Factors Affecting the Efficacy of the Commonwealth’s Indigenous Business Exemption

by

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Grad Dip Ener & Nat Res Law (Melb).

Submitted in partial fulfilment of the requirements for the degree of

Doctor of Business Administration

Deakin University

May, 2017
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b. The work(s) are not in any way a violation or infringement of any copyright, trademark, patent, or other rights whatsoever of any person.

c. That if the work(s) have been commissioned, sponsored or supported by any organisation, I have fulfilled all of the obligations required by such contract or agreement.

d. That any material in the thesis which has been accepted for a degree or diploma by any university or institution is identified in the text.

e. All research integrity requirements have been complied with.

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Signed: **Signature Redacted by Library**

Date: 22 May 2017
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DEAKIN UNIVERSITY
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Full Name: Matthew Storey

Signed: 

Date: 22 May 2017
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I would like to thank my wife, Donna Storey, for her support during the research process. I would also like to thank the interviewees who all gave up their valuable time to participate in the interviews and review the transcripts and interview reports. In particular, I would like to thank the Victorian Traditional Owners represented on the Boards of Native Title Services Victoria and the Federation of Victorian Traditional Owner Corporations who have both given me the opportunity to be involved in these issues and have supported and encouraged me throughout the research process.
Abstract

The paper describes a qualitative research project that investigated factors leading to the very low utilisation of the Commonwealth Government’s Indigenous Business Exemption (IBE), particularly from 2011 to 2015. The project involved interviews with 12 selected stakeholders from Indigenous firms, procuring agencies and policy designers which took place in 2016. Analysis of the interviews suggested that poor utilisation of the IBE was primarily attributed to risk aversion inside government and limited communication of the existence of the policy outside Government. A range of other factors and methods of overcoming these problems are also identified; principal amongst these is the need for procuring agencies to engage with Indigenous suppliers in a coordinated and deliberate fashion. The paper concludes with the identification of a number of potential areas for further research.
## List of Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AIATSIS</td>
<td>Australian Institute of Aboriginal and Torres Strait Islander Studies</td>
</tr>
<tr>
<td>ANAO</td>
<td>Australian National Audit Office</td>
</tr>
<tr>
<td>ATO</td>
<td>Australian Tax Office</td>
</tr>
<tr>
<td>CPR</td>
<td>Commonwealth Procurement Rules</td>
</tr>
<tr>
<td>CRT</td>
<td>Critical Race Theory</td>
</tr>
<tr>
<td>DHS</td>
<td>Department of Human Services</td>
</tr>
<tr>
<td>DPMC</td>
<td>Department of Prime Minister and Cabinet</td>
</tr>
<tr>
<td>eNPC</td>
<td>Enabling Partnerships Community</td>
</tr>
<tr>
<td>EC</td>
<td>European Commission</td>
</tr>
<tr>
<td>ECJ</td>
<td>European Court of Justice</td>
</tr>
<tr>
<td>ECR</td>
<td>European Court Reports</td>
</tr>
<tr>
<td>EU</td>
<td>European Union</td>
</tr>
<tr>
<td>FaHCSIA</td>
<td>Department of Families, Housing, Community Services and Indigenous Affairs</td>
</tr>
<tr>
<td>FE</td>
<td>Federations Enterprises Pty Ltd</td>
</tr>
<tr>
<td>FTA</td>
<td>Free Trade Agreement</td>
</tr>
<tr>
<td>FVTOC</td>
<td>Federation of Victorian Traditional Owner Corporations</td>
</tr>
<tr>
<td>FMG</td>
<td>Fortescue Metals Group</td>
</tr>
<tr>
<td>GPA</td>
<td>(WTO) Government Procurement Agreement</td>
</tr>
<tr>
<td>GHD</td>
<td>a global professional services (engineering) firm</td>
</tr>
<tr>
<td>Guma ICRG</td>
<td>Guma Indigenous Construction and Resources Group</td>
</tr>
<tr>
<td>HEAG</td>
<td>(Deakin University Faculty of Law and Business) Human Ethics Advisory Group</td>
</tr>
<tr>
<td>IBA</td>
<td>Indigenous Business Australia</td>
</tr>
<tr>
<td>IBE</td>
<td>Indigenous Business Exemption</td>
</tr>
<tr>
<td>ICRG</td>
<td>Indigenous Construction and Resources Group</td>
</tr>
<tr>
<td>IOP</td>
<td>Indigenous Opportunities Policy</td>
</tr>
<tr>
<td>IPP</td>
<td>Indigenous Procurement Policy</td>
</tr>
<tr>
<td>JV</td>
<td>Joint Venture</td>
</tr>
<tr>
<td>KPI</td>
<td>Key Performance Indicator</td>
</tr>
<tr>
<td>NTSV</td>
<td>Native Title Services Victoria Ltd</td>
</tr>
<tr>
<td>PBI</td>
<td>Public Benevolent Institution</td>
</tr>
<tr>
<td>PSG</td>
<td>Pacific Services Group</td>
</tr>
<tr>
<td>PSC</td>
<td>Project Specific Criteria</td>
</tr>
<tr>
<td>SME</td>
<td>Small and Medium Enterprises</td>
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<tr>
<td>SN</td>
<td>Supply Nation</td>
</tr>
<tr>
<td>TO</td>
<td>Traditional (Aboriginal) Owner</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
</tr>
<tr>
<td>US</td>
<td>United States of America</td>
</tr>
<tr>
<td>WTO</td>
<td>World Trade Organisation</td>
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CHAPTER 1 – INTRODUCTION

Why has the Indigenous Business Exemption been of Limited Effect?

Targeted Procurement

Whatever ideological perspective is adopted, the notion that a key purpose of a government is to implement policies that have some impact on the society that supports it would generally be accepted. Daintith (1979) draws a distinction between government policy activities that occur through exercise of powers of imperium (such as legislation) and those that occur through powers of dominium. Implementation of government policy through means such as legislation is unremarkable in concept. However, implementation of government policy through exercise of powers of dominium is a less explored concept.

Government will almost inevitably constitute at least one of the largest single actors in any particular national economy. In Australia, general government final consumption expenditure constituted 18 per cent of gross domestic product in 2015. The equivalent figure for the United States (‘US’) was 14.3 per cent, for the United Kingdom (‘UK’) 19.4 per cent, and for the European Union (‘EU’) 20.4 per cent (World Bank 2016). A single economic actor of such magnitude will inevitably have an impact on the society of which it is part. This is so whether or not the economic actor in question deliberately shapes its actions towards achieving a particular policy objective. This impact will be felt in areas such as employment demand and conditions, the land market, and capital markets. In addition though, an economic actor of such magnitude must purchase goods and services in order to operate. The Commonwealth Government represents only approximately 38 per cent of the total public sector (DTF 2005). Yet in 2013-14 it entered into 66,047 procurement contracts with a total value of $48.9 billion (ANAO 2015, 31).

If guided to a particular purpose even a small portion of these transactions could have a considerable impact on the economy and consequentially the society that supports it. Public procurement can then be a means by which government can exercise its powers of dominium to implement government policy. However, the use of public procurement to achieve policy objectives beyond the immediate purchase of goods and services – a ‘secondary objective’ – (Arrowsmith 1995) is often restrained by international instruments (McCrudden 2004) and the legitimacy of the approach is often contested.
Erridge and McIlroy (2002) explore the basis of this contest in suggesting: “[a]t present public procurement policy … reflects the market model supported by public choice theorists” (2002, 58).

They summarise the competing views succinctly (2002, 59):

Opponents of the use of public procurement for socio-economic purposes have argued that the outcome is likely to be extra or hidden costs and therefore policy should remain market based. However … given that the market model is flawed there is a moral imperative for governments to ensure that the public interest is served.

The parameters of this particular debate are explored more fully in the following chapter. Suffice at this stage to note that the Commonwealth Government accepted the legitimacy of utilising its procurement expenditure to advance a secondary objective when, in May 2011, it put in place a preferential procurement policy in respect of Indigenous enterprises (DFD, 2011 – see now DoF 2014). This is the Commonwealth Procurement Rules Indigenous Exemption (No 17) (DPMC 2015b) usually referred to as the Indigenous Business Exemption (‘IBE’). As becomes apparent throughout the course of the following research the policy impetus for the adoption of the IBE are unclear. Some informants attributed it to the work of Supply Nation inspired by developments in the United States going back to the late 1960s (see below section 4.12). Others have suggested its origins lie in the work of Indigenous Chambers of Commerce in NSW (Foley, 2017).

The IBE and IPP Outlined

The IBE allows a Commonwealth department or agency to avoid the tender process that would otherwise apply to contracts for goods and services of a value of greater than $80,000 or construction projects of a value greater than $7.5 million if the contract is awarded to a firm with greater than 50 per cent Indigenous ownership that employs fewer than 200 employees and where ‘value for money’ can be demonstrated (DoF 2014; DPMC 2015c; ANAO 2015).

On 1 July 2015 (during the life of this current research project) the Commonwealth Government further expanded the policy represented by the IBE with the introduction of the Indigenous Procurement Policy (‘IPP’). The IPP has four components (DPMC 2015C):

- The IBE remains in place;
- Commonwealth Government departments and agencies must however ensure that a percentage of all procurement contracts (0.5 per cent in 2015-16 increasing to 2.5 per cent by 2018-19) is awarded to Indigenous-owned firms;
• a mandatory requirement that procurements of a value between $80,000 and $200,000 for provision of goods and services in remote areas must be awarded to Indigenous firms; and

• a requirement that contractors awarded Commonwealth tenders of a value in excess of $7.5 million must by the end of the contract period ensure either 4 per cent of the contract workforce or 3 per cent of the enterprise workforce is Indigenous.

The objective behind the IPP and its component IBE is contained in a joint statement by the Prime Minister and the Minister for Indigenous Affairs issued with the announcement of the IPP. The Prime Minister and Minister stated (C of A 2015, 2):

> Getting Indigenous adults into work is a critical priority in Indigenous Affairs. With employment, people have financial independence, control over their own lives and the ability to provide for their families’ future.

Indigenous businesses are key to creating jobs and employing more Indigenous Australians. Indigenous businesses are around 100 times more likely to employ an Indigenous person than other businesses.

This policy is about creating opportunities for these Indigenous businesses to grow and employ more people. It is also about stimulating private investment in new Indigenous businesses.

A strong Indigenous business sector will help drive financial independence, and create wealth and opportunities for Indigenous Australians. It will also provide the basis for Indigenous economic development in regional and remote Australia.

The propositions put forward by the Prime Minister and Minister are well supported by empirical data. This data is explored more fully in the following chapter but the following provides a summary of the key propositions.

• Indigenous Australians suffer considerably greater social disadvantage in relation to a range of attributes when compared to the broader Australian community (SCRGSP 2014; DPMC 2015a).

• The aspects of this multiple disadvantage are correlated. That is, for example, an Indigenous Australian who is not in the labour force is also more likely to have lower educational standards, poorer health status and less adequate accommodation than an Indigenous Australian who is in the labour force (SCRGSP 2014).

• An increase in the level of economic activity undertaken by Indigenous-owned enterprises should lead to an increase in the number of Indigenous Australians in the labour force (Altman 2001; Furneaux & Brown 2008) and consequentially a reduction in the social disadvantage suffered by Indigenous Australians (Biddle, 2011).
• An increase in Commonwealth government purchasing of goods and services from Indigenous-owned enterprises should lead to an increase in the level of economic activity undertaken by these firms (DPMC 2014) and thus an increase in the number of Indigenous Australian in the labour force (Altman 2001; Furneaux & Brown 2008).

Despite the apparent soundness of the program logic behind the IBE, its implementation in practice has been somewhat limited. The only published data (prior to the current research project) on the utilisation of the IBE between its introduction in May 2011 and June 2015 is a report produced by the Australian National Audit Office: *Procurement Initiatives to Support Outcomes for Indigenous Australians* (ANOA 2015).

That report suggests that in the period from May 2011 and June 2015 only four contracts were let under the IBE. The following table from the report details those contracts (ANAO 2015, 73):

<table>
<thead>
<tr>
<th>Entity</th>
<th>Nature of Contract</th>
<th>Date</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>Event Management</td>
<td>June 2013</td>
<td>$0.1 million</td>
</tr>
<tr>
<td>Defence</td>
<td>Construction</td>
<td>May 2014</td>
<td>$0.7 million</td>
</tr>
<tr>
<td>Defence</td>
<td>Construction</td>
<td>January 2015</td>
<td>$1.5 million</td>
</tr>
<tr>
<td>Department of Human Services</td>
<td>Cleaning</td>
<td>February 2015</td>
<td>$8.3 million</td>
</tr>
</tbody>
</table>

It can be seen from this table that the four contracts had a total value of $10.3 million. The last contract let, in February of 2015, comprised $8.3 million of this total value. By way of contrast, in 2013-14 (as noted earlier) the Commonwealth Government entered into 66,047 procurement contracts with a total value of $48.9 billion (ANAO 2015, 31). During that financial year one contract was let using the IBE with a value of $0.7 million. In percentage terms IBE contracts amounted to 0.0015 per cent of the number contracts for 2013-14 and 0.0014 per cent of value for that year.

It will be recalled that the IBE technically only applies to the purchase of goods and services of a value of greater than $80,000 or construction projects of a value greater than $7.5 million. A number of the contracts identified by the ANAO are therefore of a value that would not require use of the IBE. During the research many respondents noted that even for contracts of a value below the requirement for a public tender (that the IBE exempts) it would be unusual to not go to a public tender process. The IBE provided legitimacy in not doing so. Although not stated explicitly in the ANAO report, presumably this is the reason for the inclusion of the low value contracts in the report analysis.

During the course of the research it became apparent that over the period from May 2011 to June 2015 there were an additional four contracts let with a total...
combined value of $0.56 million. Despite this marginal improvement in outcomes, the motivation behind this research project remains; that is, to investigate: **Why has the IBE been of limited effect?**

That investigation is detailed in the following five chapters. Set out below is a brief description of those chapters.

**Contribution of Existing Literature**

As a basis for the primary research, a review of relevant literature was undertaken. This is contained in the following chapter. However as noted earlier, there is extremely limited extant research both specifically on the IBE and more generally on factors that affect the efficacy of secondary objective procurement programs similar to the IBE. In the absence of any extensive literature considering the effectiveness of policies encouraging participation by Indigenous enterprises in public procurement processes, the literature concerning small and medium enterprises (‘SME’) participation is examined as a useful proxy from which some guidance may be taken. This is contained in the literature review in Chapter 2.

That Chapter notes that Flynn, McKevitt and Davis (2015, 446-447) identified seven main impediments to SME participation in public procurement:

- Bureaucracy;
- Lack of communication between SMEs and public procurers and too much weighting on cost;
- SME lack of knowledge over how to source opportunities or engage with procedural aspects of tendering;
- Onerous tender documentation and unprofessional procurement staff;
- Time demands of completing tender documentation;
- Requirements of previous relevant experience and financial costs of tendering; and
- Large contract size and information asymmetries.

Of course the foregoing factors were identified as impediments to SME participation in public procurement generally, not factors that affected the usage of a procurement program that had the secondary objective of the encouragement of SMEs. This distinction noted, it was considered that the identified impediments provided useful propositions to examine as part of the primary research.

The literature review establishes some definitional and contextual matters surrounding the use of public procurement processes to further policy objectives beyond the immediate purchase of goods and services for the purposes of government. The IBE is an example of this approach, which has also been
described as the incorporation of secondary objectives into public procurement processes. A starting point in this regard is to consider literature that examines the content of the procurement process and explores what characteristics make public procurement distinct from (private sector) organisational procurement.

The literature review goes on to consider existing research that has investigated questions around the both the legitimacy and effectiveness of the incorporation of secondary objectives into public procurement processes. The examination of existing research that has considered these questions provides a basis which informs the data generation and analysis that forms the main body of the investigation. The issue of the perceived legitimacy of the incorporation of secondary objectives into public procurement processes has a particular relevance to the research project. This is because at least until July 2015 with the introduction of the IPP, use of the IBE was at the discretion of the purchasing department or agency. If the use of approaches such as the IBE was perceived as ‘illegitimate’ as many respondents reported, then this may have had an impact on its use and thus effectiveness.

Finally, the literature review looks at the issue of how to measure the achievement of secondary objectives; and how effective procurement policies have been in achieving secondary objectives. It also considers the empirical data to support the proposition that an increase in Indigenous enterprise leads to an increase in Indigenous participation in the labour force.

**Preliminary Questions of Methodology**

The research problem carries with it a number of implied assumptions and values. For example, it is implied by the fact that the issue is stated as ‘research problem’ that it is desirable to decrease levels of Indigenous disadvantage. Similarly, implicit in the selection of the problem is the notion that encouraging Indigenous involvement, through ownership or employment, in private sector (Indigenous-owned) enterprise is a worthwhile approach to reducing Indigenous disadvantage. While some may argue that it is not desirable to have Indigenous peoples become a component of the current global market structures (Banerjee & Linstead 2001) it is not the purpose of this research project to engage in debate around these matters. Rather, this project constrains itself to investigating the research problem as posed above.

With the research problem thus identified it is necessary to present the problem as a single precise research question. Although, Creswell (2013, 138) suggests that the while the entire study is reduced “to a single overarching central question” he adds “and several subquestions”. Bearing in mind the discussion of
the research problem above, the central question would appear to be: **What factors have limited the effectiveness of the IBE?**
From this central question several subquestions suggest themselves:

- What are the circumstances when the IBE has been used?
- What benefit to Indigenous people can be attributed to the IBE?
- Why is the IBE not utilised more often?
- How can these identified limiting factors be overcome?

At the outset of the research there was no presumption as to the nature of these factors; for example that they were one or all of legal, economic, administrative social or cultural. Over the course of the research it became apparent that the most commonly identified factors could be described as cultural more than legal or economic.

In addition to these main research sub-questions a number of respondents also referred to the issue of ‘black-cladding’ – the use of sham Indigenous ownership to give advantage to a practically non-Indigenous supplier. The interviews and research analysis also therefore extends to some consideration of this matter.

The method that was adopted to investigate these research questions is described in greater detail in Chapter 3. However, in summary, due to the very limited existing data regarding the research questions, it was considered necessary to generate primary data for analysis. This was done utilising a method involving a combination of semi-structured interviews of stakeholders and some limited documentary content analysis.

A research method involving such a combination of sources to examine a bounded phenomenon (Noor 2008) can be described as a case study method. The research is undertaken within an overall paradigm that adopts the pragmatic approach to analysis (Morgan 2007).

The unit of analysis adopted for the purposes of this research is the ‘stakeholder’. The notion of stakeholder in the current context is also discussed further in Chapter 3; however, briefly the stakeholders for the purpose of this investigation are considered to be those actively involved stakeholders who perform the roles of client, decision-maker or designer (Achterkamp & Vos 2008). Specifically these were identified as the following:

- Indigenous firms – who constitute the decision-makers (Group A);
- the Commonwealth agencies engaging in procurement – who constitute the clients (Group B); and,
- those individuals and agencies responsible for the development and oversight of the policy – who constitute the designers (Group C).
The Interviews

From this stakeholder identification, interviews were undertaken with the individuals set out below. The research interviews were undertaken with 12 respondents in the period from February 2016 to April 2016.
Group A: Indigenous Firms (Decision-Makers)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simon Walter</td>
<td>Barpa JV/Cockram</td>
<td>Business Development Manager</td>
</tr>
<tr>
<td>Jeremy Clark</td>
<td>Barpa JV/ Federation</td>
<td>Managing Director</td>
</tr>
<tr>
<td>Anonymous</td>
<td>eNPC</td>
<td>General Manager</td>
</tr>
<tr>
<td>Shane Jacobs</td>
<td>PSG</td>
<td>Managing Director</td>
</tr>
<tr>
<td>Marcia Langton</td>
<td>ICRG</td>
<td>Chair (&amp; Forrest Review Advisor)</td>
</tr>
</tbody>
</table>

Group B: Procuring Departments (Clients)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ian Cumming</td>
<td>Defence</td>
<td>Colonel Estate &amp; Infrastructure</td>
</tr>
<tr>
<td>Phil Lindenmayer</td>
<td>Dept Human Services</td>
<td>National Manager of Commercial Partner Management</td>
</tr>
<tr>
<td>Anonymous (2)</td>
<td>FMG</td>
<td>Manager Community Development</td>
</tr>
</tbody>
</table>

Group C: Agencies or Individuals Who Made or Influenced the Policy (Designers)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maya Stuart-Fox</td>
<td>Dept Prime &amp; Cabinet</td>
<td>Assistant Secretary, Indigenous Economic Development Branch</td>
</tr>
<tr>
<td>Yvette Simms</td>
<td>Dept of Finance</td>
<td>Assistant Secretary, Procurement Policy and Advice</td>
</tr>
<tr>
<td>Pete Dunn</td>
<td>GHD</td>
<td>Business Development Manager</td>
</tr>
<tr>
<td>Supply Nation</td>
<td>Supply Nation</td>
<td>Chairperson</td>
</tr>
</tbody>
</table>

The interviews were recorded and interview recordings were transcribed. Respondents were provided with an opportunity to correct any inaccuracy in the transcript including whether the interview did not accurately reflect their views on any particular issue.

For the purpose of reporting the results of the research, reports of the interviews conducted with respondents were prepared by the researcher. Each report contains a summary of the interview conducted with that respondent. Each respondent was given an opportunity to comment and suggest amendments to the report of their interview if they thought it did not provide a fair and accurate summary of their views. These interview reports are contained in Chapter 4. The reports are divided into sections corresponding with the broad research subquestions.

The interview transcripts were analysed by the researcher. This analysis is contained in Chapter 5. As part of this analysis the responses to questions contained in the transcripts were ‘coded’ in the sense that the information was subdivided into categories for the purpose of creating links between locations in the data and sets of concepts or ideas (Basit 2003). The data, once assigned into categories, was tabulated and the number of respondents identifying a factor as impacting negatively on the use of the IBE summed. Respondents’ comments on
mechanisms to improve the IBE were similarly categorised, tabulated and summed.

**Summary of Findings and Analysis**

Analysis of the interviews showed various negative factors and methods of improvement were often connected in respondents’ responses. Foremost amongst these ‘clusters’ was the combination of ‘procurement officer risk aversion’; ‘doubts about supply certainty’; ‘calculating value for money’; and ‘procurement officer conservatism’ as related negative factors. These factors were seen as connected with ‘introduction of targets’; ‘greater advocacy’; ‘tolerance of mistakes’; ‘better measuring’; and ‘better definition of value for money’.

Another ‘cluster’ was the factor ‘lack of supplier development work by procuring agency’ being (loosely) linked to ‘certification requirements’ and likely to be diminished by methods such as ‘greater emphasis on supplier development’; ‘discussion with suppliers about allocations’; ‘state government adoption’; ‘ongoing policy stability’; and ‘more emphasis on training the Indigenous workforce’. The improvement methods of ‘more practical training for suppliers’ and having a ‘central point of contact in departments’ were often connected to responses around this cluster.

A third broad cluster was comprised of the factors ‘awareness amongst suppliers’ and ‘limited supply options’. These factors were linked and seen as connected to the improvement methods of ‘development of a greater spread of Indigenous businesses’; ‘more precision in the Supply Nation directory’; and ‘greater role for IBA’. Chapter 5 contains the complete analysis of the negative factors impacting upon utilisation of the IBE and the methods by which respondents suggested these factors could be overcome.

While all of these factors were identified as significant the overwhelming conclusion that must be drawn from the interviews is that the two key factors needed to improve the IBE were: (1) the imposition of the IPP targets; and (2) a deliberate approach from procuring agencies to establish a relationship with Indigenous suppliers and coordinate an escalating series of contracts. In the discussion this is referred to as a ‘supplier development approach’. The factors developed by Flynn, McKeivitt and Davis (2015) referred to above were identified by some respondents but not seen as more significant than the imposition of targets and supplier development.

One of the respondents was employed at Fortescue Metals Group (‘FMG’). FMG has had significant success in implementing an Indigenous preferential
procurement program known as ‘One Billion Opportunities’. A very clear theme coming through the interviews (including that with the FMG employee) was that there is very little difference in the issues facing public and private sector organisations seeking to introduce Indigenous preferential procurement schemes. Again the imposition of targets and supplier development were seen as the key approaches. This fact suggests that the research conclusions are of potential relevance to other private sector organisations seeking to enhance their Indigenous supply chain.

**First Year of the IPP Targets and the Impact of the Research**

The first full year of the operation of the IPP occurred over the course of the research. The Department of Prime Minister and Cabinet (‘DPMC’) has published information regarding the achievement by agencies against the targets as contained in the IPP (0.5 per cent of total contracts awarded in 2015-16). That information is set out below (DPMC 2016):

<table>
<thead>
<tr>
<th>Portfolio</th>
<th>Target</th>
<th>Contracts awarded</th>
<th>Total value of contracts</th>
<th>Average Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2015-16</td>
<td>2015-16</td>
<td>$ million</td>
<td>$</td>
</tr>
<tr>
<td>Defence</td>
<td>70</td>
<td>285</td>
<td>142</td>
<td>498,246</td>
</tr>
<tr>
<td>Human Services</td>
<td>18</td>
<td>254</td>
<td>10</td>
<td>39,370</td>
</tr>
<tr>
<td>Prime Minister and Cabinet</td>
<td>6</td>
<td>239</td>
<td>28</td>
<td>117,155</td>
</tr>
<tr>
<td>Treasury</td>
<td>19</td>
<td>116</td>
<td>35</td>
<td>301,724</td>
</tr>
<tr>
<td>Attorney-General’s Dept</td>
<td>19</td>
<td>91</td>
<td>4</td>
<td>43,956</td>
</tr>
<tr>
<td>Environment</td>
<td>14</td>
<td>80</td>
<td>4</td>
<td>50,000</td>
</tr>
<tr>
<td>Foreign Affairs and Trade</td>
<td>13</td>
<td>76</td>
<td>14</td>
<td>184,211</td>
</tr>
<tr>
<td>Employment</td>
<td>7</td>
<td>67</td>
<td>1</td>
<td>14,925</td>
</tr>
<tr>
<td>Agriculture and Water Resources</td>
<td>5</td>
<td>55</td>
<td>6</td>
<td>109,091</td>
</tr>
<tr>
<td>Education and Training</td>
<td>4</td>
<td>41</td>
<td>5</td>
<td>121,951</td>
</tr>
<tr>
<td>Social Services</td>
<td>6</td>
<td>36</td>
<td>4</td>
<td>111,111</td>
</tr>
<tr>
<td>Industry, Innovation and Science</td>
<td>15</td>
<td>33</td>
<td>15</td>
<td>454,545</td>
</tr>
<tr>
<td>Immigration and Border Protection</td>
<td>19</td>
<td>29</td>
<td>5</td>
<td>172,414</td>
</tr>
<tr>
<td>Finance</td>
<td>8</td>
<td>27</td>
<td>5</td>
<td>185,185</td>
</tr>
<tr>
<td>Health</td>
<td>12</td>
<td>27</td>
<td>4</td>
<td>148,148</td>
</tr>
<tr>
<td>Veterans’ Affairs</td>
<td>4</td>
<td>19</td>
<td>1</td>
<td>52,632</td>
</tr>
<tr>
<td>Parliamentary Departments</td>
<td>4</td>
<td>15</td>
<td>1</td>
<td>66,667</td>
</tr>
<tr>
<td>Infrastructure and Regional Development</td>
<td>8</td>
<td>12</td>
<td>2</td>
<td>166,667</td>
</tr>
<tr>
<td>Communications and the Arts</td>
<td>5</td>
<td>7</td>
<td>0.1</td>
<td>14,286</td>
</tr>
<tr>
<td><strong>Total Commonwealth</strong></td>
<td><strong>256</strong></td>
<td><strong>1,509</strong></td>
<td><strong>284</strong></td>
<td><strong>188,204</strong></td>
</tr>
</tbody>
</table>
The extraordinary turnaround from eight contracts with a total value of $10.86 million over in excess of four years to 1,509 contracts with a total value of $284 million in one year requires some commentary at the outset of this discussion. If, as it would appear at first blush, the impact of the imposition of the IPP targets has been to more than remedy any deficiency in the utilisation of the IBE then the central question the research project sought to investigate is rendered largely irrelevant. Such an outcome would suggest that the only problem with the IBE was the absence of agency targets and the introduction of the IPP targets has remedied this problem.

Indeed, all 12 of the respondents who participated in the research interviews which were the main component of the research stated that the introduction of the IPP targets would improve utilisation of the IBE. Clearly they were accurate in their analysis. However, the statistics showing apparent success of the IPP targets may obscure some nuance in the effectiveness of the IPP (and the IBE) in achieving their objectives.

The first point to note goes to the comparison between the period 2011-2015 and the period 2015-16. One point the research highlighted is that there were no consistent records of contracts let to Indigenous businesses kept in the 2011-2015 period. One informant (Yvette Sims – Department of Finance) stated that during 2012-13 and 2013-14 there were a total of 48 contracts of a value of greater than $10,000 awarded to Indigenous businesses, but it could not be ascertained whether these were pursuant to the IBE (as opposed to by public tender). Information about contracts of a value of less than $10,000 was not available.

The 2015-16 DPMC data includes contracts of a value less than $10,000. Information about the total number of these small value contracts is not currently available. Nor is information regarding, for example, the median value of contracts either on an agency or whole of government basis. The research has indicated that there were a number of quite large contracts awarded by the Department of Defence. Similarly, in October 2015 the Department of Foreign Affairs and Trade announced the award of a $9.2 million security contract. This single contract constitutes the majority of that Department’s $14 million total. The fact of these large contracts will of course impact on the average contract value data. However, without more detailed information regarding the 2015-16 DPMC data it is impossible to even estimate the median value of contracts awarded. Certainly from the 2015-16 DPMC data it is not possible to ascertain what numbers of contracts were awarded directly to an Indigenous supplier without a requirement for public tender as envisaged under the IBE. Nor is it possible to ascertain whether the 2015-16 data represents an increase in the
number of contracts awarded to Indigenous businesses or merely an improved reporting of the existing levels of contract award. This point is of course important as it is only an increase in the level of Commonwealth business going to Indigenous suppliers that could lead to the increase in the Indigenous employment levels sought by the Commonwealth.

The second point is that the research did reveal that a number of contracts had been negotiated in the period prior to the implementation of the IPP targets but executed after 1 July 2015. While the research only identified several such contracts (although they were of significant value) it must be accepted that they may also have been other contracts close to execution in agencies where there was no respondent interviewee. To the extent this is the case the 2015-16 DPMC data could be seen to overinflate the effectiveness of the IPP targets.

The third point to note is that the virtually all of the respondent interviewees discussed the impact of the absence of the targets and the positive effect their introduction would have. Often, for example, respondents highlighted not just the mandatory aspect of the target but the effect of the target in legitimising the use of the IBE: as such the research serves to explain why the introduction of the IPP targets has had (and presumably will continue to have) such a significant impact. Similarly, this analysis provides guidance for other public and private sector organisation contemplating policies similar to the IBE.

Thus, while the 2015-16 DPMC data provides a valuable indication of the possible effectiveness of the IPP targets, it does not render the research outcomes otiose.

**Closing**

The conclusion to the discussion contained in Chapter 6 emphasises the key themes of the importance of targets like the IPP model and the adoption of a supplier development approach. Particularly in the context of facilitating the development of a diverse Indigenous supply base, comment is made on the compatibility of the joint goals of increasing Indigenous employment and the creation of Indigenous wealth. Finally, it is noted that while the IPP represents a significant step for the Commonwealth which is an important economic actor, there is still significant scope to develop similar programs in other sectors of the economy.

**Researcher Interest**

One final point should be stated at this introductory point. The researcher is employed as Chief Executive Officer of an Indigenous organisation (Native Title Services Victoria Ltd – ‘NTSV’) that has Public Benevolent Institution (‘PBI’)
status. NTSV is in turn owned by another Indigenous PBI status corporation, the Federation of Victorian Traditional Owner Corporations (‘FVTOC’). The researcher is a director of FVTOC. The FVTOC in turn wholly owns a for profit corporation – Federation Enterprises (‘FE’). The researcher is also a director of this corporation. FE is in turn the majority shareholder in a joint venture company Barpa Construction. The minority shareholder in Barpa is Cockram Constructions. Barpa is one of the Indigenous companies that is referred to in this research. Jeremy Clark and Simon Walter who were interviewed as part of this research are employed by Barpa and Jeremy Clark is also a director of FE and the Executive Officer of FVTOC.

While holding these positions in corporations associated with the research the researcher has no pecuniary interest in the subject matter of the research.
CHAPTER 2 – LITERATURE REVIEW

2.1. Chapter Overview

In commencing this literature review it is useful to bear in mind the object of the literature review process. Webster and Watson provide an excellent summary (2002, xiii):

A review of prior relevant literature is an essential feature of any academic project. An effective review creates a firm foundation for advancing knowledge. It facilitates theory development, closes areas where a plethora of research exists and uncovers areas where research is needed.

With this task in mind it should also be remembered that the purpose of this research is to investigate the factors that have affected the efficacy of the IBE. In an examination of the effectiveness of a government preferential procurement program such as the IBE, it is appropriate to explore a number of foundational questions the analysis of which will support consideration of the primary data generated by the research activity.

Accordingly, this Chapter will primarily seek to explore what consideration has been given in existing academic literature to the effectiveness of government (or public) procurement policies aimed at achieving ‘secondary objectives’ (Arrowsmith 1995); that is, policy objectives beyond the simple purchase of goods or services the subject of the procurement activity. In particular the chapter will look at issues relating to policies aimed at enhancing the role of SME in public procurement processes. This focus on SME policy has been adopted for two main reasons. The first reason stems from the fact that definitions of SME are generally by reference to number of employees. In the US, the number is statutorily defined at 500; and it is 250 in the EU (Nicholas & Fruhmann 2014). Under the current IBE it is only Indigenous enterprises in Australia with 200 or fewer employees that are within the scope of the procurement exemption (DoF 2014); thus the IBE is only available to Indigenous enterprises that satisfy a generally accepted definition of SME. Second, in the absence of any extensive literature considering the effectiveness of policies encouraging participation by Indigenous enterprises in public procurement processes, the literature concerning SME participation acts as a useful proxy from which some guidance may be taken.

This is not to suggest that there is a complete absence of literature concerning the effectiveness of Indigenous focussed procurement policies. Bolton (2004) and Bolton (2006) contains discussion of policies put in place in the Republic of South Africa under the Preferential Procurement Policy Framework Act (5 of
2000. The latter piece however, focusses particularly on the legal framework of these measures. The former piece is discussed further below. In addition there is some literature that considers the effectiveness of secondary objective procurement programs designed to assist minority- and women-owned business in the United States. These are considered further below in section 2.5.3. While this literature exists it is not sufficiently plentiful to serve as an independent basis for analysis. In order to have a sufficient evidential and theoretical foundation for an exploration of these matters identified it is necessary to have regard to the more plentiful SME literature as discussed above.

As a basis to this exploration it is necessary to address a number of definitional and contextual matters. This Chapter will undertake this task in a number of sections as follows.

Section 2.2 immediately following this introduction will provide some definitional foundation to the subsequent discussion by identifying what is meant by the term ‘public procurement’. To do this the section considers what it is that constitutes the procurement process and how this process differs in a public (government) context from procurement processes that operate in a private sector context.

Section 2.3 moves on to consider the literature relating to SME participation in public procurement in the context of two related matters: first, the perceived impediments to SME participation in public procurement. The second matter considered is what mechanisms have been deployed in various jurisdictions to overcome these impediments.

Section 2.4 considers the question of the legitimacy of seeking to incorporate secondary objectives in a public procurement process. This consideration involves both the issue of legitimacy at a theoretical level and the related empirical consideration of whether the incorporation of secondary objectives in the public procurement process can be shown to have a negative impact on the price or value obtained by government in the acquisition of the goods and services in question. The literature reviewed relating to the empirical analysis of the impact of incorporation of secondary objectives again uses SME policies as a convenient proxy for secondary objectives particularly as they relate to the encouragement of Indigenous enterprise.

Section 2.5 of the Chapter considers issues relating to the effectiveness of the incorporation of secondary objectives into procurement related programs as a means of achieving those secondary objectives. This consideration in turn is in three parts. The first looks at the literature describing how effectiveness of the achievement of secondary policies has been measured. The second traverses
academic debate surrounding the effectiveness of these policies. The third part turns attention more directly to the effectiveness of such policies in the context of Australia’s Indigenous communities. However, as noted above, given the absence of any literature directly considering this point, the discussion at this point focuses on analysis of evidence in support of the assumption identified earlier: that an increase in economic activity undertaken by Indigenous enterprises leads to an overall decrease in Indigenous economic and social disadvantage.

