



# LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

13<sup>th</sup> Assembly

## PUBLIC ACCOUNTS COMMITTEE

### Public Briefing Transcript

12.00 pm Tuesday, 17 September 2019

Litchfield Room

**Members:**

Mrs Kate Worden MLA, Chair, Member for Sanderson

Mr Terry Mills MLA, Deputy Chair, Member for Blain

Mr Lawrence Costa MLA, Member for Arafura

Mrs Lia Finocchiaro MLA, Member for Spillett

Mr Tony Sievers MLA, Member for Brennan

Mr Gerry Wood MLA, Member for Nelson

**Witnesses:**

Department of Infrastructure, Planning and Logistics

- Andrew Kirkman, Chief Executive Officer
- John Harrison, General Manager, Infrastructure, Investments and Contracts
- Bruce Michael, Acting General Manager, Transport and Civil Services

The committee convened at 12.03 pm.

## INDIGENOUS PARTICIPATION ON CONSTRUCTION PROJECTS

### Department of Infrastructure, Planning and Logistics

**Mr DEPUTY CHAIR:** Gentlemen, thank you for coming. Welcome to this hearing. I will make a formal introduction to our proceedings in a moment. I am the Deputy Chair, but the Chair for the purposes of today's meeting because of Prince Edward, who could not be here, unfortunately. The Chair is, in her official capacity, engaging His Royal Highness.

On behalf of the committee I welcome everyone to this public briefing on Indigenous Participation on Construction Projects. I welcome to the table to give evidence to the committee Andrew Kirkman, CEO, John Harrison, General Manager Infrastructure, Investment and Contracts and Bruce Michael, Acting General Manager, Transport and Civil Services.

Thank you for coming before the committee. We appreciate you taking the time to speak to the committee and look forward to hearing from you today.

This is a formal proceeding of the committee and the protection of parliamentary privilege and the obligation not to mislead the committee applies. This is a public briefing which is being webcast through the Assembly's website. A transcript will be made for use of the committee and may be put on the committee's website.

If, at any time during the briefing, you are concerned that what you will say should not be made public, you may ask that the committee go into a closed session and take your evidence in private.

Could you please each state your name and capacity in which you are appearing. Then, Mr Kirkman, would you like to make an opening statement?

**Mr KIRKMAN:** Andrew Kirkman, Chief Executive Officer, Department of Infrastructure, Planning and Logistics.

**Mr HARRISON:** John Harrison, General Manager in Infrastructure, Investment and Contracts, Department of Infrastructure, Planning and Logistics.

**Mr MICHAEL:** Bruce Michael, Acting General Manager, Transport and Civil Services, Department of Infrastructure, Planning and Logistics.

**Mr KIRKMAN:** Thank you for the opportunity to make an opening statement, Chair. I also thank you for providing us the opportunity to provide information on the Indigenous Participation on Construction Projects Policy under the department and Indigenous development plans, and to respond to any questions that the committee may have.

As mentioned, I am joined here by John and Bruce.

There is significant opportunity to support local Aboriginal employment and economic development outcomes through government procurement activities, which is why the Indigenous Participation on Construction Projects Policy was developed in partnership with business and industry. The policy commenced in August 2014 and was subsequently revised in 2017.

The policy seeks to promote employment opportunities for Indigenous Territorians and build the capacity of Indigenous businesses to successfully share in the delivery of construction projects in the Northern Territory. The policy seeks to achieve this through increasing the number of tenders awarded to Aboriginal business enterprises, ABEs, improving the participation rate of Indigenous employees, trainees and apprentices directly employed through department-issued contracts and equitably weighted assessment criteria for Aboriginal participation.

To achieve increases in Aboriginal participation, contractors are required to provide proposals in their tender response schedule to allow for assessment of Aboriginal employees, including apprentices and trainees who are directly employed on the works, the intended use of group training schemes or recognised Territory Indigenous community organisations to deliver the proposed works and nominated subcontractors' usage of Aboriginal employees, including registered Indigenous apprentices and trainees. These items are evaluated

during the tender assessment process as part of the local content criteria which now has a mandatory minimum weighting of 30%.

Also in support of the policy, our project teams collaborate with other agencies to identify Aboriginal employment opportunities. For example, we work very closely with the Department of Local Government, Housing and Community Development, which has a work unit responsible for assessing the local capacity in remote communities for the delivery of Aboriginal employment in those communities.

