

TPG24-26 Policy and Guidelines: First Nations Impact Assessment Policy

TPG24-26

1 November 2024

Acknowledgement of Country

We acknowledge that Aboriginal and Torres Strait Islander peoples are the First Peoples and Traditional Custodians of Australia, and the oldest continuing culture in human history.

We pay respect to Elders past and present and commit to respecting the lands we walk on, and the communities we walk with.

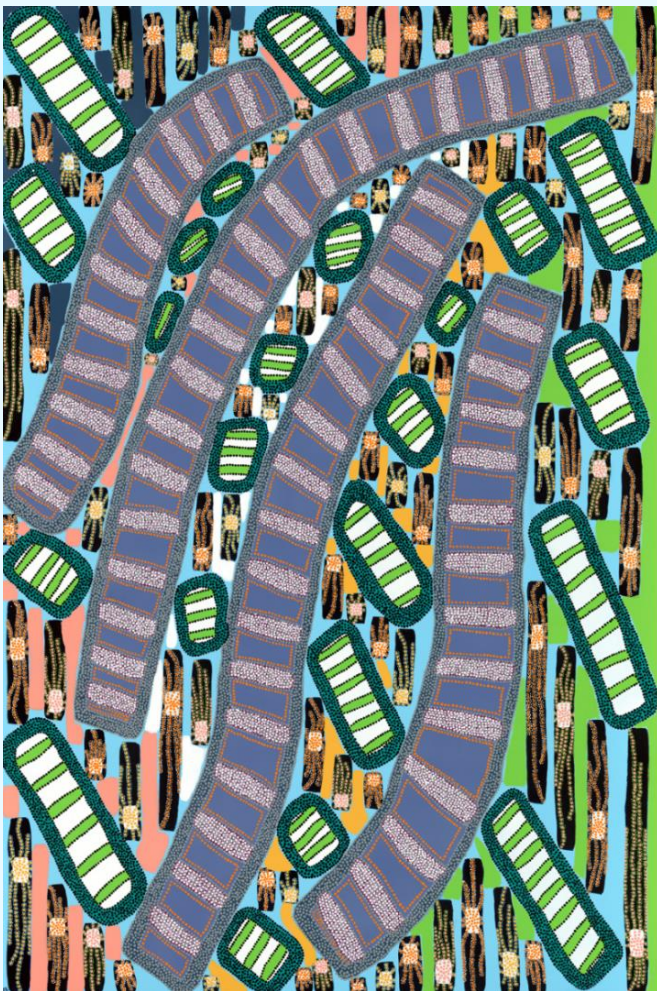
We celebrate the deep and enduring connection of Aboriginal and Torres Strait Islander peoples to Country and acknowledge their continuing custodianship of the land, seas and sky.

We acknowledge the ongoing stewardship of Aboriginal and Torres Strait Islander peoples, and the important contribution they make to our communities and economies.

We reflect on the continuing impact of government policies and practices, and recognise our responsibility to work together with and for Aboriginal and Torres Strait Islander peoples, families and communities, towards improved economic, social and cultural outcomes.

Artwork:

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First Nations Impact Assessment Policy

Purpose

The First Nations Impact Assessment Policy provides directions to NSW General Government Sector (GGS) agencies on when and how to complete First Nations impact assessments for new measures.

The First Nations Impact Assessment Policy comes into effect on 1 November 2024.

Overview

All GGS agencies must prepare First Nations impact assessments for new measures that meet the mandatory eligibility criteria.

First Nations impact assessments provide evidence on how new measures will impact First Nations people and communities, and the extent to which First Nations voices have informed the policy design. This forms part of the NSW Government's Closing the Gap commitment to better align government investment with the needs, priorities and aspirations of First Nations communities in New South Wales.

Summary of Requirements

Mandatory

GGS agencies must complete a First Nations impact assessment for all new measures that meet one or more of the below criteria:

1. A First Nations-specific new measure: A proposal that is specifically designed for or exclusively impacts First Nations people or communities
and/or;
2. A new measure that would significantly or disproportionately impact the socio-economic outcomes or interests of First Nations people or communities.

Section 1 - What is a First Nations impact assessment?

First Nations impact assessments provide evidence on how new measures will impact First Nations people and communities and the extent to which First Nations voices have informed the policy design.

Why First Nations impact assessments are needed

As a signatory to the National Agreement on Closing the Gap, the NSW Government has committed to change the way it works in developing and implementing policies and programs that impact the lives of First Nations people in New South Wales. This new way of working includes listening and engagement with First Nations people and communities through genuine partnerships.

