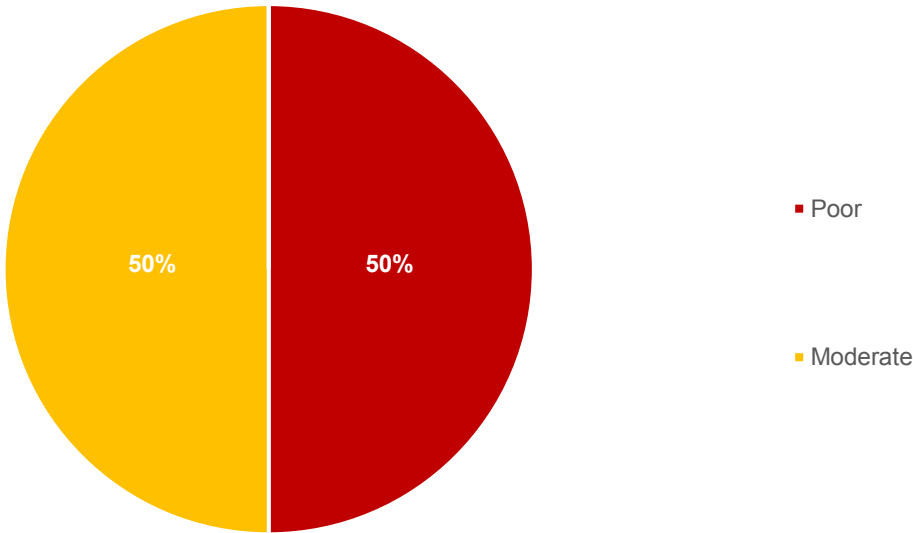
³¹ There were nil responses received for the 'Nil impact', 'Moderate', 'Successful' and 'Highly successful' options.

Q5: To what extent do you believe the APIC Policy has achieved its objective in increasing Aboriginal businesses opportunity to supply to NSW Government



32

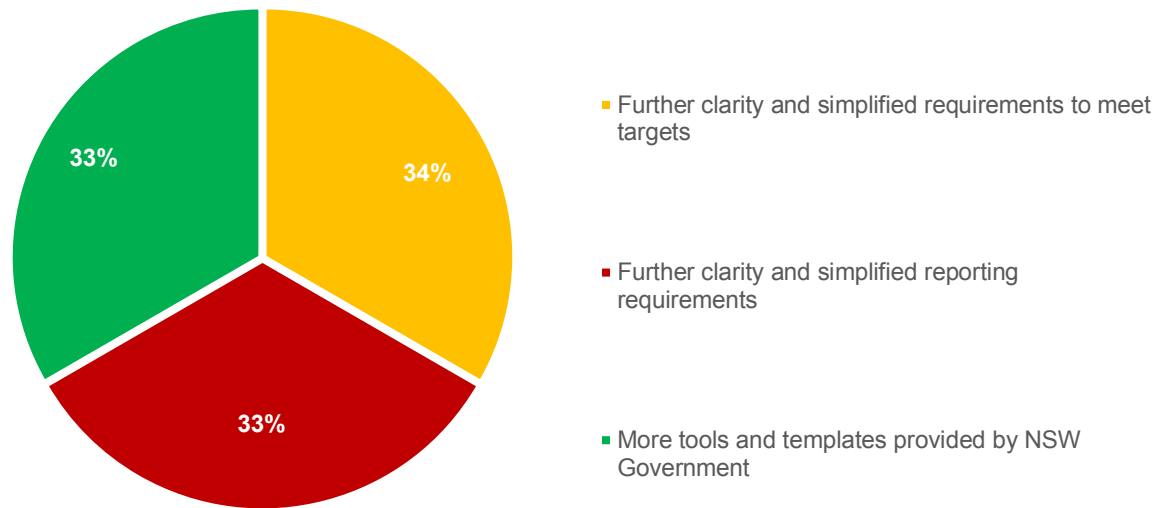
Q6: To what extent do you believe Aboriginal Participation Plans and Aboriginal Participation Reports have been helpful in meeting the APIC Policy targets?



33

³² There were nil responses received for the 'Not applicable', 'Nil impact', 'Successful' and 'Highly successful' options.
³³ There were nil responses received for the 'Not applicable', 'Nil impact', 'Successful' and 'Highly successful' options.

Q7: What amendments should be made to improve the effectiveness of the APIC Policy? NB More than one option may be selected.



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³⁴ There were nil responses received for the options regarding greater government consultation with Aboriginal communities and suppliers and guidance for suppliers during tender activity.

NSW Procurement

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