

Transforming the relationship between Aboriginal peoples and the NSW Government

Aboriginal Affairs NSW
research agenda 2018-2023



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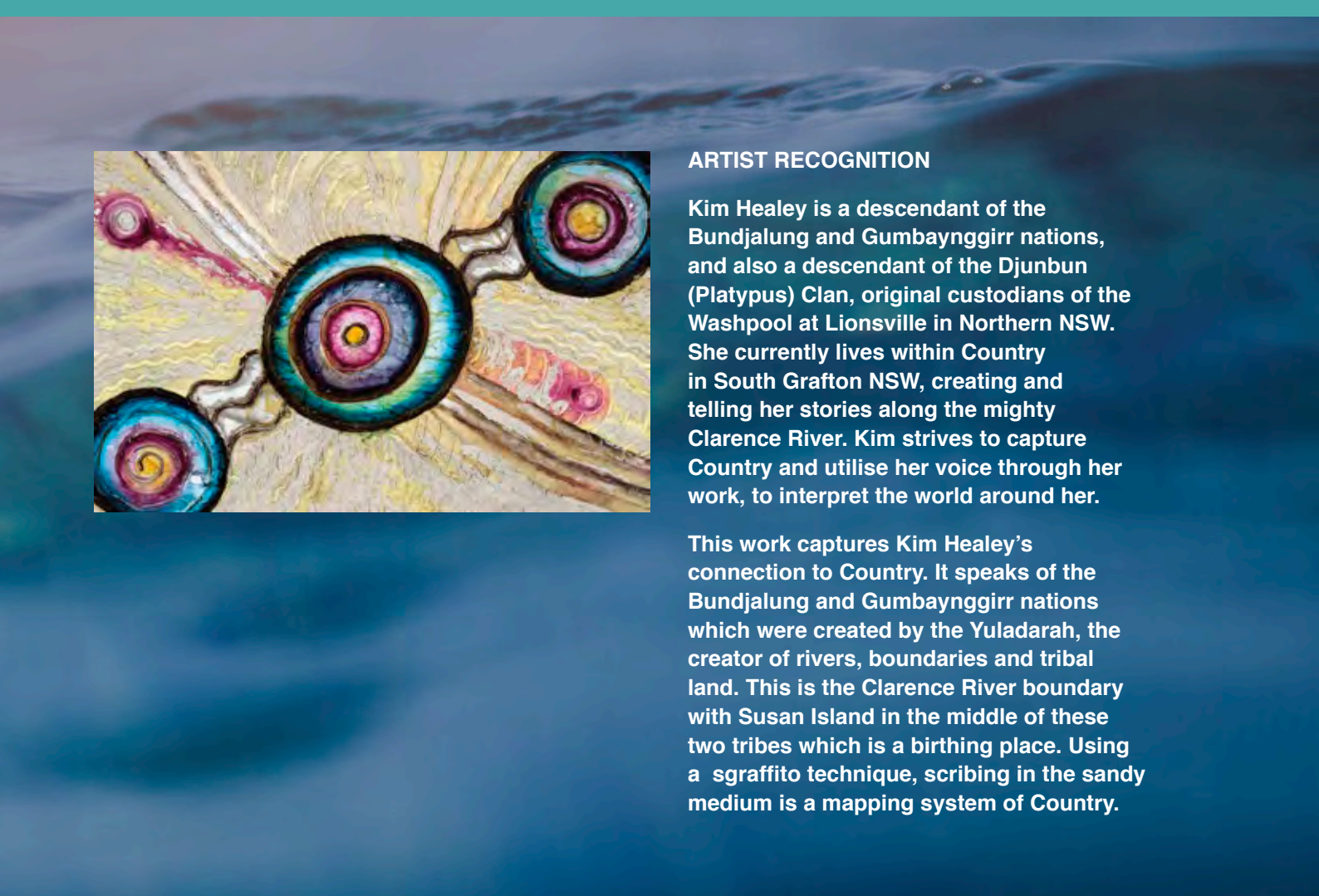
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ARTIST RECOGNITION

Kim Healey is a descendant of the Bundjalung and Gumbaynggirr nations, and also a descendant of the Djunbun (Platypus) Clan, original custodians of the Washpool at Lionsville in Northern NSW. She currently lives within Country in South Grafton NSW, creating and telling her stories along the mighty Clarence River. Kim strives to capture Country and utilise her voice through her work, to interpret the world around her.

This work captures Kim Healey's connection to Country. It speaks of the Bundjalung and Gumbaynggirr nations which were created by the Yuladarah, the creator of rivers, boundaries and tribal land. This is the Clarence River boundary with Susan Island in the middle of these two tribes which is a birthing place. Using a sgraffito technique, scribing in the sandy medium is a mapping system of Country.



Foreword



In 2013, the NSW Government released *OCHRE* (Opportunity Choice Healing Responsibility Empowerment) – a community focussed plan for Aboriginal affairs.

OCHRE recognises the failure of policies fixated on “the gap” and “disadvantage” and by contrast, respects Aboriginal peoples’ culture, rights and contributions to the social, cultural and economic development of the State. *OCHRE* represents a commitment by the NSW Government to reset its relationship with Aboriginal communities, acknowledging the criticality of a genuine and accountable partnership with Aboriginal communities to improving the lives of the State’s First Peoples.



It is evident that significant change is now under way in NSW Aboriginal affairs policy; change that is transforming not only the way policy is developed, but also how the government engages Aboriginal citizens and what Aboriginal communities now expect of government. To support and inform these changes we have built a research agenda for our time. Our agenda makes a calculated and, perhaps, historic shift in emphasising hope over despair, aspiration over services, and placing the transformation of the relationship between Aboriginal peoples and government at its centre.

Our agenda is wide-ranging and seeks answers to new questions about the relationship between First Peoples and their lands and languages, the cultural capability of the public service, the nature of Aboriginal economic prosperity, and the negotiations that must define self-determination – information needed to support a positive, respectful and enduring relationship between Aboriginal peoples and government.

This research agenda reflects our desire for a new narrative in Aboriginal affairs and demonstrates our commitment to embedding Aboriginal voices and perspectives into policy development and implementation. We cannot do this on our own. The extended research community will be critical in delivering the evidence that supports Aboriginal communities and the NSW Government to work together to determine what works, what's worth trying and what success looks like.

I would like to thank the many individuals who have contributed to this agenda.

Jason Ardler
Head of Aboriginal Affairs NSW



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Our research agenda could not have been realised without the collaboration, enthusiasm, guidance, commitment and knowledge of many.

To the First Peoples of New South Wales, I thank you for your wisdom, patience and persistence.

To the New South Wales Coalition of Aboriginal Regional Alliances, I express my gratitude for your guidance and commitment to shaping an agenda that aims to be a model of hope.

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- Dr Kyllie Cripps, Acting Director, Indigenous Law Centre, University of New South Wales
- Professor Dennis Gray, Deputy Director, National Drug Research Institute, Curtin University
- Professor Shane Houston, Deputy Vice-Chancellor, Indigenous Strategy and Services, University of Sydney
- Associate Professor Janet Hunt, Deputy Director, Centre for Aboriginal Economic Policy Research (CAEPR), Australian National University