First Nations impact assessments seek to improve the effectiveness and appropriateness of new measures that impact First Nations people and communities by ensuring good practice policy design has been followed, including:

- Challenging assumptions that all people will benefit from proposals in the same way.
- Demonstrating how the impact of new measures on First Nations outcomes have been considered.
- Embedding First Nations perspectives on funding decisions through genuine engagement.
- Highlighting instances where the needs of different First Nations communities have been considered.

Objectives of First Nations impact assessments

First Nations impact assessments aim to support more effective decision making and resource allocation by better aligning new measures with the needs, priorities and aspirations of First Nations people and communities. This will support progress towards Closing the Gap targets and self-determined First Nations outcomes by:

- Explicitly considering the direct and indirect impact of new measures on First Nations stakeholders.
- Ensuring alignment of new measures with First Nations-led strategies and priorities, such as the Closing the Gap Priority Reforms and the NSW OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment) Strategy.
- Embedding meaningful engagement and partnership-based approaches; where issues, opportunities, options and priorities are identified with First Nations stakeholders.
- Integrating culturally appropriate evidence into policy design, business cases, cost-benefit analyses and evaluations to inform decision making.
- Embedding consideration of culturally appropriate service delivery options through Aboriginal Community Controlled Organisations (ACCOs) and other First Nations-led service providers.

Section 2 - When is a First Nations impact assessment required?

The NSW Government requires GGS agencies to produce First Nations impact assessments for all new measures that meet the eligibility criteria for the 2025-26 Budget onwards. Agencies should do this by completing the template at [Appendix A](#).

ELIGIBILITY CRITERIA FOR FIRST NATIONS IMPACT ASSESSMENTS

The NSW Government requires GGS agencies to produce First Nations impact assessments for new measures that meet any of the following criteria:

1. It is a First Nations-specific new measure:
 - a proposal that is specifically designed for or exclusively impacts First Nations people or communities, and/or
2. A new measure that is not First Nations-specific but would significantly or disproportionately impact the socio-economic outcomes or interests of First Nations people or communities.

This can include new measures impacting:

- life expectancy, health, social and emotional wellbeing, and/or access to disability services
- early education, development, learning potential, employment opportunities, economic participation, and digital inclusion
- access to social and affordable housing or general housing policy that may affect First Nations communities
- social services including out of home care, child protection, family safety, and early intervention and matters relating to the justice system; and
- access to cultural and spiritual practices, economic development of First Nations people's land and waters, and the ability to practice culture and language.

Agencies are encouraged, but not required, to complete First Nations impact assessments for new measures that do not meet the eligibility criteria, as the proposal may still benefit from applying a First Nations perspective.

Applying the eligibility criteria requires the use of judgement to the specific context of the new measure. For additional guidance on how to apply the criteria, please see examples below. If further clarification is required on whether to complete a First Nations impact assessment, please contact the First Nations Expenditure and Outcomes Branch at fneo@treasury.nsw.gov.au or your Treasury Policy and Budget Group Relationship Lead.

Treasury can also request a First Nations impact assessment where a new measure meets the eligibility criteria but an impact assessment has not been completed.

DEFINITION AND EXAMPLES OF 'SIGNIFICANT' IMPACT

Significant impact refers to the size or magnitude of a policy's effect on the socio-economic outcomes and interests of First Nations communities. A policy may appear to affect all cohorts equally but have a unique significant impact on First Nations people due to historical, social, economic or cultural factors.

Examples of significant impact

Access to healthcare services: On average, First Nations people have higher rates of chronic illness than the non-Indigenous population. Proposals that impact public access to services for treatment of chronic health conditions are likely to have a more significant impact on First Nations health outcomes, including progress towards Closing the Gap health targets.

Access to lands and water or ability to engage in cultural practices: Proposals that impact First Nations people's access to traditional lands and water or ability to engage in cultural practices are likely to have a significant impact on First Nations people and communities.

Digital inclusion: There is a significant digital gap for remote First Nations communities, including in internet access, digital literacy and access to digital infrastructure. Proposals improving digital inclusion and access in remote areas are likely to have a significant impact on First Nations socio-economic outcomes.

DEFINITION AND EXAMPLES OF 'DISPROPORTIONATE' IMPACT

Disproportionate impact refers to the unequal effects that government policies and services have on First Nations people compared to the broader population because of the over or underrepresentation of First Nations people across some service systems.

Examples of disproportionate impact

Changes or reforms to out-of-home care: As of June 2022, First Nations children made up 43.8 per cent of all children and young people in out-of-home care in New South Wales. Changes or reforms to the out-of-home-care system are likely to disproportionately impact First Nations children and young people.