In approaching the literature review relevant to the identified research questions it is important to note that although the IBE has been in place since 2011 there has to date been no academic consideration of it. There are two references to the IBE in written material produced by the Commonwealth Government. The first is a one-sentence reference in a 2014 Commonwealth Government report, *Creating Parity* (DPMC 2014). The second is a report entitled *Procurement Initiatives to Support Outcomes for Indigenous Australians* produced by the Australian National Audit Office (‘ANAO’) in July 2015. Much of the ANAO report considers the operation of another policy initiative, the Indigenous Opportunities Plan (‘IOP’). The IOP has since been absorbed into that portion of the IPP that requires contractors to set Indigenous employment targets. References to those aspects of the report that are relevant to the IBE are integrated into the following literature review. In summary though in relation to the IBE the ANAO concluded (2015, 23):

> Some Indigenous suppliers interviewed by the ANAO observed a low level of awareness of the IBE. Entity staff interviewed by the ANAO perceived a number of potential barriers to the IBE’s use, including the difficulty in identifying a suitable Indigenous business, and having sufficient information to assess whether a value for money outcome would be achieved through the use of the IBE, compared to undertaking an open tender process.

The Report recommended that the IBE be better promoted by the Commonwealth Government and that an improved procedure for reporting use of the IBE be put in place. Both recommendations have been accepted by the Commonwealth Government (ANAO 2015, 28).

Not only has there been no academic consideration of the IBE (that can be identified) but in fact there has been very little consideration of the effectiveness of similar policies in other jurisdictions. The announcement of the enhanced Commonwealth IPP package in the absence of any research into the effectiveness of the IBE and similar policies elsewhere can only be seen as a bold commitment by the Commonwealth Government underscoring the perceived need to take expeditious action around Indigenous disadvantage.
These matters stated it is appropriate to commence with some definitions.

2.2. **Definitions: Public Procurement**

2.2.1. **Organisational Procurement**

The process of *organisational* (business to business) purchasing has been an area of considerable academic interest for quite some time. For example a widely cited work by Ford (1980) analyses the *relational* nature of business to business transactions from the time of the decision to evaluate new or alternative suppliers to the establishment of a long-term supply relationship. The relational nature of organisational supply arrangements continues to be a prominent theme in the literature today (for example Baraldi et al 2014; Woodside & Baxter 2015).

Another basis of analysis of the organisational supply phenomenon looks less at its *relational* aspects but more at its *procedural* character and the context in which these procedures take place. This line of analysis is often (for example Johnston & Lewin 1996; Caldwell, Bakker & Read 2007) attributed as first being described by Robinson, Faris and Wind in 1967. The original analysis by Robinson et al identified eight phases in organisational purchasing as follows:

1. Recognition of need and a general solution
2. Determination of characteristics and quantity
3. Description of characteristics and quantity
4. Search for potential sources
5. Acquire and analyse proposals
6. Evaluate proposals and select supplier(s)
7. Select an order routine
8. Performance feedback and evaluation.

Johnston and Lewin (1996) consider both the stages set out above and later analysis by Webster and Wind (1972) and Sheth (1973) both of which rationalised the number of phases and explored contextual variables to the process such as environmental, organisational, group, participant, seller, conflict/negotiation, and informational. Johnston and Lewin (1996) contribute an expanded comprehension of the number and scope of these contextual matters.

These authors developed a composite model of organisational purchasing that integrates both the procedural phases and contextual characteristics. This model is depicted by them diagrammatically as follows (Johnston & Lewis 1996, 3):
The diagram above sets out the eight procedural stages first identified by Robinson, Faris and Wind and (1967) also illustrates how the various contextual characteristics can impact upon these stages.

Thus, the literature concerning organisational purchasing suggests that an appropriate analysis should comprehend both procedural stages of the activity and the context within which these processes occur. Relevantly to the current investigation it is necessary to consider whether public procurement differs materially from this general model of organisational procurement.

2.2.2. Public Procurement

Thai (2001, 9) summarised the economic activities of government under four major headings:

- Providing the legal framework for all economic activities
- Redistributing income through taxation and spending
- Proving public goods and services ... and
- Purchasing goods, services and capital assets.

This last activity is ‘public procurement’. A succinct definition of the activity is provided by McCrudden (2007a, 3) as follows:
Public procurement involves the purchasing by government from private sector contractors, usually on the basis of competitive bidding, of goods and services that government needs.

While this definition identifies the core element of ‘purchase of goods and services by government from the private sector’ and has the benefit of brevity, it gives little idea of the steps involved in this process.

Writing in 2007 in the specific context of public procurement Caldwell, Bakker and Read adopt Van Weele’s (2005) six-stage analysis: “specification, supplier selection, contracting, ordering, expediting and follow up/evaluation” (Caldwell, Bakker & Read 2007, 149). Even this six stage analysis can be further rationalized. Arrowsmith (2010, 1), again writing in the context of public procurement, reduces the process into three distinct phases:

(i) Deciding which goods and services are to be bought and when (procurement planning);

(ii) the process of placing a contract to acquire those goods and services which involves, in particular, choosing who is to be the contracting partner and the terms on which the goods and services are to be provided; and

(iii) the process of administering the contract to ensure effective performance.

Arrowsmith (2010) goes on to note the attention of regulators (and often therefore researchers) is generally upon the second of these three phases but, as will be discussed in section 2.5 of this Chapter, for the purposes of the current inquiry it is necessary to consider each of these phases.

What is noticeable in the literature on the procedural analysis of organisational supply is that those writing of public procurement do not suggest that the phases of the process differ as between public and private procurement. The six stages of Van Weele’s analysis developed in a private sector context were adopted unamended by Caldwell, Bakker and Read (2007) in an analysis of public procurement; Arrowsmith’s (2010) three phases of public procurement correspond with the original eight developed by Robinson, Faris and Wind (1967) in the context of general (private sector) organisational purchasing.

The distinction between public and private procurement then does not fundamentally lie in the details of the process but rather in the content of the contextual factors described by Johnston and Lewin (1996) and noted above. This notion is illustrated in the following diagram from Thai (2001, 18).
In the diagram above Thai is illustrating the functions of ‘policy’, ‘authorisations’ and ‘regulations’ in public procurement processes. These constitute many of the contextual characteristics described by Johnston and Lewin (1996), in particular the ‘environmental’ characteristics (for example, legal cultural and economic factors). However, the ‘procurement functions’ and ‘feedback’ illustrated by Thai are a mere further compression of the stages of procurement described above.

The notion that the key distinction between private sector organisational purchasing and public sector procurement lies in the areas identified by Thai is noted also by Rainey and Bozeman (2000). These authors, after an assessment of much extant empirical research, find that while in many respects there is little difference between private and public organisations, this is not so in the areas of recruitment and procurement. These two areas are notable for the level of regulation and authorisation necessary in public organisations before decisions can be made.

A similar theme is identified by Lindskog (2008) who, using the example of the purchase of telecom services in Scandinavia, draws a direct comparison between the original eight stage model of Robinson, Faris and Wind (1967) and the processes in public sector procurement. Somewhat later, Lindskog, Brege and Brehmer (2010, 170-171) develop this analysis by suggesting:
Public procurement is in almost all situations and countries regulated by a specific legislation that is stricter than for the private sector purchasing activities. The private and public purchasing is in many ways similar but the organization of private buying processes is not stipulated by law ...

The diagram by Thai above illustrates the role of authorisation and regulation in public sector procurement. It also illustrates the role of ‘policy making and management’ in influencing both authorisation and regulation and also in the actual procurement process itself. In Thai’s description of this characteristic, ‘policy making and management’ is directly associated with the role of executive government (as compared to the legislature or judiciary) within the confines of a legislated regulatory framework (Thai 2001, 18-20). While Thai’s analysis indicates the long standing importance of policy making and management in public procurement McCrudden (2007b) puts a contemporary glaze on this phenomenon through an examination of how governments have more recently extended the reach of governmental policy making and management considerations by using private sector corporate social responsibility aspirations to further governmental policy objectives in the context of private sector organisational purchasing.

This more recent development aside, the key distinction then between public procurement and organisational purchasing lies not in the process itself but in the regulatory framework around these processes and in the policy considerations that inform both the content of regulation and the exercise of discretion by the executive arm of government.

2.2.2.1. Commonwealth Government Public Procurement

The Commonwealth Government’s public procurement process provides a relevant illustration of many of the concepts identified by Thai (2001).

Commonwealth Government procurement is regulated by the Commonwealth Procurement Rules 2014 (‘CPR’) (DoF 2014). These are issued by the Minister for Finance under section 105B(1) of the Public Governance, Performance and Accountability Act 2013 (Cth). That is although the CPR are issued under authority of an Act, they constitute administrative rules of the executive government utilising the UK (as opposed to US) model described by Thai (2001).

The CPR are divided into two divisions. Division One rules must be applied in all Commonwealth procurements. Division Two rules must be applied in procurements that exceed the ‘procurement threshold’ unless the procurement is specifically exempted by virtue of being a matter included in Appendix A of the CPR. There are 17 matters contained in Appendix A. The IBE is one of these. The procurement thresholds above which Division 2 applies are $80,000 for purchase...
of goods and services by Commonwealth Departments, $400,000 for purchase of goods and services by Commonwealth corporations, and $7.5 million for construction contracts (DoF 2014).

The Division One rules specify that all procurements must (DOF 2014, 13, r 4.4):

- [be] non-discriminatory and encourage competition;
- use public resources in an efficient, effective, economical and ethical manner that is not inconsistent with the policies of the Commonwealth;
- facilitate accountable and transparent decision making;
- encourage appropriate engagement with risk; and
- be commensurate with the scale and scope of the business requirement.

The Division One rules also specify that all Commonwealth procurements must achieve ‘value for money’, which is said to include (DOF 2014, 13, r 4.5):

a. the quality of the goods and services;
b. fitness for purpose of the proposal;
c. the potential supplier’s relevant experience and performance history;
d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);
e. environmental sustainability of the proposed goods and services (such as energy efficiency and environmental impact); and
f. whole-of-life costs.

The ‘whole of life’ costs include matters such as original purchase price, maintenance costs and disposal costs.

Thus, the CPR illustrates the regulatory and policy framework diagrammatically portrayed by Thai (2001).

The following section of this chapter turns attention to an aspect of the practical operation of public procurement process that has been outlined above, that is the role of ‘policy’ in the public procurement process. The position of SME illustrates this process.

2.3. SME Participation in Public Procurement

As noted in the introduction to this Chapter, in this section it is intended to consider the literature relating to the impediments to SME participation in public procurement processes and also the literature relating to what mechanisms have been deployed to mitigate these impediments. The focus on SME policies is justified both because the IBE as contained in the CPR 2014, as opposed to those originally issued in 2011 (DFD 2011), is expressed only to apply to Indigenous-
owned SME, defined as 200 employees or less (DoF 2014) and because the literature relating to SME participation provides a convenient proxy in the absence of literature considering Indigenous-specific policies.

2.3.1. Impediments to SME Participation

Before considering the impediments to SME public procurement participation it is worth briefly noting what is seen as the benefit of SME participation so as to warrant attention to the impediments. This is particularly so as a brief consideration of these benefits acts as a useful foundation to the discussion in section 2.5.3 regarding the effects of increased Indigenous economic activity. The most common definition of an ‘SME’ is an enterprise with fewer than 250 employees, although a definition of fewer than 100 employees is also common across many countries (Kushnir, 2010). Some analysis considers annual turnover rather than number of employees; for example, Reis and Cabal (2015) define a ‘small business’ (in Brazil) as one with an annual turnover of less than US$1,157,500 and a ‘micro business’ as one with an annual turnover of less than US$157,500.

While there may be limited consensus around the definition of SME there does appear to be broad agreement around the desirability of these firms, in particular their participation in public procurement processes. This consensus is conveniently summarised by Karjalainen and Kemppainen (2008, 230-231) who note that the involvement in small businesses in public procurement is seen as desirable because it:

... increases innovativeness, encourages entrepreneurship and contributes to job creation and economic development. Small businesses also tend to have higher growth rates than large firms. Thus by buying from SMEs the public sector can positively influence local economies, regional regeneration and local sourcing ... they produce over 10 times more patents per employee than their larger counterparts [and] are also seen as a source of flexible personalized services ... they ... respond quickly to changing market demands, are organizationally flexible and have more efficient internal communication.

Many writers have commented in similar terms (for example: Nicholas & Fruhman 2014; Akenroye & Aju 2013; Athey, Coey & Levin 2013; Loader 2007; Clark & Moutray 2004; Denes 1997).

Clearly SME participation in public procurement processes is seen as desirable. However, there are also a great many impediments to this participation that have also been identified. Reviewing the literature relating to this point Flynn, McKEvitt and Davis (2015, 446-447) identify seven main impediments:

- Bureaucracy;
Lack of communication between SMEs and public procurers and too much weighting on cost;

- SME lack of knowledge over how to source opportunities or engage with procedural aspects of tendering;
- Onerous tender documentation and unprofessional procurement staff;
- Time demands of completing tender documentation;
- Requirements of previous relevant experience and financial costs of tendering; and
- Large contract size and information asymmetries.

Various writers have identified these impediments or aspects of them (for example, Reias & Cabal, 2015; Nicholas & Fruhman 2014; Preuss, 2011; Loader 2011; Karjalainen & Kemppainen 2008). However, Akenroe and Aju (2015) provide a hugely valuable contribution to this discourse by diagrammatically presenting the impediments to SME public procurement participation and identifying the relevant phase of the procurement process at which the impediment is encountered. This diagram is set out below (Akenroe & Aju 2013, 339):

![Diagram of impediments to SME public procurement participation](source:image)

On the one hand then is the apparent desirability of SME participation in public procurement. However, on the other hand, are the impediments to this participation that are described above. The question is then posed: **What mechanisms have been developed to overcome these impediments and facilitate SME public procurement participation?** This question is addressed in the following subsection.
2.3.2. SME Procurement Participation Mechanisms

While the focus of the discussion in this subsection is around SME procurement participation, the subsection will also seek to describe mechanisms that have been used to further other forms of secondary objective. Of particular relevance of course are mechanisms that have been used in various jurisdictions to encourage Indigenous enterprise participation.

In addition to providing the diagrammatic depiction of the impediments to SME procurement participation reproduced above, Akenroe and Aju (2013) also describe a comprehensive taxonomy of the mechanisms that have been used to overcome these. This taxonomy will be adopted for analytic purposes and will be enhanced with examples of the various types of mechanisms drawn from other authors.

In the taxonomy of Akenroe and Aju (2013, 349) there are four broad categories of mechanism:

- Broad procurement reform;
- Subsidy model;
- Capacity building; and
- Spending target.

2.3.2.1. Broad Procurement Reform

In the description by Akenroe and Aju (2013) under this heading are mechanisms that simplify the bureaucracy around procurement tendering. Examples provided are simplified tender documentation, transparency around process, and effective advertising of opportunities (web portals for example) in addition to more relaxed requirements regarding the provision of audited financial statements and (pre-tender award) insurance requirements. Other writers have identified similar mechanisms (Loader 2007) which may extend to simplified pre-tender qualification mechanisms, and reduced requirements for the lodging of pre-contract securities (Nicholas & Fruhmann 2014). Bolton (2004) provides a comprehensive description of such measures that were undertaken in South Africa in 1995 in an effort to increase the participation of ‘historically disadvantaged individuals’ in the tendering process following the regime change in that country. These mechanisms included:

- Improvement of access to tendering information;
- Development of tender advice centres;
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- Waiving of security requirements on some construction contracts;
- Unbundling of larger projects;
- Promotion of early payment cycles by government;
- Simplification of tender requirements; and
- Appointment of a procurement ombudsman.

ANAO (2015, 23) briefly discusses some of these issues and notes that some Indigenous enterprise representatives interviewed as part of the ANAO report process had commented that there was very little support offered in the ‘pre-bidding’ and ‘tender discovery’ phases (using the Akenroe and Aju (2013) structure as depicted above). Certainly there is no suggestion in ANAO that the Commonwealth Government had engaged in a ‘broad procurement reform’ as part of the IBE process.

2.3.2.2. Subsidy Model

The next category suggested by Akenroe and Aju (2013) is the ‘subsidy model’. The authors state: “Grants might be offered to small suppliers that can bring novel products or services to the marketplace” (Akenroe & Aju 2013, 350) and suggest that this model has been utilised in a number of jurisdictions in particular Ireland, Egypt the US and India. No other literature supports the existence of a direct subsidy payment to SMEs. However, Bolton (2004) does refer to the existence of targeted financial services to assist SME engaging in public procurement tendering in South Africa, and Denes (1997) refers to similar arrangements in the US. Athey, Coey and Levin (2013) refer to subsidies in the context of a margin on tender price. This mechanism is discussed below under the heading of spending targets.

It becomes apparent that in practice what is referred to by Akenroe and Aju (2013) in respect of this category goes to mechanisms such as elimination of tender fees and reduced or modified security deposits. These mechanisms were discussed under the previous (broad procurement reform) category. However, its separate identification under this category does assist in refining analysis of the otherwise diverse ‘broad procurement reform’ category.

2.3.2.3. Capacity Building

Arguably the third category posited by Akenroe and Aju (2013), capacity building, could also fall within the general rubric of broad procurement reform. However, the particular mechanisms that are suggested here go not so much to reform of the governmental procurement process but rather towards enhancing the capacity of the SME to engage with this process. Under this heading Akenroe
and Aju (2013) suggest mechanisms such as the provision of training in tender writing as a key example. Nicholas and Fruhmann (2014) also identify lack of specialist tender preparation skills as a particular impediment to SME procurement participation and point to tender preparation training schemes for SME in France and the UK as methods to overcome this. Loader (2007, 310) refers to a number of informal training arrangements in UK statutory authorities to similar effect. A further aspect of this category of mechanism is assistance in the development of specialist legal skills relevant to procurement processes. This is referred to by Lindskog, Brege and Brehmar (2010).

2.3.2.4. Spending Targets and Related Mechanisms

The final category of mechanism identified by Akenroe and Aju (2013) is arguably the most contentious. Within this broad category are mechanisms such as the compulsory ‘set aside’, ‘subsidies’ ‘selective purchasing’ and ‘preference’. All of these mechanisms involve some sanctioned disruption to an otherwise apparently ‘open tender process’. The IBE, the Commonwealth policy the subject of this investigation, would be included in this category of mechanisms. McCrudden (2007a) devotes extensive analysis to each of these mechanisms and the legal basis and validity of them in a range of jurisdictions. That author notes a number of examples of the use of Indigenous preferential procurement policies in the US and Canada. Some of these matters are explored further in the following section in the context of effectiveness. The object at this point is merely to describe the various mechanisms.

Athey, Coey and Levin (2013, 1) provide some succinct definitions:

One approach is to set aside a fraction of contracts for targeted firms. For instance [US] federal procurement contracts between $3,000 and $100,000 are reserved automatically for small businesses ... An alternative is to provide bid subsidies for favoured firms.

A further example of a set aside is the Canadian policy described in McCrudden (2007a) where procurement of goods and services for delivery on the lands of Indigenous Canadians is set aside for Indigenous-owned enterprises. This of course is also a component of the new IPP. A bid subsidy as referred to above has the effect that a tenderer will still be successful if within a determined percentage of the otherwise lowest tenderer. Selective purchasing by contrast operates as a prohibition; that is firms that do or do not display particular characteristics are precluded from participation in the tender. This of course operates to the advantage of remaining firms. Selective purchasing is commonly used in the context of ‘boycotts’ of firms associated with particular policies or practices (McCrudden 1999). The final mechanism is ‘preferential procurement’. Under this approach firms that do display a particular characteristic are excused
from the requirement to tender at all. If the selective purchasing arrangements are limited by value of contract or total number of contracts it could also be described as a set aside arrangement (McCrudden 2007a).

McCrudden (2007a) draws some distinction between mechanisms that bestow some obligation or advantage on a firm adopting a particular policy and those where the policy objective is to foster a particular type of firm. An example of the first type would be the provision of subsidy, or use selective purchasing to favour firms who utilise sustainable energy or engage a certain percentage of employees of a particular ethnic minority or gender. McCrudden (2007b) explores this approach in some detail in the context of mechanisms to utilised by government encourage greater corporate social responsibility in the private sector.

An example of mechanisms aimed at encouraging particular types of firms are the use of set asides and preferential procurement for the benefit of firms of a particular size or those owned by a particular class of person. In the US, the Small Business Act 1953 (US) and its set-aside provisions described briefly by Athey, Coey and Levin (2013) above provide an example. A further example from the US lies in the Works Employment Act 1977 (US) which requires 10 per cent of projects under that Act be awarded to ‘minority owned’ businesses. ‘Minority’ under this legislation includes Native Americans, African Americans and Hispanics. As McCrudden notes, this approach goes beyond attempting to ensure government policy is implemented by the private sector. It is an attempt to “restructure the economy more broadly … This was an attempt to stimulate the growth of an entrepreneurial [originally] black middle class” (McCrudden 2007a, 8).

The Commonwealth Government’s IPP adopts a number of these mechanisms. There is the preferential procurement approach found in the IBE which is the focus of this examination. There is also the mandatory set aside of contracts for delivery of goods and services in remote locations. These two mechanisms are buttressed with the mandatory targets for the award of a certain percentage of contracts to Indigenous firms. In addition though, the final component of the IPP – the requirement for Commonwealth contractors to engage a certain percentage of Indigenous employees – displays the characteristics of the ‘policy encouragement’ approach described by McCrudden (2007a; 2007b).

The ANAO (2015, 74) identifies a significant limitation to the preferential procurement approach at least in the context of the IBE. This limitation is that it is still a requirement of the CPR that ‘value for money’ be demonstrated. The assessment of value for money in a non-competitive tender environment presented a challenge to Commonwealth procurement officers.
The foregoing then has provided a description of the mechanisms which can be used to enlist public procurement in the cause of encouraging government policy, even to the extent of (modest) economic restructuring. The following section of this Chapter will examine the debate about the legitimacy of this enlistment. The latter part of the following section gives particular regard to the issue of whether the use of public procurement to achieve secondary objectives imposes a greater cost burden.

### 2.4. The Legitimacy of Pursuing Secondary Objectives

#### 2.4.1. The Three Strands of Public Procurement

While there are records of governmental procurement activities dating back to Syria in 2800 BCE (Thai, 2001, 11), contemporary centrally organised government procurement is usually identified as having developed in the 19th century. Astrom & Brochner (2007) suggest that from the outset the apparent sole criteria for the awarding of procurement contracts was price (2007). However, McCrudden (2004), discussed below at section 2.4.4, identifies the inclusion of secondary objectives within procurement programs from the mid-nineteenth century. These early instances of the inclusion of secondary objectives aside, Astrom & Brochner (2007) suggest it was only in the 1960s that matters such as contractor reliability were explicitly being taken into account and not until the 1980s that the multiparameter nature of procurement bidding was being researched (Waara & Brochner 2006). Erridge and McIlroy (2002) explore several suggested ‘strands’ in public procurement (2002, 53): the commercial strand, the regulatory strand, and the socio-economic strand. Their analysis supports their suggestion that these strands cannot necessarily be reconciled. This section of the Chapter will consider each of these strands and the factors that may impact upon them. Section 2.4.2.1 pays particular attention to empirical data going to the issue of whether incorporation of secondary objectives leads to increased costs. The final section brings these three strands together by briefly reviewing the extent of procurement related policies currently used by the Commonwealth Government.

#### 2.4.2. Commercial Strand

In looking at the ‘commercial strand’ Erridge and McIlroy (2002) focus on the rise of dominance of ‘public choice theory’ in procurement decision-making from the 1980s. Reference to the policies of both the European Commission and the UK is made in support of this suggestion. The key to the application of public choice theory to public procurement decision making is summarised as follows (Erridge & McIlroy 2002 54):
The understanding that competitive decision making will result in greater economic efficiency through reduction in costs, which will produce savings and maximise operating efficiency thus ensuring fair and equitable use of taxpayer’s money.

The paper goes on to identify however that even within the commercial strand, the notion of ‘lowest price’ is often in practice replaced with best ‘value’. The notion of value in turn is seen as comprising three components: economy, efficiency and effectiveness (2002, 55). Of these, economy refers to the lowest price principle, whereas efficiency goes to “the relationship between the output of goods and services and the resources used while effectiveness is concerned with the achievement of targets not only in terms of quantity but also quality” (2002, 55). In support of this interpretation Loader (2007, 309) notes that the UK Treasury defines value for money in procurement as “the optimum combination of whole life costs and quality to meet the customer’s requirements”. Loader (2011, 288) also notes that the UK government accepts that value for money thus defined “is rarely synonymous with lowest price”. The definition of ‘value for money’ as contained in the CPR is set out above in section 2.2.2.1.

Wong, Holt and Cooper (2000) usefully develop the nuance of the commercial strand posited by Erridge and McIlroy (2002). These authors surveyed over 80 UK construction clients. A quantitative analysis of the responses led to an ordinal ranking of the importance of project specific criteria (‘PSC’) by which tenders were assessed. The analysis showed little variation between public and private sector clients. Over 30 PSC are identified in relation to both private and public sector clients. Examples of these PSC are matters such as ‘ability to complete’; ‘actual work quality on similar jobs’, ‘contractors’ familiarity with geographic area’; and health and safety record (Wong, Holt & Cooper 2000, 770). The research also examined the weight attached to PSC as against a simple tender price criterion. The results indicating that while only 22 per cent of public sector respondents suggested that PSC were equal or more important than tender price, a mere 4 per cent saw price as the sole determinant and 66 per cent saw PSC as playing a role in tender award decisions. Interestingly, 32 per cent of private sector clients saw PSC as equal to, or more important than, price (Wong, Holt & Cooper 2000, 772). The authors suggest the need for public defensibility as the basis for the greater price sensitivity in the public sector.

The significance of the analysis presented by Wong, Holt and Cooper to the research problem is that it provides a good sample of quantitative data to support the notion that, even within the commercial strand, it is extremely rare for a procurement decision to be based upon a price criterion alone. The research illustrates the nuance behind the term ‘value’. Acceptance of the proposition that value can include a range of criteria lays the foundation for
greater acceptance of the legitimacy of the socio-economic strand discussed below.

These authors highlight that even in circumstances where there is no explicit secondary objective incorporated into the procurement process it will be rare that the procurement decision is based on the issue of price alone. Rather, the generally operative notion of ‘value’ will require consideration of a range of matters that can be summarised as economy, efficiency and effectiveness.

Given this background, consideration of the effect on price of the incorporation of secondary objectives may be thought unnecessary. This would be naïve. While public procurement decisions are not made on the sole basis of price, the issue of price is of course significant in the extent to which secondary objectives will be adopted.

2.4.2.1. The Price of Secondary Objectives

While Wong, Holt and Cooper (2000) investigated the inter-relation of price and other factors in procurement decisions, other researchers have focussed upon the issue of trying to discern whether the implementation of various secondary objective mechanisms leads to increased costs to government.

In this regard it becomes necessary to differentiate between the various secondary objectives that may be pursued. For example a requirement to utilise renewable energy on a project in circumstances where renewable energy is more expensive than fossil fuel will (in the short term) result in higher project costs. By contrast a requirement for a contractor to give preference to employees normally resident in a project area may not necessarily involve additional costs.

The limited deployment of Indigenous preferential public procurement policies in Australia and other jurisdictions means that there is no data available on whether such policies lead to increased procurement costs. However, there has been a great deal of research around the issue of whether SME preferential public procurement policies have resulted in increased contract costs. In this section of the discussion the literature relating to this research will be reviewed on the basis that the situation of SMEs may in many respects be a legitimate proxy for Indigenous enterprises. The discussion will conclude by noting that while consideration of SMEs generally may be useful, the position of Indigenous enterprises may differ in a number of regards.

Denes (1997) provides a useful starting point. Denes commences by noting that basic economic theory and previous research suggests that an increased number of tender bidders is directly correlated to a decreased bid price. In examining the
application of this theory to the provision of dredging services to which on occasions the set-aside provisions of the *Small Business Act 1953* (US) applied, Denes (1997, 443) concluded: ‘No evidence was found to support the hypothesis that set-asides increased costs ... One possible reason...is that more firms bid on the set asides.’ Somewhat by way of contrast Marion (2007) analysed the ‘bid preference’ system used to favour small businesses in the award of Californian highway construction costs. Under this system small firms received a 5 per cent bid preference margin. The analysis showed the system did lead to higher (3.8 per cent) procurement costs but that these were less than the 5 per cent bid preference margin. However, Yoon (2006) showed that if overall contribution to social welfare is included in the calculation of the cost of bid preference to minorities in auctions of radio broadcast licences, the bid preference system provided a more efficient outcome.

Athey, Coey and Levin (2013) examine small business set-asides in US Forest Service contracts and conclude that the set-aside mechanism does achieve higher small business participation but also imposes higher costs. The authors suggest that a subsidy mechanism would produce more favourable (in terms of price and efficiency) results. Nakabayashi (2013) examined the effect of small business set-asides in Japanese public construction contracts. The author concluded that if the set-asides were removed there would be a significant exit of SMEs from the construction procurement market and that the resultant reduction in competition would operate to increase procurement costs. A similar conclusion was reached by Reis and Cabral (2015). These authors considered the effect of the introduction Brazilian federal law that allowed SME set-asides for contracts of a value of less than US$35,000 and a 5 per cent bid preference in other tenders. They concluded that the introduction of the law did not affect prices and did facilitate a significant increase in SME procurement participation. However, there was also an increase in post-contract termination for poor performance. Unless remedial measures were put in place this would inevitably increase the overall cost of procurement.

This brief review of the academic literature that has examined the impact upon price of the incorporation of secondary objectives relating to increasing participation of SMEs in procurement processes has identified diverse conclusions in the research that has been undertaken. A consistent theme appears to be though that the greatest likelihood of SME preferential procurement policies not having a negative cost impact is in circumstances where these policies facilitate increased competition in the procurement process through the increased participation of SMEs. In the context of IBE, which operates as an exemption from the usual requirements for public tendering, the utilisation of the policy may not lead to an increase in participants in any
particular tender process. However, in particular circumstances (for example in remote locations) the development of Indigenous enterprises stemming from the utilisation of the policy could lead to increased competition and an overall reduction in procurement costs. Even in circumstances where IBE did not facilitate increased competition around a particular procurement it should be borne in mind that the exemption can only be utilised if the Indigenous enterprise can demonstrate the broader notion of ‘value’.

2.4.3. Regulatory Strand

The second strand identified by Erridge and McIlroy (2002) is ‘regulatory’. This strand focusses on the requirement for ‘transparency and equality of opportunity’ (2002, 56) in order to ensure genuine competitiveness in the tendering process. Other writers also emphasise the inherent political sensitivity around public procurement and the need to maintain public confidence in the integrity of the process as an important foundation for this regulatory strand (Schapper et al 2006, 2). The same matters are clearly identified in the CPR (DoF 2014) as noted above in section 2.2.2.1.

The political sensitivity associated with public procurement can be seen to impact upon the actions of procurement officials who are reported to adopt conservative approaches to procurement methods to protect against uncertainty arising from possible legal complications (Drijber and Stergiou 2009) and public criticism (Love et al, 2008). The issue of procurement official conservatism arising from a concern regrading uncertainty comes through strongly in the research outcomes.

Erridge and McIlroy themselves however do not develop this theoretical foundation but rather turn their attention to a discussion of detail of European Commission processes.

Thai (2001) in a seminal piece which has already been referred to above (section 2.2.2) analyses the overall role and structure of government procurement processes. The article refers to procurement processes in a range of jurisdictions but has a primary focus on those processes in use in the US. Thai identifies a differential approach between those jurisdictions that tend to regulate procurement through statutory means (particularly the US, Europe and many developing nations) and those that utilise administrative practice to regulate procurement (the UK and many former British possessions – including Australia) (Thai 2001, 27). The dichotomy identified by Thai illuminates the differential approaches to management of the regulatory strand identified by Erridge and McIlroy (2002). Relevantly, Thai notes though that irrespective of the approach taken to regulation or the developed/developing status of a jurisdiction a ‘sound
procurement system’ will have two goals. He identifies these goals as: (1) ‘procurement goals’: “quality, timeliness and cost (more than just price)”; and (2) ‘non-procurement goals’: domestic preference, environment protection, “social goals (assisting women and minority owned business concerns) and international relations goals” (Thai 2001, 27). These two sets of goals equate to the commercial strand and the socio-economic strand identified by Erridge and McIlroy (2002).

The analyses of Thai (2001) and that of Erridge and McIlroy (2002) are quite complementary. The latter provides a clear analysis of the ‘commercial’ and ‘regulatory’ strands in public procurement policy and an effective dissection of the commercial strand into the component parts of economy, efficiency and effectiveness. In so doing they are able to demonstrate that that price alone is not (or rarely) the sole determinant of procurement decisions. In ‘opening up’ the field of relevant considerations the article provides a strong theoretical foundation for the Commonwealth’s IPP.

Thai (2001) is useful to the analysis because the piece authoritatively demonstrates that across jurisdictions, embedded in the procurement process is the aim of furthering a multiplicity of objectives beyond simply lowest price. The piece also illustrates that satisfaction of the regulatory strands identified by Erridge and McIlroy (2002) is not inconsistent with efforts to achieve these socio-economic objectives.

2.4.4. Socio-Economic Strand

The final strand identified by Erridge and McIlroy (2002) is the socio-economic strand. The discussion here is largely normative for the authors suggest: “At present public procurement policy ... reflects the market model supported by public choice theorists” (2002, 58). However, they briefly continue to suggest that this should not be the case positing (in summary) that the public nature of public procurement justifies the inclusion of socio-economic considerations in procurement decisions. They summarise the competing views succinctly (2002, 59):

Opponents of the use of public procurement for socio-economic purposes have argued that the outcome is likely to be extra or hidden costs and therefore policy should remain market based. However, as we have already discussed, given that the market model is flawed there is a moral imperative for governments to ensure that the public interest is served.

The legitimacy of the socio-economic strand is a theme pursued by McCrudden (2004) but from a somewhat different basis. McCrudden in this piece explores the history of the concept of ‘linkage’ in public procurement. To McCrudden (2004, 257) ‘linkage’ is where government combines the functions of:
... participating in the market as a purchaser and at the same time regulating it through the use of its purchasing power to advance conceptions of social justice

McCrudden’s ‘linkage’ is thus has parallels with with Arrowsmith’s (1995) term ‘secondary objectives’. However, McCrudden’s term acknowledges that the advancement of “conceptions of social justice” may not be merely a ‘secondary objective’ in the procurement process. McCrudden (2004) traces a number of examples of this linkage in (primarily) the US and the UK during the 19th and 20th centuries. Common 19th century examples are stipulations in government contracts regarding minimum wages. McCrudden (2004) notes the tendency following World War I to introduce preferential procurement arrangements for firms employing disabled workers in an attempt to ameliorate the position of injured ex-servicemen. The process continued after World War II expanding to use various mechanisms to include preferential provisions for firms employing disabled workers generally. McCrudden (2004) goes on to note arrangements in a number of European countries to give preferential provision for firms employing workers from areas with high regional unemployment. McCrudden continues this history by identifying the development of the role of procurement in the civil rights movement in the US in the 1960s and more recently. Examples provided in this regard are non-discrimination clauses inserted in US federal contracts to the more recent affirmative action measures where certain proportions of federal contracts are ‘set aside’ for firms owned by ‘minority’ groups or women. McCrudden (2004) also identifies a number of further examples of linkage in a range of jurisdictions such as Malaysia, South Africa, Northern Ireland and Canada. The author places some emphasis on the requirements for linkage imposed by international organisations such as the International Labor Organisations (‘ILO’) with respect to pay and conditions of workers employed by contractors to state parties to the ILO conventions.

McCrudden (2004) illustrates that there has been a long history of incorporation of secondary objectives into procurement decisions stretching back centuries. Through international examples McCrudden (2004) also demonstrates the practice is commonplace globally. Particularly as the examples cited often relate to ‘non-contentious’ socio-economic objectives regarding (for example) injured ex-servicemen, McCrudden’s piece illustrates that the inclusion of secondary objectives is not contentious. Rather the debate is not about secondary objectives or ‘pure’ commercial considerations but rather about which secondary objectives are legitimate: in so doing the piece points to (without identifying) a potential implicit racism in the reluctance to embrace objectives such as Indigenous preferential procurement.
A further piece by McCrudden (1999) focusses on the selective purchasing mechanism and examines another basis by which the legitimacy of incorporating secondary objectives could be challenged; that is, the obligations imposed under international law, in particular the World Trade Organisation’s (‘WTO’) Government Procurement Agreement (GPA). The piece focusses upon a case study of a challenge to a law of the State of Massachusetts which imposed ‘selective purchasing’ sanctions against corporations involved in the Republic of Myanmar. The stated objective of the law was to effect a change in the attitude of the government of Myanmar to human rights abuses. In exploring this issue McCrudden (1999) looks more generally at the desirability of linking human rights issues with public procurement. In so doing he refers to a number of examples of such linkages in operation. A number of the examples to be later repeated in McCrudden (2004). However, the piece looks more broadly at trade law identifying the possible risk that selective purchasing, such as the Massachusetts Act may act as a cloak for genuinely anti-competitive practices. As part of this consideration the article examines in some detail the provisions of the WTO GPA that may impede the incorporation of secondary objectives and those provisions that may authorise such arrangements. This detail will not be explored here.

