

INCA CONSULTING

ABORIGINAL PARTICIPATION IN CONSTRUCTION (APIC) GUIDELINES

Evaluation report



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EXECUTIVE SUMMARY

Background

Aboriginal Affairs, NSW Department of Education and Communities commissioned an evaluation of the operation of the Aboriginal Participation in Construction (APIC) Guidelines. The APIC Guidelines (first published in 2001) aim to expand Aboriginal access to, and participation in, NSW Government-funded construction activities. The Guidelines require NSW Government agencies to:

- determine which projects are priorities for Aboriginal participation
- include in tender documents specifications for both contractors and subcontractors regarding Aboriginal participation
- include Aboriginal participation as a criterion for assessing proposals
- assess tenderers' formal plans for Aboriginal participation
- collect data on actual participation.

The purpose of the evaluation was to determine:

- The effectiveness of the program model
- The impact of the program since 2007.

The evaluation was also undertaken to highlight innovative approaches to the recruitment and retention of Aboriginal employees, and contain meaningful recommendations about APIC's future.

The evaluation featured wide-ranging consultation with NSW Government agencies, construction industry participants and some consultation with Aboriginal community representatives. The evaluation also made use of Aboriginal participation data collected by NSW Government agencies and collated by NSW Procurement. The work was conducted in late 2013/early 2014.

Summary of findings

The evaluation found that the APIC Guidelines provide an important basis for providing employment and training opportunities for Aboriginal people on large-scale NSW Government construction projects. The Guidelines are well known across Government and the construction industry. It can be demonstrated that the APIC Guidelines and associated activities have led to good employment outcomes for Aboriginal people. Since 2007, 4.4% of all hours worked on select projects were worked by Aboriginal people. This compares very favourably to ABS data that shows that less than 2% of the entire NSW construction workforce is made up of Aboriginal people. However, the data suggests that the best outcomes were achieved during the years 2008-2010. A downward



trend can be observed in later years, suggesting that a renewed effort is required if the opportunities for Aboriginal participation in construction are to be fully exploited.

While the Guidelines provide an important basis for creating employment opportunities in the construction industry, they do not in themselves drive employment outcomes. It is the preparedness of NSW Government agencies to ‘activate’ the Guidelines that makes the difference – through prioritising Aboriginal participation in tender processes and through their oversight of contractors. Moreover, good outcomes are driven by strong partnerships between Government, contractors and local communities. Identifying opportunities early and working hard to prepare and empower local communities, creating linkages with training organisations and subsidies and supporting contractors in their efforts are all key. In short, there needs to be a culture that supports Aboriginal employment, within government and the construction industry. A number of factors were identified as being important ingredients of success:

- Identifying, at an early stage, construction projects that have the potential to support Aboriginal employment and focusing particular effort on these projects
- Having the right person to represent the agency in a dedicated role to drive Aboriginal employment, someone with passion and commitment
- Being clear about the priority given to Aboriginal employment on the project, through the tender process and in managing the contract.
- Establishing a pre-tender relationship with local community members and organisations - ask what opportunities they see and what preparations they could be making to up-skill/provide a pool of workers and to communicate with the community about the upcoming project
- Helping communities and jobseekers to prepare for the opportunities of an imminent construction project (for example by offering clarity on when works will commence and what skills will be needed)
- Providing contractors with community contacts, making introductions to local community organisations and providing referrals to appropriate Group Training Organisations and recruitment agencies
- Encouraging and supporting lead contractors to ask for or insist on the efforts of their subcontractors to offer opportunities to Aboriginal people
- Where necessary, providing a mechanism for supporting Aboriginal employees (and the employer) during the period of employment (in practical and emotional terms)
- Establishing relationships with local training providers to ensure they can offer the training that will be required at the time it will be required
- Identifying available state and Commonwealth training subsidies that could be accessed by the contractor and their subcontractors



- Focusing on education, training and job-readiness outcomes as well as actual employment opportunities
- Laying the foundation for ongoing employment opportunities eg at the next site, in the next stage of development or in the operation and maintenance of the new facility.

The NSW Government should consider the following as measures for improving employment outcomes for Aboriginal people across Government construction projects:

1. Establishing a stronger, cross-government mechanism for identifying upcoming Government construction projects where good employment outcomes for Aboriginal people might be possible
2. Establishing a dedicated team or resource a formal network of individuals with the experience and ability to manage Aboriginal employment projects - to advise, support and provide services to agencies in their efforts to generate Aboriginal employment opportunities
3. Continuing and strengthening the process of promoting Aboriginal employment goals within relevant government agencies and sections, and demonstrating good practice in driving employment outcomes (for example through induction programs)
4. Ensuring that relevant contract managers in NSW Government agencies and the construction industry are aware of the availability of Aboriginal apprentices employed by Group Training Organisations (along with Commonwealth wage subsidies that are available)
5. Ensuring that the KPI sets for the Chief Executives of relevant agencies include reference to Aboriginal participation in construction projects
6. Exploring ways of providing financial or other incentives to contractors that are able to deliver strong employment outcomes for Aboriginal people and deliver accurate participation data (for example, a more advantageous payment schedule)
7. Ensuring that the proven ability to provide employment and training opportunities to Aboriginal people features in the NSW Government prequalification scheme for construction companies
8. Streamlining the mechanisms for collating industry APIC data, in particular, by incorporating Aboriginal participation data from Roads and Maritime Services
9. Maintaining data on the involvement of Aboriginal-owned enterprises in NSW Government construction projects
10. Encouraging the use of Aboriginal enterprises by primary contractors as a means of satisfying Aboriginal participation goals.

1. INTRODUCTION



1.1 Background

For most Australians, engagement with the economy begins with a job. Those who have a secure income are able to participate in the economy, increase their standard of living, provide secure housing and provide for the health and wellbeing of their families. For these reasons, the clear disadvantage experienced by Aboriginal people in gaining and sustaining employment is of significant concern.

Aboriginal people remain among the most severely disadvantaged groups in the Australian labour market and in relation to nearly every measure of socioeconomic wellbeing. In NSW, the Aboriginal unemployment rate is nearly three times the non-Aboriginal rate, despite an already markedly lower participation rate compared with non-Aboriginal people. Some 48% of NSW Aboriginal people aged 15 years and over are employed, compared with 72% of non-Aboriginal people¹. Many unemployed Aboriginal people are long-term unemployed². In terms of employment type, Aboriginal people are much more likely to be in unskilled or semi-skilled jobs than in professional or managerial positions³.

The disadvantage experienced by Aboriginal people in employment is inextricably linked to multiple other areas of disadvantage. Lower levels of school participation and completion, poorer outcomes in terms of literacy and numeracy and lower levels of participation in higher education are all factors that contribute to poorer employment outcomes for Aboriginal people. It is also well established that employment is a key social determinant for the health and wellbeing of individuals and communities.

Governments at both national and state levels have advocated a collaborative approach between industry peaks (including the not-for-profit sector), employers, governments and Aboriginal communities for building demand for Aboriginal employees. Strategies for improving Aboriginal employment rates are central to meeting 'Closing the Gap' targets and are a critical platform of both the *OCHRE* plan and *NSW 2021*.

¹ ABS (2012) 6287.0 Labour Force Characteristics of Aboriginal and Torres Strait Islander Australians, Estimates from the Labour Force Survey, 2011.

² Productivity Commission 2003, p.3.19

³ Taylor J, Gray M, Hunter, B, Yap M & Lahn J 2011. Higher education and the growth of Indigenous participation in professional and managerial occupations. Report to the Department of Education, Employment and Workplace Relations. Canberra: CAEPR.



OCHRE contains a range of initiatives to improve economic outcomes for Aboriginal people including:

- the Aboriginal Economic Development Framework that will set the direction for NSW
- Opportunity Hubs which aim to support successful transitions from secondary school into further education, training or employment for Aboriginal students
- Industry Based Agreements which are targeted partnerships between the NSW Government and key industry peaks
- an Aboriginal employment strategy for the public sector with a focus not only on employment of Aboriginal people but career progression
- an increased focus on how the NSW Government can use its 'purchasing power' via procurement and construction to support Aboriginal employment and enterprise development.

The construction industry is a major employer of Aboriginal people. According to the 2011 Census, the construction industry was the sixth largest employer of Aboriginal people in NSW. Between 2006 and 2011, the total number of Aboriginal people employed in the industry, increased from 2,568 to 3,565. The Aboriginal proportion of the workforce increased from 1.2 per cent to 1.6 per cent during this time. Over this same time period, the total workforce in the construction industry grew by 1.7 per cent per annum, while the Aboriginal workforce in the industry grew by 7.8 per cent per annum.

1.2 The Aboriginal Participation in Construction (APIC) Guidelines

The Aboriginal Participation in Construction – Implementation Guidelines were first published in January 2001. The aim of the Guidelines was to expand Aboriginal access to, and participation in, NSW Government-funded construction activities through government agencies including requirements for Aboriginal participation in contracts. More specifically, the Aboriginal Participation in Construction (APIC) Guidelines aim to:

- improve workforce diversity in the construction and related industries by facilitating the development of Aboriginal enterprises
- encourage government contractors to provide Aboriginal people with apprenticeships, on-the-job skills training and career opportunities for those first entering the industry.

The Guidelines required NSW Government agencies to:

- determine which projects are priorities for Aboriginal participation

- include in tender documents specifications for both contractors and subcontractors regarding Aboriginal participation
- include Aboriginal participation as a criterion for assessing proposals
- assess tenderers' formal plans for Aboriginal participation
- collect data on actual participation.

