

## DEPARTMENT OF INDUSTRY, SCIENCE, ENERGY AND RESOURCES

MS22-000558

To: Minister for Industry and Science (For Information)

**ANAO AUDIT - PROCUREMENT OF DELIVERY PARTNERS FOR THE ENTREPRENEURS' PROGRAMME, AND NOTIFICATION OF NON-COMPLIANCE WITH THE COMMONWEALTH PROCUREMENT RULES****Recommendations:** That you

1. **Note** the ANAO audit of the *Procurement of Delivery Partners for the Entrepreneurs' Programme*, and that the department expects media scrutiny when the audit is tabled on 24 June 2022.

**Noted / Please Discuss**

2. **Note** that the department's non-compliance with the *Commonwealth Procurement Rules* in the conduct of the procurement is a significant issue of which I must notify you (paragraph 16 refers), and the Finance Minister (Attachment E), under section 19(1) of the *Public Governance, Performance and Accountability Act 2013*.

**Noted / Please Discuss****Minister:**

Date:

**Comments:**

<b>Clearing Officer:</b> s 22	Secretary	Mob: s 22
Sent: 22/6/2022		
<b>Contact Officer:</b> s 22	Deputy Secretary	Mob: s 22

**Key Points:**

1. The Entrepreneurs' Programme, as a successor to Enterprise Connect, has supported over 22,000 Australian companies to strengthen and grow since its launch in 2014. However, the ANAO's audit found the department's administration of the procurement of delivery partners in late 2019 and early 2020 was deficient in significant respects and fell short of the appropriate standards of transparency, consistency and fairness.
  - a. The department has agreed to all of the ANAO's recommendations and commenced implementing them as a matter of priority. We take this matter very seriously and are determined to uplift our capability and processes to ensure no repeats of these issues.

2. The ANAO audit examined whether the design and conduct of the procurement process for delivery partners for the Entrepreneurs' Programme complied with the Commonwealth Procurement Rules (CPRs), and whether the signed contracts are being appropriately managed. The Auditor-General has provided an embargoed copy of the audit directly to you. The ANAO audit concluded:
  - a. The design and conduct of the procurement did not comply with the CPRs, and the signed contracts are not being appropriately managed.
  - b. In its conduct of the procurement, the department did not demonstrably achieve value for money and "fell short of the ethical requirements set out in the CPRs". There was not open and effective competition as competing tenders were not treated fairly or equitably, and probity risks were not appropriately managed.
  - c. The contract management framework is inadequate and the contracts do not include an effective performance management framework.
3. The department takes seriously the important issues raised in the ANAO audit and we have agreed to all 10 recommendations (recommendation 6 is agreed in principle – see below). A copy of the department's public response to the audit is provided at [Attachment A](#).
4. While the department fell short of the ethical requirements in the CPRs for transparency, consistency and fairness, departmental officials were not found to have breached the requirements relating to honesty, integrity, proper use of an individual's position, and accepting inappropriate gifts or hospitality.

### **Future of the Entrepreneurs' Programme**

5. The ANAO audit recommends (recommendation 6) that the department should not extend the existing delivery partner contracts, and should conduct a new procurement process to be completed before the existing contracts expire on 30 June 2023. The department agreed in principle to this recommendation, as any new procurement process would be subject to Government consideration about the design and future of the programme.
  - a. Given the deficiencies identified in the ANAO Audit, we do not support extensions to the existing delivery partner contracts.
  - b. While the Entrepreneurs' Programme has been instrumental in supporting some businesses, we expect criticism of the department's administration of the programme may damage its brand.
6. More fundamentally, we believe it is timely to reconsider – and, potentially, reset – the approach to supporting SME innovation. This means ensuring that any measures to support SMEs are aligned with your priorities and key Government policies relating to, for example, job creation, skills development, building sovereign capability, and lifting national productivity.
  - a. With your agreement we will work with you to develop options along these lines. This should include considering the future of the various measures currently in place under the Entrepreneurs' Programme, and what, if any, procurement processes should occur in future.