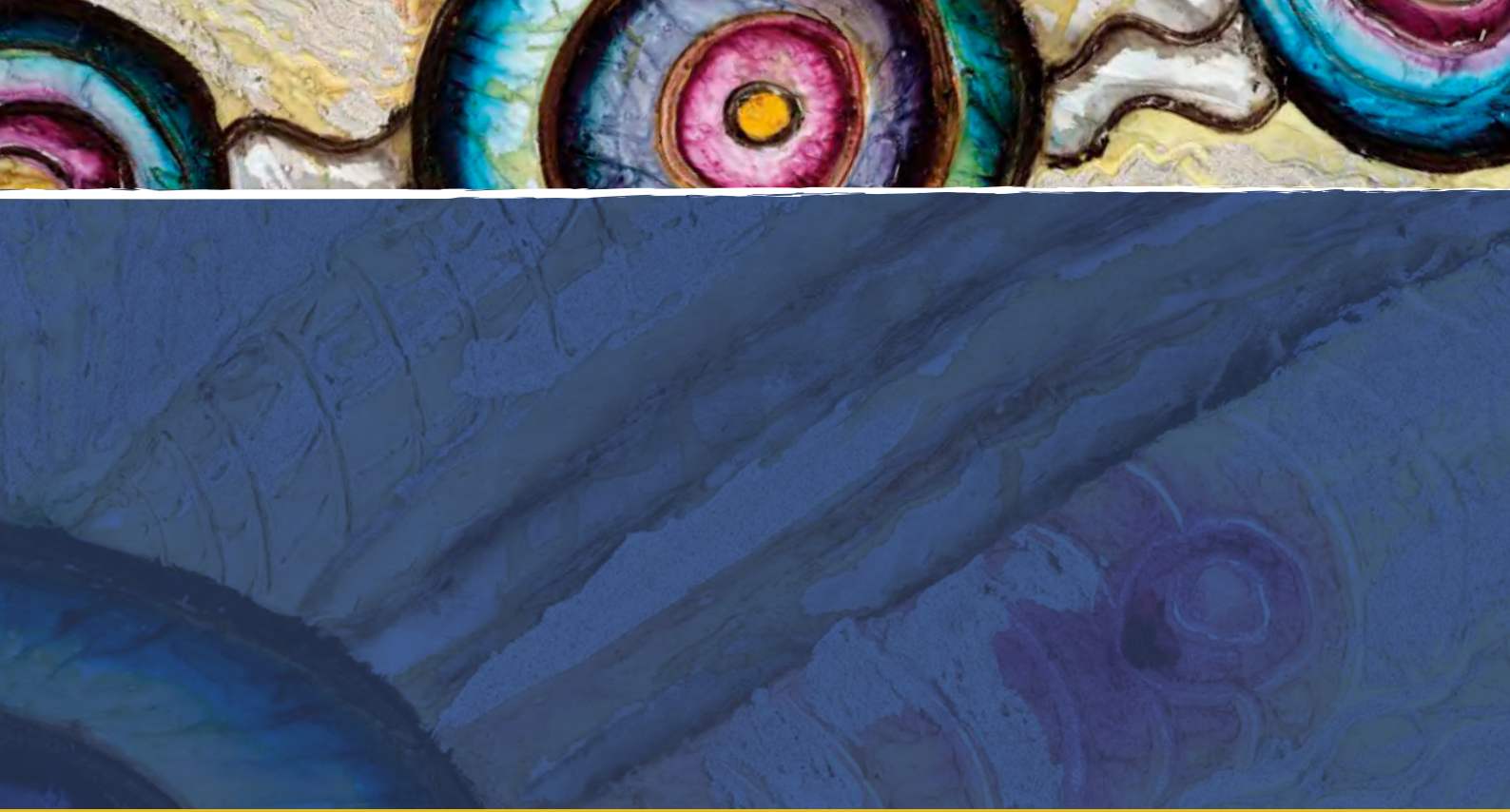


- Dr Wendy Jarvie, Visiting Professor, School of Business, University of New South Wales Canberra
 - Professor Ilan Katz, Social Policy Research Centre, University of New South Wales
 - Professor Richard Madden, Director, Sydney Centre for Aboriginal and Torres Strait Islander Statistics, University of Sydney
 - Jeff McMullen AM, journalist, author and film-maker
 - Dr Gabrielle Russell-Mundine, Academic Leader, National Centre for Cultural Competence, University of Sydney
 - Associate Professor Heidi Norman, Faculty of Arts and Social Sciences, University of Technology Sydney
 - Professor Chris Sarra, founder and Chairman of the Stronger Smarter Institute and Professor of Education at the University of Canberra
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About this research agenda

Introduction

If we listen to Aboriginal people, a vital first step towards alleviating disadvantage is to close the space between us. Beginning in 2011, the New South Wales Government embarked on an extended period of consultation with Aboriginal communities (see Walker & Linklater, 2012). During these consultations, Aboriginal people made it clear that while many previous policies had raised great expectations they had not delivered the many promised improvements. Furthermore, the concerns Aboriginal communities had raised over many decades about how policy responses were developed remained unaddressed. There is clearly a strong Aboriginal yearning for a different relationship with the New South Wales Government that includes a genuine commitment to shared decision-making, a willingness to listen and clear accountability. A new research agenda is needed to guide this.

Transforming the relationship

Australian government policy responses have long been driven by the meticulous measurement and recording of most aspects of Aboriginal lives (Lea, 2014). As Mick Dodson notes, “Since their first intrusive gaze, colonizing cultures have had a preoccupation with observing, analysing, studying, classifying and labelling Aborigines and Aboriginality” (Dodson, 1994). Sometimes this has involved controversial Interventions like the Northern Territory Emergency response of 2007 (Altman, 2017) but in most cases the policies are launched “under the sign of social justice to remediate disadvantage” (Vincent, Neale & McKinnon, 2014, p.21).

For over two centuries Aboriginal peoples have been viewed and discussed as a ‘problem.’ The extent of the ‘Aboriginal problem’ is determined through extensive monitoring and surveillance that references no less than 170 social measures, standardised against the norms of mainstream Australians. In 2015 the Productivity Commission estimated that close to 2,000 pages are produced on the extent of Indigenous disadvantage, with the equivalent of almost 7,000 pages of data available as electronic attachments (Productivity Commission, 2015). This excludes that reported in the annual National Indigenous Reform Agreement performance report. The so-called objective facts that emerge are used unflinchingly to confirm the status quo. That is, the ‘Aboriginal race’ is an intractable ‘problem.’

Many government policies are introduced with the stated aim of overcoming disadvantage, such as the national *Closing the Gap* reports. However, they ultimately support a discourse of pathology and dysfunction which can be used “to subjugate and discipline Indigenous people” (Moreton-Robinson 2014, p.312). This inevitably requires still more measurement, research and intervention (Lea, 2014). The current national policy focus on closing the disadvantage gap has influenced New South Wales policy through various Commonwealth-state agreements, compounding the continuing metrics of dysfunction. The relevance of standardised measures is contested by Indigenous Australians who argue that they fail to reveal what is required (Kendell et al., 2011). The gauge of disadvantage and dysfunction ignores the different structures that frame Aboriginal world views, diverse understandings of power, identity, values and practices; and ultimately profoundly different motivations and aspirations (see for example Altman & Hinkson, 2010).

Calls for change from a deficit focus and the despair it sustains, have echoed for decades. In 1989, Charles Perkins pushed for a national reorganisation of Aboriginal affairs:

The time has come for our people to break out of this unworthy, enforced western dreamtime and charter a new course, not only for our people, and particularly for our children, but for our nation. We must throw off the yoke of welfare and the soul-destroying concept of welfare and the subsequent dependency syndrome. It is destroying us and will continually do so... We are running out of time (Perkins, 1990).

In his 2015 Senate Occasional Lecture, Chris Sarra offered the Australian Parliament three strikingly clear ways to overcome the deficit discourse in the Indigenous policy space:

Acknowledge, embrace and celebrate the humanity of Indigenous Australians;

Bring us policy approaches that nurture hope and optimism rather than entrench despair;

Do things with us, not to us! (Sarra, 2015).

After the release in 2016 of yet another report showing dismal progress in *Closing the Gap*, Senator Patrick Dodson, a Yawuru Nation’s leader, spoke out against the focus on measuring disadvantage. Dodson argued what was required was a complete restructuring of the

relationship between government and Indigenous peoples and the political will to recognise Indigenous peoples through a settlement process or treaty (Robinson, 2016).

In 2017, the *Uluru Statement from the Heart* emerging from the Indigenous *National Constitutional Convention* called for reform built on the principles of a First Nations’ Voice enshrined in the Constitution, agreement-making and truth-telling about history (Uluru Statement from the Heart, 2017). To improve the lives of future generations the Uluru Statement spoke of the need for structural change to the relationship between Aboriginal peoples and the nation.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future.

