

Senate Finance and Public Administration Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Supplementary Budget Estimates 20-24 October 2014

Prime Minister and Cabinet Portfolio

Department/Agency: Department of the Prime Minister and Cabinet
Outcome/Program: Outcome 1: Prime Minister and Cabinet
Topic: Indigenous Advancement Strategy

Senator: Senator the Hon Jan McLucas

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Question:

1. What is the total number of applications received for funding under the Indigenous Advancement Strategy?
 - a. What is the total value of the applications?
 - b. What is the total value of the applications for each stream?
 - c. What is the total value of the demand driven applications?
 - d. How many demand driven applications were received?
2. Can the Minister confirm that a small organisation that does not meet the requirements for classification as an Indigenous organisation under the CATSI Act, will be able to apply for funding of \$500,000 or more and will not be required to incorporate under the same regulator as a small Indigenous organisation applying for the same funding?
3. Can the Minister confirm the powers of the Registrar under ORIC include powers to:
 - appoint a special administrator;
 - change the constitution;
 - call a general meeting;
 - convene a meeting of “interested persons”;
 - appoint an examiner to look at the business to identify financial or governance issues;
 - remove directors from office;
 - act for Members “in certain circumstances”.
4. Can the Minister confirm that these powers are not available to ASIC?
5. The Indigenous Advancement Strategy Guidelines state that an exemption to the incorporation requirement will be considered where:
 - An organisation can demonstrate that grant funding received under the Department of the Prime Minister and Cabinet’s Indigenous Affairs portfolio is a small portion of their total revenue, and as such changing incorporation status may unfairly impose additional requirements on their operations and business model;

- An organisation can demonstrate that they are required to operate under specific non-Commonwealth legislation as part of their licencing arrangements or funding received through other sources;
 - An Indigenous organisation is incorporated under the Corporations Act 2001 at 1 July 2014, and they can demonstrate that they are well-governed and high-performing; and as such would not receive significant benefit from incorporation under the Corporations (Aboriginal and Torres Strait Islander) Act 2006. (Department of Prime Minister and Cabinet website)
- a. Are these the only three exemptions that can be applied to an Indigenous organisation?
 - b. Is there discretion for a case by case exemption to be granted outside of these three identified grounds? If so, who exercises this discretion, and by what criteria are individual case assessments made where they fall outside those grounds for exemption?
6. A \$10,000 one-off payment is being offered to assist Indigenous organisations to incorporate. How was this figure reached?
 7. Was there any consultation with Indigenous organisations prior to the introduction of the incorporation requirement? If not, why not?
 8. How much funding has been kept aside for demand driven applications? Is this funding quarantined from the entire pool, or is funding set aside in each stream for demand driven applications?
 9. How will the process for demand driven applications differ from the assessment process of other IAS grant applications?
 10. The department may make one off or ad hoc grants that do not involve a planned selection process but are designed to meet a specific need, often due to urgency or other circumstances. What is the process of assessment and criteria for these grants and how does it differ from the process for other applicants?
 11. The Portfolio Budget Statement figures for each of the five streams contain funding for portfolio bodies and some additional budget measures that are not part of the Indigenous Advancement Strategy. Can the department provide a breakdown of these figures identifying the component funding elements?
 12. Are all special appropriations categorised as committed funds under the IAS in the respective streams? Can the department provide a list of all special appropriations that comprise committed IAS funds by stream?
 13. The Indigenous Employment Program (IEP) has its own guidelines and criteria which applicants must meet for IEP funding. Are applications for IEP funding under the IAS, and/ or the demand driven application process, required to meet the IEP criteria in addition to the criteria for the Jobs, Land and Economy stream of the IAS?
 14. Many organisations experienced difficulties with the application process. What happens to applications that were not filled in correctly during the compliance checking stage?
 15. What is the assessment process for the grant applications?
 - a. How many small teams will assess the applications?
 - b. How many staff comprises these small teams and what is their APS level?
 - c. How were members selected for the grant selection committee?