Under the Guidelines, projects are categorised according to the degree to which the construction project is likely to impact on Aboriginal communities. Different guidelines apply to each of the categories in terms of the expectations on contractors to create employment opportunities for Aboriginal people. The project categories are:

- *Category 1 project:* Primarily directed to one or more Aboriginal communities, or where an Aboriginal community is the sole or predominant beneficiary.
- *Category 2 project:* Has an Aboriginal community as one of the key user groups, or a prominent project stakeholder.
- *Category 3 project:* A government project that has the potential to benefit the Aboriginal community.

Through the Guidelines, NSW Government agencies can, on selected construction projects:

- require service providers to meet agreed Aboriginal participation targets and report on the delivery of Aboriginal development outcomes
- seek to use service providers with a commitment and demonstrated ability to effectively plan and implement Aboriginal participation appropriate to the needs of the service provider, the project and employees.

A requirement of Category 1 projects is the development of an Aboriginal Participation Plan (APP) by the contractor. The APP takes the form of an undertaking on the part of the contractor to put certain measures in place to encourage Aboriginal employment opportunities. Contractors may (or may not) establish targets for a number of Aboriginal employees, the number of hours to be worked, provision of training etc.

Through encouraging NSW Government contractors to employ, train and provide apprenticeships to Aboriginal people and promoting the development of Aboriginal enterprises, it is envisaged that a more significant portion of construction job opportunities may be carved out for Aboriginal people. The Guidelines identify roles for government agencies and contractors in participating in the program as well as supporting contractors to implement the Guidelines.

In 2007, the Guidelines were revised and reissued in order to simplify them and to promote their wider use. In 2010, a trial was commenced of the strengthened application



of the Guidelines. Some 24 projects were identified by six NSW Government agencies in order to trial the strengthened application of the Guidelines. The trial made it mandatory for the participating agencies to apply the Guidelines to the nominated projects. The following agencies participated in the trial:

- NSW Department of Trade and Investment, Regional Infrastructure and Services (DTIRIS)
- Ageing, Disability and Home Care (ADHC)
- Roads and Maritime Services (RMS)
- Health Infrastructure, NSW Health
- Housing NSW (Department of Families and Community Services)
- Department of Attorney General and Justice (DAGF)

While the Department of Finance and Services have carriage of procurement issues for the NSW Government, the APIC trial was led by Aboriginal Affairs in partnership with the APIC Working Group. The Working Group is made up of the following organisations:

- Aboriginal Affairs
- Department of Finance and Services
- Department of Premier and Cabinet
- NSW Treasury
- NSW Public Works
- NSW Department of Trade and Investment, Regional Infrastructure and Services
- Ageing, Disability and Home Care
- State Training Services
- Asset Management Directorate, Department of Education and Communities
- Roads and Maritime Services
- Health Infrastructure, NSW Health
- Housing NSW
- Department of Attorney General and Justice
- Master Builders Association of NSW
- Australian Constructors Association.

A significant change in NSW is being introduced with the *OCHRE* plan, which sets out the Government's commitments to NSW Aboriginal communities to promote social,



economic and cultural participation. *OCHRE* represents a different way of doing things, with its emphasis on partnerships, shared decision-making, harnessing opportunities and creating local solutions. It also seeks to improve the evidence base in order to understand better what works, which underscores the importance to informed decision-making of evaluating initiatives such as the APIC Guidelines.

Aboriginal Affairs,,NSW Department of Education and Communities engaged Inca Consulting Pty Ltd to undertake a process and impact evaluation of the operation of the strengthened application of the Aboriginal Participation in Construction (APIC) Guidelines.



2. EVALUATION OBJECTIVES

The purpose of the evaluation was to determine:

- The effectiveness of the program model (Process Evaluation) and;
- The impact of the program (Impact Evaluation).

The evaluation was also undertaken to highlight innovative approaches to the recruitment and retention of Aboriginal employees, and contain meaningful recommendations about APIC's future.

There remains significant opportunity for Aboriginal employment and enterprise development in construction and it is an area of major NSW investment. The NSW Government recently signed an Industry Based Agreement (IBA) with the Master Builders Association of NSW. As part of the work being progressed through the Agreement, the IBA Steering Committee has identified the review of the APIC guidelines as an opportunity to provide easier and greater contractor compliance with the Guidelines and also provide a more direct benefit for the Aboriginal community.



3. EVALUATION METHODS

The evaluation entailed the following activities:

1. Review of relevant documentation – the APIC Guidelines and supporting materials, and APIC Working Group proceedings
2. Consultation with APIC Working Group members, including representatives of:
 - a. NSW Aboriginal Affairs
 - b. NSW Department of Trade and Investment, Regional Infrastructure and Services
 - c. Roads and Maritime Services (RMS)
 - d. Health Infrastructure NSW
 - e. Department of Attorney General and Justice
 - f. Department of Education and Communities
 - g. Procurement NSW
 - h. NSW Public Works
 - i. State Training Services NSW.
3. Interviews with the agency project managers/directors associated with NSW construction projects where the APIC Guidelines were applied (8 interviews in total)
4. Interviews with representatives of seven construction companies that have carried out relevant projects, including two Aboriginal-owned enterprises.
5. Interview with a representative of the Master Builders Association of NSW
6. Interviews with representatives of six recruitment/labour hire companies that specialise in finding employment opportunities for Aboriginal people
7. Interviews with two representatives of TAFE NSW
8. Short interviews with eight Aboriginal people who have worked on NSW Government construction projects (conducted by phone and during a site visit)
9. Review of APIC industry data as collated and provided by NSW Procurement
10. Review of Aboriginal participation data separately maintained by RMS.

The interviews with Working Group members and others were guided by interview schedules that are included in Appendix A.

4. EVALUATION FINDINGS

4.1 The role played by the APIC guidelines

It was widely acknowledged among representatives of NSW Government agencies that the APIC guidelines provide an important basis for pursuing opportunities to generate Aboriginal employment on NSW Government construction projects. The routine inclusion of APIC requirements in GC21 construction contracts⁴ was thought to provide a clear statement of the NSW Government's commitments to supporting Aboriginal employment outcomes in the sector. The Guidelines were seen as an important statement to construction companies of the expectations of government in this regard when entering into contracts with private construction companies. The Guidelines were thought to have underpinned a culture shift within government and the construction industry, towards a situation where it was 'the norm' to look for opportunities to employ and provide training opportunities to Aboriginal people.

A number of people noted that it was important for government policy, priorities and expectations to be formalised by way of a set of guidelines that were plain to see. It was also noted that construction industry participants like to have clear requirements that they can respond to rather than being expected to interpret some broad policy or statement of intent. As one informant said: *"Engineers like a flowchart to follow."* (Working Group member)

However, it was clear from the consultations that there is a widespread view that the APIC Guidelines do not in themselves create Aboriginal employment opportunities. While they provide an important basis, it is the way the Guidelines are interpreted and applied that results in the desired outcomes. As a couple of informants noted:

"Merely including the guidelines in the contract requirements does not in itself deliver anything." (Working group member)

"The Guidelines per se only offer a framework, nothing more. They're not the 'generator'." (representative of NSW Government agency)

Much of the feedback provided by informants related to good practice (and bad) in the application of the Guidelines and this is discussed in detail later in this report.

⁴ GC21 contracts are standard form contracts for use by NSW government agencies for constructions contracts worth more than \$1million. See <https://www.procurepoint.nsw.gov.au/before-you-supply/standard-contract-templates-0/standard-form-documents/gc21-edition-2>

4.2 Application of the Guidelines

Consultation with various NSW Government agencies revealed that there is widespread application of the APIC Guidelines, at least in a technical sense:

“We’ve implemented the guidelines through most of our projects.” (Working Group member)

“For us, it’s standard operating procedure.” (Working Group member)

However, it was evident that there are quite different practices with regard to the way the Guidelines are applied and differences in their centrality to the effort to stimulate Aboriginal participation. Often, agencies reported that the APIC categorisation of projects was largely ignored and projects were instead assessed on the basis that there was potential for good Aboriginal participation outcomes. In particular, the degree to which an Aboriginal community will be a beneficiary of the project appears to be downplayed in the internal assessment of how to apply APIC Guidelines to a particular project. Rather, agencies reported that they typically assess upcoming projects and treat them as Category 1 (regardless of the APIC definitions) where:

- the project was of a sufficient size and duration
- it was being undertaken in an area with a sizeable Aboriginal population
- there were likely to be roles that could be filled by the available labour pool
- there was a realistic possibility that some Aboriginal employment outcomes could be achieved.

In short, many agencies have preferred to take a thoughtful or pragmatic approach rather than a mechanistic approach that relies solely on the APIC Guidelines. This of course should be viewed as a very positive thing but it does cloud the question of the role that the APIC Guidelines *per se* play in driving Aboriginal employment opportunities. The following quotes demonstrate these points:

“We said let’s forget about the categories – instead let’s look at local employment opportunities...we’re trying to be more strategic.” (Working Group member)

“We’ve made it mandatory for projects over \$20million.” (Working Group member)

“We’re not interested in the aspirational, we really want to make it happen. We see it as necessary. We made a call a couple of years ago. We use the Category 1 guidelines wherever we can, providing it makes sense to.” (Working Group member)

“We upped the ante. If we see an opportunity, we make it Category 1, even though it’s not technically. We’ve cranked it up.” (representative of NSW Government agency)

“You have to make a judgement call. There might be good opportunities with a small project if it’s in the right place. But the reverse is true also. You need to use common sense rather than blunt criteria.” (representative of NSW Government agency)

One of the most common – and important – points made by informants was that achieving good employment outcomes for Aboriginal people rarely occurred through simply categorising projects and including the relevant APIC requirements in construction contracts. It was consistently noted that the agency’s expectations needed to be made clear and that APIC contract clauses needed to be ‘activated’ by the agency through:

- stressing the importance of Aboriginal participation outcomes in pre-tender meetings and tender documentation
- providing feedback on and input to the Aboriginal Participation Plan developed by the successful tenderer
- including Aboriginal participation outcomes as an agenda item at work in progress meetings
- requiring Aboriginal participation data to be provided and taking steps to verify it if need be
- reporting on the contractor’s performance (in terms of outcomes and effort) via the Contract Performance Reporting framework (or whichever framework the agency uses).