Access to social and affordable housing: Service usage of social and affordable housing is higher for First Nations people than for the broader population. Policies affecting the supply of social and affordable housing are likely to disproportionately affect First Nations people.

Changes to Schools for Specific Purposes (SSPs): First Nations young people account for a high proportion of students engaged in SSPs which provide specialist support for those with higher learning needs. Policies aiming to reform or change SSPs are likely to disproportionately impact First Nations students and their life outcomes.

Section 3 – Guiding principles for completing a First Nations impact assessment

Guiding principles for First Nations impact assessments

The NSW Government has committed to working with First Nations people and organisations to embed Closing the Gap principles in ways of working throughout the policy process.¹ These principles include:

1. Self-determination – that the views, needs, interests and aspirations of First Nations people are centred in decision-making.
2. Partnership – policy and place-based partnerships drive community-led initiatives and outcomes, with active and informed involvement of all parties.
3. Shared decision-making – where First Nations parties hold as much weight as government representatives, including transparent negotiation and data and information sharing.
4. Inclusiveness – ensuring all perspectives are heard, respected and acknowledged appropriately as decisions are made.

These principles align with the Priority Reforms in the National Agreement on Closing the Gap, which commits governments to build and strengthen structures that empower First Nations people to share decision-making authority with governments. Agencies should demonstrate how these guiding principles have been applied in the policy design process for new measures.

Applying a First Nations lens to policy development

TPG 24-28 NSW First Nations Investment Framework provides guidance on good practice in working with First Nations people and communities on the design, appraisal and evaluation of initiatives. The approach is centred on genuine relationships and partnerships with First Nations people and communities to ensure that the outcomes initiatives seek to improve are defined, measured, analysed and reported in a way that is culturally informed, relevant and meaningful. This includes guidance on how to:

- build foundations for genuine relationships with First Nations stakeholders
- take partnership-based approaches for shared-decision making
- establish First Nations-community defined outcomes
- embed First Nations-led approaches to data collection, access and analysis
- facilitate transparency and accountability with First Nations stakeholders
- Apply a First Nations-lens to cost-benefit analysis

Agencies are encouraged to use the First Nations Investment Framework as a guide to good practice when developing new measures and completing a First Nations impact assessment.

For questions or further support relating to the NSW First Nations Investment Framework, please contact the First Nations Economic Wellbeing team at fnew@treasury.nsw.gov.au.

¹ [NSW Closing the Gap Implementation Plan 2022-24](#)

Section 4 - Frequently Asked Questions

1. My new measure applies equally to all people in New South Wales. Why should I conduct a First Nations impact assessment?

While a policy may be intended to apply equally to everyone in New South Wales, in practice it may have a significant or disproportionate impact on First Nations people and communities. In considering whether a First Nations impact assessment is required, policy makers should challenge assumptions that all people will benefit from new measures in the same way. This will highlight instances where the unique needs and priorities of First Nations communities need to be considered in policy design. This helps to ensure the intended positive impacts of the policy are achieved and negative or unintended impacts are minimised.

2. Why do I have to do a First Nations Impact Assessment for proposals under the business case threshold?

Agencies are required to complete a First Nations impact assessment based on the likely significance of the *impact* of the proposal on First Nations people and communities, rather than the significance of the amount spent. This is because new measures that are of significance to outcomes for First Nations people may not have any, or a significant, associated financial impact (for example policy, legislative or regulatory changes). For this reason, there is no monetary threshold attached to eligibility to complete a First Nations impact assessment.

If you are unsure whether your proposal meets the eligibility criteria, contact your Treasury Policy and Budget Relationship Lead or the First Nations Expenditure and Outcomes Branch at fneo@treasury.nsw.gov.au.

3. Can I cross-reference First Nations impact assessments in other evidence documents, such as business cases?

Yes. The two products are complementary. First Nations impact assessments should be submitted alongside business cases (where applicable).

Question 1 of the First Nations impact assessment requires the impacts on First Nations people to be outlined. If distributional analysis has already been conducted, for example in the business case, this can be cross-referenced in the First Nations impact assessment and attached.

Questions 2-6 of the First Nations impact assessment focus on the policy design factors (such as engagement approach and culturally appropriate service delivery) that allow the proposal to be effective in achieving the intended outcome. This information is additional to a business case.

4. My NPP has undergone a gender impact assessment and the impact on First Nations women has been addressed there. Do I still need to complete a First Nations impact assessment?

Yes. If your proposal satisfies the eligibility criteria for both the gender impact assessment and the First Nations impact assessment, you are required to complete both. This is because the assessments have a different focus.