The significance of the piece is that provides a detailed authoritative analysis of the GPA. A general awareness of the thrust of the GPA but a lack of familiarity with the detail of the agreement could form a basis to question the legitimacy of the general incorporation of secondary objectives. The piece provides a basis by which this can be responded to.

Arrowsmith (1995) pursues similar themes to those investigated by McCrudden (1999) in that the focus is on legal impediments to the pursuit of secondary procurement objectives. However, the focus in Arrowsmith (1995) is on the role of procurement in the development of UK industry policy and upon the recent (1995) European Commission laws regarding free trade and how these may impact upon the UK practices. The piece though commences with a further useful survey of the frequent use of procurement as a tool of government to deliver social policy objectives. The article contains useful analysis of the role of procurement in furthering non-legislated industry policy objectives and the impact free trade regulation can have upon this. In the context of the current investigation, the European Commission experience considered by Arrowsmith (1995) has useful parallels with the development in Australia of bilateral free trade agreements whose obligations extend beyond the general WTO GPA considered by McCrudden (1999).
Indeed the European Union (EU) experience of the tension between the desire for (economic) non-discrimination and the achievement of social objectives is illuminating. The basic principle is contained in art 2 of Directive 2004/18/EC (the Procurement Directive (EU 2004) which provides:

Contracting authorities shall treat economic operators equally and non-discriminatorily and shall act in a transparent way.

Attempts to specify social (or environmental) requirements in a tender specification are specifically addressed in art 23 of the Procurement Directive. The requirements are described as follows by the European Commission (EC, 2010):

... technical specifications must not reduce competition, must be transparent and must not discriminate against possible contractors from outside the Member State of the contracting authority.

The tension created from the prohibition on discrimination and the desire to use procurement to further social objectives has led to a number of cases before the European Court of Justice (ECJ). Cases from Beentjes in 1988 (Case 31/87 - Beentjes [1988] ECR 04635) to Max Havelaar in 2012 (Case C- 368 European Commission v Kingdom of Netherlands [2012] ECR) have though suggested an uncomfortable and limited acceptance of such policies. As Muller-Wrede (2012, 115) notes in the Max Havelaar case the ECJ found:

compliance with the [tender] “criteria of sustainability of purchases and socially responsible business” and the obligation to “contribute to improving the sustainability of the coffee market and to environmentally, socially and economically responsible coffee production” are not sufficiently clear, precise and unequivocal and therefore infringe the transparency obligation stipulated in Article 2 of the Directive.

The result is that the ECJ has imposed strict controls around the use of such policies – demanding a strict “subject matter of the contract nexus” with the social policy in question (Muller-Wrede 2012, 117).

The analysis presented above suggests there is long-standing and significant use of public procurement to achieve secondary objectives. So much so, that bearing in mind the legal obligations identified by McCrudden (1999), Arrowsmith (1995) and those arising under particular regimes such as the EU, the legitimacy of using procurement to further secondary objectives should not be able to be seriously questioned.

It should not be surprising therefore that the Commonwealth Government has a significant number of procurement related policies in addition to the IBE. A number of these relate to considerations to be taken account of during a
procurement process. Examples of this are policies such as the National Waste Policy, trade sanctions, SME participation in the information and communications technology industry, and Commonwealth Fraud Control Guidelines. The Indigenous Opportunities Policy and the Workplace Gender Equality Procurement Principles are further examples. In these last two examples procurement is being used to encourage private sector adoption of Commonwealth Government social policies in the way described by McCrudden (2007a; 2007b). ANAO (2015, 116) lists 18 such ‘procurement connected policies’.

In addition, as noted earlier in section 2.2.2.1, while all Commonwealth procurement is subject to the requirements of Division 1 of the CPR to achieve value for money and to maintain ethicality and transparency, Appendix A of the CPR sets out a range of procurement activities that are not subject to the more technical requirements of Division 2 of the CPR which would otherwise apply to the procurements above the procurement threshold. There are 17 such exemptions to the operation of Division 2 set out in Appendix A. The IBE is number 17. An exemption for “procurement of goods and services from a business that primarily exists to provide the services of persons with a disability” (DoF 2014, 33) is number 16. The other Appendix A exemptions apply to the procurement subject matter (real estate, labour hire etc). Thus, while the Commonwealth Government has a range of procurement-related policies aimed at pursuing broad policy agendas such as trade, the environment and security there are only three instances of secondary objectives aimed at particular social groups; women in the context of the inclusion of a requirement for procurements to have regard to Workplace Gender Equality Procurement Principles; the disabled in including that businesses that primarily exist to provide “the services of persons with a disability” is included in the Appendix A exemptions and Indigenous Australians. Indigenous Australians are the focus of both the IOP (and its more recent iteration in the current IPP) and the IBE. However the IBE is unique in that as McCrudden suggests it sets out to “restructure the economy more broadly... This was an attempt to stimulate the growth of an entrepreneurial black middle class” (McCrudden 2007, 8).

The preceding discussion in this section examined the theoretical literature that considers the legitimacy of incorporating secondary objectives into public procurement processes. This literature indicates that incorporation of such secondary objectives is commonplace in many jurisdictions and is a policy tool that had been deployed in support of such objectives for a considerable period of time in both Australia and elsewhere. The discussion has also identified the distinction between price and value in public procurement and shown that price alone is not necessarily a determinative factor in making procurement decisions.
Further empirical research has been traversed that even in relation to price it cannot be automatically assumed that incorporation of secondary objectives through mechanisms such as the IBE will lead to an increase in the direct price of procurement.

The following section of this Chapter moves away from consideration of the *legitimacy* of the incorporation of secondary objective policies to considering the *effectiveness* of those policies in achieving their stated objectives.

### 2.5. Effectiveness of the Mechanisms

Given the early experience of the IBE it is reasonable to consider whether secondary objective procurement policies are effective at all. Some of the literature that considers the *legitimacy* of secondary objective procurement programs for the advantage of Indigenous peoples has been examined above. However, there is little published research that considers the *effectiveness* of these programs. This section aims to examine some of the literature that is available. Before doing so however it is necessary to consider whether there is some empirical foundation to support the inference that a procurement program effective in increasing the economic activity amongst Indigenous suppliers will also then be effective in reducing Indigenous disadvantage. This threshold consideration follows immediately below.

#### 2.5.1. The Link between Indigenous Enterprise and Indigenous Well-Being

The report *Overcoming Indigenous Disadvantage: Key Indicators 2014*, produced by the Steering Committee for the Review of Government Service Provision (SCRGSP 2014) is a recent and comprehensive evidence source. The Report provides evidence in regards to key disadvantage indicators such as:

- Life expectancy;
- Young child mortality;
- Early childhood education;
- Literacy and numeracy;
- Year 12 attainment;
- Post-secondary education participation and attainment;
- Employment; and
- Household and individual income.

The Report shows that Indigenous Australians are at a considerable, at times devastating, disadvantage when compared to the broader Australian
community. More recently this conclusion has been reiterated by the DPMC in the 2015 *Closing the Gap Report* (DPMC 2015a).

As noted in the introduction to this discussion, the aspects of this multiple disadvantage are statistically correlated. That is for example, an Indigenous Australian who is not in the labour force is also more likely to have lower educational standards, poorer health status and less adequate accommodation than an Indigenous Australian who is in the labour force (SCRGSP 2014, 3112-3123).

Given this correlation, an increase in the number of Indigenous Australians in the labour force should consequentially lead to a reduction in the social disadvantage suffered by Indigenous Australians. This expectation is supported by empirical research (Altman 2001; Furneaux & Brown 2008; Biddle 2011). Intuitively one would expect that an Indigenous-owned firm is more likely to employ Indigenous people.

This proposition is also supported by the available research. For example, Hunter (2014) concludes that Indigenous-owned or jointly owned business report on average a 64 per cent Indigenous workforce. The figure for majority-owned Indigenous businesses were 72.4 per cent. The equivalent figure for non-Indigenous businesses is 0.7 per cent. Other researchers have reached similar conclusions (Foley, 2000).

Hunter’s general conclusion is strongly supported by Morrison et al (2014). The study by Morrison et al involved a quantitative analysis of 324 Indigenous entrepreneurs across the private (n=263), community (n=51) and cooperative (n=10) sectors. The Indigenous businesses surveyed were 50 per cent or more Indigenous-owned. Respondents were located in remote, rural and urban settings and involved in over 19 industry sectors. There was additional quantitative research to further investigate some aspects. Businesses included in the study ranged in size from 1 to 450 employees. One hundred and eighty-nine or 58.9 per cent employed less than three people. Six employed greater than 100 people. In summary, of 321 Indigenous businesses 67.8 per cent had more than 50 per cent Indigenous employees. The median number of Indigenous employees across all firms was one (Morrison et al 2014, 173).

A more detailed analysis is contained in the following table (Morrison et al 2014, 176, Table 49):
<table>
<thead>
<tr>
<th>Percentage of Employees that are Indigenous</th>
<th>N</th>
<th>Urban</th>
<th>Regional</th>
<th>Remotes</th>
<th>Private</th>
<th>Community</th>
<th>Cooperative</th>
</tr>
</thead>
<tbody>
<tr>
<td>0%</td>
<td>16</td>
<td>6</td>
<td>8</td>
<td>2</td>
<td>10</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>5%</td>
<td>2</td>
<td>3.6%</td>
<td>7.4%</td>
<td>4.5%</td>
<td>3.8%</td>
<td>8.5%</td>
<td>20%</td>
</tr>
<tr>
<td>1-10%</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>0.6%</td>
<td>1.2%</td>
<td></td>
<td>0.8%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>11-25%</td>
<td>20</td>
<td>9</td>
<td>6</td>
<td>5</td>
<td>19</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>6.2%</td>
<td>5.3%</td>
<td>5.6%</td>
<td>11.4%</td>
<td></td>
<td>7.3%</td>
<td>2.1%</td>
<td></td>
</tr>
<tr>
<td>26-50%</td>
<td>66</td>
<td>32</td>
<td>18</td>
<td>15</td>
<td>53</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>20.2%</td>
<td>18.9%</td>
<td>16.7%</td>
<td>34.1%</td>
<td></td>
<td>20.2%</td>
<td>21.3%</td>
<td>10%</td>
</tr>
<tr>
<td>51-67%</td>
<td>32</td>
<td>17</td>
<td>10</td>
<td>5</td>
<td>22</td>
<td>9</td>
<td>1</td>
</tr>
<tr>
<td>10%</td>
<td>10.1%</td>
<td>9.3%</td>
<td>11.4%</td>
<td></td>
<td>8.4%</td>
<td>19.1%</td>
<td>10%</td>
</tr>
<tr>
<td>68-75%</td>
<td>12</td>
<td>6</td>
<td>3</td>
<td>3</td>
<td>5</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>3.7%</td>
<td>3.6%</td>
<td>2.8%</td>
<td>6.8%</td>
<td></td>
<td>1.9%</td>
<td>14.9%</td>
<td></td>
</tr>
<tr>
<td>76-100%</td>
<td>173</td>
<td>96</td>
<td>63</td>
<td>14</td>
<td>150</td>
<td>16</td>
<td>6</td>
</tr>
<tr>
<td>53.9%</td>
<td>56.8%</td>
<td>58.3%</td>
<td>31.8%</td>
<td></td>
<td>57.3%</td>
<td>34%</td>
<td>60%</td>
</tr>
</tbody>
</table>

| Total                                     | 320| 168   | 108      | 44      | 261     | 47        | 10          |

The study also reported that the Indigenous businesses involved would prefer to employ a greater number of Indigenous employees: 72.8 per cent (Morrison et al 2014, 178) but often encountered supply limitations to this ambition.

These findings would suggest that in terms of the total number of Indigenous employees the six firms that employed more than a hundred employees at least 50 per cent of which were Indigenous would employ more Indigenous people than the 189 micro firms.

These findings allow us to conclude that since an increase in Commonwealth government purchasing of goods and services from Indigenous-owned enterprises leads to an increase in the level of economic activity undertaken by these firms, then this should lead to an increase in the number of Indigenous Australians in the labour force and a reduction in Indigenous social disadvantage.

There is also private sector evidence to suggest that procurement schemes targeting Indigenous enterprise lead to an increase in economic activity by these firms. For example, the Creating Parity Report (DPMC 2014) noted that one corporation, FMG, has awarded 156 contracts since 2011 with a total value of $1.56 billion to over 50 Indigenous businesses.

Having dealt with this threshold consideration it is next necessary to consider how the effectiveness of a program such as the IBE can be measured.
2.5.2. The Measurement of Effectiveness

In the context of procurement, ‘monitoring’ can refer to the process of contract management by the procuring agency. For the purposes of this discussion the monitoring and evaluation under examination is that of the effectiveness of the IBE, in particular the collection of data regarding the award of contracts under the IBE and consequently the identification of methods to increase the rate of award of contracts. In the context of the IBE as an effective policy measure, the collection of data confirming the connection between the award of contracts to Indigenous enterprise and reduction in Indigenous disadvantage and if need be adjustments in the program to enhance this connection would also be an important part of monitoring and evaluation.

The development and implementation of monitoring and evaluation methods is of course essentially a discipline in its own right (Markiewicz & Patrick 2015) and it is beyond the scope of this discussion to do justice to this body of knowledge. However, it is appropriate to identify some key components of an effective monitoring and evaluation approach to secondary objective public procurement programs. It is useful to provide some definitions at the outset.

The OECD defines the term ‘monitoring’ as follows (2015, 27):

*Monitoring* is a continuous function that uses the systematic collection of data on specified indicators to provide management and the main stakeholders of an ongoing development intervention with indications of the extent of progress and achievement of objectives and progress in the use of allocated funds.

In the same document ‘evaluation’ is also defined (2015, 21):

*Evaluation* is the systematic and objective assessment of an ongoing or completed project, program, or policy, including its design, implementation, and results. The aim is to determine the relevance and fulfilment of objectives, development efficiency, effectiveness, impact, and sustainability. An evaluation should provide information that is credible and useful, enabling the incorporation of lessons learned into the decision making process of both recipients and donors.

The discrete nature of the functions of monitoring on the one hand and evaluation on the other is clear in Storey’s (2008) suggested six-step approach to the monitoring and evaluation of procurement specific and other SME targeted policies which can be summarised as follows:
Monitoring
Step 1    Take up of program
Step 2    Recipient opinions
Step 3    Recipient views of impact of program

Evaluation
Step 4    Comparison of assisted firms with ‘typical’ firms
Step 5    Comparison with matched firms
Step 6    Selection bias taken into account

Storey goes on to note that while steps 1 to 3 are often undertaken it is rare that a comparison with a ‘control group’ as required in steps 4 to 6 are. The methodology outlined by Storey and the view that most program review activities are limited to the monitoring and not the evaluation of funding is also a feature of the more recent analysis of SME policies in Latin America and the Caribbean undertaken by Acevedo and Tan (2010) for the World Bank.

To date, with the limited exception of the 2015-16 DPMC data and the ANAO Report (ANAO 2015) which reported against Step 1 (albeit partially) and to a limited extent Step 2 of the methodology suggested above, there has been no thorough going work that has undertaken a monitoring exercise of the IBE let alone the control group based evaluation suggested by authors such as Storey (2008) and Acevedo and Tan (2010).

In the absence of an existing comprehensive evaluation and monitoring program it is useful to consider reports of evaluation of similar secondary objective procurement programs in other jurisdictions.

2.5.3.  Are Secondary Objective Policies Effective?

‘Effective’ in the context of the immediate discussion should be taken to have two aspects. First whether Indigenous businesses participate in the procurement program so as to improve the proportion of government contracts being awarded to Indigenous firms. This aspect of effective is also influenced by consideration of whether the cost of the procurement program was such as to suggest there were other more efficient means of increasing Indigenous business participation. The second aspect is whether Indigenous businesses participation in the procurement program improves the overall levels of Indigenous well-being. This latter matter was considered in section 2.5.1. above. It remains now to consider the first aspect.

Material from the US (particularly in light of the ‘strict scrutiny’ requirement arising from Adarand Constructors Inc v Pena 115 US 2097 (1995)) and relating to secondary objective procurement programs designed to assist minority- and
women-owned business is the most fruitful. This indicates that while minority (including Native American-owned) businesses still receive disproportionately fewer government contracts the disparity is less marked in areas where special measure procurement programs (in the nature of the IBE) are in place (Enchaugtugui et al 1997). Further, as at 2003, of six surveyed US federal government departments, four exceeded the overall government target of a 5 per cent procurement from socially disadvantaged businesses as did the federal government procurement overall (US Commission 2005). These general conclusions are supported by an analysis of a specific program (in Erie County, New York) which indicated that while the program was effective in developing women- and minority-owned business that participated in the procurement program, there was a limited take up of the program (Wallace 1999).

Aside from this generally quite high-level data, however, there is little empirical analysis of the effectiveness of a particular secondary objective procurement programs designed to benefit Indigenous businesses. This shortcoming in the analysis of secondary objective procurement programs has been noted also in the context of programs intended to benefit SME generally (not specifically Indigenous SMEs). Often the high-level data can obscure the success or otherwise of particular programs (Nicholas & Fruhmann 2014; Freeman 2013).

With this in mind it is useful to consider analysis of the effectiveness of some particular secondary objective procurement programs. Similarly to the use of literature regarding the impediments to SME participation in public procurement and the policies developed in response to this (section 2.3 above) the absence of data in respect of the effectiveness of Indigenous-targeted programs, analysis of SME targeted programs act as a useful proxy also in the analysis of effectiveness.

Athey, Coey and Levin (2013) examine small business set asides in US Forest Service contracts and conclude that the set aside mechanism does achieve higher small business participation but also imposes higher costs. The authors suggest that a subsidy mechanism would produce more favourable (in terms of price and efficiency) results. Nakabayashi (2013) examined the effect of small business set-asides in Japanese public construction contracts. The author concluded that if the set-asides were removed there would be a significant exit of SME from the construction procurement market and that the resultant reduction in competition would operate to increase procurement costs. A similar conclusion was reached by Reis and Cabral (2015). These authors considered the effect of the introduction of Brazilian federal law that allowed SME set-asides for contracts of a value of less than US$35,000 and a 5 per cent bid preference in other tenders. They concluded that the introduction of the law did not affect prices and did facilitate a significant increase in SME procurement participation.
However, there was also an increase in post contract termination for poor performance. Unless remedial measures were put in place this would inevitably increase the overall cost of procurement. Examining preferential bank financing programs for SME, Freeman (2013) is dubious in relation to their effectiveness. In a study involving 800 firms employing from less than 10 to greater than 250 employees in the UK Georgiou et al (2014) found that while procurement policies were targeted at the barriers faced by firms they were ineffective in removing them. Similarly, Nicholas and Fruhmann (2014) raise questions about the effectiveness of SME targeted procurement programs intended to foster innovation.

The mixed assessment revealed by even this small survey of analysis of the effectiveness of secondary objective procurement programs highlights a number of issues in relation to such programs. First, the high level data from the US suggests that overall such programs do tend to foster targeted businesses although do not of themselves eliminate disparate access to government procurement opportunities. Second, assessment of the results for procurement programs of differing designs (not surprisingly) differ.

These factors point to the importance of putting in place arrangements for monitoring and evaluation of the effectiveness of the IBE and, if need be, adjusting the design of the program in light of the results of that monitoring to improve its effectiveness.

2.6. Literature Review Conclusions

This literature review has been necessarily broad ranging. A significant portion of it has involved the foundational tasks of exploring the definitions of procurement in general and public procurement in particular. An aspect of this exploration was an exposition of the processes of Commonwealth procurement that form the context of the discussion of the operation of the IBE. Despite this breadth of coverage a number of key themes have emerged. These are that:

- The processes of procurement in both the public and private sectors are essentially similar. The distinction is the environmental and contextual factors (for example legal, policy, cultural factors (Johnston & Lewin 1996; Thai 2001).

- Generally participation by SME in the public procurement is seen as positive but a number of currently identified impediments to such participation include (Flynn, McKeVitt & Davis 2015):
  - Bureaucracy;
  - Lack of communication between SMEs and public procurers and too much weighting on cost;
o SME lack of knowledge over how to source opportunities or engage with procedural aspects of tendering;
o Onerous tender documentation and unprofessional procurement staff;
o Time demands of completing tender documentation;
o Requirements of previous relevant experience and financial costs of tendering; and
o Large contract size and information asymmetries.

• Mechanisms to overcome these impediments include (Akenroe & Aju 2013):
o Broad procurement reform (bureaucratic simplification);
o Subsidies;
o Capacity building; and
o Targets.

• The issue of the legitimacy of pursuing secondary objectives within the public procurement process is impacted upon by various competing ‘strands’ within procurement ideological discourse. Erridge and McIlroy (2002) identify three such strands:
o Commercial (minimum price);
o Regulatory (transparency and accountability; and
o Socio-economic (rectifying imperfect markets and nature of public enterprise).

• In addition, while there are various analyses of the cost of including secondary objectives the outcomes (for example, Denes 1997) of which may depend on the objective pursued, the incorporation of secondary objectives in public procurement has been a policy tool deployed by governments for centuries (McCrudden 2004).

• In the context of Indigenous preferential procurement programs such as the IBE there is significant empirical evidence both as to existing Indigenous disadvantage; that participation in the workforce reduces this disadvantage (SCRGSP 2014; Biddle 2011) and that Indigenous firms are significantly more likely to employ Indigenous people (Morrison et al 2014; Hunter 2014).

• While there are some broadly mixed data there is empirical evidence (primarily for the US) to support the proposition that procurement programs targeted at ‘minority’ are effective in increasing economic activity by these groups (US Commission 2005) but that there is inadequate monitoring and particularly evaluation of such programs (Storey 2008).
The application of these propositions will be considered in light of the research outcomes.
CHAPTER 3 – METHODS

3.1. Overview

The purpose of this Chapter is to identify the methodological approach that was adopted in the research project. In summary the Chapter indicates that the project utilised a method involving a primarily semi-structured interview of stakeholders and where possible documentary content analysis (this was undertaken in the literature review). A research method involving such a combination of sources to examine a bounded phenomenon (Noor 2008) can be described as a case study method. The unit of analysis adopted for the purposes of this research is the stakeholder. The research is undertaken within an overall paradigm that adopts the pragmatic approach to analysis.

To demonstrate the appropriateness and validity of these approaches the Chapter proceeds in several sections. The following section 3.2 will consider the research approach or paradigm that was adopted in the course of this investigation. While various approaches (paradigms) may have relevance to an investigation of the research problem, the approach considered most relevant is what is described as the ‘pragmatic approach’. This is because of the strong focus the pragmatic approach places on the objective of the research. As Cherryholmes notes: “[I]t is driven by anticipated consequences” (1992, 13). As was stated in the introductory chapter an explicit purpose of this research is to identify measures that can be taken to improve the IBE and the IPP more generally. As discussed in section 3.2 below it is this concise objective that renders the pragmatic approach appropriate.

Section 3.3 of this Chapter discusses the methodology that was employed as the foundation to the investigation. The section identifies that a determining factor in the framing of the investigation’s methodological approach is the paucity of existing data regarding the IBE. Essentially the existing data comprises minimal working documents from government departments. The section identifies that while these documents should certainly be analysed as part of the investigation it will also be necessary to generate primary data. The section discusses the three main forms of primary data generation: direct observation, interviews, and questionnaire survey (Snow & Thomas 1994; Patton 2002).

Of these forms of primary data generation, section 3.3 concludes that the transactional nature of the phenomenon under investigation and its relative novelty indicate that interviews with stakeholders in the IBE is the most appropriate method to generate primary data. In particular, the ‘semi-structured interview’ is seen as providing the necessary combination of ensuring relevance while allowing for flexibility of response. The section then identifies that the
combination of content analysis of the limited existing documents and interviews with stakeholders indicates that the methodological approach to be adopted is best described as ‘case study’ with the unit of analysis being the individual stakeholders who are interviewed.

The section then examines the issue of the validity of a case study approach where stakeholder interview is the predominant method of generating primary data. The section concludes that while there may be legitimate questions raised about the validity of the case study methodology, these concerns can be addressed by an explicit statement of the known shortcomings and an acknowledgement of these.

Section 3.4 describes the implementation of the selected methodology. With reference to relevant literature, the section analyses the nature of a ‘stakeholder’. It identifies that while there are various and broad definitions of stakeholder the most relevant for the purposes of this investigation is that of actively involved stakeholders (Achterkamp & Vos 2008). Actively involved stakeholders comprise three main groups: clients, decision-makers, and designers. This theoretical description is then translated to the specific context of the IBE. Thus translated, the stakeholders are: Indigenous firms (who constitute the decision-makers), the Commonwealth agencies engaging in procurement (the clients) and those individuals and agencies responsible for the development and oversight of the policy (the designers). Section 3.4 then proceeds to set out the five questions (although in a semi-structured interview ‘prompts’ may at times be a more appropriate description) that were put to the individuals constituting (or representing) these stakeholders and sets out in tabular form how these interview questions are relevant to the identified research subquestions.

The concluding section 3.5 reviews the process of analysis of the transcript analysis through the coding process and the necessary limitations of this process.

3.2. The Research Paradigm

3.2.1. Relevance of a Paradigm

As noted earlier, the current research is guided by a number of assumptions. Primarily these are that: it is desirable to reduce the economic disadvantage suffered by Indigenous Australians; and that this goal can be achieved by improving the effectiveness of the IBE and the IPP of which it is now part. Given these explicit assumptions it is appropriate to consider an accurate explicit statement of an appropriate research paradigm.
A paradigm can be relevantly described as “the basic belief system or worldview that guides the investigator, not only in choices of method but ontologically and epistemologically in fundamental ways” (Lincoln & Guba 2004, 105). Creswell (2013, 19-20) identifies that paradigms have also been described as ‘alternative knowledge claims’, ‘broadly conceived research methodologies’ or ‘interpretative frameworks’. While Lincoln and Guba (2004) conceive of the paradigm as involving (or being determined by) questions of ontology, epistemology and methodology, Creswell (2013) would include axiology as a central component. The role of values is acknowledged by Lincoln and Guba (2004, 112) but not given by those authors as central a status as Creswell (2013).

In short, a paradigm can be described as “a basic set of beliefs that guides action” (Guba cited in Creswell, 2013, 18).

While inevitably each individual investigator has a somewhat unique set of basic beliefs and thus research paradigms, various authors have categorised these paradigms in general terms. At its broadest level, paradigms could be analysed on the basis of those interpretative frameworks that suggest there is a universal knowable reality and those that suggest that reality is a culturally defined construct existing within a particular historical juncture. The former approach is associated with positivist and postpositivist paradigms. The (at least probably) knowable nature of reality of these paradigms suggests an epistemology that separates inquirer from the inquiry. Quantitative research may generally be seen as falling within this paradigm. Although as Creswell (2013) notes, much qualitative research in areas such as health sciences where qualitative research is often ancillary to quantitative investigation and is bounded within a post-positivist paradigm. By contrast research paradigms identified by terms such as constructivist, postmodern, pragmatic or critical theorist (to name only some) proceed on a basis that essentially reality is a cultural construct. These may also be termed ‘metaphysical paradigms’ (Morgan 2007, 57). Thus the research process, its findings and consequences are influenced by cultural factors such as who is undertaking it, when it is undertaken, what the researcher’s objectives are and the attitude of the researched. The identification of these issues is seen as an important component of the research methodology.

Of this second category much is written of the constructivist paradigm. A central tenant of the constructivist approach is summarised in the following (Lincoln, Lynham & Guba 2011, 102):

To me this means that we construct knowledge through our lived experiences and through our interactions with other members of society. As such, as researchers, we must participate in the research process with our subjects to ensure we are producing knowledge which is reflective of their reality.
The same authors suggest a further feature of a constructivist approach is an emphasis on ‘trustworthiness’, ‘credibility’, ‘authenticity’, ‘transferability’ and ‘confirmability’ as an indication of ‘goodness’ or quality of research (Lincoln, Lynham & Guba 2011, 109). These characteristics they argue give research ‘validity’ (cf correctness) amongst participants and position the research as a basis for action.

3.2.2. An Appropriate Paradigm

The constructionist emphasis on ‘validity’ as a measure of the quality of research and a foundation for policy development is attractive in the context of the nominated research problem. However, the constructionist conception of validity as “producing a knowledge which is reflective of [the] reality” (Lincoln, Lynham & Guba 2011, 109) of both researcher and subjects is problematic. In the context of the nominated research problem quite conceivably the constructivist reality would be one founded upon the potentially racist views of some stakeholders. This raises a question as to whether it is acceptable to the researcher to give ‘voice’ to the racist. The answer to this question can only be ‘no’.

This emphasis on race points to consideration of a further example of the second category of paradigm: critical race theory (‘CRT’). Parker and Lynn (2002, 10) suggest that CRT has three objectives: to present narratives as valid approach to examining race and racism in society; to argue for the eradication of racism and develop an understanding that race is a social construct; and to develop an understanding of the relationship between race and other ‘axes of domination’. ‘Race’ in this context should be understood in a social, historical, political and cultural context. It is not seen necessarily (or even) simply biologically (Ladson-Billings 1998). Parker and Lynn (2002) argue CRT relies heavily on narrative for two reasons. First, it has its origins in legal discourse where narrative is a legitimate (in fact arguably the dominant) form data collection; and, second, because the narrative provided a mechanism for giving voice to communities long silenced by institutional structures. As Parker and Lynn describe (2002, 11):

> The thick descriptions and interviews, characteristic of case study research, not only serve illuminative purposes but also can be used to document institutional as well as overt racism. The interviewing process can be pulled together to create narratives that can be used to build a case against racially biased officials or discriminatory practices.

At first blush then CRT would appear to provide an appropriate paradigm within which to investigate the nominated research problem. However, this may not be the case for the reason: that the axiological foundation of CRT is based in race and racism (Villenas & Deyhle 1998; Ladson-Billings 1998). By contrast, the
research problem, while clearly investigating a racial phenomenon, is not assuming a foundation in racism. Almost to the contrary the research problem proposes to investigate the apparent failure of a positively discriminatory measure. Similarly, the research is not primarily aimed at giving voice to Indigenous Australians any more than it is aimed at giving voice to officials of the Commonwealth Government. Thus, while the research explicitly has a transformational objective (to improve the efficacy of a positively discriminatory measure) it would not appear to be founded in CRT as it does not take racism as axiomatic. This noted it must also be stated that the research has suggested that some manifestations of historical or contemporary racist attitudes towards the abilities of Indigenous entrepreneurs and their firms.

3.2.3. A Non-Paradigm: The Pragmatic Approach

A further paradigm approach that has a keen focus on the outcomes of research is often termed ‘pragmatic’ (Cherryholmes 1992), although proponents of this approach eschew the term ‘paradigm’ (Morgan, 2007 66). Adherents of the pragmatic approach appreciate that research is undertaken in “social, political and other contexts” (Cherryholmes 1992, 14). The approach suggests that there is an “external world independent of our minds” (Cherryholmes 1992, 14); however, it also accepts that the question of whether or not any particular representation of that real world is accurate, is unknowable. Rather, “truth is what works at the time. It is not based on a dualism between reality independent of mind or within the mind” (Creswell 2013, 28). Cherryholmes goes on to identify the core of the pragmatic tradition (1992, 13):

> Pragmatic research is driven by anticipated consequences. Pragmatic choices about what to research and how to go about it are conditioned by where we want to go in the broadest of senses. Values, aesthetics, politics and social and normative preferences are integral to pragmatic research its interpretation and utilization.

In short, the researcher’s objective (informed by their own value system) informs both what and how to research. The research process assists in achieving the desired objective: “[I]t is not the abstract pursuit of knowledge through ‘inquiry’ that is central to a pragmatic approach but rather the attempt to gain knowledge in the pursuit of desired ends” (Morgan, 2007, 69).

It was acknowledged that the nominated research problem brought with it a number of implied values. The purpose of the research explicitly is to develop a research foundation not just for further action but for further action to achieve particular objectives that are informed by the researcher’s values. While these values encompass a denial of the validity of racism, the research problem is not (necessarily) founded upon a racial analysis of the subject matter. These
considerations suggest that the appropriate paradigm for the research is that identified above as ‘pragmatic’. With this conclusion in mind, it remains to demonstrate what is the most appropriate research methodology to give effect to:

- the research ‘paradigm’ adopted;
- the particular research problem context; and
- the explicit objectives of undertaking the investigation.

This task is undertaken in the following section.

3.3. Methodology

3.3.1. The Methodological Context

The Policy under investigation was put in place in 2011. However, as is apparent from the literature review section of this discussion, with the exception of the contribution of the ANAO (2015) there has been no thorough going appraisal of the policy undertaken at this time. However, as noted earlier, the main catalyst to undertake the current investigation is the fact that there have been very few instances where the IBE has been utilised. Necessarily then the volume of relevant documents is severely limited.

The absence of existing significant data relating to the IBE suggests it is necessary to generate this information. In the absence of pre-existing information in the form of written documents, generally three main methods of generating data in social sciences are identified: direct observation, interviews and questionnaire survey (Snow & Thomas 1994; Patton 2002).

As noted in section 3.1, the following analysis will conclude that of these options the most appropriate method for generating primary data in the context of the IBE is semi-structured interviews of relevant stakeholders. The results of these interviews and the limited documentary material that is available constitute the data for the purposes of the investigation. The use of different sources of evidence to investigate a particular bounded phenomenon (Noor 2008) would suggest that in aggregate the approach to be taken to the investigation is appropriately described as the ‘case study method’.

Following this contextualising introduction this section will proceed to:

- Establish why it is asserted that the interview was the most appropriate method to generate new data;
- Consider the variety of interview approaches that were possible and conclude that the semi-structured interview was the most appropriate in the current investigation; and
• Consider issues relating to the validity of the case study approach adopted.

The following section 3.4 will consider the identity of the interviewees in the context of an analysis of stakeholder concept as it applies to an investigation of the IBE.

3.3.2. Direct Observation, Survey or Interview?

The nature of the phenomenon investigated (the processes of government procurement) suggested direct observation was not an appropriate method for data generation. This is because the process from identification of need by the government/purchaser to ultimate conclusion of contract with supplier and subsequent discharge of obligation under the contract can take a number of years, often with long periods of little activity and significant confidentiality requirements. Direct observation by contrast is an effective method to observe a particular instant transaction (Wells & Lo Sciuto 1966) or if the researcher has the opportunity to stay in the field for the period over which the phenomenon occurs (Walsham 2006). This is impractical in the context of government procurement.

Survey or interview methods are the two possible remaining techniques. The survey approach was rejected for the following reasons. A survey approach is generally seen as having the advantage of its “efficiency in generating large amounts of data that can be subject to statistical analysis” (Snow & Thomas 1994, 462). The survey does though have two major drawbacks. First, a low response rate and small sample can undermine the credibility of the study (Gable 1994). Second, the instrument is not flexible. Once the instrument has been designed, trialled and deployed it cannot be amended to reflect the preliminary information gathered as part of the research process without developing and administering a new survey instrument (Gable 1994). The static nature of the survey also indicates it is an appropriate method to test a pre-existing hypothesis but not as apposite in the development of hypotheses (Gable 1994). In the instant case, where there has been no previous work considering the research problem, the static nature of the survey therefore appeared inappropriate.

The fact that the IBE appears to have been utilised on so few occasions pointed both to the inappropriateness of survey techniques and to the desirability of the interview as a primary data generation technique. This is because the small population size of engaged individuals and organisations created an opportunity to gain information from a large proportion of the stakeholder population but militated against a purely statistical analysis of this population. (The term ‘stakeholder’ is described below in section 3.4). The interview allowed for a
depth of insight from this small but comprehensive group of potential informants (Atkins 1984). Further, the interview can be sufficiently flexible so that information gained during the course of the research process can be integrated into subsequent interviews and, if need be, additional propositions to be explored in further interviews with informants (Qu & Dumay 2011). A further factor that pointed to interview as the desired approach is the absence of any previous research in relation to the research problem. The absence of previous research inevitably means that theories to explain the phenomenon to be explored can only be entirely speculative. In such a situation the greater depth made possible by the interview facilitated the development of explanatory theory that can be tested by research with a greater emphasis on quantitative approaches at a later time (Diefenbach 2009; Chetty 1996; Decrop 1999).

Having concluded that the interview was indeed the most appropriate technique for additional data generation it is necessary to further examine what constitutes an interview and what form of interview is most appropriate in the circumstances of the current investigation.

3.3.3. The Interview

An ‘interview’ has been defined as “a verbal exchange often face to face, though the telephone may be used, in which an interviewer tries to elicit information, beliefs or opinions from another person” (Burns, cited in Kumar 2014, 177). Snow and Thomas (1994) identify five types of interview:

- open-ended;
- structured;
- group;
- longitudinal; and
- telephone.

However, these classifications cannot be exclusive (an open-ended, longitudinal telephone interview is possible for example). Taking then the fundamental distinction between an open ended (or semi-structured) and a structured interview the question is which model was appropriate in the circumstances of this investigation?

There is a clear distinction between structured and semi-structured interviews. In a structured interview exactly the same questions are asked of each respondent in as much as possible the same way and often with limited response options (Qu & Dumay 2011; Kajornboon 2005). This has the advantage of facilitating coding and analysis but has the disadvantage of discouraging or preventing probing into the respondents’ answers. By contrast in a semi-
structured interview, while the interviewer has a list of themes, issues and questions to explore these, the order and content of the questions can be altered to facilitate probing, provide clarification and encourage a conversation (Qu & Dumay 2011). It “offers sufficient flexibility to approach different respondents differently while still covering the same areas of data collection” (Noor 2008, 1604).