Put simply, it was said that employment outcomes only flowed if the APIC contract requirements were actively enforced by the agency. Following are some illustrative quotes:

“Sure, the GC21 includes a performance management framework, but it depends on the proactivity of the project manager.” (Working Group member)

“We monitor it pretty closely via the Executive Steering Committees, the Contract Performance Report. Across the board, they’re all complying.” (Working Group member)

“We report on both their efforts and achievement through the CPR. We try to influence them through the reporting process.” (Working Group member)

“Builders will respond to the pressure applied by the client. You need to make it as important as workplace safety and all the rest of it.” (representative of NSW Government agency)

“We use every opportunity – pre tender, tender assessment, WIP meetings, contract performance reporting.” (Working Group member)

“It needs to be made an imperative...there are so many other imperatives.” (construction industry representative)

The degree to which APIC requirements are enforced by agencies naturally depends on the priority that the agency (and individual project directors) gives to Aboriginal employment outcomes. It is easy to see – and at least one example was unearthed through the research – that in the absence of an organisational culture that supports the pursuit of Aboriginal employment outcomes, the APIC Guidelines can easily be passively and ineffectively applied. As a couple of informants noted:

“The Guidelines are there but there’s not a strong push. Our projects are pretty much all Category 3.” (representative of NSW Government agency)

“If the people not managing the contract are not driving the outcomes, it’s easy for the tenderer to ignore it.” (representative of NSW Government agency)

“There’s no real strong support or drive for it...my project managers should be more aware of it...it’s a moral thing I suppose. The guideline, the information is there if you want to do it.” (Working Group member)

“[Across the sector] There’s no real policing of those contractual requirements. Even when there is good reporting there’s no policing.” (construction industry representative)

“The Guidelines could be given a lot more weighting – especially on regional projects. In regional areas, unemployment is high and there’s the potential to do some good.” (Contractor)

A complicating factor raised by a number of informants is that the APIC Guidelines apply to the lead contract but, unless the lead contractor specifies it, not to subcontracts with the builder’s suppliers. It was further noted that construction companies are not necessarily large employers and rely on subcontractors to supply most of their skilled and unskilled labour for a particular project. There can be greater potential for generating good outcomes through influencing the employment practices of subcontractors than



the lead contractor but the Guidelines do not provide a strong mechanism for this. Basically, it was reported that the APIC Guidelines emphasised *direct employment* of Aboriginal people rather than *using Aboriginal labour* on a project. It was also noted that these common subcontracting arrangements hamper the ability to collect and report on Aboriginal participation data – it requires the lead contractor to collect data from all of its subcontractors, aggregate the data and then provide a report to the client agency. It is not difficult to see that this process can easily break down.

Although not NSW Government construction projects, two interesting case studies were found in relation to the work being undertaken by a large construction company. The following case studies highlight good practice in setting expectations for subcontractors and supporting their efforts to provide employment opportunities for Aboriginal people:

Case studies

1. A current project to construct the \$35 million MH-60 helicopter training and maintenance facility at HMAS Albatross in the Shoalhaven. An interview conducted with a representative of the lead contractor revealed a highly developed approach to ensuring good employment opportunities for Aboriginal people. Based on the contractor's internally-developed Aboriginal employment policy, all subcontractors – and there are many for this large project – were vetted on the basis of their ability and commitment to provide employment opportunities to Aboriginal people. The contractor also invited a local Aboriginal employment agency to promote their services to subcontractors and to run workshops for subcontractors on how to go about recruiting and retaining local Aboriginal people.
2. A nearly-completed project to build a \$200 million Engineering and IT Faculty building for the University of Technology Sydney. A target was specified by UTS to provide employment to at least 80 Aboriginal people, with a minimum one-month duration. Opportunities had to be provided to labourers, apprentices and tradespeople. The contractor worked very closely with an Aboriginal job readiness and placement agency to assist subcontractors to find and make use of local Aboriginal employees. Subcontractors are encouraged to liaise directly with the agency and the lead contractor only stepped in where subcontractors were 'not playing ball.' The UTS target was exceeded prior to the end of the contract. It is hoped that this effort will also support good Aboriginal employment outcomes for some upcoming, large scale and high profile construction projects in Sydney and this will provide a significant benefit to the Aboriginal community in Sydney. As the contractor's representative noted: *"I've got subbies ringing me up and saying how good these guys are. There's a fair proportion who say they will keep these guys on. I see the potential for the whole community. It's going to change the mindset of the younger generation."*



Although the routine use of subcontracting arrangements can complicate the pursuit of Aboriginal employment outcomes, it was noted by a number of construction companies that the situation was improving. It was thought that an industry-wide acceptance of the APIC guidelines had been developed, with larger companies leading by example. With more and more positive experiences with Aboriginal tradespeople, labourers etc, subcontractors have become more supportive and ‘compliant’. As one contractor put it, *“It’s becoming increasingly easy. Lots of our subbies are employing Indigenous tradesmen. There’s no push back anymore.”*

Section 4.4 provides some further detail relating to good practice application of the Guidelines.

4.3 The trial of the strengthened application of the guidelines

In October 2010 the former NSW Government committed to trialling approaches to strengthening Aboriginal employment through leveraging government expenditure in both construction and the procurement of goods and services. As part of this commitment, a trial was mounted to test the viability of strengthening the APIC Guidelines and their application. Fundamentally, this involved six NSW Government agencies nominating 24 projects that would be subject to the *mandatory application* of Category 1 APIC requirements.

In conducting the evaluation, it was discovered that several of the nominated projects had not commenced and several had changed in scope or were broken up into smaller contracts (and thus no longer deemed suitable by the agency for the application of the Guidelines). In some of these cases, the Category 1 APIC guidelines were simply not applied, despite the purpose of the trial being to test the mandatory application of the guidelines. In other cases, the guidelines were applied but in the same, ‘business as usual’ way – whether that be with strong or weak enforcement of the contract requirements.

Several of the agencies remarked that the trial had not resulted in any departure from their usual decision making processes. Some agency representatives (and working group members) were oblivious to the changes being trialled and/or had real difficulty understanding the intent of the trial. In short, it was evident that the trial of the strengthened application of the Guidelines was fairly incoherent.

It would seem that there was really no response from NSW Government agencies to the strengthened application of the Guidelines – those that had embraced the Guidelines and had them embedded in their procurement and contract management processes, continued to operate in this way. Those agencies (or individuals) where there was less

emphasis on looking for Aboriginal employment opportunities continued to interpret and apply the Guidelines in a way that resulted in few tangible outcomes. Making the APIC Guidelines mandatory for NSW Government Agencies to apply has had little bearing on how the matter is approached.

Given these findings, it is difficult to not conclude that the trial was an ineffective means of testing a new way of applying the Guidelines. It is also evident that the trial missed the point in terms of what drives good outcomes. As outlined in the previous section, it is not what the Guidelines say nor whether they are voluntary or mandatory – it is whether there is a culture within NSW Government agencies that makes Aboriginal employment outcomes a priority.

In fact, some informants said that mandating the application of the APIC Guidelines was counterproductive. It was thought that making an Aboriginal Participation Plan (APP) a mandatory contractual requirement would result in Aboriginal participation becoming a compliance issue rather than something that all parties could give careful thought and attention to.

4.4 Good practice in achieving Aboriginal employment outcomes

As detailed in the previous sections, agency oversight of the progress made against an APP was an important element of ensuring good Aboriginal employment outcomes. However, it was noted that while some good outcomes could be achieved by carefully overseeing contractors, the strongest outcomes are achieved where there is a strong partnership between the agency, contractors and local Aboriginal communities. As a couple of informants said:

“You can’t take a bureaucratic approach...rigid guidelines, targets. There’s got to be an appreciation of the commercial realities. It’s the partnerships, good-will and passion that gets it done, not the words in a contract.” (representative of NSW Government agency)

“It’s about demystifying Aboriginal employment...lots of working together to get the outcomes.” (Working Group member)

“It certainly has to be a contract condition but they have to be shown how...It’s what happens in the background.” (representative of NSW Government agency)

“The difference is made by the attitudes and actions of the people involved.” (Working Group member)



The views of some particular informants were of most interest here – agency representatives who had applied significant effort to achieve strong employment outcomes for Aboriginal people on a small number of large-scale construction projects. A number of factors were identified as being important ingredients of success:

- Identifying, at an early stage, construction projects that have the potential to support Aboriginal employment - *“You’ve got to identify the opportunities early. Someone needs to get in there and start talking up Aboriginal participation from the get go.”*
- Having the right person to represent the agency in a dedicated role to drive Aboriginal employment, someone with passion and commitment - *“Not everyone is suited to it. Younger people are more flexible but you also need someone with gravitas.”*
- Being crystal clear about the priority given to Aboriginal employment on the project, fostering a strong partnership and establishing trust - *“It’s a three way partnership [between the agency, the contractor and the local community]. If everyone plays their part, good outcomes can flow.”*
- The agency establishing a pre-tender relationship with local community members and organisations, and helping them to prepare. Ask what opportunities they see and what preparations they could be making to up-skill/provide a pool of workers/communicate with the community about the upcoming project - *“You have to help Aboriginal communities know when to jump on the bandwagon and lobby for APIC for upcoming projects...communities need to be prepared by agencies before the tenderer is selected.”*
- Making employment outcomes part of a wider engagement process with the local community - *“We’ve been involved since day dot. It was being built on a sacred site so there was lots of consultation. It became a process of engaging with the Aboriginal community – and employment opportunities were a part of that.”*
- Inviting relevant Aboriginal community representatives to pre-tender meetings.
- Providing tenderers with community contacts, making introductions to local community organisations (remembering that Land Councils are not employment agencies) - *“Give the builders a bit of a head start so that opportunities are not missed.”*
- Providing a mechanism for supporting Aboriginal employees (and the employer) during the period of employment (particularly the early stages). For example, community contacts that can help to address issues of absenteeism where they arise, providing transport to a worksite etc – *“Providing that support and mentoring for employees is really important. That’s where the community can chime in and make it doable for the contractor...Even things like getting someone in the community to help an employee write an apology letter if he’s late.”*
- Establish relationships with local training providers to ensure they can offer the training that will be required. Closer liaison at a State level would also be beneficial - *“The key linkages [with education and training opportunities] need to be strengthened.”*
- Identify available state and Commonwealth training subsidies that could be accessed - *“It’s about joining the dots.”*



- Focusing on education, training and job-readiness outcomes in lieu of actual employment opportunities - *"I'm not sure if they employed that many people from the TAFE courses, but it expanded the pool and those people still got something out of it."*
- Laying the foundation for ongoing employment opportunities eg at the next site, in the next stage of development or in the operation and maintenance of the facility.

Clearly, what is being suggested here is a relatively intensive effort that hinges on the ability and passion of one person or a small group of individuals. Not every construction contract in NSW can or should be approached in this way, however, if the above principles were applied more widely, better employment outcomes would surely result. The one limiting factor here is that there are only a small handful of people with this experience and their roles are not dedicated to these sorts of tasks:

"Succession planning is important...we need to keep up the momentum. There are only a few people who really know how to do this." (Working Group member)

Case Study: Nowra Correctional Centre

The Nowra Correctional Centre, a 500 bed, \$150million project was commenced in 2008 and completed in 2010. The NSW Public Works Project Manager saw that there was great potential to provide employment opportunities for Aboriginal people in the area. There was extensive consultation with the local community to discuss what initiatives might be put in place to take best advantage of the opportunity. Rather than setting a quota, there was an interest in seeing what could be achieved with an intensive effort.

Local education and employment brokers were engaged (with some use made of available Commonwealth Government funds. The brokers coordinated the promotion of a discrete program for pre-apprenticeship training in preparation for the project. A relatively large pool of Aboriginal people was provided pre-apprenticeship training via TAFE and most attained very good results.

An Aboriginal Participation Plan was prepared by NSW Public Works that stipulated that the list of Aboriginal candidates would be exhausted before other candidates were considered for relevant roles on the project. Public Works undertook to provide three candidates for positions that would exceed job expectations.

By the completion of the project, 10.5% of all work hours were performed by Aboriginal people. As an example of the outcomes for Aboriginal people, a story was relayed of a young man who left school in Year 12 but before completing his HSC. He needed to look after his dying father. He approached the Aboriginal employment agency, looking for an electrical apprenticeship. He was provided with tutoring support through his studies. After his participation as an apprentice on the Nowra project, he is now a certified electrician and continues to be employed by his original employer. As a representative from the employment agency noted: *"He had nothing. He didn't know how to find opportunities. Now, he's got a trade."*

Case study continues...

A similarly intensive approach was then used to staff the correctional centre. This provided some ongoing opportunities for those employed during the construction phase and opportunities for other people. Upon



opening, 20% of new recruits for the centre were Aboriginal and 20 people are still currently employed as corrective services officers.

Reportedly, the cost to Government of delivering these outcomes was \$60K and the cost borne by the contractor was \$300K – or 0.2% of the entire \$150million budget.

Case study. The NSW Department of Education and Communities (DEC) commissioned a project to extend The Yarradamurra Centre for Aboriginal Performing Arts and Languages at the Dubbo TAFE campus in 2008. It was a one-year, \$3.7 million project. An intensive effort was applied by NSW DEC to see that the project offered employment opportunities to Aboriginal people. Through close liaison with an Aboriginal TAFE educator in Dubbo, Aboriginal students were involved (as part of their course work) in designing some elements of the project – finishes etc. There was also extensive ongoing consultation led by DEC with the local Aboriginal Land Council and some community organisations to ensure that good employment outcomes could be realised. This required an on-ground presence by DEC and many ‘informal’ discussions with relevant people.

According to NSW Procurement data, the construction phase of the project included 14 Aboriginal employees who performed 9196 hours of work (29% of all hours worked). The employees included two Aboriginal apprentices – a carpenter and an electrician. The two apprentices reportedly required some support, particularly in ensuring their engagement with the TAFE course work. The Aboriginal counselor at the TAFE was engaged to provide this support throughout the project. Both apprentices were employed for the duration of the project. One of the apprentices was known to have moved on to another project after the Yarradamurra Centre was completed and to have secured ongoing employment in the industry.

Subsequent to the construction phase, there was also strong Aboriginal involvement in the landscaping work and design of furniture items. A similar approach has been taken to other projects in Orange and Tamworth TAFE construction projects. The lead contractor involved in the project has continued to employ Aboriginal people on a project by project basis and remarked that, in relation to an upcoming project in western NSW “*We’ve got a couple of blokes up there now that we know so we might connect with them again.*”



Case Study. The Cessnock Correctional Centre was extended to include an additional 250 beds, with the \$69 million construction project commencing in early 2010. An Aboriginal community centre and an Aboriginal employment agency were both invited by NSW Procurement to stage community information sessions to discuss the project and the employment opportunities that might exist. It was deemed important that two organisations were asked to be involved, to overcome some local politics that might otherwise have created some community divisions.

Through the information sessions, people were able to register their interest in participating in the project. Through a partnership with TAFE, a Cert II course was offered to prepare people for employment in the construction industry. Some funds were provided to an Aboriginal-owned transport provider to provide transport for people needing to attend the TAFE course. A high level of mentoring was provided to people as they attended TAFE, provided by staff of the Aboriginal employment agency. This mentoring continued through the project via on-site visits to employees and helped to address some non-attendance issues as well as the general emotional well-being of employees.

The contractor was reportedly very supportive of the efforts to ensure Aboriginal participation. As an Aboriginal community representative said *"It was one of the best projects I have ever seen that has had genuine employment outcomes for the community. They went above and beyond. I take my hat off to them."*

According to NSW Procurement data, 60 Aboriginal workers were employed on site and performed about 10% of all working hours on the project. It was noted by a community representative that: *"most of these guys have gone on to bigger and better opportunities. It provided a big opportunity for some people to get their life back on track."*

To emphasise the importance of the partnership approach, another example was provided of two bridge reconstruction projects in western NSW. The same contractor was engaged to build both and was reportedly committed to providing employment opportunities for Aboriginal people. In one community, there was reportedly strong interest and involvement from local community members and organisations and good participation rates were achieved. In the other community, there was a lack of community interest and less willingness to support the effort – consequently, a much lower participation rate was achieved.

A number of informants made note of the important role played by Group Training Organisations (GTOs). Essentially, these organisations employ people (including Aboriginal people) as apprentices. They recruit them, manage their training activities, provide ongoing pastoral care and then offer them to employers on short-term contracts. A construction company can essentially access this labour pool on an as-needs basis, without the risk and expense of employing their own apprentices. From the apprentice's point of view, there may be an ongoing opportunity with that employer or else another opportunity elsewhere once the project has been completed. Additionally, where GTOs are a member of the Department of Employment and Workplace Relations (DEWR) Indigenous Employment Program (IEP) panel, they are able to access payments through that program. One representative of a GTO reported that when an employee was placed

in a role with a construction company, the IEP payments went with them. As this informant said:

‘It’s great. They’re looking for skilled Aboriginal people to meet their APIC requirements. We can send them the people they’re looking for and a couple of thousand bucks. Basically, we do all the paperwork, make it easy for them.’

Some construction companies obviously use the services of Group Training Organisations and the employees that they can offer. However, some other construction companies were not that aware of what GTOs provided or how it could work to the mutual benefit of contractors and Aboriginal employees. As one contractor said “That’s definitely something we could do a little better.”

4.5 Some additional levers

Informants spoke of a range of other factors or activities that can help to boost Aboriginal participation in NSW Government construction contracts, beyond those approaches that can be applied to a particular project. Firstly, it was suggested that in order to strengthen a culture within agencies that supports efforts to achieve Aboriginal employment outcomes, KPIs for Chief Executives could be established. It was noted that Chief Executives of NSW Government agencies had KPIs that related to the delivery of Aboriginal Affairs results but that these did not necessarily include Aboriginal participation in construction projects. It was further noted that establishing this as a KPI would likely strengthen the mechanisms for collecting accurate data on participation rates an important outcome as is detailed in sections 4.8 and 4.9.

The possibility of establishing targets for Aboriginal participation – on a project-by-project basis – was discussed with informants. The prevailing view was that it would generally be counterproductive to introduce targets as a way of strengthening the Guidelines. The thinking here was that specifying targets in contracts would lead to a ‘quantity over quality’ situation and that the temptation would arise to cycle Aboriginal people through projects or otherwise ‘fudge the numbers’ As one person said:

“Targets water down the effectiveness of the approach. You don’t want people focused on complying with a target. You want them to try to achieve something.” (Working Group member)

However, informants did note that it was desirable for contractors to set their own aspirational targets, say, through the APP but that these should not necessarily be binding providing that the right amount of effort has been made to achieve them.