- The gender impact assessment considers new policy proposals from a gender lens and how the proposed policy, program or project may have different impacts on people based on their gender. [TPG23-27 Gender Impact Assessment Policy](#) can be found [here](#) for more information.

- The First Nations impact assessment provides evidence on how new measures will impact First Nations people and communities, as well as policy design factors such as the extent to which First Nations voices have informed the policy design.

Where relevant, the answers provided in the gender impact assessment can be cross-referenced in the First Nations impact assessment or vice versa to avoid duplication. Both impact assessments encourage an intersectional approach.

5. How will First Nations impact assessments inform the assessment of new measures and NSW Government decision making?

First Nations impact assessments provide an additional source of evidence on the merits of a new measure and its likely impact and effectiveness for First Nations people and communities. This forms part of the broader set of evidence that government considers in decision making.

Central agencies will consider this evidence in advice to government on policy and investment proposals. Completed First Nations impact assessments may also be provided directly to Cabinet and other stakeholders to support decision making.

6. Are First Nations Impact Assessments required for all measures going for Government consideration?

Any new measure coming forward for government consideration that meets the eligibility criteria requires a First Nations impact assessment. This includes matters relating to legislative or regulatory change and which may not have a financial impact.

Measures relating to non-discretionary cost variations or timing adjustments for existing programs do not need to complete a First Nations impact assessment.

Please contact the First Nations Expenditure and Outcomes Branch at fneo@treasury.nsw.gov.au or your Treasury Policy and Budget Group Relationship Lead to discuss how a First Nations impact assessment can be applied to your specific proposal.

7. I have several proposals within a particular program. Do I need to complete a First Nations impact assessment for each proposal?

Agencies should use their judgement to decide whether each component of the program requires a separate First Nations impact assessment, or if an overall one would be appropriate. This will depend on how the program or proposal impacts First Nations people, and how the policy proposal development process has occurred (e.g the approach to engagement with First Nations communities for the program).

Where you decide to complete one First Nations impact assessment for a collection of proposals, please ensure it provides sufficiently detailed information about each of the components. If unsure, please contact the First Nations Expenditure and Outcomes Branch at fneo@treasury.nsw.gov.au or your Treasury Policy and Budget Group Relationship Lead.

8. My agency has its own internal Aboriginal Impact Statement or Cultural Impact Assessment. Do I still need to complete Treasury's First Nations impact assessment?

Yes. The First Nations impact assessment is mandatory for eligible new measures, including for agencies with internal impact assessments. This ensures consistency in the information provided to government and central agencies to inform decision making and advice.

Agency internal impact assessments may be cross-referenced where relevant within the First Nations impact assessment to minimise duplication and can be provided as a supplementary attachment.





Appendix A: First Nations Impact Assessment Template

INSTRUCTIONS

- Complete questions 1 to 5.
- Provide links to any sources or data you are referencing.
- Consider intersectional perspectives in your responses. If you are completing a gender impact assessment which contains relevant analysis on First Nations women, you can refer to the gender impact assessment in this document to avoid duplication.
- Findings from distributional analysis within a business case can be cross-referenced at Question 1 (if applicable).
- First Nations stakeholder views should be reflected in responses, and where possible, First Nations impact assessments should be completed in partnership with First Nations stakeholders.
- Submit the completed First Nations impact assessment to your Treasury Relationship Lead as an attachment to the new measure.




How the proposal impacts First Nations people

1. How will the proposal impact the outcomes and interests of First Nations people and communities?

-  *Tip: Describe the direct and indirect impacts, both positive and negative. Will there be different impacts for First Nations people compared with the broader population?*
-  *Tip: Will different First Nations cohorts (e.g. age, gender, regions) be impacted differently? Consider any intersectionality.*
-  *Tip: Describe the expected impacts quantitatively (e.g. impact on Closing the Gap targets) and qualitatively (e.g. views from First Nations stakeholders).*
-  *Tip: Cross-reference any distributional analysis from the gender impact assessment and/or business case where appropriate.*





Governance and engagement approach

2. Has the proposal been developed through shared governance and decision-making arrangements with First Nations people, communities and/or organisations?

-  *Tip: Outline how First Nations stakeholders have been engaged the development of the proposal, including any new or existing governance structures that support authentic partnership approaches. Include details of any specific governance arrangements for the collection and handling of First Nations data.*
-  *Tip: Include details on which First Nations people, groups and/or organisations have been engaged.*
-  *Tip: Outline how the principles of self-determination, partnership, shared decision-making and inclusiveness have been applied in the engagement approach. If they haven't been applied, explain why.*

Alignment with First Nations defined priorities and outcomes




3. How has engagement with First Nations people, communities and/or organisations informed the design of this new measure?