### Department's Implementation of ANAO recommendations

7. The ANAO audit made nine other recommendations that relate to improving transparency, consistency, record-keeping, engagement of probity advisers, as well as management of contracts, performance, and conflict of interest.
8. Some work of this nature had already been in train within the Department before this ANAO audit, but the department is now explicitly implementing these recommendations as a matter of priority, both at the programme level and department-wide, including:
  - a. putting in place a strengthened contract management framework
  - b. immediate improvements to procurement frameworks and compliance, and a quick "review of the health" of existing procurements and contract management
  - c. a holistic review of the function and delivery method of procurement and contract management services, with attention to people, processes and systems
  - d. implementing a coherent governance framework including a centralised and strengthened approach to the management of probity and conflicts of interests with clear expectations and line of sight from the departmental executive.
9. Given the seriousness of the audit findings, I sought independent external advice to verify the facts and circumstances underpinning the findings (the Auditor-General's permission was sought to share the ANAO's section 19 proposed report with the independent consultant). This advice informed the department's response, and included recommendations which the department will also implement.

### Key risks and sensitivities:

10. Beyond adverse publicity and reputational damage to the programme and the department, there is a material risk of claims in light of the breach of CPRs. Unsuccessful tenderers may seek compensation or remedy through several legal channels, including claims under the *Government Procurement (Judicial Review) Act 2018* (Cth) and common law (e.g., by way of negligent misstatement).
11. Stakeholders may approach you or your office, expressing concern and requesting remedial action. Those from incumbent delivery partners would be concerned about reputational risk, and related implications for their operations and future participation in government procurements. They may also want certainty about the future of their contracts and may put forward a case for contract extension. Stakeholders from unsuccessful tenderers may come directly to you to seek compensation or remedy, or assurances about the department's future management of procurements and contracts.
  - a. All stakeholders, media, and claims for compensation should be referred to the department.
12. To manage these risks, the department will work closely with affected stakeholders, and public messaging will focus on the actions and improvements the department is implementing in response to the audit findings. We have already advised Comcover of the potential claim for damages.

13. Suggested talking points for you are at Attachment B.
14. Information on the delivery partners, and an overview of the Entrepreneurs' Programme are provided at Attachments C and D respectively.

**Notification of significant non-compliance**

15. As the accountable authority, under section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act), I am required to notify you and the Finance Minister of any significant non-compliance with the PGPA Act and related instruments (CPRs included).
16. In relation to this procurement, the non-compliance related to:
- a. not disclosing to the market accurate information about the evaluation criteria and evaluation method;
  - b. the manner in which evaluation of tenders was undertaken, including by evaluating submissions that did not satisfy conditions for participation and/or minimum format and content requirements;
  - c. omitting to maintain a level of documentation that was commensurate to the scale, scope and risk profile of the procurement;
  - d. failing to actively manage conflicts of interests;
  - e. involving incumbent providers in the redesign project which resulted in their early and inequitable access to information;
  - f. the procurement processes used to engage external advisers.
17. The non-compliance is considered significant due to the likely impact on the reputation of the program and the department, and the high value of the programme and the associated procurements.
- a. The program of work underway to implement the ANAO audit recommendations will address these issues and ensure compliance with all requirements under the PGPA Act and related instruments.
18. In accordance with section 17 of the PGPA Act, the Department's *Annual Report 2021-2022* will include a brief summary of the instances of non-compliance, and an outline of actions taken to remedy the non-compliance.
19. A copy of the notification to be sent to the Finance Minister is at Attachment E. The letter will be sent as soon as the audit is tabled.

**Consultation: YES**

20. Internal - Executive Board; Assurance and Audit Committee; Internal Audit team; General Counsel; Chief Finance Officer.

**Attachments**

- A:** Department's response to the ANAO audit
- B:** Suggested talking points
- C:** Snapshot profile of delivery partners
- D:** Overview of the Entrepreneurs' Programme
- E:** Copy of letter from Secretary to Finance Minister



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

OFFICE OF THE SECRETARY

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EC22-001055

Auditor-General  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

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Dear

Thank you for your correspondence of 28 April 2022 seeking comment from the Department of Industry, Science, Energy and Resources on the proposed audit report for the performance audit for the procurement of delivery partners for the Entrepreneurs' Programme.

The proposed report concludes that the conduct of the procurement process fell short of the ethical requirements in the CPRs and that the delivery partner contracts are not being appropriately managed.

The department accepts that its approach to this procurement in late 2019 and early 2020 was deficient in significant respects and fell short of the appropriate standards of transparency, consistency and fairness. The department also accepts that its management of these contracts requires improvement.

The department accepts all of your recommendations and will now expedite a program of work to implement a more comprehensive and rigorous probity framework and capability uplift. This work commenced in early 2021 and to date has focused on continuous improvements of the grants process in terms of due diligence, contract management, record keeping and the use of probity advisers. This audit has highlighted the need to expedite this work to include procurement and contract management more generally.