The level of Aboriginal engagement in construction work depends on a number of factors, including the time available to design, tender and construct the infrastructure and the availability of capable ABEs in the region. Prior to the implementation of the policy, the agency engaged directly with about 30 ABEs each year on infrastructure projects Territory-wide. Since the introduction of the policy there has been more than doubling the use of ABEs and more than 60 have been engaged in recent years.

Following the implementation of the policy, the department, over time, has increased the number of ABEs engaged from around 3.8% of total construction contracts—that is not only remote but all construction contracts put out by the department. It was about 3.8% in 2013-14. That was increased to 6.2% in 2018-19, last financial year, with a similar increase in the actual value of construction contracts going to ABEs from about 4.6% in 2013-14 to about 8.8% last financial year. These figures do not include the subcontractors used in any contract.

Indigenous employees under subcontracts are separately identified within the Indigenous Development Plans. Indigenous Development Plans, IDPs, are a mandatory requirement under the policy for all construction tenders over \$500 000. The purpose of the IDP is for the head contractor to develop strategies and protocols within the contract that support Indigenous enterprise and maximise employment and training opportunities for Indigenous Territorians. The contractor has 14 days from contract award and before any work commences on-site to submit the finalised IDP for approval to the department's superintendent for that project. The superintendent either approves the IDP or rejects it, giving reasons for their rejection. The contractor must rectify the identified deficiencies and resubmit the plan for further assessment until the plan is approved as meeting the requirements of the contract. A guidance document to assist contractors in preparing their IDP is accessible through DIPL public website.

DIPL has in place a Contractor Compliance Unit which is responsible for managing and reporting on audits of condition of contract requirements, including meeting local development commitments in tender responses and under the approved IDPs. Contractors are provided feedback from a contractor compliance audit in the form of a report of non-conformance, opportunities for improvement and observations on the system of performance, as well as feedback on positive performance against these criteria.

The contractor must identify strategies to address any non-conformances and advise these strategies to the superintendent who will accept and close out the non-conformance or reject the proposed strategy and require the contractor to further reconsider actions to meet their contractual requirements and those commitments they made in the Indigenous Development Plans. Audit findings help inform the superintendent on the contractor project performance and are taken into account when the superintendent is assessing performance at the end of each project.

You may be aware that the new Aboriginal Contracting Framework is currently being developed by the Department of Trade, Business and Innovation in consultation with stakeholders. That department is the policy department for procurement for government. When finalised, this department's Indigenous Participation on Construction Projects Policy will be revised or we may need to replace it to align with the new framework.

I welcome any questions the committee may have.

**Mr DEPUTY CHAIR:** Thank you, Mr Kirkman. I will start and it will flow from here. In Budget Paper Number 3, there were key performance indicators for the audits of Indigenous development plan for 2018-19. Were they met?

Before you start, I meant to ask, can you remind us of the nature of those audits, or what was required in those audits, and were those audits met?

**Mr KIRKMAN:** The audits look at a number of criteria that have been, I guess, committed to under each Indigenous Development Plan. All our significant projects over \$500 000 get at least one audit, depending on the value. I will get Mr Harrison to go into a bit more detail on how many audits we look to do on contracts.

As I have just discussed in the opening statement, our audit team then either ticks off those commitments as being met or identifies if there is non-conformances against those commitments, and gives the contractor opportunities to identify ways to address those on-conformances. For further detail, I will pass to Mr Harrison.

**Mr HARRISON:** How the audit of the Indigenous development plans works is that any contract—we have an internal target of about 67% for contracts valued between \$500 000 and \$5m, and then 100% target above \$5m. Anything over \$5m will definitely have an audit.

**Mr DEPUTY CHAIR:** So, the band between \$500 000 ...

**Mr HARRISON:** Yes, it is an internal, it is not something we will report on. It is just basically a workload management. Anything between \$500 000 and \$5m, there is a lower rate, and then a higher rate above \$500 000, once it is out of the 77% target that is the KPI that has been set.

I do not have the exact figures on me. If we did not achieve the 77% we came very close. It might have been in the order of 75% that we achieved. So ...

**Mr KIRKMAN:** Just to define that. We are just finalising our annual report for 2018–19, so I would be very happy to come back to the committee once we have finalised that and provide that information about our performance against that KPI.

**Mr DEPUTY CHAIR:** Thank you. The 67% internal guiding your activities—how do you determine which one will and which one will not be audited?