It is also of note that Roads and Maritime Services has set for itself an Aboriginal participation target - a target of 5% Aboriginal employment on at least 25% of construction contracts worth over \$50M. While there are no consequences for RMS not reaching this target, it was noted that the process of agreeing on the target was in itself useful in affirming an organisational commitment to Aboriginal employment outcomes.

As already noted, the organisational culture of NSW Government agencies can either enhance or impede participation rates. It was suggested that it was necessary for there to be an ongoing process of raising awareness of the benefits of Aboriginal employment, the Government's commitments and the best ways of going about supporting it. It was suggested, for example, that induction programs for staff in asset management/civil works departments could feature some content around the intent of the APIC Guidelines.

It was suggested that the NSW Government pre-qualification scheme for construction companies could provide a further lever. Companies seeking to be listed would be required to demonstrate their ability and past performance in providing employment and training opportunities for Aboriginal people. It was thought that this would send a strong signal to the sector about the importance of Aboriginal employment outcomes. As one informant said *"They have to prove they can build stuff of a certain scale, why not insist that they employ Aboriginal people?"*

One suggestion was put forward for there to be a direct financial incentive for contractors to employ Aboriginal people (or at least meet the commitments set out in the APP). For example, it was suggested that contracts could include provision for the early release of funds or a more advantageous payment schedule if the APP is executed to the satisfaction of the project manager. It was noted that this would need to be carefully thought through but it was put forward as a possible means of driving better outcomes.

Lastly, it was noted that it was often easier to support Aboriginal enterprises through awarding sub-contracts than it is to take on new employees directly. By being better supported, those enterprises can in turn employ more people. It was thought that there could be stronger mechanisms for helping primary contractors to make use of Aboriginal enterprises. In particular, it was noted that NSW Treasury's policy that only one quote is required if it is from an Aboriginal enterprise could be better exploited. It was also noted that the \$15K membership fee for *Supply Nation* (a directory of Aboriginal enterprises) was a significant barrier – it was suggested that a NSW Government-wide access agreement could be negotiated.

4.6 Challenges and barriers to Aboriginal participation

Informants spoke about some of the challenges and barriers to achieving solid Aboriginal participation outcomes, and generally with the process of making it happen. Some of these include:

- A perception that it costs more to employ Aboriginal people and that these costs are significant - *"It's a fallacy that it costs more. It's really marginal on a big project."* (Working Group member)
- The misunderstanding or assumptions about the size of the local Aboriginal population (especially in Sydney) - *"[Contractor] just took the view and maintained that 'there's no Aboriginal people here.'"* (representative of NSW Government agency)
- A mismatch between the required labour force and the available pool - *"In some places, the required skill set or labour pool just doesn't exist."* (representative of NSW Government agency)
- The pressure to accept tenders on the basis of price with little regard for the Aboriginal employment outcomes that have been promised - *"Does APIC get any weight in the tender process? Decisions are made on the basis of price, never APIC. You'll tend to get standard set of commitments unless you work with them to exploit opportunities."* (representative of NSW Government agency)
- The timing of projects and decision-making processes - *"It's hard to know when to put the effort in to prepare the ground. You need to wait for project to be approved by Treasury."* (working Group member)

In relation to the final point above, a number of informants noted that timing was important. Instances were reported of missed opportunities where potential employees were identified and provided with training in advance of a major project but that too much time elapsed before the jobs were needed and the candidates had moved on. This situation obviously does not result in the desired outcome, rather, it results in frustration for the local community. As one informant said *"You can't get people's hopes up then let them down. They say 'Don't train us, tell us you're going to give us a job and then it doesn't happen'."* (construction industry representative).

The same frustration obviously results where the contractor does not follow through on the commitments made via an Aboriginal Participation Plan. One example was provided by an Aboriginal employment and training agency that had recruited and helped 21 people obtain a Cert II in civic construction, along with their traffic control and plant operator tickets. This was done in the hope of being able to find work for these people on a local highway bypass project. In the end, only two of these people were offered a job and only for a short-term contract of a few weeks.

A particular issue that many informants spoke about was the tension between generating *local* employment and generating *ongoing* employment opportunities for Aboriginal people. A number of informants were adamant that they wanted to strive for ongoing employment opportunities rather than focusing on short-term, unskilled positions. It was noted that there was sometimes a tendency to use construction projects as a means of offering work experience rather than full employment opportunities:

"We want to assist with, provide a career path, give ongoing opportunities to people." (Working Group member)

"We don't always see local people being employed. We're more interested in striving for continuous, rolling employment opportunities." (Working Group member)

"There needs to be a mechanism for linking people up to other projects, other construction companies. We really focus on that." (Working Group member)

"You don't want 25 individuals rotating through – is that a real outcome?" (construction industry representative)

However, it was noted that this was often at odds with the expectations of the local community. It was further noted that this was sometimes a source of conflict, as evidenced by the following quote:

"We have Land Council meetings that are sometimes not that useful...get railroaded. They complain that we don't employ particular people...it's a bit self centred." (representative of NSW Government agency)

4.7 Contractor responses to the APIC Guidelines

Among NSW Government agency representatives there was a widespread view that contractors were generally very supportive of efforts to generate Aboriginal employment opportunities. It was reported that there was generally an eagerness to deliver on this aim, though obviously within the commercial constraints that they face. It was also noted that the effort was often consistent with their own corporate social responsibility goals, particularly for the larger construction companies. Following are some typical quotes:

"We've had no push back from any of our contractors. The responses we're getting are fantastic." (Working Group member)

"We're piggy backing on their internal processes." (Working Group member)

“Our contractors are generally very eager. It helps them out financially, especially if they can get access to training grants. It improves their bottom line.” (representative of NSW Government agency)

Indeed, several informants were of the view that efforts to encourage Aboriginal participation had become ‘part of the landscape’ or ‘business as usual’ for the NSW construction sector. A culture shift was detected:

“We’ve seen the commitments in terms of the proportion of Aboriginal employees go from 2% up to about 10%.” (Working Group member)

“We’re getting some innovative thinking. [Contractor] interviewed ten Aboriginal people and took them all on on a trial basis. Three of them were offered full time positions. That’s pretty good commitment I reckon.” (representative of NSW Government agency)

“They’re engaging [with Aboriginal communities] better. They take it more seriously. The whole thing is cascading down to subcontractors. It’s a real shift.” (representative of NSW Government agency)

“We’re getting to point where everyone knows this [Aboriginal participation] is a goal. You just have to make sure you take your chances when they come along.” (representative of NSW Government agency)

To balance this fairly positive picture though, informants also said that some contractors were reluctant, particularly at first, and that there had to be a fair amount of oversight and pressure for their commitments to be fulfilled:

“There’s certainly instances where they’ve been reluctant...fall back on excuses or the difficulties. Sometimes they’re genuine difficulties, sometimes not. In the end, it’s hard to push them if they won’t play ball.” (representative of NSW Government agency)

“As long as you’ve made it a priority from the outset. If you don’t revisit it until the end of the contract or half way through, chances are you won’t see the outcome.” (representative of NSW Government agency)

“The builders are reticent to begin with but their enthusiasm builds. Often it’s just a lack of confidence.” (Working Group member)

“The natural starting position is to see it as an imposition...it can be hard for them to see a benefit except the opportunities for further work.” (representative of NSW Government agency)

And of course, there were reports of those contractors who were highly reluctant to take their commitments seriously, or to pursue work where Aboriginal participation was a requirement:

“The clauses can just scare them off— especially the smaller builders.” (representative of NSW Government agency)

“I tried to get a report out of him but I couldn’t.” (representative of NSW Government agency)

These perspectives of agency representatives are reasonably well validated by what the contractors interviewed had to say. It was clear from the response that while there was generally an enthusiasm there, there was also a resignation to the fact that they have to respond to the APIC Guidelines if they want to secure government contracts. It was also clear that contractors viewed things through a commercial lens and while generally supportive of the idea, there was an appreciation that only so much could be done. Amongst the comments were also a few suggestions that APIC is sometimes treated as a compliance issue:

“Look, if the government wants to run these sorts of affirmative action programs that’s fine. We have to respond to that. We’re very happy to do it. There is a cost though.” (Contractor)

“We’re generally happy to try to find these sorts of [Aboriginal participation] opportunities...where there are real opportunities that is.” (Contractor)

“We have our own corporate objectives...social responsibility...it dovetails with what the government wants. It’s win-win really.” (Contractor)

“If we can help out by providing some opportunities to Aboriginal kids or whatever, we will. At the end of the day though we’re there to do the job and make a few bucks, not take too many risks.” (Contractor)

“It can be hard. There’s not many unskilled labourer positions these days...it’s hard to offer on-the-job training. It helps if you’ve got your ticket for sure.” (Contractor)

“It was suggested to us to use a local landscaping mob...Aboriginal-run...they were fantastic.” (Contractor)

“We’ve got a bit of a template that we use [for the APP]. We know we can deliver on that. It seems to satisfy government.” (Contractor)

“We just report the hours each month or whatever they ask for. We probably move blokes around a bit to keep the hours up.” (Contractor)

“There was a guy put on there for a while...did some labouring I think. They provided some training but it didn’t really work out.” (Contractor)

“I don’t think we really adhered to those clauses [APIC requirements].” (Contractor)

4.8 Monitoring and reporting Aboriginal participation data

There is obviously significant interest in determining the effectiveness of the APIC Guidelines and for this reason they include a requirement on contractors to report on some key variables, namely:

- the number of Aboriginal people employed for more than a four week period
- the number of hours they work
- the proportion of all hours worked on the contract.