- d. How many members make up the grant selection committee? Is this finalised?
 - e. What role will State managers have in the assessment process and at what stage in the process?
16. Will the department recommend grants to be approved by the Minister?
 17. Does this process allow for the Minister to make a determination to fund a proposal that was not recommended by the department?
 18. Will the Minister receive departmental advice about every eligible application and make the selection at his own discretion?
 19. In relation to decision-making by the Minister, have the Commonwealth Grant Rules and Guidelines 2014 recommendations for documentation of advice and reasons been adhered to? If not, why not?
 20. The IAS Guidelines state that ‘grant funding may be drawn from across one or more programmes to address national priorities and community issues.’ Given that the Portfolio Budget Statement establishes the five programs as separate appropriations, how will funding be administered for grants that cross program streams?
 - a. Will eligibility or selection criteria be waived or amended in these instances? If so, how?
 - b. Where an application for activities that crosses multiple program streams is being assessed, is the Minister able to approve part of the application or will it be assessed as a whole?
 - c. If an application for funding covers multiple program streams, are the ‘national priorities’ and ‘community issues’ identified on page 3 of the Guidelines considered to be additional, alternative or overriding selection criteria?
 21. Is it within the power of the Minister to approve an application for funding for an amount less than the organisation tendered for? If so, on what basis is funding determined?
 22. The IAS Guidelines state that eligible applications will be assessed against the assessment criteria set out for the relevant outcome in the application kit, and then prioritised against competing eligible applications for the available grant funding. Where many applications meet the selection criteria (more than the available funding) what is the process for selection of successful applicants? What criteria are used and how are applications prioritised?
 23. How is the Minister and the Department ensuring that Indigenous organisations are given preference in delivering services to Indigenous people?
 24. Are reporting requirements negotiated on a case by case basis or are there standard reporting requirements for successful applicants across the board?
 25. Can grant money be redirected before a contract has expired?
 - a. Who has the authority to redirect or discontinue funds?
 - b. On what basis and in what circumstances can this authority be exercised?
 26. Paragraphs 21 to 28 of the draft Head of Agreement sets out arrangements for ‘consultation, cooperation and evaluation.’ In particular, paragraph 23 provides that the Commonwealth may, at any time, evaluate a project, the provider’s capacity to deliver a project in accordance with the project agreement and/ or the provider’s performance under its project agreement/s. Who has the authority to order a program evaluation and what form can the evaluation take – departmental or external?

27. The Second Action Plan: Moving Forward 2013-2016 of the National Plan to Reduce Violence against Women and their Children 2010-2022 was released on 27 June 2013 by the Prime Minister. Among the national priority areas are:

National Priority Three: Supporting innovative services and integrated systems

National Priority Five: Continuing to build the evidence base

Can the Minister explain how making the Family Violence Prevention Legal Service -one of the four pillar legal services that directly addresses family violence, with a proven record - compete in open tender for core funding is consistent with the Government's Plan and national priorities?

28. Is the IAS part of the Closing the Gap Agreement or is it separate? Do the Closing the Gap targets apply to IAS outcomes?
29. Were Indigenous organisations or representatives consulted in the development of the IAS?
30. Did the Department of Finance approve the IAS funding Guidelines?
31. Were ANAO Implementing Better Practice Grants Administration considered?
32. Has the Department been delegated any decision making powers? If so, what is the extent of the delegated authority?

Answer:

1. The Department received 2,280 applications in the IAS Grant round.
- a. The total requested value of the applications is approximately \$7 billion.
- b. Not all applicants were specific about which programme stream they were applying for. The table below includes notional allocations against programme streams for some applications:

Jobs, Land and Economy	\$2.2b
Children and Schooling	\$1.8b
Safety and Wellbeing	\$1.8b
Remote Australia Strategies	\$719m
Culture and Capability	\$513m

c-d. The Department registered 18 applications submitted through the dedicated Demand-Driven Funding Inbox. Total requested funding is \$7 million.

2. Organisations can choose to apply to the Minister for an exemption from the requirement to incorporate.
3. Information relating to the powers of the Registrar under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* can be found at www.oric.gov.au.
4. Information relating to the powers of the Australian Securities and Investments Commission under the *Corporations Act 2001* is available at www.asic.gov.au.

5. The Minister for Indigenous Affairs, or an approved delegate, may provide an exemption from the requirements under one or more of three exemption criteria identified in this question. The criteria have been developed to provide sufficient flexibility for individual organisations considering an exemption. Exemptions may be considered where an organisation can demonstrate that it is well-governed, high-performing and low risk.
6. The Department undertook compliance cost assessments utilising the Business Cost Calculator developed by the Office of Best Practice Regulation. This assessed the costs of transferring the incorporation of an organisation. The allocation of \$10,000 is designed to contribute to one-off costs that may be incurred by the organisation such as independent legal advice and accountancy services to support the transfer of incorporation. It is not expected to cover all the costs associated with organisations transferring their incorporation status to Commonwealth legislation.
7. Key stakeholders were consulted as part of the development of the IAS Guidelines, including the Incorporation requirement, prior to the release of the Guidelines. These include the Prime Minister's Indigenous Advisory Council, the Social Justice Commissioner and the National Congress of Australia's First Peoples.
8. Refer to PM 34.
9. The process for demand driven, ad hoc and one-off applications is broadly consistent with the assessment process for other IAS Grant applications. Applications will be assessed by Departmental staff against the same, equally-weighted criteria as other grants. Funding decisions will be made by the Minister or his Departmental delegate.
10. Refer to Question 9.
11. Indigenous Portfolio Bodies' appropriations in Appropriation Act no.1 are not part of the Indigenous Advancement Strategy (IAS). All funding appropriated to the Department for Budget measures is included in the IAS funding provided through Appropriation Act No.1. Indigenous Budget measures for the Department are listed on pages 24 and 25 of the 2014-15 Department of the Prime Minister and Cabinet (PM&C) PBS.