The structured interview is more akin to a verbal questionnaire and more apt to the testing of hypothesis. A multiple choice interview or questionnaire is a clear example. Here the researcher has sufficient confidence in their understanding of the phenomenon being investigated so as to pose a finite range of responses to the questions put to the informant. (Atkins 1984). The “rich and interesting” (Atkins 1984, 253) data produced by a semi-structured interview is more appropriate to the development of such a hypothesis (Qu & Dumay 2011). In the circumstances of the current investigation where, as noted earlier, there was little existing research and a complex phenomenon to be explored, the semi-structured interview appeared the most appropriate.

Some information derived from semi-structured interview can yield both nominal and ordinal data that will be susceptible to quantitative analysis (Atkins 1984). To do so involves coding of the data gleaned from interviews. The process of coding itself involves consideration of a range of factors including the raw data itself, the issues raised in relevant literature, and potentially any hypothesis posited by the researcher (DeCuir-Gunby, Marshal & McCulloch 2011). The description of the coding process in respect of the current study is contained in the following section.

Accordingly, as noted in section 3.3.1 above, the research methods employed that in aggregate the approach taken to the investigation was best described as the ‘case study method’. The following subsection considers issues associated with the validity of the case study method, particularly in the situation where the results of interviews constitute a significant component of case study data.

### 3.3.4. Case Study and Validity

A number of definitions of ‘case study’ have been proposed. A common definition (Chetty 1996; Noor 2008) is that developed by Yin (1989, 22):

> The term refers to an event, an entity, an individual or even a unit of analysis. It is an empirical inquiry that investigates a contemporary phenomenon within its real life context using multiple sources of evidence.

Having assigned the research method as ‘case study’, it is appropriate to briefly consider the issue of the ‘validity’ that can be ascribed to results produced by this method. There are four criteria generally agreed for assessing qualitative
research: credibility (internal validity); transferability (external validity); dependability (reliability); and confirmability (objectivity) (Lincoln & Guba 1985; Reige 2003). Decrop (1999, 158) illustrates these criteria with the following questions:

- Credibility – how truthful are particular findings?
- Transferability – how applicable are the research findings to another setting or group?
- Dependability – are the results consistent and reproducible?
- Confirmability – How neutral are the findings (in terms of whether they are reflective of the informants and the inquiry and not a product of the researcher’s biases and prejudices)?

There is a substantial volume of literature that considers the soundness of the case study method in relation to these criteria (see for example Chetty 1996; Decrop 1999; Angen 2000; Reige 2003). Diefenbach (2009, 876) provides a succinct yet comprehensive summary of the concerns that have been expressed around the use of case study method:

Major areas of concerns are the influence of the researcher on the research design, weaknesses and limits of methods and theories, the selection of the units of investigation, interviewees and other data sources, the sufficiency and reliability of the sources of information, internal validity (truthfulness of the data) selection and grouping, interpretation and presentation of data, external validity (generalisation of the findings) testing of theory, as well as relation between social sciences and social.

Despite this apparent litany of doubt much of the literature raising concern about aspects of a case study approach also identifies methods by which these concerns can be allayed. For example Diefenbach (2009) suggests that issues of a researcher’s political perspective affecting the research process can be ameliorated by making this perspective explicit; that the absence of a predefined research question can be of benefit in an exploratory qualitative process; and that issues of generalisability only arise if it assumed that case study based research outcomes should have a predictive function.

In the context of the soundness of data collection, a case study approach could be challenged on the basis that the selection of the unit of investigation or interviewees was unduly influenced by the views and attitudes of the researcher or organisational gatekeepers. There are two responses to this challenge. The first is to appreciate that the case study is not seeking a quantitative representative sample. The second response is again that therefore it is incumbent on the researcher to make the basis of the selection of unit of investigation and interviewees explicit in order that the reader is aware of the
choices that have been made in the research process (Angen 2000; Diefenbach 2009).

The internal validity of case study data can also be a basis for concern. In essence this is a concern going to whether the interview (or other method) collects the relevant data or indeed whether the interviewee (knowingly or unknowingly) provides inaccurate information. Some level of comfort in this regard can be derived from the use of ‘triangulation’ (Jick 1979; Decrop 1999; Diefenbach 2009). Essentially this involves confirming the concurrence of data from a number – preferably three – (Decrop 1999) of different sources. In the current investigation the main source of information was the interviews. However, triangulation can occur within sources; for example, one interview to another (Reige 2003; Diefenbach 2009). Thus, triangulation within the respondents was possible.

A further significant concern that can be raised regarding the internal validity of the data goes to the role of the researcher in determining what data is included for consideration and how this data is organised – what Diefenbach called ‘selection and grouping’ (2009, 884). This concern identifies the fact that it is inevitably a subjective determination by the researcher as to what, out of the volume of data produced by numerous interviews or documents, is included for consideration and how this is grouped for analysis. The process of coding is a clear example of grouping. Similar concerns can be expressed in relation to the writing up of the data that is analysed. A number of mechanisms are possible to address this concern. Having more than one researcher involved in the process is commonly suggested (Atkins 1984; Reige 2003; Diefenbach 2009). Unfortunately this approach was not feasible in the current project. In addition though, mechanisms such as mechanical recording of data and confirmation of summary of interviews with respondents can be deployed (Reige 2003). Both these were employed in the current investigation. Ultimately though there must be a “degree of trust in the diligence in and integrity of the researcher” (Pyett cited in Diefenbach 2009, 885; see also Angen 2000) because ultimately decisions regarding the selection, analysis and presentation of data and their interpretation can only be subjective. While this can be portrayed as a weakness of the qualitative case study method, it is also its strength in that it allows for human creativity in the development of analysis (Diefenbach 2009).

Having identified that a number of the concerns regarding the validity of a case study approach can at least be ameliorated by an explicit in relation to the identified matters, it is appropriate at this point to summarise these matters.

- The researcher’s interest in some of the organisations involved in the research has been disclosed in the introduction.
The research considers it desirable to reduce the economic disadvantage suffered by Indigenous Australians, and that this goal can be achieved by improving the effectiveness of the Commonwealth’s IPP policy.

The research question (and subquestions) posed are pre-defined but necessarily exploratory in nature (that is, ‘what factors affect the IBE?’ as opposed to ‘what is the effect of factor X on the IBE?’).

The informants (who also constitute the unit of investigation) were selected on the basis that they constitute the limited population that may have knowledge of the research question.

3.3.5. Conclusions as to Methodology

This section has described the methodology adopted in the investigation. It has identified (in general terms) the limited extant data that was available for the purposes of the study and concluded that was necessary to generate additional data to found any useful analysis. The section then considered the alternative techniques available in the generation of additional data and concluded that the interview, or more particularly in the circumstances of the current investigation, the semi-structured interview was the most appropriate. The semi-structured interview was appropriate as it allowed the flexibility necessary in circumstances where there was limited pre-existing information. Noting that the investigation could best be described as adopting a case study approach, the section moved on to consider issues associated with the validity of this approach. The section concluded that while there may be legitimate interrogation of the validity of the case study approach with appropriate disclosure of the basis of the exercise of investigator discretion and acknowledgement of the limitations of the approach it was recognised as an appropriate method to provide valuable insights in fields where there has been limited prior research.

The following section 3.4 moves on to consider several matters relevant to the implementation of the identified methodology. These go to the basis for the identification of the interviewees, the notion of a ‘stakeholder’ and the identification of an appropriate unit of analysis.

3.4. Stakeholders and Implementation

3.4.1. Introduction

As noted immediately above, in order to implement the methodological approach described in the previous section it was necessary to determine the identity of the interviewees. This section examines the notion of ‘stakeholder’ and the application of the concept of stakeholders in the current circumstances. It is concluded that the stakeholder (or its individual human agent) was the
appropriate interviewee. Related to these considerations is the determination of the unit of analysis that was adopted in the investigation.

Not surprisingly, given the central role of the interviewee/stakeholder to the research project, it was determined that the appropriate unit of analysis is the stakeholder. However, this conclusion also requires some consideration of the relationship between an individual and the organisations of which they may be part in the identification of stakeholder.

The section continues by applying these more theoretical considerations to the circumstances of this particular investigation concluding that the relevant stakeholders are:

- Indigenous firms;
- The Commonwealth agencies engaging in procurement; and
- Those individuals and agencies responsible for the development and oversight of the IPP.

The section contains a discussion of the basis for this conclusion.

The section then progresses to identify the questions that will be put to the interviewees and how these questions relate to the particular research subquestions.

3.4.2. Stakeholder

Clearly, the central player in the phenomenon under investigation is the Indigenous enterprise that is, or is not, utilising the IBE in seeking the award of Commonwealth Government procurement contracts. This fact may suggest that the relevant stakeholder would naturally be an Indigenous enterprise.

However, while the focus of the study is necessarily Indigenous enterprises, these firms can only exist in a context: decisions about the awarding of contracts are made by government procurement officers, support is provided to Indigenous enterprises by organisations such as Supply Nation, and policy parameters are set by the Commonwealth and informed by academics and other advisors. In short the operation of the IBE (and the IPP) is a social phenomenon that extends beyond the Indigenous firms to which it is targeted to include other parties. It is appropriate therefore that these ‘stakeholders’ also constitute potential interviewees. The question arises though where the boundary to the phenomenon is to be drawn.

Reference to the literature regarding the definition of the term ‘stakeholder’ can assist in defining these boundaries. This literature inevitably commences with Freeman’s seminal 1984 definition: “A stakeholder in an organisation is (by
definition) any group or individual who can affect or is affected by the achievement of the organisation’s objectives” (1984, 46). As most writers in the area have noted though this definition is potentially vague and leaves “the field of possible stakeholders unambiguously open to include virtually anyone” (Mitchell et al 1997) or indeed anything (Laplume, Sonpar & Litz 2008). A number of further definitions which can be appropriately characterised as ‘broad’ or ‘narrow’ (Mitchell et al 1997, 856) have arisen from this ambiguity. Adopting this categorisation, ‘broad’ definitions (of which Freeman’s 1984 definition would be one) can be “unidirectional or bidirectional … [e]xcluded from having a stake are only those who cannot affect the firm (have no power) and are not affected by it (have no claim or relationship)” (Mitchell et al 1997, 856). Narrow definitions focus on the issue of salience or “which stakeholders do managers really care about?” (Laplume, Sonpar & Litz 2008, 1161). The answer to this question is summarised by Laplume, Sonpar and Litz as being “managers pay attention to stakeholders who have power in relation to the firm (i.e. possess valued resources) are deemed legitimate (i.e. are socially accepted and expected), and can muster urgency (i.e. have time sensitive or critical claims)” (2008, 1161). Between the broad and the narrow view are many variations. Mitchell et al writing in 1997 identified 27 in literature published between 1963 and 1995. Laplume Sonpar and Litz writing in 2008 identified more than a hundred.

In the tradition of the salience model (or narrow definitions) with its focus on, power, legitimacy and urgency are classification models that attempt to define stakeholders by their roles. Four roles are suggested in this type of model: client, decision-maker, designer, and passively involved. The first three of these roles are collectively referred to as actively involved stakeholders (Achterkamp & Vos 2008), while Freeman’s original broad definition of stakeholder may include some of those that would be described as passively involved in the classification model.

In the current project interviewees were selected from those actively involved in the IBE. Adapting the denominations of the classification model interviewees were selected from either:

- Indigenous firms (who constitute the decision-makers);
- The Commonwealth agencies engaging in procurement (the clients); and
- Those individuals and agencies responsible for the development and oversight of the policy (the designers).

As many of these stakeholders are organisational, as noted earlier by Yin (2012), the actual interviewees were often employees or officers of these stakeholder organisations.
3.4.3. Unit of Analysis

The discussion in section 3.3.4 (Case Study and Validity) highlighted the significance of the selection of the unit of analysis. It also pointed to the importance around transparency of the unit of analysis. In the context of a case study Yin (2012, 141) suggests:

> The case serves the main unit of analysis in a case study, although case studies can also have nested units within the main unit ... A case is generally a bounded entity (a person, an organization, behavioural condition, event or other social phenomenon) ...

The idea of nesting referred to by Yin above arises in circumstances where, for example, the main unit of analysis is a firm or government department in which case the individual employees, managers or contractors of the firm may be considered a “secondary unit of analysis” (Yin 2012, 146).

In an almost identical fashion to that described above in relation to identification of stakeholders, the Indigenous enterprise that is, or is not, utilising the IBE in seeking the award of Commonwealth Government procurement contracts may at first blush appear as the obvious unit of analysis in an examination as to factors affecting these enterprises taking advantage of the policy. However, as also discussed above, these firms can only exist, operate and make decisions in a context that is necessarily impacted upon by the actions of other stakeholders. A clear example of this is the government procurement officers making decisions regarding the award of Commonwealth contracts and the appropriateness of utilisation of the IBE.

For these reasons the unit of analysis adopted was the stakeholders as identified above.

With these matters addressed, it remains to identify matters that went to the implementation of the selected method in investigating the research sub-questions identified earlier. This required both identification of particular stakeholders (or at least classes of stakeholders). In cases where a particular subquestion is proposed to be addressed the question (or at least prompt) that it is anticipated will elicit the relevant data needs to also be specified. These tasks are undertaken in the following section.

3.4.4. Implementation

3.4.4.1. Stakeholder Identification

To commence with the identification of (classes of) stakeholders, three classes equating with the three classes of actively involved stakeholder were identified above. These were: Indigenous firms (referred to below as Group A), procuring
departments (Group B) and those who made or influenced the policy (Group C).
Set out in Table 1 below are the interviewees from each class.

Within each class of actively involved stakeholder selection of the actual
interviewee must be made on some explicit bases. The bases of selection are
necessarily guided by both the desire for research integrity and practical
considerations. These are discussed below.

Within the restrictions of (word) space and (researcher) time a maximum
number of twelve interviewees is suggested. This maximum is reinforced by the
practical aspect that given the limited efficacy of the IBE there are limited
numbers of both Indigenous firms who have been involved in the IBE and
government departments that have utilised it. In addition it is desirable to
achieve some balance between the views of he various stakeholder classes to
present an appearance of a balance of stakeholder views.

Further, as noted in section 3.4.4.1 above, while the unit of analysis is usually an
organisation of firm the actual interviewee must be an individual. Where
possible the interviewee should be the individual who actually made the
participation decision or formulated the relevant policy. Almost without
exception, this objective was achieved in the Interviewees who were selected
and ultimately agreed to participate and are listed in Table 1.

Table 1: Proposed Interviewees

Group A: Indigenous Firms (Decision-Makers)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
</tr>
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<tr>
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<td>Guma-ICRG</td>
<td>Chair (&amp; Forrest Review Advisor)</td>
</tr>
</tbody>
</table>

Group B: Procuring Departments (Clients)

<table>
<thead>
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</tbody>
</table>

Group C: Agencies or Individuals Who Made or Influenced the Policy (Designers)

<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maya Stuart-Fox</td>
<td>Dept Prime &amp; Cabinet</td>
<td>Assistant Secretary, Indigenous Economic Development Branch</td>
</tr>
<tr>
<td>Yvette Simms</td>
<td>Dept of Finance</td>
<td>Assistant Secretary, Procurement Policy and</td>
</tr>
</tbody>
</table>
3.4.4.2. Research Questions and Interview Question Matrix

The research subquestions were set out in Chapter 1 above. For ease of reference they are repeated below and assigned an identification letter. Table 2 which follows describes the proposed interview questions and identifies which of the research subquestions it is anticipated that each interview question will elicit data in relation to.

**Research Subquestions**

(a) What are the circumstances when the IBE has been used?

(b) What benefit to Indigenous people can be attributed to the IBE?

(c) Why is the IBE not utilised more often?

(d) How can these identified limiting factors be overcome?

**Table 2: Interview Question/Research Question Matrix**

<table>
<thead>
<tr>
<th>Interview Question/Method</th>
<th>Research Subquestions Relevant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Can you describe your organisation? (For Group A also describe number of Indigenous employees and company holding structure)</td>
<td>a, b</td>
</tr>
<tr>
<td>What involvement have you (or has your organisation) had with the Policy?</td>
<td>a,</td>
</tr>
<tr>
<td>Why do you think more firms have not taken advantage of the Policy? (What was your experience in taking advantage of the Policy)</td>
<td>a, c</td>
</tr>
<tr>
<td>How do you think the Policy could be made for effective?</td>
<td>d</td>
</tr>
</tbody>
</table>

3.5. Ethics, Implementation and Coding

3.5.1. Ethics

The project is research involving human subjects (the interviewees) carried out for the purposes of a higher degree at Deakin University. As such the project required consideration pursuant to the *Deakin University Human Ethics Guidelines* (Deakin 2015). The project has a focus on ‘Aboriginal or Torres Strait Islander peoples or issues’ (Deakin 2015). As such the project was automatically deemed to be ‘not a low risk project’ and required consideration by the Deakin
University Faculty of Business and Law Human Ethics Advisory Group (‘HEAG’). In considering the ethics application for a research project involving Indigenous Australian people or issues the HEAG is guided by an ethical assessment of the project informed by a number of published ethical guidelines. These are in particular the National Statement on Ethical Conduct in Human Research (Chapter 4.7 Aboriginal and Torres Strait Islander Peoples) (NHMRC 2015) and the Guidelines for Ethical Research in Australian Indigenous Studies (AIATSIS 2012). Of these the AIATSIS guidelines are probably the most relevant to the current project.

The AIATSIS Guidelines are based around 14 central principles. Without at this point setting out each principle, many are informed by the fundamental notion that Indigenous people have the right to free prior and informed consent in relation to any activity involving or affecting them or their lands or culture. In addition, the AIATSIS guidelines at principle 11 articulate that: “Indigenous people involved in research, or who may be affected by research, should benefit from, and not be disadvantaged by, the research project” (AIATSIS 2012, 15).

The project stems from the researcher’s involvement as the Chief Executive Officer of Native Title Services Victoria Ltd (‘NTSV’). NTSV is a native title service provider under the Native Title Act 1992 (Cth) funded by the Department of Prime Minister and Cabinet to assist Victorian Traditional Owners in achieving outcomes under that legislation. As such the researcher has as clients the Traditional Owner Corporations of Victoria. A key policy objective of these Traditional Owner groups is enhancing and extending the operation of Indigenous preferential procurement policies (FVTOC 2015).

The research was directly inspired by the desire to achieve this policy purpose. Correspondence to this effect from the Traditional Owner Corporations with which the researcher is involved was provided to the HEAG. In addition appropriate consent forms were obtained from all interviewees who were beforehand provided with plain language statements explaining the project.

More generally the interviewees were given the opportunity to have their comments anonymised. Two respondents did in fact chose to identify as ‘Anonymous’. A ‘proof’ of the transcript of their interview was provided for corrections prior to analysis. The summarised report of the interviews (contained in the following chapter) was also made available to each interviewee for comment prior to thesis submission.

3.5.2. Implementation

The interviews were conducted between February and April 2016. Five were conducted over the telephone and the other seven in person in Melbourne and
Canberra. The interviews lasted (on average) for approximately one hour and were recorded. The recordings were transcribed professionally. The transcripts were provided to the respondents for correction and a number of respondents took the opportunity to undertake minor editing of their comments.

3.5.3. Coding

Weston et al (2001, 386) describe a “recursive, iterative process” in developing a coding system that took somewhat over four years to complete. Basit (2003) describes a process that was undertaken in significantly less time. Both projects though involved a similar approach. In both cases the researchers describe commencing with a reading (and rereading) of the transcripts of recorded interviews. Aside from (re) familiarisation with the contents of the transcript, the reading facilitates an open coding process in the sense described by Male (2016, 182): “the identification of categories which emerge as the data is examined.” Despite this open coding the researcher’s familiarity with the much of the subject matter did suggest a number of a priori codes which were added to by emergent codes that were apparent from the transcript.

This transcript perusal led to the development of two further tools. The first was a basic spreadsheet identifying the key themes that emerged from the transcripts in the columns matched by rows where the interviewees were identified. This provided a simple index to which interviewees identified with a broad category of issue. In essence this is (a very simplified form of) the codebook described by Weston et al (2001). The spreadsheet by itself is, though, a very bare tool. In summarising respondents’ comments to manageable pieces of information to fit within a spreadsheet the richness of the comments can be lost. Basit (2003, 146) describes the dilemma when she identifies:

> ... two strategies which are commonly used for analysing these data: to report the results in terms of a relatively simple category scheme or to put before the reader by extensive though necessarily selective, quotation the data themselves, hoping this that the essential flavour comes through.

As with Basit, in the event both approaches were utilised. However, the second approach required the creation of manageable information not as bare as the spreadsheet. Accordingly, the other tool that was developed was the interview reports which are contained in the following Chapter Four. The report provides a summary of the interview prepared by the researcher but which the interviewee was provided with the opportunity to make comment. Where comments were made they were incorporated. The reports also contain a number of direct quotes from the interviewee some of which are used also in the analysis of the interviews contained in Chapter Five.
The reports were produced through a process of first re-reading and then summarising the transcripts and utilising this as an opportunity to collect respondents’ comments about particular issues together despite where these comments may have occurred in the course of the interview. The transcript page reference was included with the comment to facilitate subsequent verification by the researcher. This first draft of the interview report was then rewritten using style and syntax more appropriate for final publication. It was at this stage that many of the quotes were included in the final interview report. Where included the quote are direct quotes unedited from the transcript.

The combination of the two tools allows for analysis based on the frequency with which a particular factor was identified by respondents to be integrated with more detailed analysis of the specific comments made in relation to that matter. The inclusion of the interview reports, particularly given the respondents’ opportunity to comment on these should also assist in overcoming some of the methodological deficiencies of the stakeholder approach in at least ensuring that there was respondent concurrence in the researcher subjectivity. The interview reports also allow for triangulation of data between respondents’ reports particularly where not all respondents’ comments have been reproduced in the analysis chapter.

The interview reports represent an attempt to include the ‘voice’ of the respondents in the research. However, it is undeniable that the process of coding and summarisation inevitably involves subjective decisions by the researcher in relation to which data is not included and how the data that is included is presented. However as noted above (section 3.3.4) in the end there must be a “degree of trust in the diligence in and integrity of the researcher” (Pyett cited in Diefenbach 2009, 885) as decisions of this kind can only be subjective.
CHAPTER FOUR – RESEARCH RESULTS: REPORTS OF INTERVIEWS

This Chapter contains the reports of the interviews conducted with respondents. Each report contains a summary of the interview conducted with that respondent. The report is broken into sections corresponding with the broad research sub-questions. The report is clearly not a verbatim reproduction of the transcript of the interview. However on occasions a direct quote from a respondent is included. A direct quote is clearly indicated as such in the following reports.

The reports have been grouped according to the several category of stakeholder as previously described. These are:

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<tr>
<td>Maya Stuart-Fox</td>
<td>Dept Prime &amp; Cabinet</td>
<td>Assistant Secretary, Indigenous Economic Development Branch</td>
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<tr>
<td>Yvette Simms</td>
<td>Dept of Finance</td>
<td>Assistant Secretary, Procurement Policy and Advice</td>
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<td>Pete Dunn</td>
<td>GHD</td>
<td>Business Development Manager</td>
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<td>Supply Nation</td>
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The reports are presented in this Chapter without any commentary or analysis. Analysis of the interviews is contained in the following Chapter.
4.1. Simon Walter, 2 February 2016 (Group A)

Business Development Manager – Barpa Constructions

Describe Your Organisation

Simon Walter is employed by Cockram Constructions, a Melbourne-based international construction company that was established in 1861. It is a management-owned, second-tier construction company. Simon also performs the functions of Business Development Manager for Barpa Constructions. Barpa Constructions is a joint venture (‘JV’) between Cockram Constructions (49 per cent) and the FVTOC, through its subsidiary Federation Enterprises (51 per cent). Barpa was specifically established to lever the advantages presented by the IBE. Barpa was established on 30 June 2014. Cockram’s motivation in participating in Barpa was partly influenced by notions of ‘corporate social responsibility’, a desire to work with Aboriginal people to improve their position; and, in part, a potential profit opportunity it saw in the IBE. Cockram had been preparing to tender for a job in Victoria and was told that it had been awarded under the IBE. This event made Cockram aware of the IBE and its potential.

Barpa (and Cockram) are essentially specialist contract manager firms. Neither firm employs tradespeople or labourers directly. Rather, they manage subcontractors to do the actual construction work. So to use the example of a Department of Defence Puckapunyal Base job currently on foot, Barpa has four employees on site and there are 40 contractors. Barpa currently has three Indigenous employees but uses specialist non-Indigenous staff seconded from Cockram when needed.

Barpa has developed reporting mechanisms to catch the Indigenous status of contractor staff but the data is not yet available. These reporting mechanisms will also be use to Cockram Constructions. Cockram is also required to demonstrate satisfaction of the IPP Indigenous employment targets as part of the Commonwealth contracts Cockram undertakes.

Describe Your Involvement with IBE

Barpa has recently been awarded its first job with Defence at Puckapunyal. This was after over a year of going to talk to Defence officials in Canberra. With the Puckapunyal job Defence approached Barpa and asked it to tender (but not a public tender). Otherwise the paperwork was the same as any other Defence job including the need to show qualifications and certifications. The Puckapunyal job is about $2 million. Barpa is in discussions with Defence about other bigger jobs; Defence approached Barpa about jobs that were coming and Barpa advised that
it had capacity to undertake that work. Barpa is currently at pre-contract stage with Defence in relation to this work which is valued at about $19 million.

The jobs that are coming up are below the $7.5 million limit where a public tender process would be required (if it were not for the IBE) but in practice Defence would normally put these jobs out to public tender if it were not for the IBE.

Procurement rules aside, Defence categorises its contracts by size (big, medium, small) and this can affect the amount of tender paperwork involved. Under the IBE the big jobs will still involve a tender but not a public tender. The tender process gives Defence assurance about value for money.

The process of getting work under the IBE was very lengthy. There was a lot of early face to face discussion with Defence procurement officials outlining Barpa’s existence and capacity and suggesting that Barpa might write to the officials outlining these matters. Once there was an indication that this was an appropriate course Barpa would write to the officials outlining capacity and so forth. Defence would respond indicating that there may be some appropriate work and the process would continue.

*It is unlikely that a ‘cold call’ seeking allocation of a particular job would be successful. Despite the IBE, if the procuring officials did not want to allocate a job to a firm plenty of ways could be found to avoid doing so.*

Defence is the main client for Barpa because it is the Commonwealth agency that has the greatest construction spend and Barpa is a construction company. There are some other Departments that undertake construction work such as Finance and Tax, Commonwealth Science and Industry Research Organisation (‘CSIRO’) and the Australian Maritime Safety Authority (‘AMSA’) but overwhelmingly it is Defence.

Certainly Defence is the best organised, and its procurement is the best run. So even though Defence can sometimes be difficult, it is probably better than anyone else.

**Issues that Have Impacted on IBE**

A first issue is the lack of knowledge of the policy. Cockram found out about it when it missed out on a job because of it, but only really understood the policy when it met with representatives of the FVTOC to talk about it. That meeting was facilitated by Pete Dunn from GHD. Clearly if a firm the size of Cockram was not aware of the policy it was not broadly publicised.
Even within Government it is not well known. There are plenty of statutory authorities that seem to think the IBE does not apply to them. This mistake should be pointed out to them by Prime Minister and Cabinet.

A bigger issue though is the conservatism of the government people who do the procuring; procurement officers and sponsors/advocates – the budget holders. They rely on the central procurement function to prepare and run the tender process, doing the evaluations. There is a lack of knowledge in the budget holders and a fear factor.

> It just goes against all their public sector grain of, you know, the heavy responsibility they have to spend public money and the incredible due process they have to go through, the burden of all that, to suddenly short circuit it with this favouritism is kind of possibly seen as risky.

Another issue is supply capacity. There are just not many Indigenous (non-civil) construction companies to be awarded contracts. Most Indigenous construction capacity was civil and involved in the mining sector, although there was some presence of Indigenous construction firms in Queensland and the Northern Territory. So Cockram was very surprised when there was an Indigenous firm that was awarded a government science laboratory job in Port Melbourne.

The public sector purchasing culture of caution is far more important than the supply issue though. The idea of picking winners is such a conflict of their mindset. Especially procurement people; they are not policy driven apart from to get best value for the dollar for the department. As noted earlier, even with the IBE if an official does not want to allocate a job outside of a public tender process, there are plenty of ways around the IBE.

The normal value for money calculation involves a simple matrix of price against capability/risk assessment. This is why it might not be the lowest tender that wins. People that are used to doing the usual matrix find adding the Indigenous factor difficult.

Most Australians are completely ignorant of Indigenous issues apart from the mix of bad news and guilt. To ask someone like that to decide whether Indigenous participation is worth an extra 10 per cent or greater risk. It is asking for a sophisticated assessment of value for money. How does an officer dollarise the Indigenous thing? It is hard for people to do.

A procurement officer may have a notion of value for money because there will be a pre-determined price range for a job. But the final decision may come down to a difference of 1 or 2 per cent so the officer will find it hard to deal with an Indigenous tender that could be +10 per cent. They do not know how to do it. Barpa is a guinea pig in the current contract it is working on.
Even after the IPP targets were announced there is still reluctance to use the IBE. Procurement officers suggested to Barpa that the reluctance comes from further up the hierarchy – with the budget holder or the project decision-maker.

The requirements of certifications from the ISO Safety Accreditation and Federal Occupational Health and Safety Commissioner (‘FOHSC’) can be very difficult and require some expert attention from senior management. However, these accreditations are necessary particularly for bigger jobs. It would be a big investment to get these accreditations for a smaller outfit or start up.

**Ways IBE Can Be Improved**

To improve the use of the IBE takes more leadership and vocal advocacy and championing of it.

> I think the way to get more out of it is through leadership and through vocal advocacy and championing of it and making an example of successful cases and say: “Hey everybody! Look at these guys. They used exemption to do this. This is fantastic. This is what we want.” If [government is going to] be aggressive like that, I think you’ve got to be tolerant of some issues maybe arising and having a few stuff ups and saying: “We know there’s gonna be stuff ups. That’s what you get”, and it’s not just the Aboriginal businesses and contracts that have stuff ups. There’s plenty of stuff ups all over the joints, so let’s not have one stuff up in an IBE awarded contract pull it – the whole thing. We’re ready for it and we know it’s going to happen, but that’s part of what we do, but we’re running a portfolio here. We put 80 contracts out. Three of them went bad, so what? You look at contracts in a white business and probably ten of them went bad. So, I just think there’s a real need for strong public advocacy and championing and backing people who do it.

In addition the introduction of some measurement process around the use of the IBE and publication of these will assist. It has taken everyone a while to get the IBE going but it is now. It is important that its evaluated in five or six years and not one or two to see what it can really do.

The basic elements of the IBE are right. There needs to be commitment from the top levels, politicians and particularly senior bureaucrats, to say “the IBE is here we really don’t mind, in fact we want you to use it”.

Setting targets under the IPP has made a significant difference, particularly the remote area set-asides. Because Barpa was set up before the IPP was introduced it is starting to get more direct approaches from Departments calling Barpa to see if it is interested in particular jobs.

The possibility of a number of Indigenous firms all tendering against each other is wasteful. It takes a lot of resources to tender and if the idea is to grow Aboriginal business, it is self-defeating. It would be better if firms were allocated
particular projects guided by capacity. The Barpa JV model helps overcome the difficulties around the bureaucracy of tendering. Cockram is set up just to do this. For a $300,000 contract it can be hundreds of pages of tendering, which is a waste of Indigenous resources if it is unsuccessful. If you know there is a job at the end of it, then it can be worth it of course. In addition the JV model overcomes the difficulties of requirements of ISO and other health and safety certifications.

The IPP targets raise the issue of whether targets are best set by number or value. At present Barpa is probably doing a number of small jobs that would be better suited to a smaller outfit but having Barpa do them satisfies a number of contracts target. The current structure of using both number and value allows for a spread of big and small jobs (and tenderers) and normalises Indigenous supply.

Beyond the IPP targets it would be good if procurement officers were more proactive in contacting Indigenous suppliers and say “you know what you’re best at, this is what is on the books and coming up, don’t be greedy but pick something that you think you would do a god job at, then write to us and tell us why”. Of course what is on the books usually already has a procurement plan attached to it. It is best not to upset that but to think about Indigenous procurement early.

The Federation and Cockram have invested a lot in the project. It will take time for the benefits to flow back into the Indigenous community and lead to more Indigenous people coming back into the system as a result of the impacts of those benefits – the virtuous cycle – but it takes 10 to 15 years. From inception of the Barpa project to the time when we see the first real community benefits flowing from it will take five years. Given this time frame you need some policy certainty.

It would be good if State Government (particularly in Victoria) copied the Commonwealth policy. It would help defray the investment cost if the target market was ultimately bigger.

The IBE is a great policy. We do not need any more initiatives or other policies we just need to use what we have got, embrace it, advocate it, communicate it, celebrate it, don’t freak out if there is a mistake or two. Keep going. Stay the course.
4.2. Jeremy Clark, 18 February 2016 (Group A)

Managing Director, Barpa Constructions

Describe Your Organisation

Jeremy Clark is the Deputy Chair of the FVTOC and the Managing Director of its commercial subsidiary, Federation Enterprises Pty Ltd. FVTOC is a peak body of the various native title organisations in Victoria. Jeremy is also General Manager of Barpa Constructions. Barpa Constructions is a JV between Cockram Constructions (49 per cent) and Federation Enterprises (51 per cent). Barpa was specifically established to lever the advantages presented by the IBE. Barpa was established on 30 June 2014.

The FVTOC was interested in the Barpa project as it saw an opportunity to pursue its economic agenda.

The FVTOC economic agenda has several elements: to generate income to support the activities of the FVTOC, to make it independent of the need for government funds, and allow it to pursue its own political agenda. Another key goal is to generate employment both directly in Barpa and through its member traditional owner corporations; that is, employment directly associated with Barpa and funding other cultural strengthening projects and helping traditional owners build their own enterprises. FVTOC also hopes Barpa will provide another career pathway for young Koori people to do things like engineering, project management or cost estimating at university. Currently most Indigenous university students do courses in health, education or law. Barpa provides a whole new range of opportunities.

Barpa currently has three Indigenous employees. It is primarily a project management company and uses subcontractors for the actual trade work. Barpa hopes to see opportunities opening up with the subcontractors and opportunities for Indigenous subcontracting businesses. There are well-known statistics around the fact that Aboriginal businesses employ more Aboriginal people.

So whether it is employment with Barpa, as a subcontractor or for a subcontractor there should be more employment opportunities and that makes for healthier communities.

Aside from the IBE and Defence, Barpa is also pursuing opportunities with the private sector that may be coming out of its reconciliation action plans.
Describe Your Involvement with IBE

It took more than 12 months for Barpa to be awarded any work. There were seven trips to Canberra over that time to meet Department officers. Those officers knew of the policy, they were fairly positive about the policy, but translating that into actual contracts was another thing. More recently, in the last five months Barpa has had the opportunity to tender for work (mainly Defence but one with Finance) and has been awarded seven contracts. Some of those were pretty small but a couple of larger ones now.

The total value of the contracts to date would be about $7 million, but the contracts range from about $200,000 to $2.8 million. The Barpa partners were starting to get a bit dismayed but things are picking up now, although it took two years and a lot of investment of time and money and people to get there. As part of the process Barpa staff spoke to a lot of Departments as well as Defence and Finance, such as Tax, CSIRO and Australian Maritime Safety Organisation.

Issues that Have Impacted on IBE

Cockram has a long history of Commonwealth contracts (in particular Defence contracts), so Barpa was able to use these contacts when it started. Even then it was very difficult for both the Federation and Cockram. The Defence capital works structure is divided into minor, medium and large works and then divided again along State and base lines. On top of that, Defence itself will outsource a lot of the work to a private sector project manager who would manage the procurement. There is not just one firm that does all the Defence work; there is a panel of these firms and each will do different projects. There was some confusion with these project managers (and Defence) as to whether the IBE applied to projects they were managing.

So one difficulty is the number of people involved; there is not one key contact.

In other Departments even when they manage their own projects they have suppliers they are used to going to and it’s hard to get them to change. This is why Barpa hasn’t really gotten any contracts outside of Defence.

Uncertainty as to Barpa’s capacity was another issue.

One of the issues we came up against was the fact that Barpa was a new company, even though our capacity partner, Cockram, has been around for 150 years and has a fantastic track record on jobs and it’s done jobs up to 140 million dollars’ worth. There was some uncertainty about Barpa’s track record because we didn’t have one … But our capacity partner has done heaps, and they – while, they accepted that; in the bureaucratic type black and white mind, we had no track record.

There was also the issue of accreditation particularly with the FOHSC. A company cannot get a job or even tender on a job above $4 million unless it has FOHSC accreditation. A company cannot get FOHSC accreditation unless it has had a job to demonstrate its systems. It is a chicken and egg situation. Eventually Barpa was able to use the Cockram accreditation and tender for this work.