-  *Tip: Outline how First Nations stakeholders have meaningfully informed the proposal design, including establishing the case for change, identification of options and solutions and defining what success looks like?*
-  *Tip: Has the proposal been developed in response to or informed by local community needs and priorities?*
-  *Tip: Outline how the proposal aligns with broader strategic priorities, such as the Closing the Gap Priority Reforms and socio-economic targets and the NSW OCHRE strategy.²*
-  *Tip: Discuss how you have used the good practices for policy development outlined in the First Nations Investment Framework (TPG24-28).*

² <https://www.nsw.gov.au/departments-and-agencies/aboriginal-affairs-nsw/about-ochre>





First Nations-led service provision

4. If this is a service delivery proposal, how have Aboriginal Community-Controlled Organisations and/or First Nations service providers been considered for program delivery? If they haven't, explain why.

-  *Tip: Outline how the proposal will be delivered and if First Nations service providers (including Aboriginal Community-Controlled Organisations) will be used?*
-  *Tip: Outline how service delivery has been designed to be effective and viable over the long term through the use of Aboriginal Community-Controlled Organisations. This can include any plans for capacity building, shared leadership, or transfer of ownership to First Nations communities with a plan to enable service continuity.*
-  *Tip: How have First Nations people, communities, groups and/or organisations been given a say over the way the program is delivered?*

Approach to evidence and evaluation

5. How does the proposal use First Nations-led and informed approaches to evidence and evaluation?

-  *Tip: Have First Nations-informed methods been used in the development of evidence for this proposal (including within the business case and cost-benefit analysis where applicable)?*
-  *Tip: How will First Nations stakeholders be included in assessing the effectiveness of the proposal post implementation, including the approach for evaluation?*
-  *Tip: How does the proposal address Indigenous Data Sovereignty and Indigenous Data Governance principles?*
-  *Tip: Refer to the TPG24-28 NSW First Nations Investment Framework, which provides detailed guidance on how to take a culturally informed approach to evidence and evaluation.*

Glossary of terms

Closing the Gap Priority Reforms: The National Agreement on Closing the Gap is built around four Priority Reforms that have been directly informed by First Nations people. In addition, New South Wales has a unique fifth Priority Reform on employment, business growth, and economic prosperity. More information can be found here: <https://www.closingthegap.gov.au/national-agreement/priority-reforms>.

Closing the Gap Socio-economic Targets: The National Agreement on Closing the Gap includes 19 socio-economic targets across areas that have an impact on life outcomes for First Nations people. More information can be found here: <https://www.closingthegap.gov.au/national-agreement/targets>.

Direct and indirect impacts: Direct impacts are the immediate, intended, and measurable effects that result directly from the implementation of a policy. Indirect impacts are the secondary, often unintended, and sometimes longer-term effects that occur. Indirect impacts can be harder to measure and might influence areas beyond the policy's original scope.

Distributional analysis: Distributional analysis disaggregates the overall impact of a proposal by stakeholder groups, identifying those that gain and those that suffer losses and how gains and losses are distributed across groups.

Gender impact assessment: Gender impact assessments are a Treasury evidence requirement and consider how a proposed policy, program or project may have different impacts on people based on their gender. Refer to [TPG23-27 Gender Impact Assessment Policy](#) for further information.

General Government Sector: The general government sector is defined as the institutional sector comprising all government units and non-profit institutions controlled by the Government and representing the scope of the NSW Budget. Agencies in this sector generally operate under the Financial Management Framework and carry out policy, regulatory and service delivery functions.

Indigenous data sovereignty and Indigenous data governance: Refers to the rights of First Nations people to exercise control and ownership over First Nations data, and to determine what, why and how data is collected and managed.

Intersectionality: An approach that recognises that people's lives are shaped by their identities, relationships and social factors to create intersecting forms of privilege and marginalisation.³

New measure: A decision by government that involves a new initiative or discretionary change to existing policy. For further information, refer to [TPG21-11 Parameter and Technical Adjustments and New Policy Proposals \(Measures\)](#).

Parameter and technical adjustment: Non-discretionary cost variations to the budgets of existing programs in response to external factors outside of the control of the agency. They enable the continued implementation of initiatives and legal requirements under certain circumstances.

Self-determination: An ongoing process of choice, participation and control to ensure First Nations people can make decisions about matters affecting their lives.⁴

³ [UN Women 2022](#)

⁴ [Australian Human Rights Commission 2023](#)

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