These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.

We seek constitutional reforms to empower our people and take a rightful place in our own country. When we have power over our destiny our children will flourish. They will walk in two worlds and their culture will be a gift to their country (Uluru Statement from the Heart, 2017).

Seismic Policy Shifts

While assimilation and the deficit discourse have been constants, there have been dramatic policy shifts in Aboriginal affairs over the last fifty years. ‘In 1972 when policy shifted to self-determination there was overwhelming political acceptance that the colonial development project... had failed’ (Altman, 2017) but from 2004, when the Aboriginal & Torres Strait Islander Commission (ATSIC) was abolished, it was self-determination that government judged as a failure (Altman, 2017). Now, after 10 years of policy based on deficits and control, there is near universal agreement that this top down approach has failed Australia’s First Peoples. The deficit discourse has spawned at least 149 policies and operational documents directed at Aboriginal people across New South Wales government portfolios, the majority focused on human service provision (Griffiths, Katz, Newton & Davey, 2015, p.7).

Yet according to the Commonwealth's metrics there has been little or no improvement in Aboriginal wellbeing (Commonwealth of Australia, 2017).

As a result of the extensive consultations between the New South Wales Government and Aboriginal communities in 2011 and 2012, Aboriginal affairs policy in New South Wales represents a serious quest for a transformational relationship. The resulting framework, known as *OCHRE*, is a community-focused plan. It recognises the failure of policies fixated on 'the gap' and 'disadvantage' and, by contrast, respects the cultural value, rights and contributions of Aboriginal peoples in New South Wales and the centrality of a truthful and respectful relationship with the New South Wales Government, including accountability. Aboriginal Affairs believes this new community approach will enhance the well-being of all people in New South Wales (NSW Government, 2013).

Our research response

To support and inform the changes Aboriginal people in New South Wales seek we have built a five-year research agenda to expand our knowledge.

The research agenda is founded on the premise that any research must reflect the Aboriginal concerns clearly articulated throughout the consultations that delivered *OCHRE*. An agenda for our time requires new questions to be explored, focusing on relationships. These include the relationship between Aboriginal peoples and their land and their language, the cultural capability of the public service, the nature of economic prosperity, and the negotiations that must define self-determination. This research agenda will guide the new research needed to deliver stronger evidence of how to improve the relationships between people and government. An innovative inquiry will develop policy approaches that 'nurture hope and optimism rather than entrench despair' (Sarra, 2015).

The result is a collection of papers each addressing a particular area of keen interest to Aboriginal peoples. Authors come from very different disciplinary backgrounds and bring together a diversity of experience and a large body of knowledge.

The research agenda seeks to reflect the Aboriginal concern with a strong sense of community. The agenda reflects a research 'family' that aims to be a model of hope. We have deliberately built an agenda that is wide-ranging; one that cannot be achieved without collaboration.

The new New South Wales research agenda has eight chapters. Each examines the policy environment, research learnings and areas where new or further research would be useful. While each chapter is self-contained, allowing readers to explore a particular area of interest in depth, the collection comes together by identifying common themes that point to research priorities.

In the first chapter, Heidi Norman provides an overview of the unique history of Aboriginal land recovery in New South Wales. Crucially the continuing return of substantial land holdings to Aboriginal peoples will open up significant cultural, social and economic opportunities for Aboriginal communities across New South Wales. In Norman's view, this will increasingly position Aboriginal peoples as central actors in development, planning and conservation. This, she concludes, will validate Aboriginal approaches to nation-building.

In Chapter 2, Britt Jacobsen and Anthony Seiver explore the history of Aboriginal language policy in New South Wales, in the context of the 2017 consultations with Aboriginal communities on proposed legislation to recognise and protect New South Wales Aboriginal languages. In reviewing international, Commonwealth and State approaches, Jacobsen and Seiver emphasise Aboriginal languages are an essential ingredient in promoting Aboriginal community ownership and the development of the cultural essence of distinct peoples. Importantly, Aboriginal people draw overwhelmingly positive support for the nurturing of Aboriginal languages from a clear majority of New South Wales citizens, a hopeful foundation for the new relationship now sought.

In Chapter 3, Gabrielle Russell-Mundine considers the normative narratives embedded in Australian society about Aboriginal people and evidence of these in public service practice. Charged with developing and implementing government policy, the goal is a public service able to engage in a meaningful and sustainable way with Aboriginal communities. Simply put, this requires a 'culturally capable' public service, which defines appropriate capabilities, understands them fully and then incorporates them in all policies and practices.

For this to become ‘business as usual’ in New South Wales, Russell-Mundine sets the important goal of a context specific cultural capability framework.

It is the long-lasting impacts of colonisation, examined by Kirrily Jordan and Nick Biddle in Chapter 4, that so clearly shape major aspects of Aboriginal life. These include the legacy of the violent displacement of Aboriginal peoples from their lands, the alienation of successive generations from economic resources and the resulting limitations on their capacity to accrue wealth to pass onto their children and grandchildren. The elements and determinants of economic prosperity are examined carefully including demography, racism, education, employment, enterprise, housing, and land and sea management. Here we see the link to Heidi Norman’s discussion of the potential benefits of increasing land returns to expand the Indigenous estate. The need to enhance and support self-determination in the setting of goals and the design of policy related to economic prosperity also become clear. Jordan and Biddle argue this would require further exploration of what economic prosperity means for different Aboriginal people, communities and organisations in New South Wales, as well as appropriate strategies and measures to realise it. The genuine power-sharing and co-production required to achieve this remind us of the importance of a competent public service that understands self-determination for Aboriginal people.

Self-determination is the subject of Janet Hunt’s contribution in Chapter 5. History shows that self-determination can be interpreted in a variety of ways; including as an Indigenous community sector model, as First Nation building to drive the self-determination of groups, and as the possibility of treaty discussions to define the legal terms of self-determination. As any meaningful return to a policy of self-determination depends on major changes to the status quo, Hunt analyses the preconditions for such a power shift. She suggests this would first require recognition that self-determination is an inherent right and that although its meaning may vary in practice, acceptance of the legitimacy of Aboriginal governance of organisations is necessary. Attention to institutional arrangements and the Commonwealth Government’s policy environment is also vital, along with an approach developed with Aboriginal communities including agreement on financial resources and accountability arrangements. In this discussion, the importance of land, language, culture, economic prosperity and a culturally-competent public service resurface as key, interdependent elements of self-determination.

Jeff McMullen’s contribution in Chapter 6 draws our attention to the central positive role of the Aboriginal voice in the context of what McMullen sees as a “relentless, humiliating devaluing of Aboriginal and Torres Strait Islander people as human beings and a misconceived, one-sided fixation on the ‘Aboriginal problem’ ” that commenced when Aboriginal peoples were first sighted by Lt. James Cook in 1770. He argues that the ‘deficit discourse’ is shaped by our limited contact with, and knowledge and understanding of, Aboriginal Australians. Our self-interest is shaped by the degree of our family privilege, cultural upbringing, education and by an eternal fear of difference. What is compelling about this journalistic reflection on the negative public discourse is his belief that even best-intentioned Western media practice can give voice to the gravest Aboriginal concerns. By contrast, transformation occurs through listening carefully to those who hold the key to a positive discourse - Aboriginal people.

In Chapter 7, BJ Newton and Ilan Katz assess current research guidelines on ethical practices for working with Aboriginal people and communities. Drawing on their experiences in evaluating *OCHRE*, the authors present thought-provoking examples of the difficulties that can arise in building community trust and genuine partnerships within the constraints of budgets and time. They discuss the challenges for researchers including maintaining independence from government, the nature and meaning of ‘community consent’ and ‘community control’, and what is required when working with both Aboriginal and Western knowledge and practice. Their reflections on ethical research practices challenge us to understand more deeply how Aboriginal people see self-determination, the cultural competency of the public servants they are dealing with and the effectiveness of government commitments to hear Aboriginal voices.