It took two years and a lot of investment of time and money and people to get Barpa there. It really depended on the goodwill of both JV partners.

The other technical issue with construction is the bonds that are required. For a $20 million job a company would need a bond of about 25 per cent of the contract price that has to sit in an account until the guarantee period is over. Barpa used Cockram to guarantee its bond requirements but most Indigenous companies could not manage it without a capacity partner.

When you think about the time involved and the accreditations necessary it really is only the JV structure that could make the IBE work. You would need a lot of resources and even then you would not want to rely on the IBE for a start-up. As far as Jeremy is aware other Indigenous companies that have succeeded in construction were in mining and had mining companies as capacity partners.

The policy had been in place since 2011 but none of the FVTOC member corporations was aware of it until we had a presentation from Pete Dunn at GHD in 2013. He wasn’t doing it as part of any program, just that he was passionate about developing Indigenous business. It can’t have been that widely promoted by government or else FVTOC members would have heard of it. Before Jeremy’s current job he ran an Indigenous cultural centre for 10 years, so he was in business and providing services and had never heard of it.

It was Pete Dunn that helped link the Federation up with Cockram as well. So Barpa’s success is just fortuitous really, the Commonwealth had very little to do with it. In fact at the end of the road there were some recalcitrant Commonwealth procurement officers. It was fortuitous also that Pete Dunn could link up two partners who had goodwill and capacity to invest the two years lead time. It would be hard to imagine an individual, family or community that would have the resources to invest and the opportunity to link up with a capacity partner that had the resources, reputation, expertise and contacts to make it happen.

There are a range of other factors as well as the bond mentioned earlier: the insurances, registering on Austender, knowing what’s coming up before it gets on to Austender, the expertise needed to prepare hundreds of pages of tender documentation, having the contacts and keeping up with the contacts.
The procurement officers struggled to understand how to demonstrate ‘value for money’ without a competitive tender process. The bureaucracy is set up in a way that people are very scared to step out of their level of responsibility or don’t want to put the thing on the line to push things through. So you need some champions.

Value for money should be able to be satisfied by the Department’s general market knowledge and their initial estimating process. So in the end the reluctance was probably not so much value for money but more the concern that the officer taking the decision to do something new would pay negative consequences for it afterwards. Even if they said: ‘I was applying the IBE’ it’s still the individual officer who has to take responsibility and that can be daunting.

Another related problem is the high turnover of staff in the decision-making positions. So you invest time talking an officer through the IBE and then the officer will move to another position or department or into the private sector and you have to start all over again. You have to get up to Canberra and start again with the new officer.

Supply Nation has not done a lot but Barpa has not really sought its assistance. Supply Nation is good at networking particularly with private sector – the ‘meet and greet’ – but not so much the actual support.

The best thing Supply Nation has done is to create the Indigenous Business Directory which is part of the policy now. Departments can look at it and see if there is an Indigenous supplier for whatever it is they need. However the directory lists whatever a supplier puts in it, so if a small civil company from Perth says it will do construction in Victoria they will come up in the Directory. Apparently there are 400 Indigenous companies working in Victoria according to the Directory! It could do with some work.

**Ways IBE Can Be Improved**

One difficulty is the number of people involved. There is not one key contact. It would be useful if each department had a centrally designated contact point to work with. In departments other than Defence, even when they manage their own projects they have suppliers that the Department is used to going to and it is hard to get them to change. A central contact would assist with this.

Government or an organisation like Supply Nation should run very practical programs to help Indigenous businesses learn about the technical requirements that have been identified; to introduce those firms to the contacts and so on. There probably needs to be more support for Indigenous businesses. Something along the lines of what Pete Dunn was doing voluntarily with Barpa. Also as
noted earlier the Supply Nation Indigenous Business Directory could be refined so that a firm must be able to demonstrate the capacity it claims to have.

Setting the targets is one thing but they need to be strictly enforced.

*The targets have to be enforced and they keep telling us they’re going to be and they’re going to be held to account ... Well, I’ll need to see that.*

Greater promotion of the policy in the bureaucracy and with Indigenous businesses would help achieve the targets and ensure there is greater scrutiny around the targets being achieved.

Indigenous Business Australia (‘IBA’) should have been in this space but it has not been. It has just run their three-day business workshop, the sort of thing the ANZ does for free. IBA has a bit of work to do. IBA seems to have a lower profile in the southern states.

**Black-Cladding**

In a complex industry like construction there is just not the existing Indigenous expertise to develop a firm. Indigenous interests have to have a capacity partner or else it just will not happen. So at present Cockram does the majority of the (particularly) technical work but the long term aim is for Barpa to be a stand-alone company independent of Cockram’s resources. This is the only way that FVTOC can start up a company like Barpa.

‘Black-cladding’ is too simplistic a term. Some arrangements should be criticised but you at something like Barpa; there are thousands of Traditional Owners that stand to benefit when it is at full function.

If a single Aboriginal person was partnered with a white company who is benefitting? Well it is benefitting that person and their family but how do you drill down to what are the benefits that you want to see from the program? Even if a mum and dad company hooked up with a Cockram and got very rich, they will still be employing more Indigenous people. They will be doing scholarships and the like and they will have an effect on their partner company.

Before Barpa, Cockram had no engagement with Aboriginal people. As one of the Cockram personnel said once ‘you know we’re builders, what we do is build’. They had no engagement with politics or community issues but they could see something like the partnership as their corporate social responsibility. They could get some money out of it eventually sure but that’s not why they did it. So the partner needs to want to make a difference.

It is complex because if you see an Aboriginal-owned company that is not achieving employment targets, well the business is still doing well. The benefits
will flow into the Aboriginal community and they will still start employing more Aboriginal people even if not in the short term. It is not all about jobs in the short term.

There is also an issue that some people are happy to support a program that helps Aboriginal People “but geez we don’t want to see them actually driving a Mercedes, be wealthy or be successful”. Really they are happy to help Aboriginal people to not be a welfare burned but not get above any white people. It’s the same in sport – be a good grateful player but don’t get too big for your boots. I think business involvement, the economy it’s the same.

The following quote from Jeremy highlights the significance of broader role of the IBE:

Preferential procurement really does give us a foot in the door to be involved in the business world and if we can have successful Indigenous businesses in a range of industries – that would hopefully lead us as a people to lift a lot of our poorer cousins, and brothers and sisters to a level where they can achieve a better standard of living and being able to offer a good education for their children, provide an opportunity to enter into the career that they’ve never thought of and as well as support vehicle to strengthen their cultural ties to their country and everything else. It’s not just all about economy, but you need capacity and resources to achieve a lot of what we need to achieve as Aboriginal people.
4.3. Anonymous, 14 March 2016 (Group A)

General Manager eNPC

Describe Your Organisation

eNPC Australia is wholly owned by the Waanyi people from the Gulf of Carpentaria. It started about 14 years ago to provide mining related services to Century Mine (which has shut now). It provided crushing, screening, equipment hire and labour hire but has since diversified. It employs 50-60 people about 75 per cent of whom are Indigenous. In 2015 it had about a $20 million turnover. Since the mine closure eNPC has moved into some drilling and quarrying operations. In general the mine closure has been difficult for the company and it has been looking for partnership opportunities. One of these is with a construction company to build in remote locations. The work with this company was picked up through the IPP. eNPC is also looking at a partnership with a civil construction company to do more remote civil work.

Describe Your Involvement with IBE

eNPC started working on the IPP contract about two years ago and it was signed in late 2015. It is the construction of defence facilities (sheds) at various locations in the Territory, Western Australia and Queensland. Although the contract was signed during the currency of the IPP it was negotiated before that – when there was only the IBE.

The IBE contract is quite small for eNPC overall but it is seen as an important pipeline into the future. The increased civil experience in particular is useful because it gives eNPC the local experienced labour to undertake more of the civil roadwork back in the Gulf. Ultimately eNPC would like to see IPP contracts as constituting about half its turnover.

The contract value is $10 million but it may increase as the work progresses.

In about 2013 eNPC realised that it needed to branch out from the one client (Century Mine) because the mine closure was coming. eNPC were looking for opportunities. Anonymous didn’t know about the IBE then but that year he went to a conference in Alice Springs and met Pete Dunn of GHD who told him about it. eNPC hadn’t really had any involvement with government work before then, mainly mining.

eNPC has found that DFAT is interested in the company doing some international aid work because of the IPP. The issue of value for money seems to be pretty easily resolved here because of DFATs existing remuneration framework and
experience in the market. It is really more about capability and experience in the area.

The only companies Anonymous knows of that have gotten work under the IBE are eNPC, Barpa and PSG.

**Issues that Have Impacted on IBE**

The main issue eNPC had in securing the IPP contract was the requirement for Federal Safety Commissioner accreditation. In the end eNPC got certification based on the existing certification of the partner firm but it took a year of negotiation, and even then eNPC had to complete and be audited on a number of little projects before the partner certification could be extended to it. Similar issues have applied to eNPC’s civil contracting work; even though the company has more experience there – it is just easier to use the JV accreditations.

There was certainly no advertising. Anonymous is not aware that there had been any previous experience of Aboriginal (particularly community) organisations picking up Commonwealth procurement work, so without advertising it simply wasn’t on the agenda. His experience is mainly in remote communities, though. There has not really been any Commonwealth procurement opportunity in remote communities anyway. The only real presence is Centrelink offices.

Certainly most procurement offices are used to focussing on tendering process and achieving value.

The requirement for sureties of financial bonds can be very difficult for most community operations that do not have strength in their balance sheets.

In most of the remote communities the only experience of Government has been in a grant-based context. To change that into tendering and ‘value for money’ procurement is to turn all of that on its head. Most people in remote communities are born into a welfare system. To get remote community people into procurement you need external actors (like eNPC and Barpa) to be involved.

Even when people in remote communities do try to start small businesses, they rarely have even the basic financial skills to make it work. The original Chair of eNPC was a ringer, not very educated at all. It will be interesting to see where the IPP contracts over the next few years fall.

**Ways IBE Can Be Improved**

The IPP targets have made a big difference. The change for procurement officers from ‘available policy’ to ‘measurable output’ made a big difference. That’s why it is such an opportunity. Anonymous would imagine that if a public servant is
told to do something they do not have a hesitation about doing it. This is what the targets achieve. From the conversations eNPC has had with DFAT, after the targets have been announced they are keen as mustard. Even though the Department still needs to achieve value for money, now it can look creatively at how to achieve it. Most of the JV partners are familiar with the requirements of value for money, so this is not a difficulty, at least not with the targets set. The targets make it real.

However, there still will not be many remote Indigenous communities that can get a contract in their own right. The partnerships will be vital.

Aside from targets the most important thing is monitoring measures. Not letting it get mossy. Be on top of what is and is not working. To show that it can demonstrate impact back to the community.

Neither the IBA nor Supply Nation has really figured out what eNPC does. It is registered, but not certified, with Supply Nation. Supply Nation did not want to talk to eNPC because it employed a white manager. It did not go down that well with eNPBC. However, eNPC got the Defence job so being certified does not seem to matter that much.

It is important to be on the register just so the procurement officers know a firm is there. Supply Nation is probably more important for Departments that do not do a lot of procurement who do not know the players. That sort of work does not really bring much benefit to a community.

There needs to be mechanisms to help people with the processes of start-up: insurances, certifications, and support while it is all coming together. Otherwise it will be hard to get new players into the market.

**Black-Cladding**

The relative lack of capacity of many remote communities can lead to a risk of black-cladding. It is important that there are mechanisms in place to ensure subcontracting and employment opportunities are directed back to communities and procedures to transfer management.

There are many stories in mining of companies trying to partner traditional owner groups just to get access to markets. If a company can partner and gain a sole source advantage it can improve returns. It’s a matter of being careful that the JV partners are there for the right reasons.

It also comes to the right partner – not a Tier 1 like Leightons – but someone where there can be access to the CEO or the Board. If there is access to the
decision-makers then there can be influence on the direction and that is what is needed, to be important to the partner.

The difference between black-cladding and a legitimate JV is the degree of control or influence the Indigenous partner can exercise. You need that transparency and input into decisions.
4.4. Shane Jacobs, 26 April 2016 (Group A)

Managing Director Pacific Services Group

Describe Your Organisation

Shane Jacobs is the co-owner and managing Director of Pacific Services Group (‘PSG’). PSG is a fully integrated facilities management business focussing on construction and cleaning. PSG was formed when Shane, who had been running a large plumbing business, joined up with his cousin Troy, who had been in the Fire Brigade, to form PSG about five years ago. About two years after it was formed, the company heard of the IBE. At that time it had between 30 and 40 employees and three or four of them were Indigenous. PSG now has about 160 employees and 58 of them are Indigenous. About 30 per cent of the supply chain is Indigenous.

Describe Your Involvement with IBE

PSG was the first business to be awarded a contract under the IBE. This was a $6 million Defence facility (HMAS Waterhen) redevelopment. (Stage Two of the contract HMAS Waterhen contract never eventuated so the original contract value was only $1.2 million.) PSG learnt about the job from the Defence forward planning documentation and directly approached Colonel Ian Cumming about the work. Colonel Cumming got PSG to submit pricing documentation to demonstrate value for money and was awarded the job. The IBE was brought to PSG’s attention by its CEO at the time (Mike Coleman). However, the IBE was not well advertised. Mike only found out about it by chance while Googling information about Commonwealth contracts generally. Mike called the number that was listed and then Mike and Shane went to Canberra and saw an officer in Finance who suggested a small defence job which never eventuated. At first everyone was terrified of using it. This was in 2012. David Liddiard (the Indigenous ex-NRL player) alerted PSG to Supply Nation. PSG had to be Supply Nation certified to demonstrate that it was an Aboriginal business.

After that PSG was awarded a number of contracts by DHS for office fit outs. This was about three or four contracts worth somewhere between $100,000 and $500,000, but they were on the open market (not IBE). It was then awarded a large cleaning contract for Centrelink and Medicare offices in WA for about $9 million. PSG also secured a cleaning contract for the Australian Tax Office (‘ATO’) in Queensland worth about $3.5 million. PSG has also just finished a contract for fitout of the ATO in Newcastle worth $8 million but that was on the open market (not IBE) also.
Issues that have Impacted on IBE

PSG found it hard initially to get traction with the IBE. There was no real framework around it and departmental procurement officers were reluctant to use it. There was a lot of concern around demonstration of value for money. PSG had meetings in Canberra where there was a lot of doubt expressed about value for money and the absence of competitive tendering. It was really only when Defence (Ian Cumming) and Finance (John Owen) decided to champion it that headway was made.

For PSG, purchaser doubts about capacity did not seem to be the major issue. The firm had been delivering similar contracts for a while and achieved various ISO and Federal OHS Commissioner Certifications. It took a lot of time and a lot of money but that is what needs to be done to work in that space. PSG knew the firm had to perform at 110 per cent to overcome any initial (racist) perceptions.

PSG demonstrated satisfaction to the system auditors through a $0.5 million job at the (Commonwealth) Parliamentary Offices in Victoria. Going through the accreditations process improved the firm’s performance. It was worthwhile.

For many other firms there would be a monetary impediment in doing what PSG has done.

I can’t answer for other people, but just from me talking to other suppliers … I think it’s a monetary issue. You’ve got to be able to invest. I think the Federal Safety Accreditation would have cost us $30,000-$50,000. Then the next issue to come into play is going to be Bank Guarantees. The department’s going to say to them “We want a couple of hundred thousand dollar bank guarantee.” … I think there are not a lot of mature Aboriginal suppliers out there, and yeah, that scares them, mate. The whole process scared them, you know? And that’s why I think – I don’t know, whoever it is, if it’s Supply Nation, if it’s the IBE, if it’s the Chambers, there’s going to be a lot educating happening.

Most of the mature Aboriginal firms have been in mining (Rusco Brothers, ICRG) but they are moving into IPP work.

To put together a tender for a $5 million opportunity can cost you $20,000 and there is no guarantee you will get it even with the IBE. People do not understand that an Indigenous firm using the IBE still has to go through a tendering process, just not the competitive tender.

It can be hard to get an Aboriginal labour force on the jobs. It’s easier in cleaning than construction because there is not such a high initial skill set necessary and people can be trained ultimately moved into management roles but construction can be very hard.
To assist in the development of Indigenous suppliers PSG has developed the BD101 program. There are three steps to the program. The first two are compulsory. The first step involves a potential supplier answering a self-assessment questionnaire of about 70-80 questions that goes to diverse matters such as accountancy software, email format, insurances and marketing format. The second stage occurs after any remedial action arising from stage 1. The second stage involves going ‘live’ on a contract. This allows the tracking through of the administration of purchase order, invoicing and the accounting of it. The last stage, which is voluntary, is for the individual supplier to undertake a Certificate IV in Business. PSG has an MOU with the University of Technology Sydney to facilitate this.

Supply Nation and IBA have been very useful to PSG. Shane Jacobs was on the board of Supply Nation in 2012 and 2013 and IBA has provided a lot of support.

*We have a close working relationship with IBA. IBA have really supported our growth and to be honest with you I don’t think we would be in this position today if it wasn’t for the IBA supporting us ... IBA helped us out with seed funding on our projects. They helped us out with some capital to attract staff, get our own equipment. Like ... our cleaning opportunities, we needed equipment to start them, so, they helped us out. So that’s seed funding to start the jobs off.*

PSG is Supply Nation certified and the contacts and networks this has facilitated have been hugely useful. It would have taken PSG another 10 years to get where it is today without this support.

While Finance knew about the IBE, a lot of other departments PSG had contact with were not so sure. Immigration for example was contacted by PSG and stated they were still researching its use.

Peter Dunn from GHD was of great assistance in the early lobbying of departments to use the IBE.

*Ways IBE Can Be Improved*

The introduction of the IPP targets is crucial:

*I think that was the game changer and I think now it’s filtering through the DNA of federal government. I think, one with the targets; and, two, with all the media that’s around it and you know, Nigel Scullion saying “this has to happen, this is happening ... there’s a target now”. You know, the Ministers or the Dep secretaries are going to sit in front of budget estimates and they’re going to ask them “Why didn’t you do it?”.*

When Ministers and Deputy Secretaries are showing their public support for the policy it has an impact on the way departmental procurement officers think. When a target is introduced it has the effect of also indirectly saying ‘you can
and must use this policy’. The important thing will be to put use of the policy into the KPIs for the Deputy Secretaries and make sure achievement of the KPI has a remuneration benefit.

The increasing target levels just emphasises this point.

The Government’s main objective may be the creation of Aboriginal employment and not the creation of Aboriginal wealth but Government also knows that the best way to do this is to build Aboriginal businesses that are hundreds of times more likely to employ Aboriginal workers. IBA has produced research of this. Government appreciates that the two objectives are linked.

One can imagine the situation were a department has a limited tender arrangement between several Aboriginal companies and suggests this is utilisation of the IBE but it is not, although it would satisfy their IPP targets.

You can imagine a situation where some Departments issue a lot of small office supply contracts just to satisfy the target without making much of an impact, but even that will assist in developing small Indigenous office supply companies.

**Black-Cladding**

Black-cladding is when a business just uses an Aboriginal person but does not build capability or capacity and the Aboriginal person is just used as a face to gain the benefit without making it flow on to the broader Aboriginal community. You couldn’t say it doesn’t happen but it certainly doesn’t happen a lot. Really as long as there is enrichment in terms of capacity and capability and opportunities and developing micro-businesses there is a benefit.

*There will always be mockers but you shouldn’t waste your time and energy on them.*
4.5. Professor Marcia Langton, 4 April 2016 (Group A)

Chair Guma – ICRG, Advisor Forrest Review

Describe Your Organisation

Professor Marcia Langton is Professor of Australian Indigenous Studies at the University of Melbourne. She is also a director of the Indigenous Construction Resource Group Pty Ltd (‘ICRG’) and the Chairman and shareholder/director of Guma ICRG Pty Ltd, a related company to ICRG. She was an Advisor to Andrew Forrest in the preparation of the Creating Parity Report that recommended the introduction of the IPP. Neither Guma ICRG nor ICRG have utilised the IBE. ICRG is a civil mining construction and maintenance contractor with a presence in WA, NT and Queensland. It has a workforce of approximately 240, about 70 per cent of which are Indigenous. The first contract was with FMG. It took about 12 months for ICRG to get that contract which really came from the direct contact between the ICRG Chair (Clinton Wolf) and Andrew Forrest of FMG. ICRG now works with FMG, Hancock Prospecting (Roy Hill), BHP and Queensland Roads. More recently, as part of a diversification project, some of the ICRG affiliated companies have tendered for Defence work but the result is not yet known.

Describe Your Involvement with IBE

Guma ICRG has had no involvement with the IBE but in another capacity Prof Langton was an advisor to the Forrest Review Creating Parity report that recommended the setting of targets around Commonwealth procurement. This recommendation was (in part) implemented in the IPP.

Issues that have Impacted on IBE

There was not enough awareness of the policy amongst the Commonwealth public servants so even if an Indigenous supplier was aware of the policy and went to a Department they would simply be told that there were no opportunities under the policy at present.

Even when there was awareness of the policy there was reluctance to use the policy by Commonwealth officers because of the ‘inherent risks involved in implementing the policy’. The other aspect was that one would hear Commonwealth officers say that they could not locate Indigenous suppliers, despite all the money the Commonwealth spent on Supply Nation, or if they could find them, they could not be sure of their capacity.

Guma ICRG is a member of Supply Nation. It took a lot of effort to become a Supply Nation member and it has served no useful purpose. Guma ICRG participates in events but nothing has come of it. The process of getting Supply
Nation certified probably ended up costing Guma ICRG between $30,000 and $40,000 because people had to be flown in from the west. It has been of no value.

The processes are completely different between the Commonwealth and the private sector (e.g. FMG). In the early stages FMG ‘developed’ ICRG by awarding a series of small contracts. There was still a tender process, but it is an invited tender. In one recent incident an ICRG JV company was knocked out of a tender with Rio Tinto because the JV partner had had a previous safety incident. It is wrong to say that there is ‘special consideration’ for Indigenous suppliers. The thing that is special is that companies like FMG and Rio Tinto will invite selected Indigenous suppliers to tender and look realistically at their capacity. Previously there has been a somewhat racist assumption that Indigenous companies did not have capacity (although of course some did not). What FMG did as well was arranging partnering between the Indigenous company and a known capacity partner to ensure delivery. If that works FMG will consider the Indigenous company for stand-alone work. But the process is actively managed by FMG.

At other times the ICRG company will be awarded the contract on a stand-alone basis but will subcontract to an FMG known supplier.

By contrast dealing with Government is difficult. Governments are slow and inefficient and if the Indigenous business is trying to keep its cash flow in a good position to keep staff on, the delay in government contracts can be impossible. For example one colleague reported a Commonwealth Department asking her to single source quote for a $5,000 job. They did it in order to develop the relationship with the Department but it was going to cost them money.

IBA has not helped.

Look, IBA is another one of these clunky entities in the Commonwealth’s reach into the Indigenous business sector and for instance their interest rates have been far too high, well above market rates. The conditions under which they insist on having some equity or shareholding in operations is a – I think oppressive and onerous in many circumstances from talking to people who are in them. ... Business moves fast, bureaucrats move at a glacial pace. It is just hopeless.

If they are going to take equity they should actually be involved in the development of the business. There are some things IBA has done well but it is a worry that it is run by Commonwealth public servants who have never been in business and have no idea about business.
Ways IBE Can Be Improved

Commonwealth bureaucrats have a perception of all Indigenous suppliers as micro-businesses; they do not understand that these businesses really are in the private sector. It costs a lot of money (in terms of staff time) to do up a tender. However, a contract like that will still count towards that Department’s IPP target.

The Forrest Report recommended targets by value. This is what FMG itself does with its one billion opportunities policy. The one billion is a dollar value. Of course that includes the contract value to non-Indigenous JV partners. Nevertheless it is a better approach than the Commonwealth targets.

Although the Commonwealth policy is now changed to allow for an imputed value to number calculation it is still not sufficient.

[A] Commonwealth department could go to four Indigenous companies and sole source four contracts for, say, stationery, and each contract’s worth $5,000 and then they’ve reached their target. But what is the point of that? That is not creating economic development. It’s not encouraging entrepreneurship. It’s not actually the spirit of the policy in any way at all in terms of sharing the government spend fairly with the Indigenous business sector, that’s cheating the system.

To achieve any real encouragement for economic development the target should be aimed at a percentage of value. That was what Forrest recommended.

There is also a risk that the large number of Supply Nation registered (as opposed to certified) companies that are coming on to the books will not have the capacity to deliver, but that particularly private sector companies may be under the impression that Supply Nation registration is also some guarantee of capacity when it isn’t.

The Forrest Review recommended that the level of Indigenous equity in a company for it to be eligible to take advantage of the IPP be set at 25 per cent, not the current 50 per cent. This is an important recommendation. It allows Indigenous business to get beyond merely small to medium. There is only a handful of Indigenous businesses at greater than 200 employees. To get beyond this there needs to be innovative arrangements like capability partners, JV vehicles, and subcontracting arrangements.

We need capability partners, we need joint ventures, we need the subcontracting arrangements ... we need partnerships of various kinds to bring in capability partners, and to bring in capability partners that have effective control and hand it over. Hand over the business within a set period of time under a contractual arrangement. And who in business is going to do that if the demand is that – the Indigenous ownership is 50 or 51 per cent? Nobody in their right mind would do it, just watch shark tank,
right? What are the offers made? Well from the investor, the investor is going to want a majority shareholding and then when you’re talking about – you’re going to put 50 million out there to make a project happen, why would give an Indigenous business with no capability, no capital track record, and no equipment a 51 per cent free carried shareholding? You wouldn’t if you were serious about business. You just wouldn’t. If the requirement was to give them a 25 per cent option or even 25 per cent free carry or under a loan arrangement, sure, you’d consider that. You would want to stagger the contract so that you get your return and then at the end of the contract, the Indigenous business would be in effective control, would take over the whole operation, and the non-Indigenous company has taken their return.

This is much more of the nuanced model used by the US National Minority Supply Council. It is much better than the current Supply Nation approach.

The introduction of the targets is a start but the Commonwealth needs to adopt a lot more of the relational supplier development approach that has been used in the resources sector. There are a number of examples. One was when Rio Tinto assisted an Aboriginal person to get a loan for a water truck on the strength of guaranteeing a road watering contract. The loan was got, the contract was awarded and a business was started. This is a good example of private sector supplier development that the Commonwealth needs to adopt.

There also needs to be an emphasis on developing businesses, not just achieving the targets by using the very few well-established Indigenous businesses.

The State governments should adopt policies along the lines of the Northern Territory policy.

Black-Cladding

There are various forms of black cladding, but what it is is a non-Indigenous owned company taking advantage of an Aboriginal person by either giving them a free carriage shareholding or a consultancy fee on a daily or other basis to give the impression that the company has some Indigenous content whether it be shareholding, employment and Indigenous supply chain. Usually, none of that exists.

Black-cladding needs to be distinguished from normal business practice. If Guma ICRG subcontracted with a (white) company for jigs and crushing in the mining sector, that is just sensible business practice because that is a specialised piece of equipment and you need specialist staff to operate it. Guma ICRG needs to ensure that it keeps the contract work necessary to employ the Indigenous staff who have normally come from traineeships and the other work can be subcontracted out. That is not black-cladding. Guma ICRG is well above 60 per cent Aboriginal owned; that is not black-cladding. Black-cladding is where a company is majority white-owned or even 49 per cent and where there is no real
Aboriginal control or Indigenous employment and any Aboriginal involvement in management is really just a sham in order to get preferential contract treatment.

In the mining sector when Rio Tinto started taking Indigenous procurement seriously there was a number of tier 2 and 3 companies employing Aboriginal ‘agents’ to represent them to try and take advantage of the policy. That is another blatant form of black-cladding.

Another form of black-cladding comes from ‘late identifiers’; that is, people that may have some Aboriginal ancestry but who have never identified as Indigenous, that are not a part of the Indigenous community. The definition of Indigenous is a threefold test: descent, self-identification, and acceptance by community. The late identification issue poses a threat to the integrity of the IPP. When Guma ICRG achieved Supply Nation registration, Prof Langton had to track down an organisation that would issue her a certificate of Aboriginality. However, there are stories of individuals having Aboriginality being dubiously confirmed by a statutory declaration signed by an officer from a NSW Local Aboriginal Land Council. These people’s companies then gain Supply Nation registration in order to get into the IPP. This is a concern. More attention needs to be paid to it.
4.6. Colonel Ian Cumming, 3 March 2016 (Group B)

Department of Defence Capital Facilities and Infrastructure

*Describe Your Organisation*

Ian Cumming is a Colonel in the Australian Army. For the previous three years he had been the director of various major national land projects in SE Australia. In the Defence Department these functions are located within Capital Facilities and Infrastructure which in turn sits within Estate and Infrastructure that builds new buildings for Defence, and deals with the death and rebirth of facilities for Defence at the widest interpretation of the Defence organisation. The current budget sits at about $1.2 billion, about 12 per cent of the total commercial and industrial construction market in Australia. Defence is therefore quite influential in that market.

Defence is also the largest single spend of any Commonwealth department. So in the IPP targets Defence has a target of 73 equivalent contracts; all the other departments are in single digits. Defence is one of the really only three ‘doing’ departments of the Commonwealth (along with the Department of Human services and the ATO). Other Commonwealth departments are really policy related and so have a smaller disposable budget. This makes Defence, along with Finance, quite influential in the procurement industry. There are entire industries that are dependent on the defence spend (e.g. weaponry).

*Describe Your Involvement with IBE*

Defence has been the most active in the IBE. The ANAO identified four IBE contracts during the period between 2011 and 2015. Two of those were with Defence, and Ian had a direct role in both contracts. Both those contracts were with PSG. Ian became aware of the existence of PSG and pursued those outcomes. The ANAO spoke to Ian when it was doing its audit about the comparative success of Defence with the IBE.

In the Defence project management structure, third party project contract manager administrators are involved but those administrators operate within the parameters set. Defence can still specify that the IBE will apply to a particular contract.

*Issues that Have Impacted on IBE*

For a procurement officer, using the IBE was not a comfortable proposition. It demanded a level of perceived (not necessarily actual) personal risk.
The IBE was not given enough time to work before the introduction of the IPP targets. The IPP is a bit of a stick to the IBE carrot and the IBE was about to take off like a bush fire. There may have been a middle management fear of using the IBE but it was just starting to take off. There were a lot of contracts that were lined up under the IBE that will show up as under the IPP.

The thing that made Defence (and Ian in particular) different was that, perhaps because of the military background, Defence could read that the intent behind the policy was to create long-term sustainable Indigenous employment and Defence could develop strategies to get to that objective – strategies like developing suppliers that were able to deliver the desired outcomes. This meant actually taking the personal time and risk to talk about mentoring a company into a position where it could get a job. There was a degree (or sense) of risk and the sense of unease about actually teaching someone to be a business before they were actually given a contract.

There is no doubt a procurement officer using the IBE as opposed to a public tender process was exposing themselves to risk: the risk of a hostile the Senate Estimates Committee if nothing else. If they didn’t use it, there was not a risk. There was pressure on Ian not to give PSG a third contract because of perception of probity.

There is also the risk that an unknown Aboriginal business will not be able to fulfil the contract and the officer would be held responsible for that.

*I think there is still some caution about going to an Aboriginal business because people don’t want to be seen to be told to go to an Aboriginal business because they aren’t necessarily a business that will fulfil the obligations of the contract ... but I think people still perceive that there is this thing “why would you go to an Aboriginal business when they can’t do the job when there is someone who can?” Well, the understanding is of course that you don’t go to somebody who can’t do the job whether they be whatever colour, race, creed, or whatever.*

The procuring officer is probably at the ‘doing’ level (Commonwealth Public Service Executive Level 1 or 2). To expect someone at this level to track down and develop an Aboriginal business is not realistic.

*In the public sector the procurement process is like hanging a poster on the outside of the door and saying “those who are willing to bid, come and see me”. You don’t walk out the door, down the street and say “okay, you. I’d like you to work for me. Come with me. Can you work for me? Tell me about how good you are. What sort of price? Are you value for money? Okay, I will take you”.*

This might be why Defence was better able to utilise the IBE. Ian is not a Commonwealth procurement officer. He comes from a combat background and
has spent time in the private sector and so his perspective was different and he was prepared to develop suppliers.

When it comes to value for money, in construction it is possible to run an open book approach where the (potential) builder is involved in the planning process and they will have a clear understanding of the parameters and Defence will have a clear understanding of their margins. Value for money can also be tested by reference to other similar acquisitions and many other ways.

... there’s many different ways that you can test the value for money proposition. So I don’t think there was a discomfort from our point of view on that basis.

It may be because Defence had such a lot of procurement experience it was comfortable with a more robust approach to looking at value for money and looking at issues around certainty of supply.

Of course IBE only applies to construction above $7.5 million and goods and services above $80,000 but despite this there would be a lot of discomfit to procure at even below these levels without the IBE. The IBE is the statement of Government policy that justifies an officer going to an Aboriginal business even if the full CPR rules do not apply compulsorily.

There was probably also a range of other factors that may have had an impact: the limited publicity; insurance health and safety certification, and construction guarantee bonds. It all takes time to get through and can be confusing if a supplier is not aware of these factors.

**Ways IBE Can Be Improved**

The Commonwealth needs to develop intelligence about supply capacity in a particular location. Because Defence does so much procurement it is probably better at that than most. Supply Nation information can help but it is not comprehensive. Part of this is marketing the existence of IBE so that Indigenous businesses can come forward and be identified.

The mainstream political leadership needs to push it more; there needs to be more marketing and politicians talking it up. The Indigenous leadership also needs to encourage greater participation on the supply side.

Procurement officers should be able to assist Aboriginal businesses work through the other impediments: insurance, health and safety certification, and construction guarantee bonds. Defence did this with PSG. The Commonwealth needs to be more relational in its procurement, like the private sector, not simply as transactional as it is now.
The scope of Aboriginal supply needs to be broadened to take advantage of a range of opportunities (outside of simply construction). There is scope in subcontracting and in training. There needs to be a move from supply of goods to delivery of specialist services and the more high-tech end.

**Black-Cladding**

Some individuals will make a lot of money and that will impact on culture – the creation of a black middle class. There will still be areas where people struggle. Into the future there might still be the higher employment of Aboriginal people by Aboriginal businesses but maybe not. Aboriginal business can be community owned and privately owned. Both are legitimate.

A completely credible JV could be labelled black-cladding; it really comes down to the ethical behaviours of each partner. The goal of ‘closing the gap’ is more important than the final 50-50 or 49-51 number. If you look at Barpa and Cockram; Cockram supports Barpa not for the extra work but to build an Aboriginal company. Anything beyond a sole Aboriginal owner or a community owned company can be called black-cladding but it depends on the behaviour. An associate of Ian’s once suggested you can tell by the way the money flows: if it flows in an even way and decisions are made in an even way it is not black-cladding. Supply Nation can play a role in ongoing certification.
4.7. Phil Lindenmayer, 24 March 2016 (Group B)

National Manager of Commercial Partner Management, Department of Human Services

Describe Your Organisation

Phil Lindenmayer is the National Manager of Commercial Partner Management with the Department of Human Services (‘DHS’). DHS delivers social welfare, health and child support services across Australia. It employs 34,000 people. It is one of the few Commonwealth departments to deliver services directly to clients. DHS is an active player and an early adopter in Indigenous procurement.

Describe Your Involvement with IBE

DHS was active in Indigenous procurement before the exemption was introduced into the CPR. An officer from the Department of Finance came over to DHS to work on it with Phil. The DHS facilities management contract of $8.3 million to PSG was the biggest under the IBE at the time. It took the creation of a deliberate project by DHS to bring it about and it was specifically designed to demonstrate what was possible. It was a deliberate attempt to get through the psychological resistance to trying something new.

In the PSG contract there had to be a process of demonstrating capacity. This was done by having PSG single source for a total of four contracts that were under the CPR Division 2 threshold. PSG did four fit-out contracts over a period of about 18 months. By doing this the property services people in DHS could have confidence in PSG. The contracts were: (1) August 2013 ($80,000), Bundaberg; (2) September 2013 ($110,000), Lismore; (3) May 2014 ($170,000) Redfern; and (4) December 2014 ($200,000), Orange. PSG is still doing more fitouts now. The $8.3 million contract was in February 2015.

We did a total of four under the threshold ... They did one small fit-out for 80,000 dollars. They did another one, I think, for 110, one for 170, one for I think about 200 or thereabouts over a period of about 18 months. That then got our property people and the outsource service provider into a mindset to say, “Okay, right, here’s a company that can deliver”.

Phil met the PSG personnel at a Supply Nation (in fact Australian Indigenous Minority Supply Council) ‘Connect’ Conference.