**Mr HARRISON:** It is definitely a cyclical requirement. Any contract might be let in one year and then audited in the next year. So, it is highly likely that over the life of the contract there will be an audit, but it is the reporting period in which we are reporting that actually affects that figure. It is also about the type of contract that is being audited. Anything over \$5m will be more substantial and critical than things under.

**Mr DEPUTY CHAIR:** I am interested in the band between \$500 000 and \$5m—and others may want to come in after this. Can you flesh out how you conduct audits and how rigorous are they? Describe for us the nature of these audits so we understand ...

**Mr HARRISON:** We are auditing against the Indigenous Development Plan, so there are two things that are audited against. One is commitments made in our tender document and then an Indigenous development plan. The Indigenous Development Plan is more of the management of the commitments that are made in the tender response schedule.

There is an assessment done at time of tender and that is weighted at 30%. Then that goes towards the overall value for Territory assessment. We test against those commitments that are made. That might be the number of apprentices, Indigenous apprentices, non-Indigenous apprentices or a percentage of workforce.

Then in the Indigenous development plan there are some further commitments that are made. That might be about specific training requirements or mentoring specific numbers of employees and trainees. Then the team goes out and audits against all of those commitments that are made.

**Mr DEPUTY CHAIR:** Thank you, Mr Harrison, but can you flesh out the team and the resources that you have to conduct these audits.

**Mr HARRISON:** That is a mix of internal and external resources. We have a team of people who assess the actual plan. There are two resources that will do assessment of plans and then there is a team of four people who both undertake assessments as well as manage external resources and undertake those audits.

**Mr DEPUTY CHAIR:** External from the department or ...

**Mr HARRISON:** That is correct. Via a panel of auditors.

**Mr SIEVERS:** What happens when you find out that a contractor is not doing the right thing? You have found that maybe the number of apprentices they are stating are not there—that are identified as Indigenous or so forth? What happens in those issues?

**Mr HARRISON:** Our Contractor Compliance Unit would then issue a report that details non-conformances against the contract. That is issued back to the superintendent of the contract who manages the contractual requirements. They are obviously encouraged to rectify those issues. In some cases, they might not be able to rectify and then that would be registered as a non-conformance overall against the contract.

I guess we need to recognise that this is a difficult area and in some instances there are all sorts of factors that might impact on not being able to meet those commitments. It could be availability of workforce, saturation of the market, a particular apprentice who is no longer available.

**Mr SIEVERS:** A culture issue?

**Mr HARRISON:** All of those things, exactly.

**Mr KIRKMAN:** We try to be reasonable with contractors in how we deal with non-conformances. Our preference is always to work with contractors and their subcontractors to get the best performance we can. We acknowledge that, at times, this can be quite tricky to get the numbers that we are very keen to happen that are committed to by contractors. They make the commitment, so we hold them to them, but at the same time, we acknowledge that, as you have mentioned, if there are cultural commitments—successive funerals in town, for example—then, yes, that will impact those numbers of workers for a period of time. We work with contractors on that basis.

**Mr SIEVERS:** On the figures you have given us today, there are a number of ABEs out there and the number of engagement of apprentices and trainees is on the increase, which is great. Are the number of contractors increasing?

**Mr KIRKMAN:** Yes, that is correct. As I said, since the policy has come in it has doubled in numbers of contract and the value is fairly similar. I can provide some examples of that in recent years. We have made a big effort, particularly under the remote contracting framework to target local ABEs and work with them and other departments like the Department of Local Government, Housing and Community Development on building capacity.

We understand that often there needs to be some extra support mechanisms put in place to support that capacity to ensure organisations can perform those works. We always, where there are issues about capacity, we recommend partnerships with competent, larger construction firms in the Territory with local ABEs, our performance in that regard has been good. A lot of these contracts are about the remote housing program. They lend themselves very well to ABEs developing and working in local community, whether it is upgrading houses or constructing new houses. This is long-term work, obviously. We have a program now over the next nine years—we are a year through—a decade of work. We would like to see an ongoing pipeline of work to local ABEs and particularly the local employees in those places.

By way of an example, in 2018–19, we had a total of 61 contracts which were valued at almost \$50m. That went out to ABEs. It is a considerable sum that is being spent with these organisations. The numbers fluctuate from year to year, but we are very keen to see those numbers grow. We are working with Housing on community-based partnerships. We are going into an agreement with local ABEs. It might be that there needs to be a sophisticated tier one or tier two contractor also coming into that partnership to provide that capacity for the first two or three years. You would hope to see that work from the tier ones and tier twos drop off as capacity increases with the ABEs. But it is a model that has worked. There are already some very capable ABEs in communities like Thamarrurr, Wadeye and Groote Eylandt. There are a number across the Territory now which continue to grow in capacity each year.