As you are aware, I sought independent advice to me on the department's engagement with the ANAO on this matter and the circumstances surrounding the procurement of delivery partners for the Entrepreneurs' Programme. That report has highlighted the need for systemic, cultural and capability uplift in the department. The independent report makes seven recommendations for enhancements and the department's Executive Board has endorsed the implementation of these recommendations.

The department's Executive Board has also established a small "off-line" team to strengthen the department's probity framework, processes, systems and documentation. This team will be oversighted by a Steering Committee, report regularly to the Executive Board and be oversighted by the department's Audit and Assurance Committee (AAC). The department has already engaged with the AAC chair, s 22

As a first priority the review team is reviewing the management of existing contracts and engaging in any large procurements that are in-train across the department's portfolio of activity.

In relation to the Entrepreneurs' Programme, the review team are leaning in heavily on ongoing contract management, with contract management plans put in place in March 2022. Steps are in-

train to improve record keeping, standard operating procedures, performance metrics; and probity and conflict of interest training is being rolled out to staff engaged with the programme.

This work follows from and complements improvements we have been making in our grants management. Measures include a comprehensive Probity Framework for Grants Management inclusive of policies, processes and tools to manage probity, conflict of interest and information handling throughout the grants lifecycle; and improved mandatory training modules.

Please find the department's response to the proposed report at Attachment A.

I would like to thank you and your team for your collaborative approach throughout the audit process.

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26<sup>th</sup> May 2022

## Attachment A

### Recommendations

#### Recommendation no. 1 Paragraph 2.13

When planning to employ a staged process to evaluating tenders, the Department of Industry, Science, Energy and Resources clearly identify this in its approach to market along with the criteria that will be used to shortlist potential suppliers, and if applicable, any expected limits on the number of potential suppliers that will be shortlisted at each stage.

**Department of Industry, Science, Energy and Resources response:** *Agreed – the changes we are making to our procurement-related frameworks, processes and procedures will provide for the clear identification of selection criteria and evaluation process in its approach to the market, and these changes will be included in our procurement checklist against which we will monitor compliance. Our department-wide Probity Framework will address transparency, consistency and fairness requirements.*

#### Recommendation no. 2 Paragraph 2.68

When evaluating tender responses, the Department of Industry, Science, Energy and Resources fully evaluate responses received consistent with the approach set out in the approach to the market, with the results of this work relied upon to select the successful candidate(s).

**Department of Industry, Science, Energy and Resources response:** *Agreed – the changes we are making to our procurement-related frameworks, processes and procedures will provide for responses to be fully evaluated consistent with the approach to market, and these changes will be included in our procurement checklist against which we will monitor compliance. Our department-wide Probity Framework will address transparency, consistency and fairness requirements.*

#### Recommendation no. 3 Paragraph 2.77

The Department of Industry, Science, Energy and Resources improve its procurement framework to specifically address the engagement of probity advisers, including



ensuring that advisers are independent and objective by not engaging the same probity advisers on an ongoing or serial basis.

**Department of Industry, Science, Energy and Resources response:** *Agreed – the engagement of probity advisers will be addressed in our department-wide Probity Framework, including how to ensure independence and objectivity and manage risk.*

**Recommendation no. 4  
Paragraph 2.98**

The Department of Industry, Science, Energy and Resources improve its procurement framework to specifically address how it will manage the risk of any incumbency advantages when conducting procurement processes.

**Department of Industry, Science, Energy and Resources response:** *Agreed - our department-wide Probity Framework will address how to manage incumbency advantages, including through appropriate controls and monitoring compliance.*

**Recommendation no.5  
Paragraph 2.103**

The Department of Industry, Science, Energy and Resources improve its procurement record keeping so that accurate and concise information exists on:

- the process that was followed;
- how value for money was considered and achieved;
- relevant approvals; and
- relevant decisions and basis of those decisions.

**Department of Industry, Science, Energy and Resources response:** *Agreed – Our department-wide contract management framework and Probity Framework will include assurance processes to ensure the right documentation is in place across the life cycle of a procurement and contract. We have already made changes to our standard operating procedures for the Entrepreneurs' Programme to improve record-keeping.*

**Recommendation no. 6  
Paragraph 2.118**

The Department of Industry, Science, Energy and Resources:

- not exercise the extension options in the awarded contracts;
- commences work to conduct a new procurement process that will be completed before the existing contracts expire on 30 June 2023; and
- conducts the next procurement process in a manner that fully complies with the Commonwealth Procurement Rules.