Table: Breakdown of PM&C PBS 2014-15 Appropriation Bill no.1 funds
(IAS administered funding and Commonwealth Authorities and Companies (CAC)
agencies' funding over four years from 2014-15 to 2017-18)

Outcome 2: Indigenous Programme	4 Year total \$'000	IAS and CAC Components	4 Year total \$'000
Programme 2.1 Jobs, Land and Economy			
Ordinary annual services (Appropriation Bill No.1)	2,691,766	<i>IAS Funding (excluding CAC agencies funding)</i>	2,516,918
		<i>Funding to CAC Agencies (Indigenous Business Australia & Indigenous Land Corporation)</i>	174,848
Programme 2.2 Children and Schooling			
Ordinary annual services (Appropriation Bill No.1)	884,261	<i>IAS Funding (no CAC agencies) ^(a)</i>	884,261
Programme 2.3 Safety and Wellbeing			
Ordinary annual services (Appropriation Bill No.1)	1,146,042	<i>IAS Funding (excluding CAC agencies funding)</i>	993,479
		<i>Funding to CAC Agencies (Aboriginal Hostels Limited)</i>	152,563
Programme 2.4 Culture and Capability			
Ordinary annual services (Appropriation Bill No.1)	140,265	<i>IAS Funding (no CAC agencies)</i>	140,265
Programme 2.5 Remote Australia Strategies			
Ordinary annual services (Appropriation Bill No.1)	428,089	<i>IAS Funding (excluding CAC agencies)</i>	258,253
		<i>Funding to CAC Agencies (Torres Strait Regional Authority)</i>	169,836
Outcome 2 Total			
Ordinary annual services (Appropriation Bill No.1)	5,290,423	<i>Total Outcome 2 IAS Funding (excluding CAC agencies)</i>	4,793,176
		<i>Funding to CAC Agencies</i>	497,247

(a) In addition, in Appropriation Bill No. 2, PM&C has received an appropriation of \$32.6 million over four years under Programme 2.2 for payment to the NT non-government school sector under the Stronger Futures in the Northern Territory National Partnership arrangements to enhance the quality of the school workforce teaching Indigenous students.

12. The IAS is only constituted by PM&C Outcome 2 Ordinary Annual Appropriations and therefore there are no Special Appropriations in the IAS.

13. The IEP ceased with the introduction of the IAS on 1 July 2014. Funding from the former IEP has been transitioned into the Jobs, Land and Economy stream of the IAS. Applications are not required to meet the former IEP criteria in addition to the IAS criteria.
14. The Department had staff available to work with applicants during the application process. All reasonable attempts were made to contact organisations and request any clarifications, in line with probity requirements.
15. The IAS Grants Assessment phase is still underway. This information will not be available until the end of the assessment process.
16. Yes.
17. Yes, subject to the requirements of the Commonwealth Grant Rules and Guidelines 2014.
18. Refer to answers 16 and 17.
19. Yes. The Minister has been advised of the Commonwealth Grant Rules and Guidelines 2014. They have been adhered to, noting that the assessment process has not yet been finalised.
20. (a) No.
(b) Yes, the Minister is able to approve part of an application.
(c) No. They will be considered as part of the five criteria outlined in Section 2.5 of the IAS Guidelines, noting that these criteria encompass both need and outcomes.
21. Organisations are applying for funding under the IAS Grants programme. The Minister may approve an application for funding that is less than the amount requested. The Minister may also approve some, but not all projects requested within an application.
22. Where more than one application meets the selection criteria, applications will be assessed relative to their claims against the selection criteria, taking into account regional needs and available funding.
23. One of the criteria against which applications are assessed includes how organisations will involve Indigenous communities in the development and delivery of projects, and employ Indigenous Australians. Indigenous organisations are likely to be well placed in this regard.
24. Standard reporting requirements will broadly encompass six-monthly reporting, but individual reporting requirements can be tailored on a case-by-case basis where necessary, noting that the intention is to streamline processes through the Single Funding Agreement.
25. Yes.
(a) Under the Department's financial framework the relevant delegate has the authority to redirect or discontinue funding before a funding agreement has expired. This is

generally the person named as the Departmental Delegate on the Funding Agreement.

- (b) The decision to redirect funding may be considered if a project is not on track to meet the funded outcomes. Before re-directing funding, the Department will work with providers to re-assess the project and consider ways to adjust the project scope to meet the required outcomes.

26. The Department is able to progress a programme evaluation.

27. Organisations are not required to participate in an open tender; rather, they are applying for funding under the IAS Grants programme. The IAS is a new programme which is seeking to deliver outcomes and as such, it is appropriate to test the market, noting that the Government will be working to ensure funding is targeted to areas of high need.

28. The Government is committed to the Closing The Gap targets. The IAS is designed to enable the Government to work with communities to put in place activities that address local issues and the Government's priorities. The outcomes being sought under the IAS are consistent with those under the National Indigenous Reform Agreement and the Closing The Gap targets.

29. Yes. Refer to question 7.

30. Yes.

31. Yes.

32. Refer to PM 155.