Concluding our collaborative assessment, Jason Ardler puts the case for co-developed policy in Chapter 8. Following a long period of too much government policy and too little community involvement on policy implementation, a new relationship must express local voices, two-way responsibility and accountability. In carefully plotting the course to the publication of *OCHRE*, Ardler’s analysis highlights the potential of the co-production of policies and goals to achieve outcomes that ‘walk the talk’ of self-determination. With an

acceptance that policies have not worked in the past, the voices of Aboriginal peoples must guide us towards a more hopeful future.

Our collective effort has identified over 30 areas of research inquiry which would be helpful. For the next six years we will focus on eight of these identified as priorities by Aboriginal communities:

1. How might conversations about land justice and land access be advanced?
2. How can the Native Title Act and Aboriginal Land Rights regimes be better aligned to enhance complementarity?
3. How is Aboriginal language custodianship determined and does this differ according to the status of the language? Who has the authority to make decisions about language and what responsibilities come with this? What relationship is there between activities to nurture and grow languages and community governance bodies that run or oversee these programs?
4. How is cultural capability understood in the New South Wales public service and how is it practiced? What influences practice? How is genuine interest in and commitment to culturally safe practice established and maintained in public service practice? How do the cultures and 'disciplinary' knowledges of different departments facilitate or hinder implementation of the key principles contained in *OCHRE*?
5. How is Aboriginal economic prosperity defined and who defines its meaning?
6. What is the connection/s between land ownership and local economies? What works and what does not? How are the benefits (economic, social, cultural and wellbeing) of land recovery realised and how can such benefits be measured and evaluated?
7. What are the aspirations of Aboriginal and Torres Strait Islander peoples in New South Wales for self-determination and wellbeing? What does self-determination mean to them? How do they understand wellbeing and how do they think their community wellbeing could be improved? In what areas of life do they want greater decision-making and control?
8. What is best practice advocacy, policy promotion and media reporting that highlights the strengths of Aboriginal people?

Principles that guide our research

We are acutely aware of concerns about the quality, relevance and processes of much of the research undertaken on and with Aboriginal communities. Critics within and outside communities have variously labelled some research as 'invasive', 'self-serving', 'unsuitable' and 'pointless', and have highlighted a lack of both consultation and informed consent (Aboriginal Affairs NSW, 2015). A literature review commissioned by Aboriginal Affairs NSW to inform the evaluation of *OCHRE* noted 'research and evaluation are viewed with suspicion and hostility by most Indigenous communities in Australia and internationally because the history of Western research has led to detrimental outcomes for Indigenous peoples, irrespective of the intentions of the researchers' (Katz, Newton, Bates & Raven, 2016, p.37). In the same vein, we are also cognizant that while previous research has generated considerable knowledge, the usefulness of this knowledge is predicated on the degree to which Indigenous voices have not been silenced within 'mainstream academic discourses' (Blodgett, Schinke, Smith, Peltier & Pheasant, 2011, p. 522).

Guided by our Advisory Group for Aboriginal Affairs Research (Aboriginal Affairs NSW, 2016), we are committed to research conducted with Aboriginal peoples, rather than on and about Aboriginal peoples. Existing strengths, assets and knowledge systems of Aboriginal communities and the diversity of cultures, languages, community structures, resources and experiences are given prominence. Ethical research is our touchstone – research must provide net benefits for Aboriginal people and communities; ensure Aboriginal community control of the research; be conducted with cultural sensitivity; reimburse costs to participants and communities; and enhance Aboriginal skills and knowledge (AH&MRC, 2016). The *OCHRE* evaluation provides a case study on ethical practice and will continue to inform and guide our research practices.

Finally, we must emphasise that research for the sake of research wastes effort and leaves the knowledge gained on the shelf. Alarming, some research has clearly embedded hopelessness and despair, undermining the prospect of a healing relationship between government and Aboriginal peoples. Our research agenda makes a calculated and, perhaps, historic shift to an emphasis on hope and places the transformation of the relationship between Aboriginal peoples and government at its centre. The importance of those with responsibility for policy development and implementation cannot be overstated, since it is policy that defines relationships and expectations. Our research efforts will seek to integrate the habitually separate processes of building evidence and building policy (see for example AHURi, 2017, para. 1).

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1 Return of public lands to Aboriginal control/ownership



Associate Professor Heidi Norman, Faculty of Arts and Social Sciences, University of Technology, Sydney

This is a significant asset base for Indigenous Australians that has not reached its full potential in supporting their economic independence and in turn their social, cultural and physical wellbeing.

- Senior Officers Working Group (2015)

1.1. Introduction

This paper identifies emerging research and policy issues relating to the 'return of public lands' to Aboriginal communities in New South Wales.

In New South Wales, Aboriginal peoples' rights to and interests in land are recognised predominantly through the state-level *Aboriginal Land Rights Act 1983* (ALRA) and the national-level *Native Title Act 1993* (NTA). The common intent of these two distinct pieces of legislation is to facilitate the return of land to Aboriginal communities, and the many benefits that brings. The two laws are, however, different in their approach. Land rights legislation enables land to be transferred back to Aboriginal communities who have been dispossessed. Native title, if established, confirms the water and lands in question have always been held by the Traditional Owners, so recognises a 'pre-existing' title. Although the ALRA and the NTA have been in force for 34 and 24 years, respectively, their promises have not, to date, been fully realised in New South Wales. From 2017, a

rapid escalation is expected in the recognition of Aboriginal peoples' rights to and interests in land and, consequently, in its recovery by Aboriginal communities. This is due largely to significant procedural changes intended to streamline the resolution of land rights claims and political support for such progress. This paper canvasses the issues emerging in relation to the return of public lands and the research, resources and policy reform required to ensure the anticipated social, cultural and economic benefits flow on to Aboriginal people, communities and nations.

Australian governments acknowledge the pivotal role of land in the economic, social and cultural worlds of Indigenous peoples. The New South Wales Government's 2016 report of the Aboriginal Economic Development Inquiry reinforced this observation. The Hon. Greg Pearce MLC (NSW Legislative Council, 2016) concluded that improving social and economic outcomes for Aboriginal people, creating conditions for Aboriginal knowledge and cultural expression, and alleviating large-scale disadvantage will depend on the timely processing of land claims.

The paper begins with a brief overview of the unique history of land recovery in New South Wales. The second section canvasses the changing landscape of land recovery in the state, ahead of the anticipated major acceleration in the resolution of land claims and the expected transfer of significant land holdings to Aboriginal communities. The third section explores issues emerging from this acceleration, and considers how such issues intersect with existing programs and proposed policy reforms. The final section critically analyses developments in Aboriginal land recovery and nation-to-state relations to date, and considers the future implications of these developments.

The starting point is the identification of the pressing immediate and medium-term issues relating to land return that require further research and urgent policy innovation to best enable and support Aboriginal community aspirations. Longer-term philosophical and ideological issues are also canvassed.

1.2. Land, dispossession and recovery in New South Wales

Access to land, and its resources, was central to the colonial project and was nearly always secured by violent means over an extended period. From the early years of the British settler invasion of Australia from the late 1700s, the Eora people of the Sydney Basin objected to settler land clearing. This contest over local resources soon escalated into conflict. From 1790, brutal retribution by the settlers was triggered over access to scarce yam resources along what was by then the Hawkesbury River, to the north of the initial British settlement at Port Jackson (Sydney). Retaliatory strikes by the Aboriginal resistance leader, Pemulwuy, saw a period of sporadic guerilla warfare over the following decade, before punitive British military responses finally suppressed Aboriginal resistance. The conflict coincided with the devastating impact of imported European diseases on vulnerable Aboriginal communities. Epidemics of influenza, smallpox and measles, for example, accelerated the mass-scale depopulation of the Aboriginal peoples of the Sydney Basin, extending out to surrounding networked clans.