There are some substantial issues here:

- Just as there may be a lack of oversight of contractor performance against the APP, there may be a lack of oversight of the accuracy of the data supplied (or indeed whether it is supplied at all)
- There is no strong mechanism for collecting participation data from subcontractors and data accuracy hinges on the ability of the lead contractor to collect Aboriginal participation data from all of its subcontractors
- There is a lag in terms of when the hours were worked and when the data is reported
- Roads and Maritime Services and Health Infrastructure NSW (as accredited agencies) collect and collate data in different ways
- There is likely to be under-reporting of Aboriginal participation data for people not known to the contractor to be Aboriginal
- There is likely to be over-reporting of data where employees work across several construction projects (where APIC Guidelines are in place).

In short, there is a strong framework for the collation of Aboriginal participation data but weak and inconsistent mechanisms for harvesting and verifying the data. As a result, there are limitations in the data set that is maintained by NSW Procurement.

Discussions with representatives from Roads and Maritime Services (who do not supply with NSW Procurement with data but record it via their CM21 system) revealed a very patchy data set. The data obtained set out Aboriginal participation data provided for 11 major design and construction projects from 2012/2013. It was clear that the data provided were estimates or projections – there were lots of conspicuously round numbers and the figures for the proportion of workers and proportion of hours worked by Aboriginal people were the same for four of the projects. Many of the fields included in the CM21 framework were blank. Individual RMS contract reports for the period 30/06/2010 to 30/06/2013 were provided by RMS via CM21 IT system. A large number were not populated with any data. It was conceded that the participation data maintained by RMS was lacking:

“The systems are all there to accept the data but we don’t always get it and some of the data is a bit questionable. We’ve got to put it back on the agenda.” (Working Group member)

4.9 Aboriginal participation outcomes

Notwithstanding the limitations in the NSW Procurement dataset and the unfortunate omission of data on Aboriginal participation on road works and other projects managed by RMS, the available data does show some interesting things. Firstly, the data shows that there has been Aboriginal participation in NSW Government construction contracts. For contracts commenced on 1 January 2007 or later, there have been 1,691 people employed for more than four weeks, representing 4.4% of all hours worked. This compares very favourably to ABS data that shows that less than 2% of the entire NSW construction workforce is made up of Aboriginal people⁵. However, the data shows a lot of variability from year to year, as is set out in Table 1:

⁵ Note that the Industry participation data provides a percentage of all hours worked and the ABS data provides a percentage of all employees. While these can not be directly compared, the two measures are reasonably comparable and the finding presented should be judged to be reasonable.

Table 1. Aboriginal participation indicators for NSW Government contracts 2007-2013

Year	Aboriginal employees	Aboriginal hours	Total hours	% Aboriginal participation
2007	40	10,974	1,200,856	0.9%
2008	160	93,431	873,405	10.7%
2009	1,059	323,746	10,735,171	3.0%
2010	221	248,502	2,190,138	11.3%
2011	133	71,082	1,858,184	3.8%
2012	67	19,776	510,664	3.9%
2013	11	249	33,513	0.7%
Total	1,691	767,760	17,401,931	4.4%

As can be seen in Table 1, in 2008 and 2010, more than 10% of hours worked on select NSW Government construction projects were worked by Aboriginal people. In the intervening year of 2009, however, only 3% of hours were worked, but by a much larger number of people (1,059). The reason for this must surely be the large number of the ‘Building the Education Revolution’ projects that were commenced in 2009 (in a highly expedient fashion). It was suggested by one informant that the contract management of many BER projects was outsourced to private companies and that this may have resulted in a stronger focus on Aboriginal participation outcomes.

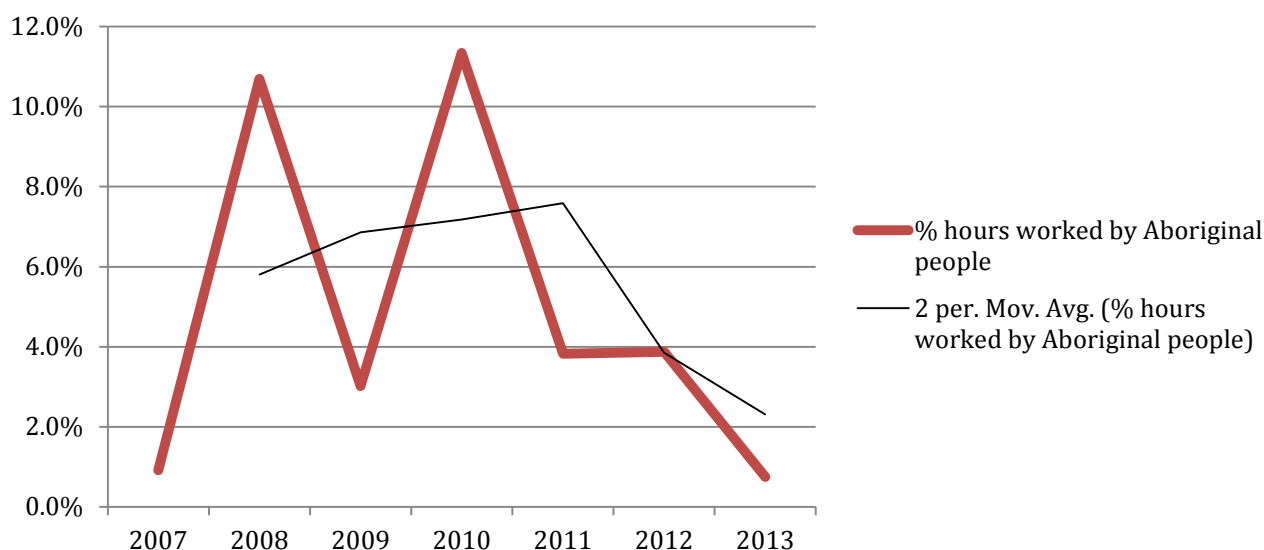
It is apparent that the flurry of construction activity created by BER projects provided employment opportunities for a relatively large number of Aboriginal people during 2009, even though a proportionately larger number of opportunities were provided to non-Aboriginal people. Some informants also saw that this was the case: that BER projects provided some work opportunities to a large number of people but that these were often short lived. As one contractor said *“A lot of people got a crack but they were only on site for a week.”*

The figures for 2013 should also be treated with some caution. This data is based on contracts commenced in 2013, some of which are still in a preconstruction phase. Aboriginal employment opportunities may well exist but have yet to transpire.

The following chart shows the year-by-year proportion of hours worked as well as a rolling average. It is apparent that there has been a decline in Aboriginal participation on select NSW Government contracts since 2010, not only in numbers of Aboriginal

employees but also in the proportion of total hours worked. Had the unique events of 2009 not intervened, the downward trend would be even more apparent.

Figure 1. Aboriginal participation (proportion of all hours worked by Aboriginal people) over time, including 2-year rolling average



As noted, there are limitations associated with the APIC industry data, though it is the most accurate information available. However, State Training Services NSW provided the evaluator with some information relating to Aboriginal apprentices and trainees in the construction industry from 2011 to 2013 (see Table 2 below). The data also shows a declining number of Aboriginal apprentices and trainees in the construction industry, in raw terms and as a proportion of all apprentices and trainees. These data – when added to the industry participation data on select NSW Government construction contracts – suggest an overall finding that the participation by Aboriginal people in the NSW construction industry is going through a recent period of decline.

Table 2. Aboriginal and non-Aboriginal apprentices employed in the NSW construction industry

	Total Apprentices & Trainees	Aboriginal Apprentices & Trainees	Per cent (Aboriginal)
January 2011	16,220	757	4.6%
January 2012	15,652	687	4.4%
January 2013	14,963	613	4.1%

Of course, if there has indeed been a decline in Aboriginal participation in NSW Government construction contracts, this is not to say that employment opportunities don't exist elsewhere. Aboriginal people given opportunities during the 2008-2010 period could in fact now be employed in other (privately funded) construction work. These findings are somewhat inconsistent with ABS labour force data that show the Aboriginal proportion of the construction industry workforce in NSW increased from 1.2 per cent to 1.6 per cent between 2006 and 2011. Over this same time period, the total workforce in the NSW construction industry grew by 1.7 per cent per annum, while the Aboriginal workforce in the industry grew by 7.8 per cent per annum.

4.10 Perspectives of Aboriginal employees

A small number of short interviews were conducted with Aboriginal employees and several of the interviews conducted with Aboriginal-owned enterprises, community organisations and employment agencies yielded second hand accounts of the outcomes for Aboriginal people. Firstly, it should be said that in general terms, the value of training and employment for Aboriginal people is the same as for non-Aboriginal people. It provides an income that can be used to support a family and to participate more fully in society. It also provides confidence and experience that can be used to build ongoing employment potential.

However, it was noted that some of the larger projects can provide meaningful employment opportunities in communities where there is high unemployment and all the social harms that flow from that. Projects that provide good employment outcomes in turn provide social outcomes for communities. Importantly, it was noted that projects can help to engage or re-engage people in training and employment. While there may be some immediate employment outcomes, there is the potential at least to build people's capacity to find ongoing employment.

Following are a couple of quotes and case studies to illustrate these points:

"I was mucking around, not doing the right things. Then this thing came along and I thought maybe I should get serious...see what was out there. I did the course and then when [the job] came they took me on...just labouring stuff. It wasn't much fun to be honest but it was okay. [Employment agency] was great – they always popped in to make sure everything was okay. [Since then] I've been working on and off – a project here and there – but it's all good."