**Department of Industry, Science, Energy and Resources response:** *Agreed in principle – while the department supports this recommendation in principle, the programme is being evaluated and decisions about its future, including programme design, will be subject to government consideration.*

**Recommendation no. 7  
Paragraph 3.7**

The Department of Industry, Science, Energy and Resources develop contract management plans for each of the delivery partner contracts.

**Department of Industry, Science, Energy and Resources response:** *Agreed – contract management plans for each of the delivery partner contracts came into effect in March 2022.*

**Recommendation no. 8  
Paragraph 3.17**

The Department of Industry, Science, Energy and Resources adopt a proactive approach to managing delivery partner conflicts of interest by:

- ensuring conflict of interest declarations are completed, updated regularly or their ongoing currency otherwise confirmed; and
- regular review of delivery partner reporting of conflict of interest in order to monitor compliance with contractual obligations.

**Department of Industry, Science, Energy and Resources response:** *Agreed – conflict of interest requirements are included in the delivery partner contract management plans and the department will regularly review reporting and compliance, as per contract conditions. Probity and conflict of interest training will be rolled out for all Programme*

*staff. More broadly, our department-wide Probity Framework will include policies, processes and tools to manage conflict of interest across departmental activities.*

**Recommendation no. 9  
Paragraph 3.44**

The Department of Industry, Science, Energy and Resources strengthen its management of the Entrepreneur's Programme delivery contracts, including by taking prompt action in circumstances where delivery deadlines are not met and verifying that services have been provided before payments are made.

**Department of Industry, Science, Energy and Resources response:** *Agreed – the contract management plans set out clear expectations for contract deliverables, and we have updated our standard operating procedure to mandate approval and verification of services prior to payment.*

**Recommendation no. 10  
Paragraph 3.63**

When contracting for the delivery of services, the Department of Industry, Science, Energy and Resources apply competitive pressure when establishing performance expectations, and how these will relate to contractual payments. This can be achieved by the department setting out its expected performance management system and standards in the approach to the market documentation, or by asking respondents to set out their proposals to inform a comparative evaluation.

**Department of Industry, Science, Energy and Resources response:** *Agreed*

## Summary of entity response

The Department of Industry, Science, Energy and Resources (the department) agrees to all of the ANAO's recommendations and takes seriously the important issues raised.

While the department's administration of the procurement fell short of the appropriate standards of transparency, consistency and fairness, particularly in late 2019 and early 2020, the Entrepreneurs' Programme has successfully supported over 22,000 Australian companies to strengthen and grow since its launch in 2014. Businesses participating in the growth element of the program have experienced average increases of 3.5 new jobs and an additional \$1.47 million in turnover.

The department is actively working to address all recommendations, and any cultural or systemic improvements necessary, as a matter of priority, including adopting a formal change program approach.

The department has already put contract management plans in place for the Entrepreneurs' Programme. We are immediately developing performance metrics and standards for delivery partners, as well as a probity plan specific to the programme, which will comprehensively address conflict of interest.

We are also establishing a robust department-wide contract management framework, and a centralised and strengthened approach to the management of probity and conflict of interest. Having successfully implemented a probity framework for grants management, we are now focused on strengthening our Probity Framework to cover procurements and contracts, with a clear line of sight by the departmental executive and our internal Audit and Assurance Committee.

**Suggested Talking Points**

- The ANAO audit raised serious issues around the department's procurement of delivery partners for the Entrepreneurs' Programme in 2019-20, and in the ongoing management of contracts.
- I'm pleased that my department is taking the audit findings very seriously and has already started implementing the ANAO's recommendations as a matter of priority, both for this program and for the department more broadly.

*If asked and subject to your views about the future of the program:*

- The Government is absolutely committed to supporting small business.
  - Such support can be particularly critical during times of crisis (such as bushfires, floods and the COVID-19 pandemic) and in ongoing efforts to support SME competitiveness and innovation.
- I will work with my department to implement the Government's plans to strengthen support for small business, create jobs, boost vital skills, bring industry expertise back on shore, and supercharge national productivity. This includes looking at the future of the Entrepreneurs' Programme.