Issues that Have Impacted on IBE

Once the IBE was introduced in 2011 it took close to 18 months to make use of it despite the Department’s support for it. This was because the nature of government procurement and the people who are attracted to working in it.
Government procurement is by its nature very process driven:

... for very good reason ... what tends to happen is that the processes are designed to be repeatable and therefore ... take some of the perceived or actual risk out of the procurement. [This] allows you to get comparatively secure or comparatively reliable ... acceptable outcome each time you do it. And therefore when there is something sort of new that doesn’t fit the mould, then there’s a sense of “oh, well, what risk does this bring?”.

The people that work in procurement are those who feel comfortable in this environment:

The psychology issue is that people who tend to be attracted to do government procurement are people who are very comfortable with structure, process, and I suppose, the need to be able to demonstrate and document. So, their sort of natural behaviour ...

Further the issue of (at least the subjective) assessment of value for money plays a role.

... where you have a busy and in some cases, stressed procurement person and they’re trying to say, “Okay. Well, holistically does this represent better value for money?” “Oh, geez. I don’t know. They look sort of fairly similar. I’ll take the cheaper one.” That tends to be – it’s much easier to be able to argue to somebody – to say – just to prove this was the lowest bid.

That is to say price is the easiest reference point. If there is an element of uncertainty, price is easily quantifiable and thus certain.

It required very senior level endorsement and it required a specific project to get properly off the ground.

The public sector is not used to developing relationships with suppliers in the same way as in the private sector. Public sector procurement is much more transactional whereas the private sector is more comfortable with relational supplier development. This was much more the model used to develop the PSG relationship. Although PSG was already quite a substantial company, it just did not have a lot of dealings with Government.

It took time for PSG to get used to Government expectations. At first PSG was quoting for a much higher quality of work than Government expected. As each contract progressed the process required less and less intervention.

Two other issues that are involved are that of simply awareness of the existence of Indigenous suppliers and also doubts amongst some officers as to whether Indigenous suppliers are ‘serious players’ that is do they have the necessary reliability. There is also a perception that you might find an Indigenous supplier in the Northern Territory but not in metropolitan Sydney. Also there is a bias that makes people think that Indigenous suppliers are propped up, not
‘industrial strength’. This comes in part from media portrayals of failed Indigenous organisations. It is not everyone that thinks like that but it is something to be conscious of.

There is an issue in the catch 22 of not getting a contract because of not being able to have demonstrated reliability in delivering a contract. This is part of the teething of the IPP. It is also why it is very important that there is publicity around the success of Indigenous suppliers when they do deliver on a government contract; so that other procurement officers can have confidence in using them.

The IBE was publicised quite well but in DHS that there was an officer who had been quite involved at Department of Finance. In other Departments there was certainly material circulated from Finance about the IBE but is was one of the 100 emails an officer might get a day, and one that didn’t demand that they do anything immediately and so was easily ignored. This is why the IPP targets are important, because an officer’s superior will need to know how the Department is tracking against the target; it demands a response.

A further issue is the nature of goods and services that government needs:

... most of the money we spend is on stuff that’s really not a strong target for Indigenous business. We lease a lot of buildings. There may very well be some Indigenous businesses there, but I’m not aware of too many. We buy lots and lots of heavy duty IT stuff ... like mainframes and enterprise software and communications equipment. We buy a lot of telecommunications services. So, in terms of what the broad categories of the things we buy are, an awful lot of it is stuff where Indigenous businesses do not operate actively in their own right. My personal understanding is that with the more operational things that state and local governments do, there’s probably more opportunity than for Commonwealth departments.

This is where DHS is a bit different because it delivers services directly to clients.

Other factors (insurance requirements, contract size, and complicated tender process) may also have had an impact but it really just depends on the extent of corporate sophistication.

Dealing with Government can be quite difficult as well, there can be significant costs attached with compliance with government contract provisions but this is counter-balanced by surety of payment.

Ways IBE Can Be Improved

The catch 22 of not getting a contract because of not being able to have demonstrated reliability in delivering a contract is part of the teething of the IPP.
It is also why it is very important that there is publicity around the success of Indigenous suppliers when they do deliver on a government contract – so that other procurement officers can have confidence in using them. Publicity around the success stories will also help promote successful Indigenous business people as role models for the next generation.

There can be scope in developing second-tier procurement, ensuring that suppliers to government are themselves using Indigenous suppliers. In addition developing the Indigenous supply register is important.

The requirement to report against targets should have a positive impact because it can create some level of competition between Departments in achieving and exceeding the targets. The targets will also help publicise how to go about using the exemption.

... the reporting will create of an impetus of itself, because there is nothing as effective as a little bit of creative competition between agency heads. ... [T]hey want to – what I desperately wanted and still want is our secretary to be able to sort of look over the table at secretaries board at the department of whatever and say, “How are you going with your indigenous business target? Oh. By the way, we got to triple our target this year”.

**Black-Cladding**

DHS has had little direct engagement with this issue because the suppliers engaged are clearly Indigenous, but it is an incredibly difficult issue (“wicked problem”) to distinguish between genuine capacity development and short-term convenience for the sake of a quick profit.

It is where the US Minority Supply approach has some merit. There, the expectation is that the arrangement will mature and while on day one there is a degree of dispensation, over two years Indigenous people should be in practical control and over five years the company should be operating in a completely commercial space. The difficulty with this approach is how you manage ‘phoenix’ arrangements.
4.8. Anonymous (2), 21 April 2016 (Group B)

Anonymous (2), Manager Community Development at Fortescue Metals Group

Describe Your Organisation

Anonymous (2) is the Manager Community Development at FMG. He started there in 2011. His role is to increase the number of Aboriginal businesses in the FMG supply chain.

Describe Your Involvement with IBE

There were two main drivers for FMG to increase Aboriginal participation in the supply chain. One was the provisions of various land access agreements with Traditional Aboriginal Owners. The other was the personal commitment of Andrew Forrest to closing the gap and eliminating disparity. Anonymous (2)’s particular role was in Aboriginal business engagement. Anonymous (2) had assumed with such high-level support that job would be straightforward, but that was not the case.

FMG data suggests that Aboriginal companies are five times more likely to employ Aboriginal people. So in the case of FMG suppliers this means Indigenous employment levels of between 8 and 10 per cent for a non-Aboriginal company up to between 40 and 50 per cent for an Aboriginal company. Before 2011 the employment levels were not measured, but in 2011 the starting base was about 4 per cent. The current overall percentage (Aboriginal and non-Aboriginal companies averaged) is 13 per cent.

Issues that Have Impacted on IBE

At first, middle management while clearly supporting the company objective would take little action themselves to implement it. The procurement section at FMG did not have the processes in place to be able to engage with Aboriginal businesses, to think laterally about how to engage with Aboriginal businesses.

The process involved in the first instance determining which existing Aboriginal businesses had the ability to tender for FMG contracts. This did not work. Although Aboriginal businesses were included on the tender list, for various reasons they were unsuccessful and began to be disillusioned. There seemed to be two main reasons for the initial lack of success. The procurement section was not satisfied they were achieving best value for money and had concerns around the reliability/capacity of the Aboriginal businesses identified. At this stage only $20 million in contracts had been awarded.
In response in December 2011 Anonymous (2) proposed to the CEO and Chairman the introduction of the Billion Opportunities Program ($1 billion worth in two years – originally Anonymous (2) proposed $2 billion in five years). Achievement of the goal became a company target, like output targets, safety targets and costs targets and achievement was included in management KPIs. Once this occurred it was not a question of procurement or other sections passively allowing Indigenous procurement but a question of how to increase it. This led to steps like reducing the contract size to a level that relatively small Aboriginal businesses could deliver. This did create some resistance because it meant a greater workload for procurement but this was the significance of the company target. When FMG started to do this it started to get some really good results. It was a ‘punt’ for FMG sometimes but the company supported the suppliers as much as it could.

Ownership of the target by the CEO was critical as was the accountability against the target. This was critical because there can be push back in the organisation, and when that happens it is good to know the CEO is taking a personal interest. That and having the accountability, having each section report against the procurement target each quarter as they do with output, OHS and costs, plus having the Aboriginal Engagement Strategy (AES) in the procurement template and having a dedicated resource within the firm to oversee it.

The original identification of Aboriginal suppliers did not come through Supply Nation but just from Anonymous (2)’s previous knowledge and some Aboriginal suppliers that directly approached FMG. FMG helped to develop these firms and then directly sourced them rather than going to tender.

Aboriginal businesses were knocking on our door looking for opportunities and they were brand new, never had a contract before, but they had built a team around them and we then basically helped them. We basically got them in, so we didn’t actually go up to tender, we just direct sourced with them. We … built a project up with them. And then we really helped them manage the project with them on site to a point where we could … then back off. And so, that model was very, very successful.

The project operated to lower the risk profile associated with Aboriginal businesses. One thing that helped is because a number of the Aboriginal businesses were Traditional Owner businesses that FMG had to have an ongoing relationship with. It was imperative to the company and the Traditional Owners that the initial projects not fail.

An important part of the process was to get the Aboriginal businesses to have a realistic assessment of their own capabilities so that the first jobs were attainable and there was a solid base to build from.
Over time there was increasing acceptance to the point where the mine site’s GM would approach Anonymous (2) with ideas for increasing Aboriginal supply participation. The projects started to increase in duration (from an initial six to eight weeks) to long-term projects that allow purchase of more significant equipment and retention of skilled personnel.

The JV model really developed as a way to ‘break up’ contracts. If there was an Aboriginal business that could do a portion of a contract FMG would arrange for it to work with an existing supplier either in a JV or as a subcontractor who could complete the balance. At first there was some resistance from some non-Aboriginal contractors to this approach. In response to this FMG introduced AES clauses into its tender documentation that required the explicit identification of Aboriginal employment and supply chain opportunities. The AES is a mandatory part of the template but can be waived if the goods in question make it just impossible. The level of employment/number of supply opportunities are then part of the tender assessment matrix.

... [A]s part of the tender evaluation ... they were weighted and that score would be a part of the overall assessment and evaluation of who actually was the successful tenderer. So, what that did was that the ... what I call the smart contractors, start to realise that it was in their best interest to start to form relationships with Aboriginal businesses. And also, the contractors started to realise that – well, if they actually went in a joint venture with an Aboriginal party, then their score was much higher.

Many of the issues that affect public sector procurement can also affect private procurement, such as: being aware of procurement opportunities before they go to public tender, attachment to existing supply arrangements, having suppliers aware of procurement processes, and having procurement officers that do not have a personal interest in advancing the strategy.

This is one of the advantages of JV arrangements because the capability partner might be familiar with both the doing side of the industry and also with things like procurement processes. If it works it can lead to situations as happened at FMG where the JV is between an experienced Aboriginal business and a new local traditional owner business.

Ways IBE Can Be Improved

Having the targets in the IPP is critical, but it is not enough. You need to have the other elements that have been mentioned (contracting splitting, procurement templates, capacity building strategies etc).

The other key thing is being held accountable to the targets; that is, having achieving (or not achieving) the targets really means something. Even if people
are only doing it to achieve the KPIs that doesn’t alter the fact that now at FMG there are 40 Aboriginal businesses in the supply chain.

The Forrest Review recommendation on level of ownership was based on FMG practice which focusses more on capacity enhancement than the restrictive definitions of Supply Nation. If a capability partner is providing the majority of capability and taking most of the risk it is unlikely to hand control to a less experienced partner so that suggests 50 per cent. Ninety-five per cent of the FMG $1.8 billion is with 50 per cent plus firms. Twenty-five per cent covers both the Aboriginal and non-Aboriginal spouse in a JV.

So if you’ve got the capability partner coming along that’s providing majority of the capability and therefore taking most of the risk, but you’re handing control of that business or joint venture to a less inexperienced party, it’s going to be very, very difficult to form those relationships. So I was always advocating the 50 per cent where it is equal board representation, equal decision-making and it’s equal so you’re go into a business relationship where no party has the upper hand on the other and you work together to build the capability over a period of time. Where the 25 per cent comes into it, our definition is minimum of 25 per cent. Ninety-five per cent of our $1.8 billion in contract is actually 50 per cent or higher [Indigenous ownership]. But we’ve had some situations where an Aboriginal husband and wife had done a joint venture with a non-Aboriginal business and therefore, that joint venture is only 25 per cent owned.

FMG now has to look at opportunities for the diversification of Aboriginal companies because the earlier civil engineering opportunities that came with the construction phase are drying up and it is necessary to look at maintenance and shut-down opportunities. So many of our suppliers are looking at State Government work and they don’t have the same policies yet.

**Black-Cladding**

FMG addresses the possibility of black-cladding through its contractor due diligence.

You do your due diligence on the contractor. You ensure that the capabilities if – you want to know who the people are – if you do your internal due diligence and your pre-qualifications on them – and these sorts of things, then black cladding to me doesn’t – we’ve never had an issue with it. It doesn’t really arise because we actually drilled down to what is your Aboriginal employment, what are the parties bringing to the table to deliver these services. We survey them on a monthly basis to ensure what they’ve said they’re going to do, they do. The other thing that we’ve done that we’ve been doing for about the last three or four years is if we award a contract to an Aboriginal joint venture, then instead of special clauses that we put into that contract that we talk about the sum of the outcomes that we want to see from the joint venture about building the capacity, transfer of information. We actually get invited to their board meetings as an observant. We’re not there for the commercial because we don’t want to
know their commercials, but we certainly are there to sort of get a feel on – that the Aboriginal party actually knows what’s going on in the contract, that information is being shared between both parties and the Aboriginal party really is making informed decisions about the project and what’s happening.

If there is thoroughness about the pre-qualification the issue does not arise. If the early scrutiny of a contractor includes matters like existing employment levels and then there are regular surveys of progress it just is not an issue. In the case of a JV, FMG will scrutinise clauses around capacity transfer and transfer of information and will attend part of the JV Board meetings to get the feel of it. This is part of reviewing the operational plan for contractors that also goes to OHS and other matters. It creates a good opportunity for dialogue and understanding the contractor.
4.9. Maya Stuart-Fox, 29 February 2016 (Group C)

Assistant Secretary, Indigenous Economic Development Branch in the Department of Prime Minister & Cabinet

Describe Your Organisation

Maya Stuart-Fox is the Assistant Secretary, Indigenous Economic Development Branch in the Department of Prime Minister and Cabinet, DPMC. That Department is responsible for implementing the IBE along with the Department of Finance.

Describe Your Involvement with IBE

The IBE was introduced into the CPR in 2011 under the Gillard Government. At that time Indigenous Affairs was part of the Department of Families, Housing, Community Services and Indigenous Affairs (‘FaHCSIA’). That Department did not have the same level of influence as DPMC and that made implementing the IBE more difficult. Some departments can be quite resistant to implementing new policies that affect their own operations and so it assists to have the influence of PM&C.

Further although the IBE was the brain child of Indigenous Affairs, responsibility for the CPR was with Finance and FaHCSIA had little influence over it. It really took the combination of the integration of Indigenous Affairs into DPMC and a Minister who was really interested in procurement and a supportive Prime Minister to start to make progress. So originally CPR Exemption 17 (the IBE) was in effect but nobody knew about it. With the combined influence of the Minister, Prime Minister and DPMC the targets were able to be introduced.

Issues that have Impacted on IBE

The uptake of the IBE varied with different agencies. The Department of Human Services had a large Indigenous clientele and were used to working with the disability exemption to the CPR (Exemption 16) so they were a lot more open to the use of the IBE. Other Commonwealth were not used to using such procedures and were quite sceptical. That scepticism extended to other procurement policies such as the Australia First Policy because that was seen as industry protection and contrary to value for money. Using procurement to achieve social policy objectives was a significant mental shift. To make that shift happen required a very big impetus from the top people for them to give it their imprimatur.

The Department of Defence and Human Services showed that value for money can be satisfied by reference to a familiar market without actually going to that
market on each tender. There is no moving away from value for money with IBE or in the IPP. There may have been a feeling that if an officer used the IBE they would be hauled over the coals and also that use of the IBE made otherwise simple procurement tasks hard and complicated. This is why the IBE needed senior buy in and the setting of targets to make it more effective.

The real issue was that there were no targets. Officers did not have to use the policy and if they do not have to use the policy then the normal response is to think ‘if you didn’t have to, why take the risk, why stick your neck out’. The lack of take up of the IBE before the IPP targets was 100 per cent to do with this issue and not a supply side problem.

... why would you, as a procurement officer, stick your neck out? You don’t have to. No one rewards you for doing it. Everyone kind of raises an eyebrow. Why are you doing it? So the only people that really did it was where you had a ... clear alignment with organisational mission, where you could ... make an argument in those terms, but ... why would people in Department of Education or ... anywhere else, or defence? Procurement officers being who they are – they’re good at running processes. Social policy is not their gig. Saving the world is not their gig. Getting good value for money is. There were just no drivers. There were zero drivers.

Where there was some success is where there were officers with a sufficiently high level of delegation to be making purchasing decisions who had some personal involvement or concern for Indigenous affairs. This is what was seen in Defence, Human Services and Tax. It was this group of only about five people that had a real impact when the IPP was being developed because they had shown it could be done. It really took this previous practical experience to get the targets included.

Maya spoke to meetings of procurement officers at the EL2 level and at first they would say ‘why are you bothering’; they were sceptical, even a bit hostile. It was suggested that it will never work because supply is not there. This really changed once people had had an actual experience of working with Indigenous suppliers, they became really committed. Their Secretaries really loved it, it became a virtuous circle.

The Indigenous supply side has expanded as any market does to meet the increase in demand, but there still needs to be a strong and predictable increase in demand to make this happen. This is why the targets need to be enforced to ensure that people can invest in expanding supply with confidence. It needs the Minister to publicly affirm that the target will be met to get the confidence to develop JVs and the like.

So there was a bit of a chicken and egg but really the key was fixing the demand problem. However there is still work to do on the supply side. DPMC, IBA and
Supply Nation are all part of this work, but supply will never increase to meet a non-existent demand. The demand has to be there first. So that’s why Maya is sceptical – very, very sceptical – of arguments that put it down to supply issues.

The other technical impediments (contracts size, insurance requirements etc) really come down to a hearts and minds issue. If officers can be convinced that they want to do this thing they will find a way to make it happen. But if they continue to be reluctant they can find many reasons to make it difficult.

**Ways IBE Can Be Improved**

When the IPP targets were introduced it wasn’t just setting numbers.

> The Secretary [of DPMC] has made very clear to the other secretaries that they are going to be meeting this target. We have had the Minister write to the other Ministers, because it is important. ... So, in other words, it’s come absolutely from the top-down and everyone’s been told to do it. We have met and spoken to every single procurement group and team.

Meet the supplier events were organised and Finance organised training around the exemption. There probably needs to be more focus on helping suppliers with their pitch but PM&C will do that.

There also needs to be consideration of building the targets into Commonwealth money that is administered by the States. The Territory does this well. This policy is still in but it is a work in progress. It would be best if the States came up with their own policy of course but the Commonwealth will pursue the matter through COAG.

A good procurement approach will look at breaking up work into packages that Indigenous businesses can manage and then looking at putting the rest to tender. By breaking the work up in this way the Commonwealth will be able to increase the targets over time. This is a much better approach then just saying ‘in 2020 the target will be x’ because then everyone just gets in a flap in 2019. The increasing targets allow Indigenous businesses to ‘grow’ over time. A department needs to work with the companies over time. The Department of Defence is excellent at this. There are some really good individuals there and they have no difficulty with their targets.

The main issue in the future will probably be to assist Indigenous companies with bigger and bigger contracts. We need to be more agile in supporting this. IBA has not been as agile as it could be. The game needs to lift 200% in terms of the support provided, particularly in capital and different types of finance; there needs to be more sophisticated financial products and business support. This isn’t just ‘so you want to start a small business workshop’.
The other thing is that there needs to be acceptance that at times things will go wrong.

I remember the procurement officers being really open about it upfront, saying, “Look, things go wrong in contracts all the time, right?” Things go wrong in every business all the time, but the first thing that goes wrong with an Indigenous business, and everyone will go, “Oh, see, that was a – that was really high risk. That was a bad idea”. So at some point that’s going to happen and we need to be mature enough to say, “You do realise this happens all the time”.

**Black-Cladding**

The issue of black cladding can be difficult to define. There is a paper supplier who gets his product from Indonesia and works with a large (non-Indigenous) corporate supplier. Maya thinks that is a good outcome but acknowledges someone could pitch that differently. To the Commonwealth a lot of the motivation goes to employment outcomes but also that the individual Indigenous business owner and their family are better off. DPMC understands that the IPP is encouraging a lot of large non-indigenous companies to look at JV type arrangements. It is also strengthening the Indigenous hand when it comes to JV structure negotiations.

Even the employment issue can vary across industries. An Indigenous civil engineering firm will be able to get better Indigenous employment outcomes than an Indigenous technical data analysis firm that has to compete with large corporates for Indigenous financial analyst graduates. The intent is not to make it harder for the Indigenous business to make money. So there needs to be mature debate about employment outcomes.

It can be difficult for politicians to talk about wanting to make (Indigenous) individuals rich. It is easier to talk about employment outcomes.
4.10. Yvette Sims, 16 March 2016 (Group C)

Assistant Secretary, Procurement Policy and Advice in the Department of Finance

Describe Your Organisation

Yvette Sims is the Assistant Secretary, Procurement Policy and Advice in the Department of Finance. (She has since moved departments). The position is responsible for the CPR. The IBE (Exemption 17) is part of the CPR.

Describe Your Involvement with IBE

The IBE was introduced in 2011 as part of the original Closing the Gap strategy. The IBE was introduced before Yvette started in this position though. The (former) Department of Education Employment and Workplace Relations as well as Indigenous Affairs in the former FaHCSIA were significant players in setting it up. The Department of Finance First Assistant Secretary at the time, John Grant, was also influential.

The CPR incorporates all of Australia’s international obligations in relation to procurement. The CPR is a relatively short document but it includes all of the, what are known as, ‘exceptions’ that are included in the various Free Trade Agreements (‘FTAs’). All the FTAs have exceptions regarding small and medium enterprises and also the Indigenous exemption. Technically the IBE would also apply to a corporation with 50 per cent Maori ownership because of the terms of the Australia - New Zealand Government Procurement Agreement.

Issues that Have Impacted on IBE

The ANAO report suggesting that there have only been four uses of the IBE between 2011 and 2015 is not reliable because there was no data kept. It may have been one or 500. It appears ANAO got its data from interviews with a number of sample agencies; there is no reliable certain figure.

When Finance did a data matching exercise between Supply Nation accredited firms and successful tenderers on AusTender the result was 29 contracts awarded in 2012-13 and 19 in 2013-14. There is no requirement to record use of the IBE in awarded contracts.

Under the Trans-Pacific Partnership Agreement and the WTO Agreement on Government Procurement there is an obligation to record use of limited tender provisions and should these agreements come into force use of exemptions from Division 2 of the CPR and conditions for limited tender will be recorded on AusTender.
The Department of Finance was a strong advocate of including monitoring and evaluation mechanisms as part of the new IPP. Ensuring a reliable list of Indigenous suppliers (as in Supply Nation) improves monitoring because it makes data matching quite easy.

One difficulty (pre IPP) was simply being able to identify an Indigenous Supplier to procure from.

... one of the issues until the Indigenous procurement policy, and until there was a publicly available list [of Indigenous suppliers] is while the CPRs have enabled people to very easily and simply procure from an Indigenous business without needing to approach the open market, if I was a buyer and I wanted to pursue that, first thing I’d want to consider was how do I know where to find an Indigenous business? That ... was the stumbling block because there was no information available unless your organisation [department] happened to be a member of Supply Nation. If your organisation was a Supply Nation member, you could access a subset of Indigenous businesses, but the list of businesses certified by Supply Nation was not easy to access or navigate. So there are a whole range of factors there ... but the minute you start making things difficult for people, they can then sensibly say, “Why am I bothering?”.

This was absolutely the main impediment to the early (pre IPP) use of the IBE.

Across the Commonwealth public service and with Indigenous businesses and advocates we were having this conversation in the lead up to the IPP and overwhelming the absence of a reliable supplier list was identified as the key impediment.

It was not that procurement officers were not aware of the IBE:

... there are procurement professionals in every agency, who know the CPRs back to front including the exemptions.

The supplier capacity issue often manifested in a simple uncertainty of the unknown, noting that while any individual would use a firm that they or an acquaintance had had a positive experience of previously but that:

[that’s very different to the proposition which is there is a business that I’ve never heard of ... I have no idea whether or not they’ve ever delivered anything to the Commonwealth before and me taking a chance on that business. So I think the fact that it is Indigenous business is irrelevant. It’s just the unknown.

It is not that it’s an Indigenous business; it’s that it is an untried business. The concern then is not so much satisfying value for money but a concern about failure to deliver.

Another factor may have been reluctance on the part of procurement officers to experiment with new procedures. Yvette suggested there was:
... a reluctance to do something different ... that’s far broader than just engaging Indigenous business. That’s just part of human nature, in my view.

It was not though a lack of awareness of the existence of the exemption. Procurement officers in every agency know the CPR back to front. If those officers wanted to they could have used the exemption. The Department of Finance publicised it. It was included in the monthly procurement bulletin and discussed at the regular forums. So there may have been a reluctance to try something new but there was certainly awareness of the existence of the policy.

There was a perception that a difficulty was demonstrating value for money.

_I agree that that was the perception. I’ve heard that many times. I disagree with it._

Yvette’s disagreement with the reality of the ‘value for money’ perception was because she knew of:

... many examples of people justifying a condition for limited tender so they can approach a single supplier that they used before that doesn’t happen to be Indigenous business ... There are lots of creative ways of getting the business that you want, so I – if people can find the ability to do that, then they can absolutely be able to justify value for money when approaching a single supplier from a different perspective.

The speculation about difficulty in satisfying value for money may have been a convenient way to describe a reluctance to try someone new.

The Department’s data does not support a contention that it is technical difficulties that inhibit SME, including SME taking advantage of procurement opportunities. The data tells us that each year about 70 per cent of contracts are awarded to SMEs and around 305 are awarded to small businesses. Further about 70 per cent of contracts by volume are valued at less than $80,000 so there is not a question of contracts being too large. To make the process easier for all businesses the Department has developed the Commonwealth Contracting Suite, standard terms and conditions for all procurements of $20,000 or less. This makes it a simple, standardised process for small or medium businesses. The maximum size of contract in the suite is 14 pages, and generally a lot shorter. It may have been more difficult in the past but it is not now.

It is probably unfair to point to the procurement officers in the Departments rather than the actual decision-makers. A procurement section in a department will normally be headed up by an officer at the Executive Level 2 level and they would normally only be directly involved in any high-value procurements. More normally the procurement section would only provide advice to the relevant operational section (saying learning and development or communications) who
would undertake their own procurement. It is at this level that the actual procurement decision is made and it’s at this level that you get the uncertainty about the capacity of an unknown supplier. The thing about the IPP is that it forces an agency to get over that uncertainty because there is a target to meet.

**Ways IBE Can Be Improved**

Within the public service generally there is a greater commitment to the ‘public good’ than normally exists in the private sector and this is the case also with advancing Indigenous economic development. Across the service, there is a number of quite senior officers who were advocating for the development of Indigenous suppliers. This was well before the Forest Review and the launch of the IPP. Departments such as Tax, Human Services and Defence were all making the effort. What the IPP does is provide a more robust framework to achieve that in. It has also increased the level of interest in developing Indigenous suppliers.

There may be more historical data on the use of the disability exemption that has been around a lot longer.
4.11. Pete Dunn, 29 February 2016 (Group C)

Business Development Manager, GHD

Describe Your Organisation

Pete Dunn is a national Business Development Manager for GHD. GHD is an Australian-based but global engineering and professional services company working with Government and the private sector. Pete has worked for about 30 years with Indigenous people; about 15 of those as an academic. Pete realised that there had been little success with welfare models but that overseas international development programs with an enterprise focus had more success. At GHD most people had little exposure or understanding of Indigenous people and issues. As a result Pete focused on aligning GHD commercial goals with Indigenous development goals.

Describe Your Involvement with IBE

Within 18 months of the IBE was promulgated in May 2011 Pete was looking for ways of using it. He had heard about it only by chance and it frustrated him that it had not been used. Inquiries with several Department of Finance officers suggested that the lack of take up of the IBE was due to a lack of promotion of the policy. In response to this arranged meetings with a number of procurement officers from various departments: Finance, Defence, Immigration and Border Protection, Department of Foreign Affairs and Trade – about a dozen all up. Generally these meetings got negative responses because none of those officers knew any Indigenous people or businesses.

Pete also worked with a number of Indigenous suppliers particularly in their relations with the Department of Defence. These companies included PSG, Barpa and National Aboriginal Construction Partners (‘NACP’) from the Kimberley. Barpa and NACP are community owned. PSG is owned by two individuals. It was PSG that was the first contract (although there is some suggestion that the Indigenous Internet Service Provider – Message Stick was). However no one was keeping a record of when the IBE was applied so it is hard to know. However when PSG was awarded a $6 million contract by Defence, the Minister put out a press release. That should have helped with the legitimacy of the IBE but it didn’t seem to make much difference. The NACP was awarded the contract after the IPP was announced but it was set up before the IPP.
The biggest contract let under the IBE so far is a $15 million security contract. This was done under a subcontract arrangement with Wilson Security. The subcontract arrangement is new – usually it is a JV model.

**Issues that Have Impacted on IBE**

The absence of the publication of any guidelines around the IBE at the time it was promulgated exacerbated procurement officers’ reluctance to use the policy. Even when there was high level support in Defence, the procurement officers themselves were quite resistant because of fear of consequences.

> I can understand from a bureaucrat’s perspective that there may be a policy there but if you’re the only one that’s sticking their head up, you could get it chopped off.

In addition there was the lack of marketing of the program to the Departments. The main Commonwealth spend is in Defence and so that was where the focus needed to be. There was nothing like the disability industries supplier index that existed and it took a while for Supply Nation to get into the space. Supply Nation wasn’t really active.

Even as late as 2013 there was still no promotion of the policy. In 2013 there was a change in government and that made a difference. Indigenous Affairs was moved into DPMC. Even then there was little awareness of the policy even in the Department of Finance that administered. Some officers in the Department of Defence suggested that the IBE would not succeed unless its use became mandatory. Uncertainty around the notion of value for money was certainly another factor that affected procurement officers’ attitude to the IBE.

One factor the Commonwealth Government did not understand is that the IBE is really about the private sector investing in Aboriginal businesses it is not actually about Government at all. The Commonwealth did not understand the origins of the program in the US and that it was about cultivating an emerging ‘black economy’. In turn the private sector did not know or understand the program. The private sector was stuck in the world of corporate social responsibility and had no positive examples of partnering with an Indigenous business. There needed to be partnering between private sector and Indigenous business and for that partnership to approach Government to use the IBE and that was not happening.

It was in those Departments were the relevant officers had some personal experience of working with Aboriginal people – working in the law, working in a community – that is where you got the most sympathetic hearing.
Ways IBE Can Be Improved

The introduction of the IPP targets is positive but whether it is enough is unclear. There still needs to be that crucial private sector/Indigenous business link. The IBE still needs a more defined role in the IPP. It still needs better marketing.

The targets should be set around value not number. Number targets will allow Departments to focus on very small contracts that don’t encourage the creation of the new economy.

The targets will encourage officers who have a genuine commitment to the black economy but also those who simply want to be seen to perform, even to outperform other Departments. Some Departments have recently approached Pete for assistance in the creation of a business to give contracts to. This is such a change from before the introduction of the IPP targets.

The management of workflow is also important. There needs to be work of a size that can be managed and there needs to be a regular flow of work, particularly if the business is to train up and employ young people.

In order for a young business [to grow] ... they need a quantum of work, they need continuous work, they need that to be flowing through their business in order to do what they really want to do which is to employ, train up more indigenous young people and to be handed a hundred fifty thousand dollar contract and that’s the only one you’ve got as a sole source for an Aboriginal business is really – it’s not enough. It needs a quantum of work.

There also needs to be greater clarity about what constitutes value for money. It needs to be made clear that reference to the known market is a legitimate indication of ‘value for money’ even in a single source situation. It would help if ‘value for money’ could clearly include social factors – employment of Aboriginal employment.

It may also be that the time frame for the targets is too short to create an Indigenous economy.

One thing the mandatory IPP targets have done is to encourage State Governments to follow suit. We’re seeing WA, NSW, the ACT and Victoria looking at following.

I think is really important is that the federal government did not understand that it’s not about them ... the IBE and subsequent procurement policies are about driving the private sector to invest in Indigenous businesses.

It is important that there is attention to training so that there will be the people to take into the Aboriginal businesses as they grow, particularly in the area of
professional positions. There also needs to be attention to encouraging businesses in remote areas.

**Black-Cladding**

There is an extreme minority where clearly a black person is being put in front of a non-Indigenous business to try and pick up work. That is what black cladding is. There is not a lot of that because it is obvious. This is different from where there is a genuine developing partnership.
Describe Your Organisation

Leah Armstrong is the Chairperson of Supply Nation. Supply Nation, previously known as the Australian Indigenous Minority Supplier Council, was set up in 2009 specifically to promote and advocate the growth of Indigenous-owned businesses through the supply chains of major corporations and government agencies. It’s modelled on the US National Minority Supplier Development Council model set up under the Nixon administration 40 years ago. In the US the target is broader than Indigenous suppliers to extend to other minority groups. Subsequently some leaders from the US Council came out and did a round of discussions with State and Commonwealth officials advocating the development of supply chain models. That did not lead to immediate legislative change along the US model but the Commonwealth did announce its Indigenous Opportunities Policy which included the IBE which was introduced in 2011.

Describe Your Involvement with IBE

It is probably true to say that the Commonwealth Government, particularly with the IOP first and then the IPP, has primarily an Indigenous employment generation objective.

The model that [Supply Nation] took from the US was about creating wealth in Indigenous families and giving indigenous-owned businesses and creating that space in the economy for entrepreneurship as they have done in the US. But most definitely, the Australian policy context both with the development of the IOP and the current one [the IPP] have always tried to focus on is that there should be that employment outcome in it. And it is a bit of a tension, ... employment is an outcome. We’re not disagreeing that employment can be – is an outcome, but it’s not a measure.

Supply National has pushed back on this but certainly the language of Government and the Forrest Review focusses on the improved Indigenous employment outcomes that arise in Indigenous firms.

It is important that the additional outcome of employment creation does not overwhelm the key objective of Indigenous firm development. The issue may lead to some conservative reaction to the IPP into the future.

The role of Supply Nation in the IBE (IPP) is to provide the certification that the supplier being considered is indeed Indigenous. It was a function that was adopted from the US model. So the role of Supply Nation was to identify and certify Aboriginal-owned businesses at 51 per cent and to assist with networking and making connections; providing a way for government agencies and
corporate procurement officers to approach, identify and make the connection. Then Supply Nation would monitor the spend and the actual contract.

Since the introduction of the IPP in July 2015, Supply Nation introduced a 50 per cent Indigenous-owned registration process as well as the earlier 51 per cent certification process that had previously been in place. The certification process also involves Supply Nation being satisfied that the CEO is Indigenous and that the decision-making control is with an Indigenous owner.

Previously the Supply Nation database was only open to Supply Nation members (both Indigenous suppliers and non-Indigenous procurers). The new Indigenous direct database is a free, open source database for anyone to access. Supply Nation continues to do the training and networking functions.

**Issues that Have Impacted on IBE**

The original IBE was a ‘best endeavours’ policy. At the same time a number of private sector corporations were also identifying potential procurement targets as part of their reconciliation action plan processes. When the IBE was reviewed in 2014 it became apparent that the Commonwealth spend was about $6 million compared to about $30 million from the private sector. Clearly it was not effective and just was not being utilised.

Even though the Supply Nation database was there, many Commonwealth agency procurement officers had no real awareness of it and if they were aware had no real motivation to go out of their way to use it. If they had used it, it was there.

However, it is not just a question of knowing about the list. There is also the issue about whether a procurement official had confidence in the capacity of the suppliers on the list to deliver the product. Even if an Indigenous supplier had gone out and satisfied whatever pre-tendering requirements had been put in place that does not mean the procuring officer will have confidence in capacity. In part this confidence issue may have arisen in the way that Indigenous firms presented themselves. In part it may have risen because of the limited experience of procurement officers with the Indigenous community.

> These procurement officers probably never even had any contact with Indigenous people, let alone Indigenous-owned businesses.

There is also just the normal risk aversion in a procuring officer against doing something new and unusual. The IPP targets operate as a tacit encouragement to use the policy and that helps although it is also the accountability factor of having target and having to report against it.
Ways IBE Can Be Improved

The Departments that have had real success, say Tax and Defence, are those Departments that have built relationships with suppliers.

... if you look at Defence, and even ATO, ... as an example, in the last 12 months, they have really sort of skyrocketed in their procurement. They talk about how their success has been around how they've been engaging and building relationships.

A lot comes down to the ability of the individual procurement officer to identify and build those relationships.

It must be remembered that the IBE has been in place only for four years. When there are much more sophisticated Indigenous businesses and much more growth in the sector the risk aversion of procurement officers will not be such an issue. It is still early, Supply Nation has been to meetings where procurement officers have struggled to understand that an Indigenous business does not necessarily have a cultural aspect to it, or why shouldn't an Indigenous business import product from China, since virtually every other business does.