John, did you want to talk a bit more about percentage that have been achieved?

**Mr HARRISON:** Yes, maybe I might just elaborate a little on some of the work that is happening within community with ABEs.

In partnership with the Department of Local Government, Housing and Community Development, there have been a number of framework agreements that have been established over five-year periods with organisations, including Yugal Mungi and Thamarrurr. Through those, we set up pipelines of work over that period to develop those businesses. That is one of the more sophisticated methods we use to develop ABEs.

Then there is also working with the Department of Local Government, Housing and Community Development to identify ABEs within regions. Some examples are Ingkerreke and Tangentyere et cetera, which we direct

contract with based on the remote contracting policy. Yes, and looking to set up some long-term contracts with some of those organisations as well to continue to develop their capacity.

**Mr SIEVERS:** The employees—the apprentices and trainees—they are working towards a trade certificate? Yes?

**Mr HARRISON:** Yes, it depends on the length of contract et cetera. If we can establish those five-year arrangements, then, yes, there is opportunity for apprentices. But on some of the shorter-period projects we can achieve some certificates.

**Mr SIEVERS:** Certificates, yes, which is great. Would your level of reporting capture that in your annual report, or would it be up to the ABEs under whoever their training organisation is?

**Mr KIRKMAN:** By and large, we have been catching it on a project-by-project basis. I guess it (inaudible) compliance on that basis. We will be working with other agencies when the Aboriginal Contractor Framework is put in place to make sure that we have a consistent way of capturing data against the commitments that will be made under the framework.

**Mr SIEVERS:** Excellent. Okay, thank you.

**Mr DEPUTY CHAIR:** Member, you have about 10 minutes left.

**Mr WOOD:** All right. Quickly, then, what happens to contracts where there are cultural reasons for people not working? Is there flexibility for the contractor to ask for a variation in the contract price, or can the person bring in non-Indigenous people to take over while those things are happening? Is there flexibility there?

**Mr KIRKMAN:** Yes, absolutely, there is flexibility. Obviously, there are not many cases where we can allow projects to stall, but there are projects like the slow builds for housing on Galiwinku. We have been able to negotiate different time frames. But we are keen on contractors coming to us to say, 'Look, we have an issue in this project. What we are looking to do is having to fill these jobs by bringing in other people', or perhaps it might be, 'Can we delay a little?'. We are very open to those discussions. As I said before, we acknowledge that at times there will be less availability in a particular region.

**Mr WOOD:** Does that make the contracts more expensive than if they did not have to take into account in the program? They could ...

**Mr KIRKMAN:** There will definitely be impacts at time on contracts. Again, when we are working in particularly remote communities, but also across the Territory, part of our commitment is to make sure there is more Indigenous employment and more ABEs being able to participate. In that commitment we understand invariably there could well be costs associated with those commitments.

**Mr HARRISON:** Just to add to that. You mentioned variation in the Aboriginal question. The reality can be that undertaking work—irrespective of whether it is an Aboriginal person or not—costs money. There can be some cost differential, depending on whether that person is Indigenous or not, particularly if the principal contractor was expecting to pull that resource from a local community.

If there had been some indication that that resource was available, then it becomes not available, there can be some additional cost associated due to accommodation and all sorts of things. It really can be on a case-by-case basis where there is a variance required. I have had a number of difficult conversations with contractors about that.

**Mr WOOD:** I have had people come and see me.

**Mr COSTA:** What percentage in Indigenous communities are they the workforce? With the contracts, is it 35% you have to employ Indigenous or 45%?

**Mr KIRKMAN:** There are a number of different targets that we set. I might get Bruce to provide a bit more of an explanation about our transport infrastructure projects because they are different again through our agreements with the Australian Government on those.

Housing contracts have a set commitment and I will get John to talk more about that. Then we have, I guess, other commitments that we hold contractors to for the work they are doing, which may not be anything set beforehand. It is really what those contractors say they can achieve in the tender responses. If they say that

they can achieve a high percentage of local employment, then clearly their assessment criteria will take that into consideration. We definitely then hold them to account on that through our audits and the ongoing work project managers have in scrutinising projects.