Beyond the Sydney Basin, 19th century colonisation can be most accurately characterised as a continuous series of regional conflicts, interspersed with shared zones of contact over a lengthy, 100-year, period (Goodall, 1996). The dispossession of Aboriginal peoples from their land took place in the absence of formal administrative governmental controls, and without negotiations with Aboriginal communities or a clear legal basis for the expropriation of their land.

Any early recognition of Aboriginal rights to land – such as land grants to select Aboriginal citizens (e.g. Colebee/ Nurragingy Land Grant) in the opening decades of the Australian colony -- and from the 1850s the 'setting aside' of reserve land for 'the use of Aborigines' – had collapsed by the late 1800s. By this time, more authoritarian and racially inflected regimes of control, segregation and dispersal had taken hold. The establishment of the Aborigines Protection Board (APB) in New South Wales in 1883 ushered in a long period of state control over Aboriginal families.

The simultaneous exercise and interplay of a racial ideology of progress, settler capitalism and European cultural supremacy propelled a long running assault on Aboriginal communities across the territory of New South Wales. By the early 20th century, government policy reached into almost every aspect of Aboriginal

peoples' lives. The interests of, first, the British colonial economy and, then, the self-governing Commonwealth of Australia from 1901, were paramount, particularly those of the land-hungry wool industry. When combined with a prevailing ideology of white supremacy, these imperatives determined the shape and scale of an intense period of land dispossession across New South Wales.

There were repeated calls for land justice from Aboriginal communities from the early years of the colonial invasion and throughout the drawn-out process of settlement and settler land acquisition. One well-documented Aboriginal petition for land was made by William Cooper and his brother John Atkinson in 1887. Their petition stated they wanted 'a small portion of a vast land which is ours by Divine Right'. Another example was the formation of the Australian Aboriginal Progressive Association (AAPA) in 1922, with a platform of no more reserve land revocation, child removals or school segregation.

Histories of land rights activism (Goodall, 1996; Norman, 2015) show it was not until the 1970s that the Australian Government first sought to recognise Aboriginal rights to land. When the Aboriginal Tent Embassy was installed on the lawns opposite the Federal Parliament in Canberra on Australia Day, 1972, it represented a dramatic challenge to the status quo. The highly visible Tent Embassy highlighted the protracted and violent dispossession of Aboriginal peoples in their own land. From the early 1970s, the Commonwealth Government began to recognise and understand enduring Aboriginal demands for land. The 1973-74 Aboriginal Land Rights Commission (also known as the Woodward Royal Commission) was tasked with inquiring into appropriate ways to recognise Aboriginal land rights in the Northern Territory with the view to developing a model for the other states to follow.

By 1978, Aboriginal land demands in New South Wales were complex and multifaceted. It had been 200 years since the arrival of the first colonial settlers and extensive land dealings and numerous changes of laws, regulations and government had followed. The New South Wales Government realised any land rights response had to take into account the reality of two centuries of land dealings, the scale of the colonial violence and dispossession, the extent of the state's interference in Aboriginal worlds, and the damage it has wrought to Aboriginal knowledge and connections. Skilled and strategic Aboriginal activists forged good working relationships with the New South Wales Government. Their aspirations were met with

enthusiasm, optimism and engagement in a new political process, underpinned by a recognition of the many benefits land rights could deliver.

1.2.1. *The Aboriginal Land Rights Act 1983*

The *Aboriginal Land Rights Act 1983* (ALRA) created a mechanism for recovering eligible Crown Lands. It established a community-controlled Aboriginal Land Council network, made up of the state, regions and Local Aboriginal Land Councils (LALCs) representing their local areas, and provided an initial 15-year compensation fund to finance the network and community-initiated enterprises. It was premised on some key ideas including consideration of the sustained loss of Aboriginal peoples' connection to land and land assets and the potential for land ownership to drive economic activity and enterprises. As this marked a clear point of departure from previous policies of assimilation, the new Act offered a form of self-determination.

1.2.2. *Purpose of the Aboriginal Land Rights Act 1983*

The purpose of the ALRA, as set out in Section 3, is to provide land rights for Aboriginal persons in New South Wales including the acquisition and management of land and other assets and investments, for representative Aboriginal Land Councils to hold those lands and to provide for the provision of community benefit schemes.

1.2.3. *Membership of Local Aboriginal Land Councils*

Under the ALRA, land claims are made on behalf of communities through LALCs, or may be made on behalf of an LALC by the New South Wales Aboriginal Land Council. The make-up of LALCs, as determined by the provisions of the ALRA, appreciates Aboriginal communities as both bound by cultural attachment to place, with developed historical associations, and as diasporic communities. This is reflected in the LALC membership criteria. LALCs are open to any adult Aboriginal person who resides within the LALC's boundaries or who has an association with the area of the LALC. Membership also extends to Aboriginal persons who are culturally associated with particular land.

1.2.4. Recovering land under the *Aboriginal Land Rights Act 1983*: Claimable Crown Land

Land that can be recovered under the ALRA is confined to certain types of 'available Crown Land'. The process for making claims under the ALRA is relatively straight forward - a LALC writes to the Registrar identifying the land they are claiming on behalf of their community. The Registrar, in turn, forwards the claim to the Minister/s responsible for Crown Lands. The Minister/s, through the Department of Lands, considers the claim and determines if the land is 'claimable Crown land' as defined in section 36(1). That is, if the land is not being used and is unoccupied and is not otherwise needed, such as for housing or an essential public purpose, and is not part of a claim under the national-level native title legislation. If appropriate, the Minister/s then vests the land in the LALC. If a land claim is refused, the LALC has the right to appeal the decision in the New South Wales Land and Environment Court. A successful land claim will usually result in the LALC being granted a fee simple interest in the land or freehold ownership - the strongest interest a landholder can have. Land recovered by LALCs, or by the New South Wales Aboriginal Land Council (NSWALC) acting on a LALC's behalf, also includes rights to certain minerals - a unique entitlement compared to all other freehold landowners in New South Wales.

1.2.5. Land rights claims and grants

NSWALC reports 2,473 land claims were granted between 1983 and mid-2014 (NSWALC, 2014b, p.2) totalling 127,000 hectares, accounting for less than one percent of the 33.5 million hectares of Crown Land¹ in New South Wales. Of the 44,118 Aboriginal Land Claims lodged in New South Wales over the more than three decades since 1983, more than 70 per cent, some 32,291 claims, remained unresolved as of July 2014.

The New South Wales Government's commitment to addressing land justice has since showed signs of being realised. In the 2015–2016 financial year the Crown Lands Minister granted (in part or in full) 146 land claims, covering an area of 2,530 hectares (NSWALC, 2016, p.14). As the NSWALC notes, this is a significant increase on the previous five years in which the average number of claim determinations were 52 per year (NSWALC, 2016, p. 15). The New South Wales Government's interest in dealing with Aboriginal land

¹ 'Crown Land', Department of Industry website, http://www.crownland.nsw.gov.au/crown_land/about_crown_land, accessed 26th June 2017. Note that this includes the 3-nautical mile zone and Western Crown land and several thousand leases.

claims reflect a number of driving forces. These include the Government's commitment to land justice and its recognition of the economic and social benefits this will provide, a desire to create certainty in relation to land dealings for a host of stakeholders, as well as the impact of the strong advocacy from NSWALC and LALCs, the findings of several inquiries and successful ongoing litigation initiated by the ALC.

1.2.6. Joint Management of National Parks and Aboriginal Owners

Since 1996, if Crown Land needed for nature conservation is of Aboriginal cultural significance, a 'buy-back' arrangement can be negotiated. This enables LALCs to obtain ownership of the land and to then lease it back to the Government for use as a national park or another form of conservation reserve under a joint management arrangement. This allows Aboriginal owners – those people with a cultural association and knowledge of that landscape - to actively participate in the management of, and communication about, Country.