*If asked about the Government's approach to procurement:*

- The Government recognises that procurement policy is a major economic lever to drive economic recovery from COVID-19.
  - We will improve the way Australian Government procurements and contracts work, ensuring more opportunities are available to Australian businesses, including SMEs. We have a detailed plan for how we will do this.

*If asked about changes the department is implementing to address the ANAO's recommendations:*

- That is a matter for my department.

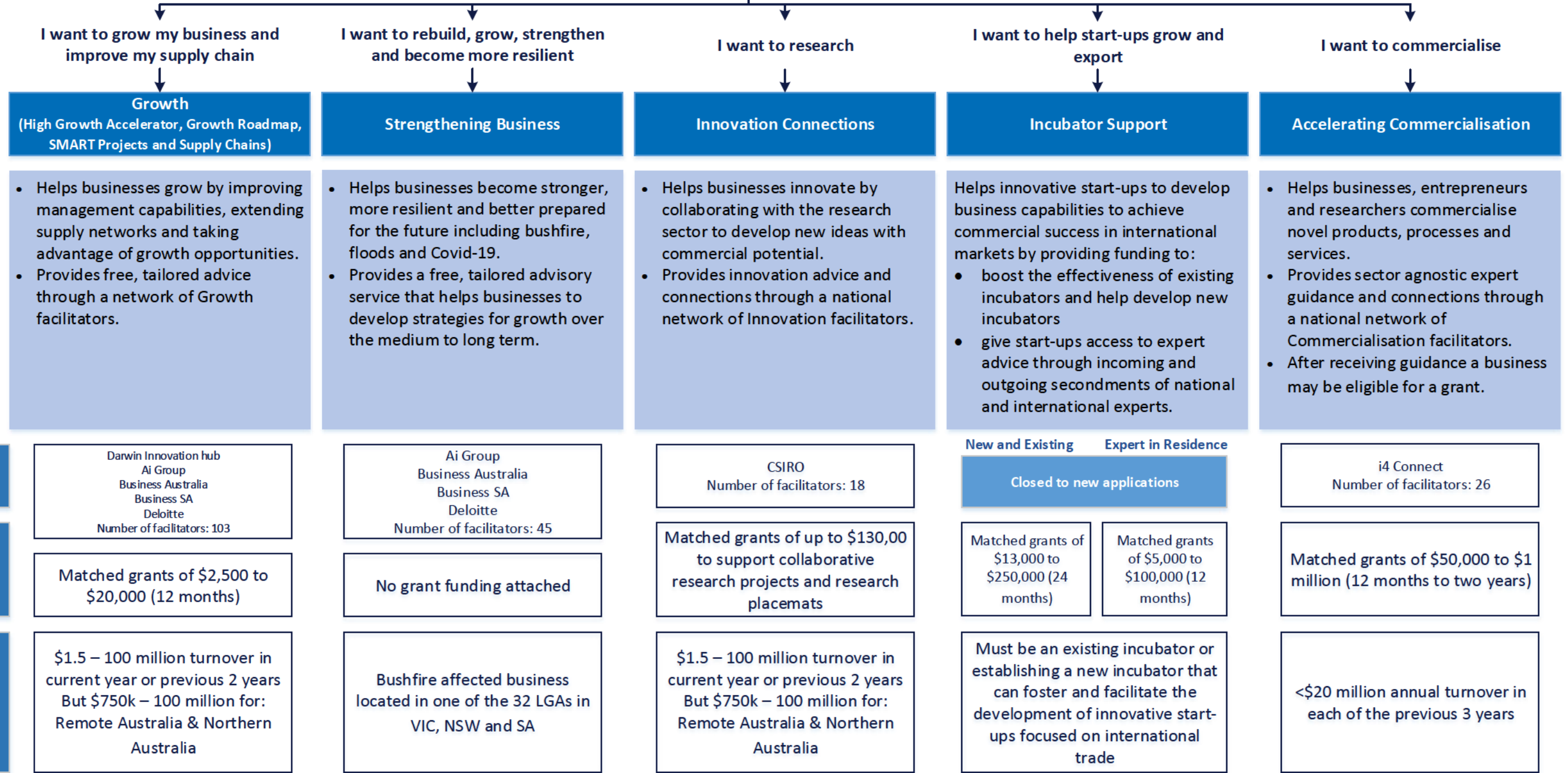
## Snapshot profile of delivery partners