Pre-qualification requirements can be an impediment to Indigenous suppliers wanting to take up Government work. There are other issues that need to be looked at: access to capital, expert human resources, existence of networks, and the absence of specialist advice. All of these matters need to be addressed and targets alone won't do that. The issue of the need to maintain cash flow in the slow process of undertaking Commonwealth work can also be an impediment.

The 25 per cent equity JV would lead to improved employment outcomes and that may be the motivation behind the Creating Parity recommendation.

IBA has capital and a wealth of experience; it certainly has a role to play. It has expanded its role as a commercial broker with a unit set up intended to identify big Commonwealth contracts that could go to Indigenous businesses that IBA could support. It’s unclear where this project is at. They also had a fast-track loan program but it is not clear how utilised it was.

Black-Cladding

The US maintains the 51 per cent standard as does Supply Nation. Supply Nation introduced the 50 per cent registration classification really to accommodate Government. However it’s important that Government understands that 50 per cent does not ensure that Indigenous people are at the forefront in terms of decision-making and control of the business.
... you could even have a 50 percent ownership of a business, and pretty much the Aboriginal and Torres Strait Islander owner is put up as the spokesperson or the front, I guess, in other words. However, [that owner] has no sort of control or management decision-making. So it's pretty much basically a clad or a front for a non-Indigenous person so that – that's my interpretation of the black cladding business.

It has not come through as a real issue yet. It does not need highlighting but it is something that people should be conscious of. That’s why Supply Nation is maintaining the 51 per cent certification. It’s also important to maintain the public credibility of the IPP.

The US also has a separate registration category for JVs with a lower percentage of minority equity. In this category there are criteria around strategies for increasing minority equity and control and for the non-minority interest’s exit.
CHAPTER 5 – ANALYSIS

5.1. Introduction

At the outset it is useful to restate the research question that this investigation aims to clarify. This was earlier stated as being: *What factors have limited the effectiveness of the IBE?*

From this central question several subquestions were identified:

- What are the circumstances when the IBE has been used?
- What benefit to Indigenous people can be attributed to the IBE?
- Why is the IBE not utilised more often?
- How can these identified limiting factors be overcome?

In attempting to address these questions this analysis Chapter is comprised of seven sections following this introduction. Section 5.1 will consider the data gathered in relation to the circumstances of use of the IBE and will analyse respondents’ information regarding Indigenous employment in the firms that were considered as part of the research. Section 5.2 provides an introduction to the structure of analysis of respondents’ responses to the issues of what were the perceived significant factors affecting usage of the IBE and how it could be improved. It also provides a summary of the respondents’ responses. Sections 5.3, 5.4 and 5.5 will look at key factors identified by respondents as affecting the level of use of the IBE. Each of these sections will also contain analysis of respondents’ suggestions as to how these limiting factors may be overcome.

As may be recalled from Chapter 1 above these key factors can be clustered into related issues. Foremost amongst these ‘clusters’ is the combination of ‘procurement officer risk aversion’, ‘doubts about supply certainty’, ‘calculating value for money’, and ‘procurement officer conservatism’ as related negative factors. These factors were seen as connected with ‘introduction of targets’, ‘greater advocacy’, ‘tolerance of mistakes’, ‘better measuring’, and ‘better definition of value for money’. These matters are discussed in section 5.3.

Another ‘cluster’ was the factor ‘lack of supplier development work by procuring agency’ being (loosely) linked to ‘certification requirements’ and likely to be diminished by methods such as ‘greater emphasis on supplier development’, ‘discussion with suppliers about allocations’, ‘state government adoption’, ‘ongoing policy stability’, and ‘more emphasis on training the Indigenous workforce’. The improvement methods of ‘more practical training for suppliers’ and having a ‘central point of contact in departments’ were often connected to
responses around this cluster. These second cluster of factors are discussed in section 5.4.

A third broad cluster was comprised of the factors ‘awareness amongst suppliers’ and ‘limited supply options’. These factors were linked and seen as connected to the improvement methods of ‘development of a greater spread of Indigenous businesses’; ‘more precision in the Supply Nation directory’; and ‘greater role for IBA’. Chapter 5 contains the complete analysis of the negative factors impacting upon utilisation of the IBE and the methods by which respondents suggested these factors could be overcome. This third group is discussed in section 5.5.

Section 5.6 raises the issue of ‘black-cladding’. Black-cladding was not part of the original research question or subquestions. A number of respondents however referred to the matter during interviews, particularly in the context of the discussion of the desirability of developing JV arrangements as a method of increasing Indigenous supplier capacity and diversity. Respondents’ comments on the issue of black-cladding are included in the reports of their interviews and section 5.6 provides some analysis of these comments.

5.2. Use of the IBE and Aboriginal Employment

5.2.1. Extent of Use of the IBE

It will be recalled that earlier in this paper the findings of the ANAO on use of the IBE between 2011 and 2015 were provided. This material constituted the only publicly available data on the use of the IBE for this period. The tabular summary is reproduced below for ease of reference (ANAO 2015, 73):

<table>
<thead>
<tr>
<th>Entity</th>
<th>Nature of Contract</th>
<th>Date</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industry</td>
<td>Event Management</td>
<td>June 2013</td>
<td>$0.1 million</td>
</tr>
<tr>
<td>Defence</td>
<td>Construction</td>
<td>May 2014</td>
<td>$0.7 million</td>
</tr>
<tr>
<td>Defence</td>
<td>Construction</td>
<td>January 2015</td>
<td>$1.5 million</td>
</tr>
<tr>
<td>Department of Human Services</td>
<td>Cleaning</td>
<td>February 2015</td>
<td>$8.3 million</td>
</tr>
</tbody>
</table>

The research interviews conducted between February 2016 and April 2016 suggested that this data was not comprehensive. The interviews with Shane Jacobs [86] of PSG and Phil Lindenmayer [99] of DHS indicate that nine contracts were awarded to PSG prior to July 2015 when the IPP targets were introduced. Three of these appear to be caught in the ANAO data. The interviews with Simon Walter [71-72], Jeremy Clark [76] and Anonymous [82] indicated that there were several other contracts that were negotiated in the period before July 2015 but
executed after that date. These contracts will presumably be identified in the data relating to achievement of the IPP targets. Despite this, the fact of their in-principle conclusion in the period prior to July 2015 suggests they are usefully included in the current analysis. In total this would suggest that approximately 11 contracts can be attributed to the IBE. This conclusion must though be subject to two qualifications.

First, as will be remembered, the IBE operates as an exemption to the requirement contained in Division 2 of the CPR that contracts for the supply of goods and services of a value above $80,000 or construction services above $7.5 million be awarded subsequent to a public tender process. As such, technically, the award of a construction services contract of a value of less than $7.5 million is not by virtue of operation of the IBE. On this technical analysis in the period to July 2015 that there appears to have been only two contracts that would have exceeded that value: one to PSG for the provision of cleaning services to DHS and the other also to PSG for construction services to the ATO. Shane Jacobs [82] suggested the ATO contract was the consequence of a tender process. It is not immediately clear whether that was a public tender process.

The technical operation of the IBE with respect to Division 2 of the CPR noted, it must also be noted that several respondents (Yvette Simms [113], Ian Cumming [95]-[96], Simon Walter [72]) confirmed that irrespective of the Division 2 thresholds, single source tenders for a contract of any significant value (which appeared to be in excess of $100,000) can be attributed to the existence of the IBE. This is not to suggest that as a matter of course contracts above (approximately) $100,000 are not put to public tender. Rather it was suggested that a single source tender would only be used if there was a particular reason for doing so. The reliable previous provision of a service by a supplier was the most likely reason identified. The existence of the IBE constituted another. This analysis was presumably the rationale for the ANAO identifying three contracts that are below Division 2 thresholds as attributable to the IBE.

The second qualification, which is related to the first, is that in the interview with Yvette Simms [112] of Department of Finance it was suggested that in the years 2012-13 and 2013-2014 there were a total 48 contracts awarded to Supply Nation registered businesses. It is unclear how many of these were awarded as a result of a single source tender. Following on from the discussion above, if any of these 48 contracts were awarded as a result of a single source tender then they could, for consistency’s sake, be attributed to the IBE.

These ambiguities noted, the current analysis will consider the circumstances of the award of the contracts to PSG, Barpa and eNPC. While this may not be a comprehensive identification of all contracts attributable to the IBE it is a
number significantly in excess of that identified by the ANAO and would represent a significant sample of the 48 contracts identified by Yvette Simms of the Department of Finance.

An issue that these considerations highlight is that there was no requirement or even mechanism to identify that a contract awarded to an Indigenous firm as a result of a single source tender was pursuant to, or even attributable to, the IBE. With the introduction of the procurement targets under the IPP an opportunity (and a motivation) for Departments to identify the award of contracts as a result of the IBE is introduced in order to demonstrate satisfaction of the relevant IPP targets. Further, the absence of easily accessible data as to the use of the IBE may have impacted on the perception of ‘risk’ around its use that is discussed in the following section.

5.2.2. Circumstances of Use of IBE

The identified IBE attributable contracts were awarded to three firms. Of these the overwhelming majority of contracts were awarded to a single firm, PSG. Further, overwhelmingly the contracts were for constructions services. Two were for cleaning services. One (identified by the ANAO) was for event management. All the firms that can be identified as having been awarded IBE attributable contracts were ‘established’ firms. Barpa could be seen as operating as an exception to this as it was a newly established JV. However, given that the non-Indigenous JV partner business had been involved in construction for in excess of 150 years, Barpa too could be said to have many characteristics of an established company. Finally, all the identified contracts were awarded by four Departments, with DHS and Defence awarding the greatest number. As the interviews with Phil Lindenmayer [99] and Ian Cumming [96] indicate, all the contracts awarded by these Departments were the result of a deliberate program of ‘supplier development’ by the Departments aimed at creating an ongoing and expanding relationship with the chosen supplier. In short it would appear that (with the possible exception of the ANAO identified ‘event management’ contract) there is no instance of a firm becoming aware of a contract in advance of public advertisement and demanding award pursuant to the IBE. As Simon Walter states [72]:

> It is unlikely that a ‘cold call’ seeking allocation of a particular job would be successful. Despite the IBE, if the procuring officials did not want to allocate a job to a firm, plenty of ways could be found to avoid doing so.

In summary, in all the cases that could be identified during the research period, the IBE was used only in circumstances where there was cooperation between an established Indigenous firm and a department which had an identified
The Commonwealth’s objective in supporting the IBE (and subsequently the IPP) was to increase Indigenous employment levels was broadly accepted by all respondents and was documented in the Commonwealth’s own IPP related research and information (DPMC 2014; DPMC 2015c). The research that supports this objective on the basis that an increase in Indigenous employment levels leads to an improvement in a range of other social economic indicators has previously been referred to (Biddle 2011; SCRGSP 2014). So too has the research that suggests that Indigenous firms’ increase in the level of economic activity undertaken by Indigenous-owned enterprises should lead to an increase in the number of Indigenous Australians in the labour force (Altman 2001; Furneaux & Brown 2008; Hunter 2014). The greater rate of Indigenous employment in Indigenous firms has been quantified by Hunter (2014) who finds that Indigenous majority-owned Indigenous businesses reported 72.4 per cent Indigenous workforce. The figure for majority Indigenous-owned and jointly owned business as a composite class was on average a 64 per cent Indigenous workforce. The equivalent figure for non-Indigenous business is 0.7 per cent.

The employment outcomes reported by the representatives of the Indigenous firms interviewed support this research and the Commonwealth’s faith in the notion that facilitating the expansion in Indigenous firms will improve Indigenous employment levels. Shane Jacobs [86] from PSG reported an increase in Indigenous employment from approximately 10 per cent to in excess of 36 per cent and a significant Indigenous supply chain. Anonymous [82] from eNPC reports a 50-60 per cent Indigenous employment rate. Marcia Langton [90] when speaking of ICRG reports a 70 per cent Indigenous employment rate. Simon Walter [71] and Jeremy Clark [76] from Barpa report a 75 per cent Indigenous workforce. While the Barpa workforce is small (four individuals) they also reported on the introduction programs to measure and improve Indigenous employment levels in the more numerous subcontractors. Finally Anonymous (2) [103] from FMG reported that amongst that companies suppliers an Indigenous employment base of 4 per cent in 2011 before the introduction of Indigenous procurement policies had improved to levels of between 8 and 10 per cent for a non-Indigenous company and up to 40-50 per cent for an Indigenous company. Anonymous (2) reported that the current overall percentage (Indigenous and non-Indigenous companies averaged) was 13 per cent.
While this sample is too small to represent a valid quantitative investigation it certainly suggests that the Commonwealth’s ambition of improving Indigenous employment through encouraging the growth of Indigenous businesses is well placed.

5.3. Factors that Affect Utilisation of the IBE

5.3.1. Introduction

The following three sections of this Chapter examine the factors that were identified by the respondents as negatively impacting upon the utilisation of the IBE by Commonwealth departments. This matter of course constituted one of the main questions put to respondents during the interview. A further question put went to suggestions for how the efficacy of the IBE could be improved.

It will be recalled that as part of the literature review chapter it was noted that Flynn, McKevitt and Davis (2015, 446-447) identified seven main impediments to SME participation in public procurement. These were:

- Bureaucracy;
- Lack of communication between SMEs and public procurers and too much weighting on cost;
- SME lack of knowledge over how to source opportunities or engage with procedural aspects of tendering;
- Onerous tender documentation and unprofessional procurement staff;
- Time demands of completing tender documentation;
- Requirements of previous relevant experience and financial costs of tendering; and
- Large contract size and information asymmetries.

Of course the foregoing factors were identified as impediments to SME participation in public procurement generally, not factors that affected the usage of a procurement program that had the secondary objective of the encouragement of SMEs. This distinction noted, it is still worthwhile to bear in mind these identified impediments when considering the factors identified by respondents in the current study. The above factors are considered again at the conclusion of this Chapter in light of the analysis of the research results.

As outlined in the methodology chapter the interview recordings were transcribed and the transcriptions analysed by the researcher. The responses to these questions were ‘coded’ in the sense that the information contained in the transcript was subdivided and assigned into categories for the purpose of creating links between locations in the data and sets of concepts or idea (Basit 2003). The data, once assigned into categories, was tabulated and the number of
respondents identifying a factor as impacting negatively on the use of the IBE summed. The tabulated information is presented below.

<table>
<thead>
<tr>
<th>Factor</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Procurement officer risk aversion</td>
<td>11</td>
</tr>
<tr>
<td>Doubts about supply certainty – factor in risk aversion</td>
<td>7</td>
</tr>
<tr>
<td>Calculating ‘value for money’ – factor in risk aversion</td>
<td>8</td>
</tr>
<tr>
<td>Officer conservatism/lack of motivation – factor in risk aversion</td>
<td>8</td>
</tr>
<tr>
<td>Awareness (amongst suppliers)</td>
<td>7</td>
</tr>
<tr>
<td>Lack of supply options</td>
<td>7</td>
</tr>
<tr>
<td>Lack of supplier development work by procuring agency</td>
<td>8</td>
</tr>
<tr>
<td>Certification requirements</td>
<td>6</td>
</tr>
</tbody>
</table>

It should be noted that respondents were not limited as to the number of factors that could be identified. Nor were they asked to rank factors on the basis of significance. Despite this a number of respondents did identify what in their view was the single most significant factor. This identification is discussed in the sections below in the context of closer analysis of each of the factors identified.

Respondents were also asked to identify methods that could improve the efficacy of the IBE. As with factors that negatively impacted on usage of the IBE, the responses were ‘coded’ and the data, once assigned into categories, was tabulated and the number of respondents suggesting a identifying a method as leading to possible improvement in efficacy summed. The tabulated information is presented below.
<table>
<thead>
<tr>
<th>Method</th>
<th>Number of Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction of targets (IPP)</td>
<td>12</td>
</tr>
<tr>
<td>Greater advocacy</td>
<td>4</td>
</tr>
<tr>
<td>Better measuring</td>
<td>6</td>
</tr>
<tr>
<td>Better (re)definition of value for money</td>
<td>4</td>
</tr>
<tr>
<td>Determine IPP targets by contract value alone</td>
<td>1</td>
</tr>
<tr>
<td>Greater emphasis on supplier development</td>
<td>9</td>
</tr>
<tr>
<td>Discussion with suppliers about allocations</td>
<td>5</td>
</tr>
<tr>
<td>More practical training for suppliers</td>
<td>5</td>
</tr>
<tr>
<td>Central contact point in Departments</td>
<td>1</td>
</tr>
<tr>
<td>Greater flexibility in JV ownership arrangements</td>
<td>2</td>
</tr>
<tr>
<td>Development of greater spread of Indigenous businesses</td>
<td>2</td>
</tr>
<tr>
<td>More precision in Supply Nation directory</td>
<td>4</td>
</tr>
<tr>
<td>Greater role for IBA</td>
<td>2</td>
</tr>
<tr>
<td>More emphasis on training Indigenous workforce</td>
<td>2</td>
</tr>
<tr>
<td>Tolerance of mistakes</td>
<td>2</td>
</tr>
<tr>
<td>State government adoption</td>
<td>5</td>
</tr>
<tr>
<td>Ongoing policy stability</td>
<td>2</td>
</tr>
</tbody>
</table>

As with the negatively impacting factors, respondents were not limited in the number of methods they could suggest nor were they asked to rank the importance of the methods they did suggest. Again despite this a number of respondents did identify what in their view was the single most important method of improvement in their view.

Although clearly separated in the foregoing tables, various negative factors and methods of improvement were often connected in respondents’ responses. Foremost amongst these ‘clusters’ was the combination of ‘procurement officer risk aversion’; ‘doubts about supply certainty’; ‘calculating value for money’; and ‘procurement officer conservatism’ as related negative factors. These factors were seen as being connected with ‘introduction of targets’; ‘greater advocacy’; ‘tolerance of mistakes’; ‘better measuring’; and ‘better definition of value for money’.

Another ‘cluster’ was the factor of ‘lack of supplier development work by procuring agency’ being (loosely) linked to ‘certification requirements’ and likely to be diminished by methods such as ‘greater emphasis on supplier development’; ‘discussion with suppliers about allocations’; ‘state government adoption’; ‘ongoing policy stability’; and ‘more emphasis on training the Indigenous workforce’. The improvement methods of ‘more practical training for
suppliers and having a ‘central point of contact in departments’ were often connected to responses around this cluster.

A third broad cluster was comprised of the factors ‘awareness amongst suppliers’ and ‘limited supply options’. These factors were linked and seen as connected to the improvement methods of ‘development of a greater spread of Indigenous businesses’; ‘more precision in the Supply Nation directory’; and ‘greater role for IBA’. The following sections of this Chapter will analyse each of these clustered factors and methods of improvement.

5.3.2. Risk

5.3.2.1. Sources of Risk

Overwhelmingly the view that use of the IBE was seen as a risk by procuring officers was identified as the single most significant factor affecting utilisation of the IBE. It was identified as a factor by 11 of the 12 respondents (the other respondent did not address the issue of public servant perceptions at all). Six respondents nominated perception of risk as the single most important factor in the limited usage of the IBE. Interestingly it was also seen by Anonymous (2) [99]-[100] as the most significant factor that had negatively impacted upon the FMG procurement program. As Marcia Langton [90] described the issue − there was reluctance to use the policy by Commonwealth officers because of the perceived “inherent risks involved in implementing the policy”.

5.3.2.2. Value for Money

The ‘risk’ was seen as comprised of three elements. The first element was that under a single source tendering arrangement it was difficult for a procuring officer to demonstrate satisfaction of the CPR requirement to achieve ‘value for money’. Eight respondents identified this as a factor. As noted in Chapter 2 it was also identified by the ANAO (2015, 23):

Entity staff interviewed by the ANAO perceived a number of potential barriers to the IBE’s use, including ... having sufficient information to assess whether a value for money outcome would be achieved through the use of the IBE, compared to undertaking an open tender process.

Concern about the ability to demonstrate the achievement of ‘value for money’ under a single source procurement arrangement is often connected to a conflation of lowest price with ‘value for money’. As noted above in Chapter 2, the CPR Division 1 rules specify value for money includes (rule 4.5):

a. the quality of the goods and services;

b. fitness for purpose of the proposal;
c. the potential supplier’s relevant experience and performance history;
d. flexibility of the proposal (including innovation and adaptability over the lifecycle of the procurement);
e. environmental sustainability of the proposed goods and services (such as energy efficiency and environmental impact); and
f. whole-of-life costs.

The ‘whole of life’ costs are defined to include matters such as original purchase price, maintenance costs and disposal costs.

The recognition that value for money ‘is rarely synonymous with lowest price’ is commonly recognised also in relevant literature. Yet, also as noted in Chapter 2, quantitative analysis of public (as compared to private) procurement officers involved in construction projects in the UK found that 78 per cent of officials saw tender price as equal to or more important than all other ‘project specific criteria’. The equivalent figure in private sector procurement was 68 per cent.

Anonymous (2) [103] identified a concern around achieving value for money in the sense of cost as one of the key factors that initially impeded the FMG procurement policy.

It would appear than that identification of a concern about achieving value for money is not simply a concern about achieving lowest price but that price is likely to be a significant factor in this concern.

A common basis for the conflation of price and value for money is described by Phil Lindenmayer [100]:

... where you have a busy and in some cases, stressed procurement person and they’re trying to say, “Okay well, holistically does this represent better value for money?” “Oh, geez. I don’t know. They look sort of fairly similar. I’ll take the cheaper one.” That tends to be – it’s much easier to be able to argue to somebody – to say – just to prove this was the lowest bid.

Irrespective of the extent to which price is conflated with broader notions of value for money, respondents queried whether the practice of single source, compared to open, tendering was the basis of the concern about achievement of value for money. The nuance in the identification of assurance of the achievement of value for money as a factor impeding use of the IBE is described by Yvette Simms [114]:

I agree that that was the perception. I’ve heard that many times. I disagree with it.
She continued [114] that she knew of:

... many examples of people justifying a condition for limited tender so they can approach a single supplier that they used before that doesn’t happen to be indigenous business ... There are lots of creative ways of getting the business that you want, so – if people can find the ability to do that, then they can absolutely be able to justify value for money when approaching a single supplier from a different perspective.

Similarly, Ian Cumming [97] was of the view that Defence had no concern in the satisfaction of value for money requirements through reference to other similar acquisitions and many other ways:

... there’s many different ways that you can test the value for money proposition. So I don’t think there was a discomfort from our point of view on that basis.

These comments suggest that while respondents identified both risk aversion generally and specifically concern about demonstration of the achievement of value for money as factors that impacted upon the use of the IBE, embedded within these factors two core elements appear to emerge from the respondents’ comments. The first factor was concern around supplier capacity. Seven respondents identified this factor. The second element was a general resistance to change also described as an ‘absence of motivation’ for change on the part of procurement officers. Eight respondents identified this factor.

5.3.2.3. Supplier Capacity

Supplier capacity is explicitly identified in the CPR definition of value for money (“the potential supplier’s relevant experience and performance history” and “the quality of the goods and services”). Accordingly the notion of supplier capacity as an aspect of concern around achieving value for money should be acknowledged. Phil Lindenmayer [100]-[101] referred to a perception amongst some procurement officers that Indigenous firms were not ‘real players’ or ‘industrial strength’. The perception of the limited capacity or reliability of Indigenous businesses was described quite directly by Ian Cumming [96]:

I think there is still some caution about going to an Aboriginal business because people don’t want to be seen to be told to go to an Aboriginal business because they aren’t necessarily a business that will fulfil the obligations of the contract ... but I think people still perceive that there is this thing “why would you go to an Aboriginal business when they can’t do the job when there is someone who can?” Well, the understanding is of course that you don’t go to somebody who can’t do the job whether they be whatever colour, race, creed, or whatever.
Yvette Simms [113] identified that the supplier capacity issue often manifested in a simple uncertainty of the unknown, noting that while any individual would use a firm that they or an acquaintance had had a positive experience of previously but that:

\[ t\]hat’s very different to the proposition which is there is a business that I’ve never heard of ... I have no idea whether or not they’ve ever delivered anything to the Commonwealth before and me taking a chance on that business. So I think the fact that it is Indigenous business is irrelevant. It’s just the unknown.

Leah Armstrong [121] identified two possible bases for the perception of supplier capacity as involving unacceptable risk, noting that in part the confidence issue may have arisen in the way that Indigenous firms presented themselves. In part it may have risen because of the limited experience of procurement officers with the Indigenous community. She stated:

These procurement officers probably never even had any contact with Indigenous people, let alone Indigenous-owned businesses.

The uncertainty regarding supplier capacity was reported also in the case of the Barpa JV company. As Jeremy Clark described it [77]:

One of the issues we came up against was the fact that Barpa was a new company, even though our capacity partner, Cockram, has been around for 150 years and has a fantastic track record on jobs and it has done jobs up to 140 million dollars’ worth. There was some uncertainty about Barpa’s track record because we didn’t have one ... But our capacity partner has done heaps, and they – while, they accepted that; in the bureaucratic type black and white mind, we had no track record.

Interestingly, Anonymous (2) [103] identified procurement officer concern around supplier capacity and reliability as the second key factor that initially impeded the FMG procurement policy.

5.3.2.4. Procurement Officer Conservatism

Another element of the overall factor of risk aversion that was frequently reported was that of the inherent conservatism of those undertaking a procurement function. The basis of this conservatism was described by Phil Lindenmayer [100]:

... for very good reason ... what tends to happen is that the processes are designed to be repeatable and therefore ... take some of the perceived or actual risk out of the procurement. [This] allows you to get a comparatively secure or comparatively reliable ... acceptable outcome each time you do it. And therefore when there is something sort of new that doesn’t fit the mould, then there’s a sense of “oh, well, what risk does this bring?”
The inter-relation between conservatism and risk aversion was also identified by Simon Walter [73]:

It just goes against all their public sector grain of, you know, the heavy responsibility they have to spend public money and the incredible due process they have to go through, the burden of all that, to suddenly short circuit it with this favouritism is kind of possibly seen as risky.

Yvette Sims suggested [114] that this reluctance to try something new is simply human nature in noting:

... a reluctance to do something different ... that’s far broader than just engaging Indigenous business. That’s just part of human nature, in my view.

Phil Lindenmayer [100] suggested procurement officers are particularly likely to be averse to the novel:

The psychology issue is that people who tend to be attracted to do government procurement are people who are very comfortable with structure, process, and I suppose, the need to be able to demonstrate and document. So, [it is] their sort of natural behaviour.

This inherent risk aversion is compounded by a lack of incentive as Maya Stuart Fox [109] reported:

... why would you, as a procurement officer, stick your neck out? You don’t have to. No one rewards you for doing it. Everyone kind of raises an eyebrow. Why are you doing it? So the only people that really did it was where you had a ... clear alignment with organisational mission, where you could ... make an argument in those terms, but ... why would people in Department of Education or ... anywhere else, or defence? Procurement officers being who they are – they’re good at running processes. Social policy is not their gig. Saving the world is not their gig. Getting good value for money is. There were just no drivers. There were zero drivers.

5.3.2.5. Risk Summarised

The headline factor of ‘risk’ can then be seen to be comprised of several components; some actual, some more psychological. The perceived risk in the use of the IBE can be seen as stemming from a concern that value for money in the sense of price may not be able to be demonstrated. It also manifests in an apparently greater concern that an Indigenous supplier may fail to perform their contractual obligations (which constitutes an additional attribute of ‘value for money’). This concern in turn has two components: first, the concern that stems from trying any new supplier; and, second, the concern that stems from using an Indigenous business in circumstances where the procuring officer may have had no experience of Indigenous businesses or even Indigenous people. The final component is more psychological. It suggests that any one, particularly a person likely to be attracted to work in government procurement, is unlikely to want to
do something new if there is no immediate benefit and some apparent risk in doing so. Under the heading of ‘risk’ it remains to consider what methods of overcoming the cluster of risk related factors where suggested by respondents.

5.3.3. Overcoming Risk

Four methods of overcoming risk were identified. Broadly these were: ‘introduction of targets’; ‘greater advocacy’; ‘better measuring’; and ‘better definition of value for money’. At the outset it should be noted that while respondents saw merit in each of these methods, the methods were also seen as connected in that each of them ‘legitimised’ the use of the IBE by procurement officers. This theme is explored further below as part of the consideration of each individual method.

5.3.3.1. Introduction of Targets

Shane Jacobs [88] summed up the commonly identified two-fold effect of the introduction of the IPP targets:

\[ I \text{ think that was the game changer and I think now it’s filtering through the DNA of federal government. I think; one with the targets; and, two; with all the media that’s around it and you know, Nigel Scullion saying “this has to happen, this is happening … there’s a target now”. You know, the Ministers or the Dep secretaries are going to sit in front of budget estimates and they’re going to ask them “Why didn’t you do it?”} \]

The IPP targets are seen as important because of the requirement to comply with them but perhaps more importantly because they legitimise use of the IBE (or Indigenous single source supply more generally). The accuracy of this perception amongst respondents is supported by the over-achievement of the 2015-16 targets reported by DPMC.

The interconnectedness of the imposition of targets with the legitimacy, indeed the imperative, to use the IBE is summed up by Maya Stuart-Fox [110]:

\[ \text{The secretary [of DPMC] has made very clear to the other secretaries that they are going to be meeting this target. We have had the Minister write to the other Ministers, because it is important. ... [S]o, in other words, it’s come absolutely from the top-down and everyone’s been told to do it. We have met and spoken to every single procurement group and team.} \]

The juxtaposition in the situation after the imposition of targets: “it’s come absolutely from the top-down and everyone’s been told to do it” with that before the imposition of targets: “There were just no drivers. There were zero drivers”, both as described by Maya Stuart-Fox is marked.

The unanimous endorsement for the introduction of the IPP targets from respondents was accompanied by comments that went to the structure of the
targets. Simon Walter [69] noted how particularly important the remote area set-aside was. A number of respondents commented on the issue of setting targets by reference to contract value or contract number. The IPP currently sets departmental targets by reference to contract number but imputes an averaged value to each contract and allows a department to satisfy targets also by reference to the value of contracts awarded. There were mixed views on the issue.

Marcia Langton [92] was firm in the view that targets should be set by value:

[A] Commonwealth department could go to four Indigenous companies and sole source four contracts for, say, stationery, and each contract’s worth $5,000 and then they’ve reached their target. But what is the point of that? That is not creating economic development. It’s not encouraging entrepreneurship. It’s not actually the spirit of the policy in any way at all in terms of sharing the government spend fairly with the Indigenous business sector, that’s cheating the system.

Professor Langton and Anonymous (2) both noted that the successful FMG One Billion Opportunities procurement policy utilised value (and not number) based targets. The FMG policy was the basis for the recommendation in the Creating Parity report that was the foundation for the IPP targets.

By contrast Shane Jacobs [89] noted that if some Departments issued a lot of small office supply contracts just to satisfy the target even that would assist in developing small Indigenous office supply companies. The issue of number versus value of contracts was also intertwined with the process of developing purchaser confidence in suppliers’ capacity through issuing contracts of increasing value.

As noted in the introduction to this discussion an examination of the DPMC 2015-2016 IPP target data indicates that 1,509 contracts with a total value of $284 million have been issued over this period. The average contract value was approximately $188,000. Information about the median data value was not currently available. However, information released by departments (DFAT 2016) and that revealed by the research suggested that within the total contract value were a number of quite significant contracts issued. This would of course operate to reduce the average contract value. Without more detailed data in relation to the 2015-16 IPP targets further analysis is difficult. It will have to suffice at this stage to note the dichotomy of views represented on one hand by Professor Langton who advocated using the policy to further develop existing businesses into larger businesses and Shane Jacobs on the other who suggests that the development of even micro businesses is important. One factor that should be considered in this regard is the analysis contained in Morrison et al (2014). As noted in Chapter 2 while this research indicates that Indigenous firms
of all sizes employed Indigenous people at very high rates, the median number of employees across all 324 businesses involved was one. This would suggest that in term of the creation of number of Indigenous jobs, encouraging the development of larger firms may lead to better outcomes.

5.3.3.2. Greater Advocacy

Advocacy of the IBE was specifically identified as a method to increase utilisation by both suppliers (Simon Walter and Jeremy Clark) and purchasers (Phil Lindenmayer and Ian Cumming). To many other respondents the notion of advocacy seemed implied in the discussion around the publication of the setting and achievement against targets which is discussed further below.

As a stand-alone method it was seen as having three important roles. First, as suggested above, having political leaders (especially government ministers) advocate use of the IBE legitimised use of the exemption and assisted in overcoming the risk aversion that to a certain extent was inherent in procurement officers. Second, advocacy of the program was seen as an important buttress against an expected reaction to the IBE that would eventually come from some non-Indigenous business interests that would perceive they were disadvantaged by the IBE. Finally, advocacy of the program was seen as important insurance against negative reactions created when the inevitable occurred and there was either the failure of an Indigenous supplier or allegations of mis-governance made against a supplier.

As Maya Stuart-Fox [111] described the issue:

_I remember the procurement officers being really open about it upfront, saying, “Look, things go wrong in contracts all the time, right?” Things go wrong in every business all the time, but the first thing that goes wrong with an indigenous business, and everyone will go, “Oh, see, that was a – that was really high risk. That was a bad idea”. So at some point that’s going to happen and we need to be mature enough to say, “You do realise this happens all the time”._

Simon Walter [74] described the general issue of advocacy quite succinctly:

_I think the way to get more out of it is through leadership and through vocal advocacy and championing of it and making an example of successful cases and say: “Hey everybody! Look at these guys. They used exemption to do this. This is fantastic. This is what we want.” If [government is going to] be aggressive like that, I think you’ve got to be tolerant of some issues maybe arising and having a few stuff ups and saying: “We know there’s gonna be stuff ups. That’s what you get”, and it’s not just the Aboriginal businesses and contracts that have stuff ups. There’s plenty of stuff ups all over the joints, so let’s not have one stuff up in an IBE awarded contract pull it – the whole thing. We’re ready for it and we know it’s going to happen, but that’s part of what we do, but we’re running a portfolio here. We put 80 contracts
out. Three of them went bad, so what? You look at contracts in a white business and probably ten of them went bad. So, I just think there’s a real need for strong public advocacy and championing and backing people who do it.

5.3.3.3. Better Measuring

This matter was often seen as a corollary to the introduction of the IPP targets and explicitly identified by six respondents. Simply put the issue was that the introduction of the IPP targets themselves would not be as effective in achieving the desired effect unless there was an effective measurement of a department’s achievement of those targets and a consequence for non-achievement. Anonymous (2) similarly described the positive impact of introducing Indigenous procurement as a KPI for both the company and individual managers in the success of the FMG One Billion Opportunities policy.

Amongst some respondents there was a level dubiousness about the genuineness of the enforcement of the targets once promulgated. Jeremy Clark [80] is an example:

The targets have to be enforced and they keep telling us they’re going to be and they’re going to be held to account ... Well, I’ll need to see that.

The issue of accountability for the achievement of targets was often also associated with advocacy in a manner described by Phil Lindenmayer [102]:

... the reporting will create of an impetus of itself, because there is nothing as effective as a little bit of creative competition between agency heads. ...

[They] they want to – what I desperately wanted and still want is our secretary to be able to sort of look over the table at secretaries’ board at the department of whatever and say, “How are you going with your indigenous business target? Oh. By the way, we got to triple our target this year”.

The attention to improving the measurement of Indigenous supply contracts demonstrated by the 2015-16 targets data suggests that Phil Lindenmayer was quite prescient.

5.3.3.4. Better Definition of Value for Money

This method was identified by three respondents (Pete Dunn, Marcia Langton and Anonymous (2)). Anonymous (2) identified it as a method that had been employed at FMG. In essence the method suggests that the level of Indigenous participation in a supply proposal should form an explicit part of the tender evaluation matrix. The effect would be that the level of Indigenous participation in a supply proposal would be included as a factor in the definition of ‘value for money’ contained in the CPR along with factors such as quality, fitness for purpose, supplier flexibility, and environmental sustainability. The rationale being that explicit inclusion of Indigenous participation would give procurement
officers greater confidence in assessment of Indigenous participation as a relevant consideration not only in utilisation of the IBE but also in competitive tender situations.

Anonymous (2) [105] described the process at FMG:

... [A]s part of the tender evaluation ... they were weighted and that score would be a part of the overall assessment and evaluation of who actually was the successful tenderer. So, what that did was that the ... what I call the smart contractors, start to realise that it was in their best interest to start to form relationships with Aboriginal businesses. And also, the contractors started to realise that – well, if they actually went in a joint venture with an Aboriginal party, then their score was much higher.

5.3.3.5. Overcoming Risk Summarised

Most of the methods of overcoming the reported perceived risk in utilisation of the IBE went to the IPP targets and matters associated with the targets. Given the staggering turn around in use of the IBE following the imposition of targets, this focus would appear completely warranted. Despite any ambiguity in the reporting of Indigenous supply contracts that may be contained in 2015-2016 targets data unarguably the targets have been effective in overcoming reluctance in utilisation of the IBE. This noted, there is still merit in the several other methods identified. Advocacy had a perceived role in the acceptance of the IBE strategy amongst the broader community beyond Commonwealth procurement officials, particularly with current or potential Indigenous suppliers. Improved measurement and transparency around measurement had an advocacy function and helped to give confidence in the IBE process, and the redefinition of value for money would assist in the ongoing development of the Indigenous supply sector beyond any short-term government program.