1.2.7. Aboriginal Land Agreements

In 2015, amendments to the ALRA introduced an additional mechanism for recovering land that aims to significantly speed up the resolution of land claims. This followed the passing of the *Aboriginal Land Rights Amendment Act 2014*, which allows for a new negotiated Aboriginal Land Agreement (section 36AA) as well as other provisions. This option brings together LALCs and the Crown Lands Department, along with any other invited parties and enables them to come to a mutually acceptable agreement. This offers a less transactional and litigious alternative pathway for resolving multiple land claims. The interested parties strategically assess land recovery options in alignment with LALC aspirations and available lands. The land that can now be recovered under section 36AA may exceed the areas of land covered by current claims, as Aboriginal Land Agreements (ALAs) can include previously refused land claims and land that might otherwise fall outside the 'claimable Crown land' definition. The ALA process has been designed to provide a more effective mechanism for land recovery with a time limit on negotiations to settle outstanding Aboriginal land claims and interest in lands. To illustrate this, an inaugural discrete, small-scale Aboriginal Land Agreement under section 36 AA of the ALRA is expected to return up to 62 land parcels to the Eden LALC, on the south coast of New South Wales, to resolve 69 (of a total of 120) of the LALC's outstanding land claims. This compares favourably to the Eden LALC's past experiences: in the preceding

33 years to 2016, 80 land claims were granted (some with several lots). While such different claims are not directly comparable, these numbers reveal a trend towards increased Aboriginal land repossession.

The full potential of the ALA process is expected to be seen following four pilot studies, which were due to commence in 2017. The pilot sites are in the Federation Council, Northern Beaches Council, Tamworth Regional Council and Tweed Shire Council areas, and involve multiple LALCs. Claims over hundreds of parcels of land are expected to be settled using ALAs during these negotiations. A senior official at the Department of Industry – Lands said a sharp increase in the total area and value of the lands held by Aboriginal Land Councils was expected over the next few years (Clarke, personal communication, 2017). The value of the Aboriginal Land Council estate is likely to increase from the current \$1 billion land valuation to between \$5 billion and \$6 billion.

1.2.8. Native Title in New South Wales

The ‘political revolution’ that generated the *Aboriginal Land Rights Act 1983* was followed a decade later by a ‘judicial revolution’. In the famous ‘Mabo case’ - *Mabo and others v Queensland (No 2) (1992)* – Australia’s highest court, the High Court, overturned the ‘legal fiction’ of terra nullius (empty land, or land belonging to nobody) that the British had used to justify claiming Australia without recognition of Aboriginal and Torres Straits Islander peoples’ occupation and their unique connection to the land, and without agreement or payment.

Common law recognition of native title rights was subsequently legislated with the passing of the Commonwealth *Native Title Act 1993* (NTA). This was followed by complementary legislation in the New South Wales Parliament: the *Native Title (New South Wales) Act 1994* (NTNSW). The purpose of the NTNSW Act, included the validation of previous land dealings by the New South Wales Government and measures to continue native title rights over land recovered under the ALRA. The interaction between the ALRA and NTA is covered in the following section and while a detailed analysis of native title case law is beyond the scope of this paper, some key points follow.

Native title recognises the traditional rights to and interests in the land and waters of Aboriginal and Torres Strait Islander peoples. Under the NTA, native title claimants can make an application to the Federal Court to have their native title recognised by Australian law. The NSWALC clarifies that ‘native title is about

recognition of rights and interests in land, whereas land rights is about granting interests in land’ (NSWALC, 2014a, p. 1).

The New South Wales Department of Industry offers a useful summary of native title:

Native title is the name Australian law gives to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. These rights are different to and separate from the statutory right of Aboriginal Land Councils to make claims for land under the *NSW Aboriginal Land Rights Act 1983* (NSW Department of Industry, 2017).

The NSWALC explains that ‘Land rights and native title are very different systems and each can be beneficial for Aboriginal Peoples’ because ‘Native title claims can deliver rights and interests in land that may not be claimable under land rights’. They also point out that ‘the rights in land delivered by land rights, generally being full ownership or freehold title, are significant rights that may not always be delivered under native title’. The NSWALC cautions that although both systems may provide benefits to Aboriginal people their interaction can lead to points of disagreement (NSWALC, 2014b, p.16).

Data from the Native Title Register shows that of the 51 native title determinations in New South Wales, eight have been beneficial determinations that native title exists in part (four determinations) or in full (four determinations). The majority of claims have been made by non-claimant applicants; that is not by Traditional Owner groups, seeking a determination that native title ‘did not exist’. Somewhere between 33% and 45% of New South Wales is currently under native title claim and awaits determination.

In 1998, the Federal Court’s dismissal of the native title claim in the Yorta Yorta case significantly restricted the likelihood of future applicants obtaining a declaration of native title in New South Wales. The Yorta Yorta case was the first native title claim to be lodged in south-eastern Australia, covering an area of land and waters in Northern Victoria and southern New South Wales. Its dismissal, upheld in the High Court in 2002, was based on narrow evidence and an interpretation of colonial records that now forms a threshold for native title determination.

As Justice Madgwick, in the case of *Gale v Minister for Land and Water Conservation (NSW)* [2004] FCA 374 said:

The decision in *Mabo* was regarded in various quarters as heralding a new dawn for at least a modest degree of reparation to Aboriginal people generally, by way of according them an ability to reclaim unalienated Crown lands. The decision in *Yorta Yorta* has confirmed that such was not the effect of *Mabo*. The ability to obtain a declaration of native title under the Native Title Act is, at least after *Yorta Yorta*, strictly limited.

In 2015, the Hon. Justice Michael Barker noted that Queensland, Western Australia and the Northern Territory 'continue to be "high volume" jurisdictions when it comes to proceedings in the Federal Court under the NTA' and he went on to note that 'to a lesser extent New South Wales, continues to be of significance' (Barker, 2015).

Two native title claims for land located in New South Wales were determined in the Federal Court in 2015. In both cases, the judge was scathing about the New South Wales Government's actions that had caused undue delays and imposed onerous evidence requirements on the claimants. In the Federal Court consent determination, Justice Jayne Jagot recognised the Barkandji people's connection to Country in far western New South Wales and the injustice of waiting 18 years for their claim to be resolved. In what was only the sixth native title determination in New South Wales, covering 128,000 square kilometres, Justice Jagot wrote:

When justice is delayed, it is also denied. No one should be in any doubt. The winds of change are still blowing through how parties deal with native title claims. The glacial pace at which they have moved in the past is palpably unjust. Because one of the factors which delays resolution, tenure searching, is so significant, directions have been made emphasising the need for a reasonably proportionate approach – that is, an investment of resources proportionate to the outcomes to be achieved. No claim can justify the kind of tenure searching which may take years, even decades, to complete (Jagot, 2015a, par. 12).

After a wait of almost two decades, the native title rights of the Yaegl people of the lower Clarence region on the New South Wales coast were also recognised in 2015, in a determination also made by Justice Jagot. The

judge noted 'today we are finally resolving the oldest matter that exists in the Federal Court of Australia' and went on to emphasise:

I have spent time focusing on the effect of the gross delays which have bedevilled these matters since the inception of the NTA. I have done so because all involved in the administration of the NTA should have a true understanding of how extraordinarily pernicious are the effects of such gross delay that entrench injustice over generations (Jagot, 2015b, par 4).

She noted:

How shameful it is, that in many of these matters the people who started the claim often become too aged or infirm to see the matter through or pass away, never having seen their labours bear fruit. Delay of this kind saps away any sense of justice or fairness in the process. It erodes confidence in the institutions, which are meant to serve our common interests. It can instill a sense of despair and incapacity in those who should be actively engaged in and empowered by the process. These effects are intolerable – and the short point is this – they now are no longer being tolerated (Jagot, 2015b, par 5).

Justice Jagot's criticism of the onerous evidence requirements for the Yaegl People to establish sufficient evidence for the state to proceed with a negotiated outcome draws attention to the need for more effective responses from the New South Wales Government.