"[It's meant that] I've got some money in my pocket!"



“There’s not much work out here for us fellas so when the jobs come around you want get a part of it.”

“I’ve got two hungry boys. My wife works a bit but it’s mostly down to me. You’ve got to work unfortunately. I’m lucky that I’ve got my trade so there’s usually something available. It’s a worry though when the project finishes and you don’t know where your next pay cheque is coming from. We do alright though.”

Case study

The Shoalhaven Sub-Acute Adult Mental Health Unit is currently under construction and will provide 20 beds at the existing Shoalhaven Hospital site for a cost of \$11.6 million. The project is being overseen by Health Infrastructure NSW. The contractor developed an APP and is reportedly ‘meeting expectations’. Two Aboriginal people have been employed on the project. One person – an elder in the local community – has been employed as a labourer on a contract-by-contract basis by the construction company for over fifteen years. He has worked on various other NSW Government construction projects over the years, all in the south coast area, and for a variety of employers. He reportedly loves his job though is worried whether he will continue to be given opportunities given his age. His employer is generally happy for him to perform light duties and ‘likes to have him around’ due to his loyalty and strong work ethic.

The other employee is a carpenter – a father of two - who apparently walked onto the site asking for a job. Seeing that he could help to fulfil obligations under the APP, and due to dissatisfaction with the services of an existing carpenter, the contractor was happy to consider him for employment. He reportedly was able to produce very strong references and was offered a contract position. His work was reportedly of an extremely high standard, as were his leadership skills. He has been offered a promotion and a full time position as a site manager on another project, though in another town. When interviewed, he was considering his options – he wanted to pursue the opportunity but had to balance this with his family obligations.

Case study

An Aboriginal-owned enterprise was contracted to perform an upgrade of 24 houses owned by the NSW Government and managed by the NSW Aboriginal Housing Office. The properties were located in Collarenebri in western NSW. The project provided six months of full time work for four employees, including two Aboriginal people – a builder and a tiler. The builder was re-engaged for the project after the Aboriginal enterprise had helped him to complete a Cert III in carpentry and joinery several years before. As the project finished, both employees were helped to find employment elsewhere in the industry. As the contractor noted, *“It’s great that they have stayed in the industry and continue to get opportunities. I wish there were more examples like it.”*

4.11 The APIC Working Group

Informants made a number of comments about the operation of the APIC Working Group that fairly clearly suggest that it has not been especially effective in coordinating the NSW approach to Aboriginal participation. Based on informant comments, it would seem that the group has suffered from having a loose agenda and inconsistent membership, probably resulting in some lost opportunities. The comments below are fairly telling:

“It’s been a merry-go-round of personnel...makes it hard to build momentum and relationships.”

“There’s been some conflict...a lack of clarity around the role of NSW Procurement.”

“The data is supplied but there’s no full interpretation. It’s hard to know what’s going on.”

“It all works best when there’s an holistic view taken and all the key players are involved [in using a construction project to generate employment opportunities for Aboriginal people]. The Working Group is supposed to allow that to happen but it doesn’t really. It doesn’t meet regularly and there’s always different people. We seem to go over the same old stuff again and again.”

“There doesn’t seem to be a clear strategy that we’re pursuing. It’s pretty loose. I come out of those meetings thinking it hasn’t achieved much.”

“There’s been some great presentations on how to do it [get good Aboriginal employment outcomes]. Those presentations need to be given across government.”

“A forum where people raise obstacles. It never seems to move forward.”

5. CONCLUSIONS AND RECOMMENDATIONS

The evaluation found that the APIC Guidelines provide an important basis for providing employment and training opportunities for Aboriginal people on large-scale NSW Government construction projects. The Guidelines are well known across Government and the construction industry. While the Guidelines provide this important basis, they do not in themselves drive employment outcomes. It is the preparedness of NSW Government agencies to 'activate' the Guidelines that makes the difference – through prioritising Aboriginal participation in tender processes and through their oversight of contractors. Moreover, good outcomes are driven by strong partnerships between Government, contractors and local communities. Identifying opportunities early and working hard to prepare and empower local communities, creating linkages with training organisations and subsidies and supporting contractors in their efforts are all key.

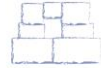
It can be demonstrated that the APIC Guidelines and associated activities has led to good employment outcomes for Aboriginal people. Since 2007, 4.4% of all hours worked on select projects were worked by Aboriginal people. This compares very favourably to ABS data that shows that less than 2% of the entire NSW construction workforce is made up of Aboriginal people. However, the data suggests that the best outcomes were achieved during the years 2008-2010. A downward trend can be observed in later years, suggesting that a renewed effort is required if the opportunities for Aboriginal participation in construction are to be fully exploited.

There may be some sense in redesigning the APIC Guidelines to put emphasis on projects where there are likely to be good employment outcomes, rather than those projects that have impact on Aboriginal communities. However, it was clear from the research that agencies tend to assess projects with little regard for the Guidelines in any case – tinkering with the written Guidelines in order to offer a stronger basis for mechanically applying the Guidelines is likely to deliver little change. Instead, the NSW Government should consider the following as measures for improving employment outcomes for Aboriginal people across Government construction projects:

1. Establishing a stronger, cross-government mechanism for identifying upcoming Government construction projects where good employment outcomes for Aboriginal people might be possible
2. Establishing a dedicated team or resource a formal network of individuals with the experience and ability to manage Aboriginal employment projects - to advise, support and provide services to agencies in their efforts to generate Aboriginal employment opportunities



3. Continuing and strengthening the process of promoting Aboriginal employment goals within relevant government agencies and sections, and demonstrating good practice in driving employment outcomes (for example through induction programs)
4. Ensuring that relevant contract managers in NSW Government agencies and the construction industry are aware of the availability of Aboriginal apprentices employed by Group Training Organisations (along with Commonwealth wage subsidies that are available)
5. Ensuring that the KPI sets for the Chief Executives of relevant agencies include reference to Aboriginal participation in construction projects
6. Exploring ways of providing financial or other incentives to contractors that are able to deliver strong employment outcomes for Aboriginal people and deliver accurate participation data (for example, a more advantageous payment schedule)
7. Ensuring that the proven ability to provide employment and training opportunities to Aboriginal people features in the NSW Government prequalification scheme for construction companies
8. Streamlining the mechanisms for collating industry APIC data, in particular, by incorporating Aboriginal participation data from Roads and Maritime Services
9. Maintaining data on the involvement of Aboriginal-owned enterprises in NSW Government construction projects
10. Encouraging the use of Aboriginal enterprises by primary contractors as a means of satisfying Aboriginal participation goals.



APPENDICES



**APIC Guidelines Evaluation
Working Group (NSW Government Agencies) Interview Guide
August 2013**

Introduction – 5 mins

Inca Consulting has been engaged by Aboriginal Affairs, Office of Communities, NSW Department of Education and Communities to conduct an evaluation of the trial of the strengthened application of the Aboriginal Participation in Construction (APIC) Guidelines. In short, we have been asked to explore how the Guidelines are being applied and what outcomes have resulted. We intend to speak to each of the NSW Government agencies that are partners in the trial along with the agency contract managers, contractors, subcontractors and relevant community organisations for a selection of relevant APIC contracts (up to 15 case studies). As a first step, we would like to canvass some issues with you and to discuss the logistics of gaining access to information and contact details for others.

1. Could you please start by telling me about your involvement in the APIC Guidelines Working Group

Operation of the APIC Guidelines

2. As I understand it, the strengthened APIC Guidelines are being applied to the following projects via your agency (LIST PROJECTS). Could you please give me a quick update on the status of these projects (eg tender stage, pre-construction, mid construction, completed)
3. Outside of the specified projects, does your agency include Aboriginal participation requirements (mandatory or voluntary) in its tender documentation? How consistently is this done across the agency? What are the mechanisms for governing how and when these criteria are included?
4. Has it been easy for your agency to apply the APIC Guidelines? What difficulties have been experienced? What adjustments had to be made?
5. How are contract managers in your agency made aware of the intent of the APIC Guidelines and they should be applied to construction contracts? How 'embedded' have the Guidelines become in your agency's tender processes?
6. What has been the response of (successful and unsuccessful) contractors to the requirement to make undertakings and develop and implement an Aboriginal Participation Plan?
7. What are your views on the Aboriginal Participation Plans and other undertakings made by contractors in tendering for the specified projects? How meaningful are these undertakings?



8. What is the process for monitoring the performance of contractors in relation to the commitments they have made in their Aboriginal Participation Plan? How effective is this process? Is it a straightforward process? How is the performance of subcontractors monitored?
9. What is this monitoring telling you? Are contractors meeting their obligations? Where (if anywhere) are obligations not being met? Why does this situation arise? What is the agency's response?
10. Contractors can employ and provide training opportunities for Aboriginal people who are on their staff, require subcontractors to do the same and/or subcontract parts of a project to an Aboriginal-managed company. Are all of these things happening? Where are the greatest opportunities being provided to Aboriginal people? What barriers are there?

Access to information and logistics

11. We would like to gain access to a number of things so that we can progress the evaluation:
 - Contact details for the contract managers for each of the select construction contracts
 - The Aboriginal Participation Plan prepared during the tender process by each of the successful contractors
 - Documentation in relation to contract performance (ie Aboriginal participation indicators)
 - Contact details for the most relevant person (ie the contract signatory) in each of the relevant construction companies.

What is the most appropriate process for gaining access to these things? Are you able to provide these things to us on a confidential basis? Who else do we need to speak with?

12. Do you have any recommendations as to which construction projects we might investigate further for the purposes of the evaluation, keeping in mind that we would like a good cross-section of projects?