5.3.4. Supplier Development

The lack of a supplier development oriented approach was the second broad cluster of factors seen as impeding utilisation of the IBE and associated remedial methods. This cluster included the factors ‘lack of supplier development work by procuring agency’ which was often connected at some level to ‘certification requirements’. The remedial methods that were suggested were ‘greater emphasis on supplier development’; ‘discussion with suppliers about allocations’; ‘more practical training for suppliers’ and having a ‘central point of contact in departments’. Interestingly the desirability of ‘policy stability’ and ‘state government adoption’ of IBE style policies was also seen as related methods of improving utilisation of the IBE. The analysis of this cluster will commence with a discussion of the reported nature and role of supplier development.
5.3.4.1. The Nature of Supplier Development

In the context of the current discussion ‘supplier development’ refers to the process of a procuring agency establishing direct contact with an Indigenous supplier ahead of the making of any procurement decision. The purpose of this contact is to allow the procuring officer and the Indigenous supplier to identify opportunities that are within the capacity of the Indigenous supplier and in addition to map out a program of supply opportunities that will allow the capacity of the Indigenous supplier to grow over time.

The planned growth contemplated by a supplier development approach also has the effect of reducing the procuring officer’s perception of risk around engaging a new (Indigenous) supplier. This is because the early smaller contract opportunities carry only minor consequence in the event of non-performance. However, performance of these early contracts allows a demonstration of capacity and a reduction in (perceived) risk in the award of later more significant contracts.

Finally, the planned award of contracts of increasing value allows for an Indigenous supplier to satisfy certification requirements such as those of the ISO 14001 relating to Environmental Management Systems and those of the Federal Safety Commissioner. Complete certification under both these regimes requires both the adoption of the appropriate policies and demonstration of the implementation of these policies in practice. However complete certification under such schemes is a mandatory pre-requisite for the award of contracts above a certain value (in the case of the Federal Safety Commissioner $4 million). This can create a catch 22 for new suppliers: a contract cannot be awarded without certification but certification cannot be obtained without demonstration of implementation of the systems through performance of a contract. A supplier development approach can break through this catch 22 by awarding a contract of sufficient value to demonstrate implement of systems but still below the value where mandatory certification requirements applies.

The supplier development approach as described above was deployed by both the Department of Defence and the Department of Human Services. It was also used extensively by FMG.

5.3.4.2. Supplier Development Described

Phil Lindenmayer [99] described the basic mechanics of the supplier development that DHS undertook with PSG:

_We did a total of four under the threshold ... They did one small fit-out for 80,000 dollars. They did another one, I think, for 110, one for 170, one for 1_
think about 200 or thereabouts over a period of about 18 months. That then got our property people and the outsource service provider into a mindset to say, “Okay, right, here’s a company that can deliver”.

Leah Armstrong [122] emphasised relational aspect of the process of supplier development:

... if you look at Defence, and even ATO, ... as an example, in the last 12 months, they have really sort of skyrocketed in their procurement. They talk about how their success has been around how they’ve been engaging and building relationships.

Anonymous (2) [104] described the quite deliberate and hands-on approach to supplier development that was central to the FMG One Billion Opportunities policy:

Aboriginal businesses were knocking on our door looking for opportunities and they were brand new, never had a contract before, but they had built a team around them and we then basically helped them. We basically got them in, so we didn’t actually go up to tender, we just direct sourced with them. We ... built a project up with them. And then we really helped them manage the project with them on site to a point where we could ... then back off. And so, that model was very, very successful.

Anonymous (2) continued to discuss the role of the JV and subcontracting in Indigenous supplier development at FMG. Under this approach an existing FMG supplier would form a JV with an Indigenous corporation to fulfil an FMG contract. Alternatively, a portion of the contract would be subcontracted to an existing Indigenous supplier. Anonymous (2) noted that this approach was initially not attractive to existing suppliers. In response to this FMG introduced the AES as part of its tender assessment. Under the AES the extent of use of an Aboriginal subcontractor was included as a factor in the tender assessment matrix (in a similar manner to that described earlier under ‘redefining value for money’). This provided an incentive to existing contractors to include Aboriginal subcontractors. A crucial component of this process was the monitoring of actual use of Aboriginal subcontractors subsequent to the contract award to ensure that undertakings were complied with. A JV between an existing supplier and an Indigenous firm was weighted even higher and this encouraged the rapid development of a number of JV models.

5.3.4.3. Supplier Development in the Public Sector

Ian Cumming [96] described both the nature of supplier development and one significant reason why there may have been reluctance to adopt the supplier development approach in the Commonwealth public service:

In the public sector the procurement process is like hanging a poster on the outside of the door and saying “those who are willing to bid, come and see
me." You don’t walk out the door, down the street and say "okay, you. I’d like you to work for me. Come with me. Can you work for me? Tell me about how good you are. What sort of price? Are you value for money? Okay, I will take you."

A supplier development approach then is quite different from the approach normally adopted in public sector procurement which centres on the competitive public tender. This is because the necessity to have early (pre-contract award) discussions with a supplier could be perceived as undermining aspects of Division 1 of the CPR. Namely that all Commonwealth procurements should be (DOF 2014, 13, rule 4.4):

- non-discriminatory and encourage competition;
- use public resources in an ... ethical manner; and
- facilitate accountable and transparent decision making;

Of course the perception that supplier development undermines these principles can be addressed (and is discussed in some greater detail in Chapter 2 above). Suffice to note at this stage that developing Indigenous suppliers can also encourage the development of competition; there is nothing unethical about addressing persistent appalling Indigenous disadvantage; and transparency and accountability can be maintained while adopting a supplier development approach.

While the perceptions of supplier development as offending Division 1 CPR principles can be responded to, respondents that identified this factor suggested that a supplier development approach was a necessary part of the utilisation of the IBE and that most departments had been reluctant to adopt this approach because of the perception. The need for advocacy of the program (discussed above) was suggested as one method of overcoming these perceptions.

5.3.5. Developing Supplier Development

Respondents suggested several methods of encouraging the use of a supplier development approach by procuring officers. The most common (nine respondents) was ‘greater emphasis on supplier development’. The three other methods that were suggested were ‘discussion with suppliers about allocations’, ‘more practical training for suppliers’, and having a ‘central point of contact in departments’.

5.3.5.1. Greater Emphasis

The most common suggested method of overcoming the identified lack of use of a supplier development approach by agencies was also the most obvious: simply
that the agencies should use it. Again, the advocacy of the IBE, including of a supplier development approach and its legitimacy by the political leadership and senior officers was seen as important in this regard.

5.3.5.2. Allocation Planning

The emphasis in the comments regarding ‘discussion with suppliers about allocations’ was focussed on enhancing the ability of the Indigenous supplier to plan a growth path for the firm based upon some certainty of future Commonwealth demand.

Pete Dunn [118] described the implications:

*In order for a young business [to grow] … they need a quantum of work, they need continuous work, they need that to be flowing through their business in order to do what they really want to do which is to employ, train up more indigenous young people and to be handed a hundred fifty thousand dollar contract and that’s the only one you’ve got as a sole source for an Aboriginal business is really – it’s not enough. It needs a quantum of work.*

Pete Dunn’s analysis also explains why to respondents that identified the methods the question of ongoing policy stability and stage government adoption of IBE type policies were seen as important and related methods. Through ensuring a stable Commonwealth policy environment and through the additional demand that would be generated by State government adoption of similar policies the ongoing demand necessary for the orderly sustainable growth of Indigenous suppliers (including new entrants into the market) could be achieved.

It was in this context that there was a reference to the training of the Indigenous workforce. That is the comment was not in the context of an overall need for greater Indigenous education and training opportunities but that there needed to be a tailoring of the provision of training opportunities as a form of firm based labour force planning built upon the foundation of allocation planning.

5.3.5.3. Supplier Procurement Training

The final two methods of encouraging a supplier development approach were quite practical. The first was to ensure that there was a known central point of contact in each agency. This was seen as method both facilitating the development of relationships between departments and Indigenous suppliers and as a method of ensuring there was at least one individual with experience in the explanation of the administrative requirements of the procurement process to Indigenous businesses. The related and more common suggestion was to increase the availability of practical training to (existing or potential) Indigenous suppliers in the satisfaction of Commonwealth procurement requirements.
5.3.5.4. Supplier Development Conclusion

Supplier development is clearly a crucial approach in increasing Indigenous participation in government procurement. As identified in section 1.2 the research suggested that the only occasions the IBE had been utilised (at least before the IPP targets) was in circumstances where there was a deliberate supplier development approach taken by the procuring agency.

A risk of the unavoidable process of categorising qualitative data provided by respondents is that the intimate connections between categories are diminished. This is particular true in the case of ‘risk’ and ‘supplier development’. The process of supplier development allows a relationship to develop between procurer and supplier. The development of the relationship allows the procurer to develop confidence in the capacity of the supplier. The development of confidence in the capacity of the supplier operates to reduce the perception of risk by the procurer regarding the use of a new (Indigenous) supplier. This in turn assists in satisfying the (existing) definition of ‘value for money’. The repeated use of the same supplier also operates to reduce any additional administrative burden created by using a new (Indigenous) supplier.

5.3.6. Supplier Awareness

The final cluster of factors focussed not so much on the relationship between the procuring agency and an Indigenous supplier but rather on the awareness of each other’s existence. The two factors going this issue were ‘awareness amongst suppliers’ and ‘limited supply options’. The methods of overcoming these awareness impediments can be described as ‘development of a greater spread of Indigenous businesses’, ‘greater role for IBA’, and ‘more precision in the Supply Nation directory’.

5.3.6.1. Procurers awareness of Indigenous suppliers

Yvette Simms [113] identified some of the issues from the perspective of the procuring agency:

… one of the issues until the indigenous procurement policy, and until there was a publicly available list [of Indigenous suppliers] is while the CPRs have enabled people to very easily and simply procure from an indigenous business without needing to approach the open market, if I was a buyer and I wanted to pursue that, first thing I’d want to consider was how do I know where to find an indigenous business? That … was the stumbling block because there was no information available unless your organisation [department] happened to be a member of Supply Nation. If your organisation was a Supply Nation member, you could access a subset of indigenous businesses, but the list of businesses certified by Supply Nation was not easy to access or navigate. So there are a whole range of factors
there ... but the minute you start making things difficult for people, they can then sensibly say, “Why am I bothering?”.

Shane Jacobs discussed the matter from the perspective of the Indigenous supplier. When asked why he thought other Indigenous firms had not pursued the same opportunities that PSG had secured, Shane responded [87]:

I can’t answer for other people, but just from me talking to other suppliers ... I think it’s a monetary issue. You’ve got to be able to invest. I think the Federal Safety Accreditation would have cost us $30,000-$50,000. Then the next issue to come into play is going to be Bank Guarantees. The department’s going to say to them “We want a couple of hundred thousand dollar bank guarantee.” ... I think there are not a lot of mature Aboriginal suppliers out there, and yeah, that scares them, mate. The whole process scared them, you know? And that’s why I think – I don’t know, whoever it is, if it’s Supply Nation, if it’s the IBA, if it’s the Chambers, there’s going to be a lot educating happening.

Shane also noted that most of the ‘mature’ Aboriginal firms had been engaged in the mining industry but were now starting to turn their attention to IPP work.

Both the respondents quoted above referred to Supply Nation’s role in connecting procuring agencies with Indigenous suppliers. Almost all of the respondents (7) that referred to this networking role for Supply Nation commented positively (or at least not negatively) on it. The issue of access to the Supply Nation directory that was referred to by Yvette Simms was overcome with the launch of the IPP when the directory was relaunched as ‘Indigenous Business Direct’ which allowed for general public access. At this time the Supply Nation registration (of at least 50 per cent Indigenous ownership) compared to the long-standing certification (in essence greater than 50 per cent ownership and an Indigenous CEO) was introduced. The more open registration classification allowed many more Indigenous suppliers to be included in the register.

This improvement noted, there was also comment from two respondents that the directory lacked sufficient precision to be truly useful. Jeremy Clark laughed [72] when he commented that on the directory there were over 400 Indigenous construction firms operating in Victoria – the directory was in fact showing every firm that had indicated they would work in Victoria.

5.3.6.2. Indigenous Supplier Awareness of the IBE

Yvette Simms, Maya Stuart-Fox, Phil Lindenmayer and Ian Cumming were all clear that department procurement officers would have been aware of the existence of the IBE. As Yvette Simms stated [113]:

... there are procurement professionals in every agency, who know the CPRs back to front including the exemptions.
However, the same was not the case with Indigenous suppliers’ awareness of the IBE. The research respondents included personnel from three Indigenous firms each of which had had varying levels of involvement with the IBE. In each case the firms became aware of the IBE only in 2013 despite its original adoption in May 2011. In each case the firm had had contact with Pete Dunn of GHD. Pete Dunn had made two of the firms aware of the IBE and assisted the third (PSG) in representation to government after PSG had, through its own CEO’s research, become aware of the IBE. Pete Dunn himself became aware of the policy in late 2012 apparently through his own contacts. From the interview it was not apparent that Supply Nation had a significant involvement in the IBE until the process of review which commenced in 2014 and led to the IPP.

From this it would seem an almost inescapable conclusion that there was no promotion of the IBE amongst Indigenous suppliers at all until the release of the Forrest Report (Creating Parity) in August 2014. This is not to suggest the IBE was deliberately kept hidden. PSG and Pete Dunn became aware of it through their own research. However, there was simply no promotion of the IBE until the policy development process that culminated in the announcement of the IPP.

In these circumstances a lack of Indigenous supplier awareness of the existence of the IBE and a consequential failure (inability more accurately) to commence the process of developing relationships with procurers must be considered a significant issue in the limited utilisation of the IBE. This factor combined with the reluctance of procuring officers to approach Indigenous suppliers as considered above in the context of both risk and supplier development, clearly had dramatic consequences on the utilisation of the policy.

5.3.6.3. Supplier Existence

The factor of the mutual awareness of the existence of Indigenous suppliers and departments keen to purchase was often combined with a question as to the existence of relevant Indigenous suppliers. Phil Lindenmayer [101] summarised this issue:

... most of the money we spend is on stuff that’s really not a strong target for indigenous business. We lease a lot of buildings. There may very well be some indigenous businesses there, but I’m not aware of too many. We buy lots and lots of heavy duty IT stuff ... like mainframes and enterprise software and communications equipment. We buy a lot of telecommunications services. So, in terms of what the broad categories of the things we buy are, an awful lot of it is stuff where indigenous businesses do not operate actively in their own right. My personal understanding is that with the more operational things that state and local governments do, there’s probably more opportunity than for Commonwealth departments.
It should be stated there were a number of exception to this general proposition that were identified by respondents: Indigenous financial analyst consultants and Indigenous internet service providers to name but two. However, amongst the seven respondents that identified lack of supply options as a factor the issue of existence of relevant suppliers was often noted in addition to an awareness issue.

IBA commonly featured as a potential method to assist in overcoming the issue of relevant Indigenous supplier existence. However, respondents usually suggested that IBA’s (then) current strategies were less than effective in this regard.

Professor Langton [91] was quite direct:

Look, IBA is another one of these clunky entities in the Commonwealth’s reach into the Indigenous business sector and for instance their interest rates have been far too high, well above market rates. The conditions under which they insist on having some equity or shareholding in operations is a – I think oppressive and onerous in many circumstances from talking to people who are in them. … Business moves fast, bureaucrats move at a glacial pace. It is just hopeless.

While Professor Langton was the most forthright on the matter almost all other respondents felt that IBA should have been more active and (or) effective in proactively assisting in the development of Indigenous suppliers to exploit the opportunities that had been created by the IBE. A notable exception to this consensus was Shane Jacobs [88]:

We have a close working relationship with IBA. IBA have really supported our growth and to be honest with you I don’t think we would be in this position today if it wasn’t for the IBA supporting us … IBA helped us out with seed funding on our projects. They helped us out with some capital to attract staff, get our own equipment. Like … our cleaning opportunities, we needed equipment to start them, so, they helped us out. So that’s seed funding to start the jobs off.

5.3.6.4. Supplier awareness and existence conclusion

The fact that this cluster of matters has been considered after risk and supplier development should not be seen as an indication of its practical significance. As noted earlier, the impact of the absence of any promotion of the existence and opportunities created by the IBE to Indigenous suppliers, particularly those Indigenous suppliers that Shane Jacobs described as ‘mature’ — with the capacity to carry the financial burden involved in successful tendering — would appear to have been dramatic. This is particularly so, also as noted by Shane Jacobs, Anonymous and suggested by Professor Langton, when many of the mature Indigenous suppliers were engaged in the mining industry in northern Australia.
These factors combined with the factors identified under the headings of risk and supplier development really suggest a complete answer to the underutilisation of the IBE.

5.4. **Black-Cladding**

The term ‘black-cladding’ is recently frequently discussed in the context of the IBE and the IPP in particular (Foley, 2013; Burrell, 2015; Mundine, 2016). The term lacks a distinct definition although Professor Langton [93] provided the essence of it:

*There are various forms of black cladding, but what it is is a non-Indigenous owned company taking advantage of an Aboriginal person by either giving them a free carriage shareholding or a consultancy fee on a daily or other basis to give the impression that the company has some Indigenous content whether it be shareholding, employment and Indigenous supply chain. Usually, none of that exists.*

As noted earlier, the issue of black-cladding was not part of the original research question or subquestions. However, over the course of the research period there was increasing political attention being paid to the matter. A number of respondents referred to the matter during interviews. In addition the question of black-cladding often arose in the context of the desirability of developing JV arrangements as a method of increasing Indigenous supplier capacity and diversity. For these reasons eight respondents spoke of their definition of black-cladding and the extent the matter constituted a legitimate area of concern. Respondents’ comments around these areas are included in the reports of the interviews under a distinct heading. They have also been analysed and coded in a similar fashion as the responses to the main research questions. In general these comments go to two matters: how a legitimate JV company could be distinguished from a black-cladding sham; and, the extent to which the creation of individual Indigenous wealth was a legitimate outcome of the application of the IBE. The following section provides some analysis of the comments around these issues.

5.4.1. **Black-Cladding and Joint Ventures**

There were four Indigenous firms that were involved with the research: eNPC, ICRG, Barpa and PSG. Of these, all except PSG was a JV company (Barpa) or had operated in a JV (eNPC and ICRG). ICRG had significant non-Indigenous equity as did its subsidiary Guma ICRG. The joint-venture model is then quite prevalent in the Indigenous business sector. The JV model was often seen as an important mechanism to facilitate the partnership between Indigenous interests and the non-Indigenous business sector that may have greater resources and expertise. In fact all (eight) respondents who addressed the black-cladding issue saw that
JV structures could be important in developing Indigenous supply capacity. However, the desirability of facilitating this partnership was balanced against the risk that a JV was simply a black-cladding sham. Often the issue was discussed in terms of the level of Indigenous ownership that was required to obtain access to the IBE or other preferred status. In various fora the figures of 51 per cent, 50 per cent and even 25 per cent had been referred to.

To access the IBE the supplier must be at least 50 per cent Indigenous owned. The 50 per cent Indigenous ownership is also a requirement of Supply Nation registration. The Supply Nation certification requirement is for 51 per cent Indigenous ownership. The Supply Nation registration category was introduced for the purpose of supporting the launch of the IPP. The Forrest Review Creating Parity report recommended that 25 per cent Indigenous ownership be sufficient to access the IBE. Not surprisingly the FMG One Billion Opportunities policy also adopts a 25 per cent Indigenous equity requirement. A number of the respondents discussed the rationale behind these figures.

Leah Armstrong [123] explains why, although Supply Nation introduced the 50 per cent registration category to accommodate the IPP, the Supply Nation preference was for the 51 per cent ownership level which is why this remained the requirement for certification:

... you could even have a 50 percent ownership of a business, and pretty much the Aboriginal and Torres Strait Islander owner is put up as the spokesperson or the front, I guess, in other words. However has no sort of control or management decision-making. So it’s pretty much basically a clad or a front for a non-Indigenous person so that – that’s my interpretation of the black cladding business.

Anonymous (2) [106] describes the consideration of the issue at FMG:

So if you’ve got the capability partner coming along that’s providing majority of the capability and therefore taking most of the risk, but you’re handing control of that business or joint venture to a less inexperienced party, it’s going to be very, very difficult to form those relationships. So I was always advocating the 50 per cent where it is equal board representation, equal decision-making and it’s equal so you’re go into a business relationship where no party has the upper hand on the other and you work together to build the capability over a period of time. Where the 25 per cent comes into it, our definition is minimum of 25 per cent. Ninety-five per cent of our $1.8 billion in contract is actually 50 per cent or higher [Indigenous ownership]. But we’ve had some situations where an Aboriginal husband and wife had done a joint venture with a non-Aboriginal business and therefore, that joint venture is only 25 per cent owned.

Professor Langton [92]-[93] outlined that a primary motivation behind the Creating Parity 25 per cent recommendation was to facilitate the
development of Indigenous suppliers at the medium more than the small end of the spectrum:

We need capability partners, we need joint ventures, we need the subcontracting arrangements ... we need partnerships of various kinds to bring in capability partners, and to bring in capability partners that have effective control and hand it over. Hand over the business within a set period of time under a contractual arrangement. And who in business is going to do that if the demand is that – the Indigenous ownership is 50 or 51 per cent? Nobody in their right mind would do it, just watch shark tank, right? What are the offers made? Well from the investor, the investor is going to want a majority shareholding and then when you’re talking about – you’re going to put 50 million out there to make a project happen, why would give an Indigenous business with no capability, no capital track record, and no equipment a 51 per cent free carried shareholding? You wouldn’t if you were serious about business. You just wouldn’t. If the requirement was to give them a 25 per cent option or even 25 per cent free carry or under a loan arrangement, sure, you’d consider that. You would want to stagger the contract so that you get your return and then at the end of the contract, the Indigenous business would be in effective control, would take over the whole operation, and the non-Indigenous company has taken their return.

Leah Armstrong discusses the particular arrangements that apply in the US to JVs of the kind described by Professor Langton. The US Minority Supply Development Council has a separate registration category for JVs with a lower percentage of minority (e.g. Indigenous) equity. In this category there are criteria around strategies for increasing minority equity and control and for the non-minority interest’s exit.

Anonymous (2) [102-103] describes a highly pro-active approach at FMG that operates to ensure whatever the equity level the Indigenous supplier is not simply black-cladding and also demonstrates a supplier development approach:

You do your due diligence on the contractor. You ensure that the capabilities if – you want to know who the people are – if you do your internal due diligence and your pre-qualifications on them – and these sorts of things, then black cladding to me doesn’t – we’ve never had an issue with it. It doesn’t really arise because we actually drilled down to what is your Aboriginal employment, what are the parties bringing to the table to deliver these services. We survey them on a monthly basis to ensure what they’ve said they’re going to do, they do. The other thing that we’ve done that we’ve been doing for about the last three or four years is if we award a contract to an Aboriginal joint venture, then instead of special clauses that we put into that contract that we talk about the sum of the outcomes that we want to see from the joint venture building the capacity, transfer of information. We actually get invited to their board meetings as an observant. We’re not there for the commercial because we don’t want to know their commercials, but we certainly are there to sort of get a feel on – that the Aboriginal party actually knows what’s going on in the contract, that information is being shared between both parties and the Aboriginal
Many respondents thought that while black-cladding was an issue that warranted attention there was a risk its prevalence could be overstated in attempt to undermine the policy. Also, as is apparent from some of the comments reproduced above, there were a number of comments to the effect the issue was more nuanced than simply the percentage of (nominal) Indigenous ownership.

Pete Dunn [118] had a pointed last word on the role of JVs in the IBE:

*I think is really important is that the federal government did not understand that it’s not about them … the IBE and subsequent procurement policies are about driving the private sector to invest in Indigenous businesses.*

5.4.2. Employment and Wealth

The discussion around Indigenous ownership and corporate structures also led several respondents to comment on a possible divergence between the Commonwealth Government’s objectives around the IBE and those of a number of Indigenous stakeholders. Leah Armstrong [120] described the tension:

*The model that [Supply Nation] took from the US was about creating wealth in Indigenous families and giving Indigenous owned businesses and creating that space in the economy for entrepreneurship as they have done in the US. But most definitely, the Australian policy context both with the development of the IOP and the current one [the IPP] have always tried to focus on is that there should be that employment outcome in it. And it is a bit of a tension, … employment is an outcome. We’re not disagreeing that employment can be – is an outcome, but it’s not a measure.*

Maya Stuart-Fox noted that employment data can be a difficult measure because it can vary depending on the nature of the industry. She used the example of an Indigenous-owned technical financial data analysis firm and an Indigenous-owned civil engineering firm commenting that it was easier for the latter to demonstrate employment outcomes but the former was just as important to the development of the policy. The development of a diverse Indigenous supply sector was also a legitimate goal of the policy.

Jeremy Clark also identified the complexity of the issue. He stated that an Indigenous-owned company may not be achieving its employment targets but still be being run very profitably. A profitable Aboriginal company will return benefits to the community and that in the longer term they would employ Indigenous people. The issue was not just about jobs in the short term. He also identified another issue about the focus on employment targets [81]:

*party really is making informed decisions about the project and what’s happening.*
There is also an issue that some people are happy to support a program that helps Aboriginal people “but geez we don’t want to see them actually driving a Mercedes, be wealthy or be successful”. Really they are happy to help Aboriginal people to not be a welfare burned but not get above any white people. It’s the same in sport – be a good grateful player but don’t get too big for your boots. I think business involvement, the economy it’s the same.

5.5. Research Analysis in Light of Literature Conclusion

At the conclusion of the literature review contained in Chapter 2 a number of key themes were identified. At this point it is useful to revisit those themes and consider them in light of the foregoing analysis of the research results.

- The processes of procurement in both the public and private sectors are essentially similar. The distinction is the environmental and contextual factors (for example legal, policy, cultural factors (Johnston and Lewin 1996; Thai 2001).

Analysis of the research results particularly the experience of FMGs one billion opportunities policy supports the notion that there is a broad similarity between procurement processes as it affects a preferential procurement program such as the IBE. Further, the extensive emphasis that respondents gave to procurement officers perceptions of risk and tendency towards risk aversion does support the notion of a distinction based on environmental and cultural factors. This noted the reported experience of FMG indicated that private sector procurement officers shared a particular aversion to supply uncertainty and increased complication of the procurement process. This suggests the environmental and cultural distinctions should not be overstated.

- Generally participation by SMEs in the public procurement is seen as positive but a number of currently identified impediments to such participation include (Flynn, McKevitt and Davis 2015);
  - Bureaucracy;
  - Lack of communication between SMEs and public procurers and too much weighting on cost;
  - SME lack of knowledge over how to source opportunities or engage with procedural aspects of tendering;
  - Onerous tender documentation and unprofessional procurement staff;
  - Time demands of completing tender documentation;
  - Requirements of previous relevant experience and financial costs of tendering; and
  - Large contract size and information asymmetries

The research analysis does confirm that many, but not all, of these impediments were also identified by respondents. For example: ‘requirements of previous relevant experience’ is represented in research in the expressed concern around Indigenous supplier’s reliability and capacity; ‘SME lack of knowledge’ equates to
the identified concerns of ‘supplier awareness’; and ‘lack of communication between SMEs and public procurers and too much weighting on cost’ equates to the ‘lack of emphasis on supplier development’. ‘Large contract size’ is also relevant to the notion of supplier development and ‘risk around value for money’. Many of the other identified impediments are reflected in the respondents’ responses although perhaps not given as great an emphasis.

- Mechanisms to overcome these impediments include (Akenroe & Aju 2013):
  - Broad procurement reform (bureaucratic simplification);
  - Subsidies;
  - Capacity building; and
  - Targets.

While the research did not suggest any particular emphasis on broad procurement reform (although there was some limited suggestion this may be valuable) the broad consensus around the significance of the IPP targets and the importance of the development of a supplier development approach parallels the latter two mechanisms identified by Akenroe and Aju.

- The issue of the legitimacy of pursuing secondary objectives within the public procurement process is impacted upon by various competing ‘strands’ within procurement ideological discourse. Erridge and McIlroy (2002) identify three such strands:
  - Commercial (minimum price);
  - Regulatory (transparency and accountability); and
  - Socio-economic (rectifying imperfect markets and nature of public enterprise).

Each of these strands was apparent in respondents’ responses. The emphasis on minimum price was reflected in the discussion of the role of value for money. The reported reluctance to adopt a single source tender resonates with the regulatory strand. Finally, the commitment of some agencies to utilising the IBE is reflective of the socio-economic strand. As suggested also by Erridge and McIlroy (2002), often these strands are unreconciled and competing within a single agency.

- In addition, while there are various analyses of the cost of including secondary objectives the outcomes (for example Denes 1997) of which may depend on the objective pursued, the incorporation of secondary objectives in public procurement has been a policy tool deployed by governments for centuries (McCrudden 2004).

Analysis of the CPR did suggest that the IBE was one amongst a number of other Commonwealth procurement related policies.

- In the context of Indigenous preferential procurement programs such as the IBE there is significant empirical evidence both as to existing Indigenous disadvantage; that participation in the workforce reduces this disadvantage (SCRGSP 2014; Biddle
2011) and that Indigenous firms are significantly more likely to employ Indigenous people (Morrison et al 2014; Hunter 2014).

The respondent Indigenous supply firms reported Indigenous employment levels in excess of those reported by Morrison et al.

- While there are some broadly mixed data there is empirical evidence (primarily for the US) to support the proposition that procurement programs targeted at ‘minority’ are effective in increasing economic activity by these groups (US Commission 2005) but that there is inadequate monitoring and particularly evaluation of such programs (Storey 2008).

Certainly after the imposition of the IPP targets the DPMC 2015-16 target data would suggest that the program is effective. However, also as noted by Storey, there is a clear absence of effective evaluation and monitoring mechanisms.

In short while there may be some difference in emphasis the experience of the IBE including with the subsequent introduction of the IPP targets suggest the accuracy of existing scholarship in the area. This in turn supports the continued operation of the program but also consideration of additional measures such as broad procurement reform, subsidies and more effective evaluation and monitoring.
CHAPTER 6 – CONCLUSION

The IBE represents a significant and unique development in Commonwealth Government Indigenous Affairs policy. Certainly there is nothing particularly original about the notion of a Commonwealth sponsored employment program for Indigenous Australians; in various forms, such programs have been in existence for decades. These programs have usually involved elements of Commonwealth funding to various Indigenous or non-Indigenous organisations to either directly employ and/or train for employment Indigenous Australians. At times, particularly more recently, there may have been some private sector involvement in these programs. Most commonly this involvement would have been as host (employer) to a trainee, although there are other models. The Jawun organisation model, where non-Indigenous private sector mentors assist in the development of Indigenous community organisations is an example, although it is not strictly an employment program.

The fundamental attribute that makes the IBE unique is its focus on encouraging Indigenous employment through developing an Indigenous private sector. The other key feature is that it involves no direct Commonwealth expenditure. Two paragraphs from the Prime Minister and Minister for Indigenous Affairs July 2015 statement (referred to in Chapter One) highlight these joint objectives (C of A 2015, 2):

Indigenous businesses are key to creating jobs and employing more Indigenous Australians. Indigenous businesses are around 100 times more likely to employ an Indigenous person than other businesses.

This policy is about creating opportunities for these Indigenous businesses to grow and employ more people. It is also about stimulating private investment in new Indigenous businesses.

Leah Armstrong identified the ideological connection between Supply Nation which was an original advocate for the IBE and the US National Minority Supply Council. The US organisation was integral in preferential procurement programs under the Small Business Act 1953 (US) and Works Employment Act 1977 (US) (see above Chapter 2). As McCrudden noted programs of this nature are (2007, 8):

an attempt to “restructure the economy more broadly ... This was an attempt to stimulate the growth of an entrepreneurial [originally] black middle class”.

The truly unique aspect of the IBE is this ambition, not just to encourage an improvement in Indigenous employment outcomes, but to stimulate the development of an entrepreneurial Indigenous middle class in this country. It is this unique ambition that underpins the importance of analysis of aspects of the
IBE that may have impeded the fulfilment of this ambition and the identification of improvements to the policy that may expedite its achievement.

With this importance in mind, the fact that, overwhelmingly, the absence of targets initially attached to the IBE was seen by respondents as the major impediment to utilisation both directly and indirectly through the implications of perceptions of risk and legitimacy in combination with the dramatic increase in utilisation of the IBE subsequent to the introduction of the IPP targets in July 2015 is very positive. However, this fact should not overshadow the other issues identified by respondents.

Significant amongst these are:

- Appreciation that in the early years of the IBE it appeared completely unsupported by any policy framework, external stakeholder communications strategy and systematic system of recording the utilisation of the IBE;
- In addition to the introduction of targets, the perceived importance of advocacy to facilitate both Indigenous supplier awareness of opportunities and in reducing perceptions of risk amongst procurement officers;
- The importance of the adoption of a coordinated supplier development approach both for the purposes of improving utilisation of the IBE, overcoming certification and other technical impediments to procurement engagement, and for facilitating the stable development of Indigenous suppliers;
- The similarity of experience between the private and public sectors in the development of successful Indigenous preferential procurement policies; and,
- The importance of JV structures in the development of particularly more complex Indigenous suppliers and the distinction between a legitimate JV and ‘black-cladding’.

In addition, the reports from Indigenous supplier respondents regarding the effectiveness of their engagement with the IBE in developing their business and the subsequent positive effect on Indigenous employment levels suggests that the IBE is indeed effective in achieving this aspect of its desired outcomes.

Bearing in mind both the significance of the IBE and the intuitive appeal of many of the respondent-identified methods of improvement of the IBE, the limitations of the current research must also be noted.

The research was a qualitative study based around interviews with 12 respondents and review of the very limited relevant extant documentation. As
noted in Chapter 3, a qualitative study of this nature cannot and does not seek to perform the same function as a comprehensive qualitative inquiry; it does not assert the predictive character of such comprehensive quantitative research. However, as advocates of a qualitative approach note (Creswell 2013, 6):

Qualitative inquiry represents a legitimate mode of social and human science exploration without apology or comparisons to quantitative research.

Certainly, as noted in the methodology Chapter, qualitative research is well suited to situations where there is little existing data upon which to base finely nuanced research questions or develop quantitative survey instruments. A particular attribute of qualitative research is that it generates enormous amounts of rich data that the researcher must attempt to manage and analyses (Diefenbach 2009). The sheer volume of data created underpins methodological consideration around what can ultimately only be subjective decisions about which data is the subject of detailed analysis. However, it also presents the researcher with hard decisions about the matters that can be explored in a necessarily finite written research report and what matters must be pursued at a later time. One strength of qualitative research is that it can serve basis for developing proposals for subsequent inquiry (Diefenbach 2009): quantitative, qualitative, or both.

The current project has suggested a number of such areas of fruitful further research the possibilities of which are enhanced by the DPMC 2015-2106 IPP target data which suggests the growth of the phenomenon population (both in procuring agencies and Indigenous suppliers) that would support a more quantitative approach. Areas of possible future research suggested by the current project include:

- A quantitative analysis of factors that have impacted on Indigenous suppliers’ use of the IBE guided by the issues identified in the current study;
- More detailed case study analysis of Indigenous suppliers engaged with a supplier development approach with a view to identifying methods to refine and improve this approach;
- A more comprehensive comparison of the factors affecting the efficacy of Indigenous (and other) preferential procurement policies in the public and private sectors;
- Analysis of whether the costs of procurement under the IBE have increased historic (that is, pre IBE) Commonwealth procurement costs;
- Longitudinal analysis of Indigenous firms that have engaged with the IBE to ascertain the existence or not of long-term IBE dependence and
employment trends and analysis of variance in these trends across private Indigenous firms and community owned firms; and

- Longitudinal analysis of JV structures to identify the extent and rate of Indigenous partner capability development and the impact on the non-Indigenous JV partners Indigenous employment outcomes.

Of course the foregoing possible further research avenues are not comprehensive. A plethora of additional matters particularly going to the impact of the development of Indigenous firms on Indigenous social indicators and in regional and remote localities also suggest themselves.

In closing it is appropriate to again express gratitude to the interviewees without whom this research would not have been possible. Each respondent has a particularly busy working schedule and yet they all gave up their time to be interviewed, and to review transcripts and the final reports. This fact alone indicates the deep personal commitment of each of them to the success of the policy.

A final quote from Jeremy Clark [81] is an appropriate place to conclude:

> Preferential procurement really does give us a foot in the door to be involved in the business world and if we can have successful indigenous businesses in a range of industries – that would hopefully lead us as a people to lift a lot of our poorer cousins, and brothers and sisters to a level where they can achieve a better standard of living and being able to offer a good education for their children, provide an opportunity to enter into the career that they've never thought of and as well as support vehicle to strengthen their cultural ties to their country and everything else. It's not just all about economy, but you need capacity and resources to achieve a lot of what we need to achieve as Aboriginal people.
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