Clearer guidance about the expectations of the evidence required to demonstrate continuous connection to Country is also expected to contribute to more realistic outcomes for Traditional Owners. Both the Council of Australian Governments (COAG) Land Administration Investigation (2015) and the Australian Law Reform Commission (ALRC) *Connection to Country: Review of the Native Title Act 1993* (2015) recommend greater support from the New South Wales Government for the work of Prescribed Bodies Corporates (that represent native title holders and their interests), a more coordinated approach from the New South Wales Government – including clearer lines of responsibility – and the appointment of a New South Wales Minister for negotiating Indigenous Land Use Agreements (ILUAs). Consideration of new approaches to improve native title administration in the state has been proposed as part of Aboriginal Affairs NSW's reforms in 2017 (Personal communication, 2016).

1.2.9. Compensation

A recent significant case in the Federal Court of Australia, referred to as *Timber Creek*,² included the first assessment of compensation payable in relation to the extinguishment and impairment of native title rights and interests. The Ngaliwurru and Nungali peoples were awarded \$3,300,261 as compensation for economic loss (plus interest) and loss of their cultural and spiritual relationship with their land. While this decision is currently on appeal, legal practitioners believe a suitable metrics will eventually emerge to calculate compensation for loss of native title rights that far exceeds the land value (Australian Human Rights Commission, 2016, p.138). The Commission's Social Justice and Native Title Report, notes: 'Compensation for impairment or extinguishment of native title rights and interests remains one of the biggest pieces of unfinished business for Indigenous peoples that must be addressed as a matter of justice and reconciliation' (Australian Human Rights Commission, 2016, p.138).

1.3. Issues emerging from acceleration of land recovery

This report has detailed the anticipated acceleration of land recovery under the ALRA and the recognition of rights to and interests in land under the NTA. An expanded Aboriginal estate in New South Wales also raises questions about approaches to land management and development, the impact of climate change and environmental collapse caused by overgrazing and intensive farming and rebuilding relationships to Country. A central point of tension is the interaction between the ALRA and the NTA. Both pieces of legislation are evolving and, as land recovery has been constrained across New South Wales to date, many of the principles they enshrine in law are yet to be fully tested and applied in the New South Wales context.

1.3.1. Interaction of the *Aboriginal Land Rights Act 1983* and *Native Title Act 1993*

There are several key ways the two predominant Aboriginal land recovery mechanisms in New South Wales, the ALRA and the NTA, interact. Views vary about the possibility for confluence and beneficial interaction and the potential for conflict and antagonism between those with interests in lands that both laws grant. It is useful to return to some early moments in the

development of native title legislation to assess this interaction, along with other land recovery mechanisms, to appreciate the impact of an escalation in land recovery.

The NSWALC councillors and staff were enthusiastic and instrumental actors in the negotiation of the Commonwealth Government's Native Title law. The role of NSWALC Council and staff was considered critical in ensuring the interests of south-eastern Australian Aboriginal peoples were represented in the debates. NSWALC's appointed negotiator, Aden Ridgeway, argued that the NSWALC's role 'put ... the east coast on the map' in an environment dominated by the 'traditional north'. The then Council Chair Manul Ritchie, similarly expressed enthusiasm in his introduction to the NSWALC 1993–94 annual report, saying:

I look back on this year... with great pride in having played a role in changing Australia. The NSWALC Councillors and staff have made a difference for Aboriginal people across Australia, and will be remembered for many years to come for doing so (NSWALC, 1994).

The passing of the *Native Title Act 1993* generated substantial interest from New South Wales Traditional Owners. The number of native title claims lodged in New South Wales is testimony to the enduring desire of Aboriginal people for recognition beyond what is prescribed in the ALRA. For example, during 1996–97 the NSWALC was involved in thirty-four native title claims, eight of which were accepted and lodged. By September 1998, the NSWALC reported that there were 'well over a hundred claims in NSW' (NSWALC, 1999, p. 23). At the same time, because of limited resources, and perhaps as an indication of the decisions to come, the NSWALC introduced a process to prioritise claims. This raised concerns about some claims being 'ill-conceived', 'without merit' or lacking 'appropriate consultation'. Such enormous interest in native title, and the sheer number of claims, highlights some of the limitations of the state-level ALRA.

The initial enthusiasm for native title is apparent in the NSWALC becoming a registered Native Title Representative Body (NTRB) in 1994. However, by 2001 the Council had reviewed this position and decided to withdraw as a registered NTRB citing 'ongoing potential conflict of interest', along with concerns about the effectiveness of the legislation between land rights provisions and the native title laws (NSWALC, 2002). Since this time the Native Title Services Corporation

² *Griffiths v Northern Territory of Australia (No 3)* [2016] FCA 900.

(NTSCORP) has evolved as a Native Title Service Provider for Aboriginal Traditional Owners in New South Wales.³

In contrast to the ALRA that focused on social justice and compensation, the Native Title Act (NTA) recalibrated land rights in New South Wales including recognition of connection to Country since time immemorial. In this sense, the two laws create different communities of interest in relation to land, or Aboriginal polities: LALC members and Aboriginal owners under the ALRA and Traditional Owners (TOs) under the NTA. Under the ALRA, membership of LALCs -- and therefore to an extent issues of Aboriginal identity -- take account of colonial dispossession and violence, social worlds forged by life on missions and reserves, urbanisation and town based affiliations. Native title, on the other hand and for the most part, is concerned with enduring and uninterrupted pre-colonial connection to place. There is understandable tension between the ALRA and the NTA that speaks to issues of connection to Country, cultural authority and governance.

As both the ALRA and the NTA are set to return far more Aboriginal land far more quickly than in previous decades, their alignment and the tensions between the two land recovery statutes comes into dramatic focus. The tensions include the following realities:

- Both statutes are (largely) confined to certain lands within the Crown Lands estate.
- The Crown Land estate is both decreasing and finite.
- The land is transferred to LALCs with native title rights (in most cases)
- Native title claims pertaining to LALC lands limits dealings on those lands (including, for example, development applications, sale or lease) and may require LALCs to seek a determination in the court to extinguish native title.
- Native title recognition is very difficult to prove and has proceeded at a glacial pace.
- Native title, once registered, provides rights to negotiate.
- There is limited scope for LALCs and Prescribed Bodies Corporate (PBCs) to enter into agreement to achieve land management objectives.

As the return of land gains momentum, and both the ALRA and native title holders seek to recover land from the same limited land resources, better understanding is critical. This should draw on the experiences of all parties in how these two land-recovery mechanisms interact to better facilitate the return of land to Aboriginal peoples. Agreement-making along with alternative mechanisms for land dealings subject to native title are critical considerations.

The complex relationship between native title and land rights has the potential to create uncertainty and delays in realising the benefits of land rights and native title interests. Darkinjung LALC, on the New South Wales Central Coast, has expressed concern about the interaction between the ALRA and NTA. The LALC's Annual Reports show significant costs associated with native title-related litigation. Darkinjung LALC's 2014 Annual Report shows expenditure of \$65,551.47 and its 2016 Annual Report shows expenditure of \$37,317.10. In their submission to the New South Wales Parliamentary Inquiry into Crown Land, the LALC recommended a review of mechanisms to facilitate dealings in land affected by native title (Darkinjung LALC, 2016).

In other situations, LALCs and Traditional Owner groups have utilised both the ALRA and NTA to achieve management and oversight of their lands. On the New South Wales North Coast, the Gumbaynggirr people successfully sought a native title determination over lands owned by the Nambucca Heads LALC and the Unkya LALC. The decision drew on the recognition of native title rights along with the freehold land held by the LALCs, and the provision for joint management made possible under the ALRA. The NSWALC celebrated the case as an example of both regimes complementing each other. NSWALC Councillor Peter Smith said:

[the] decision shows that native title and land rights can work together and are both important systems that provide rights for and advance the interests of Aboriginal people in NSW (Our Land Council, 2014).

Both the NSWALC and NTSCORP appear committed to finding ways to deliver more beneficial outcomes for Aboriginal peoples through the return of land. Both groups see leadership as critical. A Memorandum of Understanding (MoU) between the two groups in 2014

³ See Native Title Services Corporation website for more information at <http://www.ntscorp.com.au/>. Accessed 26th June 2017.

committed to regular working party meetings for sharing strategies about negotiating with government and the potential for achieving improved land justice outcomes.