General Feedback

13. Did you have exposure to the previous operation of the Guidelines (ie prior to 2011)? How (if at all) did this experience differ from your agency's experience with the current trial?
14. What are your views on the benefits that have been delivered via the APIC Guidelines? Have these benefits been fully realised? What ongoing barriers are there? How might these be overcome?
15. What advice would you give to other NSW Government agencies that might be looking to apply the APIC Guidelines?



16. Do you have any other comments to make about the APIC Guidelines and their future application?



APIC Guidelines Evaluation Contract Manager Interview Guide August 2013

Introduction

Inca Consulting has been engaged by Aboriginal Affairs, Office of Communities, NSW Department of Education and Communities to conduct an evaluation of the trial of the strengthened application of the Aboriginal Participation in Construction (APIC) Guidelines. In short, we have been asked to explore how the Guidelines are being applied and what outcomes have resulted. We are speaking to each of the NSW Government agencies that are partners in the trial along with the agency contract managers, contractors, subcontractors and relevant community organisations for a selection of relevant APIC contracts (up to 15 case studies).

We have already spoken to [INSERT NAME] from your organisation. It has been suggested that [INSERT NAME OF PROJECT] would be a good case study to use in our evaluation. I would like to speak with you about the project you have been managing and also to discuss the logistics of getting the contact details for some other relevant people. Please note that this is a confidential discussion and that your views will only be reported in a way that does not identify you. It is also important to note that the contract we have with Aboriginal Affairs stipulates that all information obtained in conducting the evaluation will be treated as confidential.

Operation of the APIC Guidelines

1. Could you please give me a quick update on the status of the project you are managing. Who is the led contractor? Who are the main subcontractors? Were you involved in the tender selection process?
2. When were you made aware of the intent of the APIC Guidelines and that they would be applied to the project? What were your initial thoughts?
3. How easy or difficult was it to incorporate the APIC Guidelines in the tender documentation and to convey their meaning to tenderers?
4. What was the response of (successful and unsuccessful) contractors to the requirement to make undertakings and develop and implement an Aboriginal Participation Plan?
5. What were your views on the Aboriginal Participation Plans and other undertakings made by the (successful and unsuccessful) contractors in tendering for the specified projects? Were they meaningful? What was the difference between a 'good' response to the APIC Guidelines and a 'poor' one?



6. Can you talk me through the undertakings made by the successful contractor. [ASSUMING THAT WE DON'T YET HAVE THE APP] Are you able to supply us with the Aboriginal Participation Plan as prepared by the successful contractor?
7. What is the process for monitoring the performance of contractors in relation to the commitments they have made in their Aboriginal Participation Plan? How effective is this process? Is it a straightforward process? How does it compare to other contract performance monitoring activities? How is the performance of subcontractors (as opposed to the lead contractor) monitored?
8. What is this monitoring telling you? Can you clearly see the benefits arising for Aboriginal people who are participating in the project? Can you give some examples? Is the contractor meeting its obligations? Where (if anywhere) are obligations not being met? Why has this situation arisen? How have you/will you respond?
9. Do you think the contractor has found it easy or difficult to provide opportunities for Aboriginal participation in the project? What barriers have there been? Has the contractor benefitted in any way?
10. Contractors can employ and provide training opportunities for Aboriginal people who are on their staff, require subcontractors to do the same and/or subcontract parts of a project to an Aboriginal-managed company. Which of these things is happening with the contract you manage? Where are the greatest opportunities being provided to Aboriginal people? How substantial are these benefits? Where could more opportunity be provided?

Access to information and logistics

11. We would like to gain access to a number of things so that we can progress the evaluation. In particular, we would like to speak to key representatives of the contracted company, some subcontractors and relevant representatives of local Aboriginal community organisations. Who do you suggest we speak with in relation to [INSERT NAME OF PROJECT]? Are you able to provide contact details? What is the most appropriate process for making contact with these people?
12. Do you have any particular questions that you would like asked of these people?

General Feedback

13. Did you have exposure to the previous operation of the Guidelines (ie prior to 2011)? How (if at all) did this experience differ from your experience with the current trial?
14. What are your views on the benefits that have been delivered via the APIC Guidelines? Have these benefits been fully realised? What ongoing barriers are there? How might these be overcome?
15. What advice would you give to other people who will need to manage NSW Government construction contracts where the APIC Guidelines apply?



16. Do you have any other comments to make about the APIC Guidelines and their future application?



APIC Guidelines Evaluation Contractor Interview Guide August 2013

Introduction

Inca Consulting has been engaged by Aboriginal Affairs, Office of Communities, NSW Department of Education and Communities to conduct an independent evaluation of the trial of the strengthened application of the Aboriginal Participation in Construction (APIC) Guidelines. In short, we have been asked to explore how the Guidelines are being applied and what outcomes have resulted. We are speaking to each of the NSW Government agencies that are partners in the trial along with the agency contract managers, contractors, subcontractors and relevant community organisations for a selection of relevant APIC contracts (up to 15 case studies).

We have already spoken to [INSERT NAME OF NSW GOVERNMENT AGENCY] regarding the [INSERT NAME OF PROJECT]. I am hoping that we can include this project as a case study in our evaluation. I would like to speak with you, along with others you may suggest, about the project and about the APIC Guidelines more generally. [AS NECESSARY] Is there someone else that would be better placed to speak with me about these issues? [NOTE THAT WE MAY NEED TO SPEAK TO COMPANY DIRECTORS, PROJECT MANAGERS, HUMAN RESOURCES STAFF ETC]

Please note that this is a confidential discussion and that your views will only be reported in a way that does not identify you or your organisation. It is also important to note that the contract we have with Aboriginal Affairs stipulates that all information obtained in conducting the evaluation will be treated as confidential.

ABOUT THE COMPANY AND EXISTING EMPLOYMENT PRACTICES

1. Could you please give me some background on your company – how long has it been established, what types of construction projects do you undertake, what geographic area do you cover, who are your main clients?
2. Could you tell me a bit about your workforce. How many employees do you have and in what sorts of roles? How do you use subcontractors and for what sorts of things?
3. Prior to the [INSERT PROJECT] contract, did you have any Aboriginal employees? In what sorts of roles? Did you ever subcontract works or services to companies that are managed by Aboriginal people and/or employee a proportion of Aboriginal people?
4. Did you have any specific employment policy that sought to provide work opportunities to Aboriginal people or other disadvantaged people? What sorts of things did this policy cover? How 'active' was this policy?



PROJECT STATUS AND APP PREPARATION AND PROGRESS

5. Could you please give me a quick update on the status of the project [CONFIRMING WHAT HAS ALREADY BEEN DISCUSSED WITH THE CLIENT ORGANISATION]
6. When were you made aware of the intent of the APIC Guidelines and that they would be applied to the project? What were your initial thoughts? Had you come across these requirements before?
7. How easy or difficult was it to respond to these requirements eg to develop an Aboriginal Participation Plan? What was involved?
8. What is the nature of your Aboriginal Participation Plan for this project? [DISCUSS AS APPROPRIATE DEPENDING ON WHETHER THE APP HAS BEEN SIGHTED] How is the plan progressing? Have you been able to do all of the things that you set out to do? What have been the barriers/difficulties?
9. What other involvement (if any) has there been from local Aboriginal people and organisations in relation to the project? What involvement (if any) was there in the development of your APP and/or finding suitable Aboriginal employees?
10. How is your progress against the APP monitored by [CLIENT ORGANISATION]? What do you have to do demonstrate progress? Is this straightforward/appropriate?
11. Have you placed any requirements on your subcontractors to reflect the commitments you have made with regards to Aboriginal participation? What has been their response? Are subcontractors supportive of your efforts to provide employment opportunities for Aboriginal people eg have they helped you to fulfill the commitments you made?

IMPACT OF THE APIC GUIDELINES

12. Thinking about the Aboriginal people that are working on this project, to what degree are they involved because of the APIC Guidelines? Are they people that have worked with you before? Do they work on other projects for you?
13. Have the APIC Guidelines resulted in any net increase in the number of Aboriginal people that you employ and/or offer training and apprenticeships to? What is the magnitude of this increase?
14. How likely is it that the Aboriginal employees in question will have ongoing employment opportunities with your company beyond the contract at hand?
15. What training opportunities have been provided to your Aboriginal employees? How important have these opportunities been for those people? How similar or different are these training opportunities to the ones you provide to non-Aboriginal staff?



16. Have the employees in question worked out for you? Do they require any additional support? What sort of support? Are you happy to provide this?
17. Have you been happy to make the commitments required under the APIC guidelines? Have there been benefits for your company and if so what sorts of benefits?
18. Can you tell me the story of one or two of the Aboriginal people concerned – how the employment and training opportunities have benefited them and what role they have played in the project and within your company.
19. Has the requirement to work within the APIC Guidelines resulted in any changes to your general employment policies, recruitment practices etc? Has it had any impact on your relationship with local Aboriginal community organisations?
20. Are staff generally aware of the APIC arrangements? Are staff supportive of the program?
21. What do you think will be the long-term impact of the APIC Guidelines?

SUMMARY

22. Do you think the APIC Guidelines should continue to be used in their current format? What, if anything, would you like to see changed?
23. What advice would you give to other construction companies that may be successful in securing future construction project contracts where the APIC Guidelines apply?
24. Do you have any other comments to make about the APIC Guidelines and their future application?
25. We would like to gain access to a number of things so that we can progress the evaluation. In particular, we would like to speak to some representatives of local Aboriginal community organisations who may be aware of the project and your efforts to provide employment opportunities to Aboriginal people. Is there anyone that you can suggest we talk to?

MANY THANKS FOR YOUR TIME