Bruce, I might get you to elaborate a little more on our targets set under our roads programs.

**Mr MICHAEL:** All projects that we do in roads that are governed under national partnership—which is the bulk of our large road projects—are governed by an Indigenous employment and supply use framework that has been developed by all states in conjunction with the federal government. The targets which are applied for employment relate to the working-age population of Indigenous Australians in any location. They are the starting base for development of the targets.

From there, we go through a process where we deal with the National Indigenous Australians Agency to look at the what capability there is on the ground to develop any project, or to get involved in the project, which means sourcing labour and programs that are suitable to the project. Then, from that, we come up with a plan for the project and a reestablishment of the target, which really reflects the local conditions of the area.

The target is to work towards working-age population representation. That will depend, in each case, on whether there is the capability of the workforce in that location. It is based regionally, so it ranges from roughly 10% in the Darwin region to in excess of 40%, 50% in other regions where the proportion of Aboriginal people in the area is a lot higher.

**Mr DEPUTY CHAIR:** We are getting close to the end and I thought I would invite you to deal with a question that is implied in your attendance here. There has been some controversy in the past about the use of this scheme—or the misuse of the scheme. You have audits and you described how they work.

Can you update us on the change that was necessary to deal with the controversy which was of great concern, what you now have in place and why there is no concern any longer? I have heard no reference to the past.

**Mr KIRKMAN:** I am happy to deal with that question, Chair. The Indigenous Employment Provisional Sum was a sub-policy under the department's Aboriginal participation on construction projects policy. That has since been extracted out of the policy following its suspension in 2017.

That policy, in itself, whilst well intended, had a number of unforeseen consequences which, obviously, did not play out well for the department being able to continue with the framework.

What we have done since then is really ensure that there is a clear message to industry that if they want government work then they must have best endeavours at employing Indigenous people, contracting with Aboriginal business enterprises and doing their darndest to get more of our Aboriginal population into the workforce.

The way we do that is effectively by having them compete with each other at assessment time on the basis of their ability to do that. It is part of the local assessment criteria which is 30% of an assessment. That is almost a third. If you cannot show that you have a good ability to employ Aboriginal Territorians and to contract with Aboriginal enterprises in the Northern Territory, then you will not win tenders, effectively.

I guess the question will come up, 'Can people manipulate that as they have done the previous scheme?' Well, yes, they can be overly optimistic in their tender responses. It is up to us and the resourcing that we have put into the Contractor Compliance Unit to make sure we are really kicking the tyres on those commitments made in tender responses and Indigenous Development Plans.

Of course, on each of our contracts we have a superintendent who works for the department. Those people have a role in contract managing each of those projects and ensuring that when a contractor says they will do something in a tender—including the number of Aboriginal people they intend to employ—we are holding them to account on that and making assessments throughout the contract on their performance.

At the end of the contract, when it comes to the next tender and a contractor is making assertions about what they think they can achieve against employing local Indigenous people, then we go back and have a look at their past performance in that regard. If they have been achieving well, then obviously we will take what they say into high account in our tender assessment. If they have been achieving poorly against what they said they would do in those past contracts, then we view that closely in what they are suggesting they might be able to achieve in future contracts.

Really, you do not need to pay contractors to pick up Indigenous people. It should be an expectation that they do that if they want to win government work. That is the fundamental difference. It is not paying for people. There are definitely support programs that industry would like to see for training, accommodation elements and the like. Those will all be things we look very closely at as the Department of Trade, Business and Innovation finalises its Aboriginal contracting framework.

**Mr DEPUTY CHAIR:** Thank you. We have used the time allocated, but you finished on a really important note. Through your best endeavours to achieve the objectives, which we all are aspiring to, you would have identified some areas that need to be strengthened so we could do better. Perhaps I put that on notice. Members, that may be something we should listen to at a future time so we can ensure that we have ongoing improvement in how we can strengthen the presence of Indigenous workers in these key projects.

Thank you for that. How was Prince Edward?

**Madam CHAIR:** Fine when I left him.

**Mr DEPUTY CHAIR:** He was fine.

**Madam CHAIR:** For the record, he is fine.

**Mr DEPUTY CHAIR:** Thank you, Andrew, John and Bruce.

**Mr KIRKMAN:** Thank you for the opportunity.

**Mr DEPUTY CHAIR:** I now hand over to the real Chair.

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The committee suspended.

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