Delivery Partner	SME?	Services provided	Key Contact	Position
Deloitte Consulting Pty Ltd	No	Growth – QLD  Strengthening Business - QLD  EP Specialists – National Provider	s 22	Director
Australian Industry Group	No	Growth – VIC, TAS, WA  Strengthening Business – VIC	s 22	Director Business Services
Darwin Innovation Hub	Yes	Growth – NT	s 22	Chief Executive Officer
NSW Business Chamber Ltd/Business Australia	No	Growth – NSW, ACT  Strengthening Business – NSW	s 22	General Manager
Business SA	Yes	Growth – SA  Strengthening Business - SA	s 22	Executive Director Employer Solutions and Programs
i4 Connect Pty Ltd	Yes	Commercialisation – National Provider	s 22	Managing Director
CSIRO	No	Innovation – National Provider	s 22	Director, CSIRO SME Connect

# Entrepreneurs' Programme

**Objective**  
 The Entrepreneurs' Programme delivers advice and grants to enable high-potential businesses to strengthen, grow, innovate and commercialise nationally and globally.

Current as of May 2022.



**Strengthening Northern Australian Businesses (SNAB)**

- In the 2021-22 Budget a \$189.6 million package of measures to support Our North, Our Future from 2021-26 was announced. This included the Northern Australia Development Program (NADP) which has a grant and the Strengthening Northern Australian Business (SNAB) advisory service.
- SNAB Advisory service is complementary to the NADP grant and provided to eligible NADP grant applicants to help them build long-term resilience and strengthen.
- 8 Facilitators and 3 digital experts engaged through existing Delivery partners provide expert business advice to help eligible businesses to grow and strengthen their performance.

**EP Impact**

- National reach:** From its launch in June 2014, EP has helped 22,457 businesses through a national network of over 165 facilitators and specialists (as at May 2022).
- Grow:** businesses participating in EP have experienced on average, an increase of 3.5 new jobs and \$1.47 million in turnover (as at December 2021).
- Innovate:** businesses participating in IC created new IP (65 per cent) and new or improved processes or products that improve their competitiveness (91 per cent), and maintained connections with research organisations (84 per cent) (as at 31 January 2020).
- Commercialise:** businesses participating in AC have on average raised \$3.75 dollars for every dollar funded through the AC program (as at 2019).
- Graduate employment:** 90 per cent of graduates were offered employment by a business at the end of an IC project, resulting in 130 early-stage researchers securing positions (as at January 2021).
- Client satisfaction:** More than 92 per cent of clients indicate that they are likely or extremely likely to recommend the EP to their peers (from a satisfaction survey conducted in March 2021).
- Learning Events:** From its launch in June 2014, EP delivered 1,426 learning events to 18,556 attendees through workshops, seminars, networking or small group events that focus on delivering information and developing business's capability (as at May 2022).



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**Department of Industry, Science,  
Energy and Resources**

**OFFICE OF THE SECRETARY**

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MS22-000558

Senator the s 22  
Minister for Finance  
Parliament House  
CANBERRA ACT 2600

Dear Minister

In accordance with Section 19 of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) I, as the Accountable Authority of the Department of Industry, Science, Energy and Resources (the department), am required to notify you as soon as practicable after becoming aware of a significant issue that has affected the entity, and reported to the responsible Minister.

A recent performance audit of the Entrepreneurs' Programme (EP) conducted by the ANAO identified instances of non-compliance with the Commonwealth Procurement Rules (CPRs) concerning a procurement undertaken in late 2019 and early 2020.

Instances of non-compliance relate to:

- a. not disclosing to the market correct information about the evaluation criteria and evaluation method
- b. the manner in which evaluation of tenders was undertaken, including by evaluating submissions that did not satisfy conditions for participation and/or minimum format and content requirements
- c. omitting to maintain a level of documentation that was commensurate to the scale, scope and risk profile of the procurement
- d. failing to actively manage conflicts of interests
- e. involving incumbent providers in the redesign project which resulted in their early and inequitable access to information
- f. the procurement processes used to engage external advisers.

The non-compliance is considered significant due to its likely impact on the reputation of the program and the department, and the high value of the program including the related procurement activities.

An independent review of the circumstances surrounding the conduct of the EP procurement has provided the department with a specific set of actions to address these and other probity related issues, and a specialist team led by a senior officer has been formed to implement those actions as a matter of priority.



The responsible Minister for the department has been notified of this matter and the corrective actions being implemented by the department.

Yours sincerely

March 2023