In its submission to the New South Wales Parliamentary Inquiry into Economic Development in Aboriginal Communities, NTSCORP (2016) argued that native title and land claims regimes can coexist under section 36(9) of the ALRA as ‘two independent but equally important and viable mechanisms to promote economic development opportunities in New South Wales’. This view is not, however, shared across the Aboriginal land rights and advocacy groups in the state. The author spoke to numerous stakeholders as background research for this report. Without exception, they emphasised impending conflict between native title and Aboriginal land rights, including competition over resources, the imbalance of power between the LALCs and Traditional Owner groups and the need for the two statutes to be more effectively aligned. That is, to be complementary rather than antagonistic, as they are currently perceived to be. Research into how such alignment can be achieved is now critical.

1.3.2. The Conservation Estate

Both the ALRA and NTA have made further land recovery and management options available to Aboriginal communities through the Indigenous Land Corporation, Indigenous Protected Areas and Joint Management arrangements with the National Parks and Wildlife Service (NPWS).⁴ The conservation estate has already registered significant Aboriginal interest over land and in working partnerships. This is set to escalate rapidly as Aboriginal land recovery is realised and Aboriginal land holdings expand. The New South Wales Office of Environment and Heritage (OEH) reports that 25 per cent of the land reserved for conservation in New South Wales is currently subject to some form of agreement with Aboriginal communities, including Memoranda of Understanding, Indigenous Land Use Agreements (ILUAs) or Aboriginal-owned lands with Part 4A lease-back agreements. Within 20 years, the OEH estimates that there will be some form of Aboriginal interest registered over all ‘public lands held in the conservation estate’ (Personal communication, 2017).

However, funding for expanding national parks has all but halted, and the ability to enter into leases with Aboriginal community landowners pursuant to schedule 14 of the *National Parks and Wildlife Act 1974* has already stalled as the OEH and NPWS don’t have the resources to ‘pay the rent’. OEH is currently considering

a range of strategies to expand the conservation estate within a limited budget, such as the inclusion of private lands as conservation areas. Until now, all conservation lands with Aboriginal interests have been fully accessible to the public, although owned by Aboriginal communities. The idea of Aboriginal lands as private conservation lands with specified access and how they might work in New South Wales, is yet to be explored. OEH funding limitations means it is unlikely shared Aboriginal and conservation areas will be further expanded. Consequently, alternative funding for the Aboriginal and conservation estate needs to be considered so the rapid repossession of territory with significant cultural management responsibilities attached, can proceed. This is especially important as LALCs and Traditional Owners recover land that has suffered environmental degradation, and needs careful management and rehabilitation, and where land is of high conservation and cultural value. Many LALCs engage in land management and rehabilitation and consider restoring landscapes as integral to restoring people’s health. These vital activities have not been investigated; such research may demonstrate the value of such regenerative labour.

1.3.3. Conservation Estate and Economic Activity

The conservation estate and the agreed management arrangements that have been negotiated between Aboriginal land holders and the administering department, the OEH, reveals a broad approach to land management encompassing conservation, culture and economic activity. The conservation estate favours sustainable, low-impact land-based economic activity, including rental return, caring for Country, ranger movement and tourism within a broader definition of economic activity that extends to less tangible outcomes such as wellbeing, connecting to Country and regeneration.

There is a body of practice in Canada that seeks to measure and quantify ‘eco-system based management’ and ‘Land Management Frameworks’. These examples offer useful insights into how broad based regional alliances can manage Indigenous land, often growing out of local-level gatherings immersed in culturally regenerative practices. These structures appear to emerge from local community needs, concerns and interests rather than government authorisation or agreements. The Coastal First Nations communities characterise their system as a ‘land management approach that recognizes that people, communities and

⁴ ILC has purchased a total of 57 properties covering 250,641.045 hectares.

the land are inseparable' (Coastal First Nations, 2017). Land-based economic activity, according to their mission, is to 'consider the health of both the people and the land that sustains them'. Economic-based management has two goals: to maintain ecosystem health and improve human wellbeing. Several examples from the United States, where tribal groups have developed Land Management Frameworks for advancing their ecological, cultural and economic interests over their Aboriginal Estate, offer insights on how this might be pursued within a framework of self-determination in New South Wales. For example, the Nez Perce Tribe (NPT) has developed a management plan for the 15,325-acre Precious Lands Wildlife Management Area, located in northern Wallowa County, Oregon and southern Asotin County, Washington. The management plan includes a strategy to mitigate the loss of wildlife habitat caused by dams, but also a commitment to managing natural resources as 'cultural resources', and therefore 'to protect, preserve, and perpetuate all cultural resources necessary to the Nez Perce way of life' (Nez Perce, 2006).

In New South Wales, much of the economic activity on the Aboriginal-conservation estate has included rental returns and employment. Constrained budgets and a shrinking labour forces demand innovative approaches to managing the Aboriginal conservation estate. There are some examples where flexible and negotiated options have been pursued. In the case of Worimi LALC, multiple outcomes – social, cultural and economic – were negotiated with NPWS as a 'package'. The negotiation resulted in 2,500 hectares of land being retained by the conservation estate, but with 400 hectares going to the LALC for a sand mine and quad bike enterprise. By all accounts, the unprecedented deal was difficult to negotiate with the existing bureaucracy (Personal communication, 2017). The Worimi LALC's negotiations resulted in multiple outcomes and reveal a complex approach to economic development, in which environmental regeneration and care and Aboriginal cultural benefits (wellbeing, connection to place), are significant measures of success.

Creative and innovative approaches are required to achieve Aboriginal conservation and cultural heritage management aspirations alongside economic activity. Case studies of approaches to successful negotiations between Aboriginal landowners and the OEH (and others) and metrics for measuring the range of significant outcomes, will be instructive in future negotiations.

1.4. The future of land recovery in New South Wales

1.4.1. Regionalised Service and Community Governance Arrangements

While the future of the Aboriginal Land Council network is guaranteed by its significant financial and land assets and its local and state-wide representative authority, the network also sits within a changing community and governmental arena.

The dedication, enthusiasm and participation required to achieve recognition of native title rights is underpinned by deep history, cultural rights and nation-based modes of organising. Increased Aboriginal urbanisation, declining bush industries, environmental degradation and climate change impacts and new mining interests means land rights and LALC activities are sited in difficult and contested spaces.

The emergence of regional governance models for Aboriginal communities across New South Wales as part of *OCHRE*, the New South Wales Government's community-focused plan for Aboriginal affairs (NSW Government, 2013), reveals local level innovation to strengthen service delivery, decision-making and community empowerment. Across the state, this has taken different forms, depending on local leadership and conditions. For example, in western New South Wales, the Murdi Paaki Regional Assembly functions as a peak social services and community development body; on the Central Coast under the nomenclature 'Empowered Communities', the Barang Regional Alliance brings Aboriginal community-controlled services together to form a peak body to advocate, and share resources and direction.

These regional networks can be seen to have grown organically within the footprint of the former ATSIC regions and the Regional Aboriginal Land Council (RALC) tier. Aboriginal Affairs NSW has established 'Local Decision Making' (LDM). This process is designed to facilitate local-level input into the design and delivery of services that reflects a more authentic understanding of Aboriginal communities and their future aspirations. It has community 'buy-in' over more than half of New South Wales.

A key point for consideration here is how the Aboriginal land estate interacts with the LDM and Regional Alliances. Anecdotal evidence shows that LALCs and Regional Alliances have the same personnel and leadership, and many Regional Alliance chairs are also

LALC chairs, or secretarial support is provided by LALCs (such as Barang Regional Alliance by Darkinjung LALC). The cooperation of LALCs as part of wider regional networks provides a rich opportunity to understand the potential of the enhanced responsibility of LALCs that have previously been perceived in some areas to have low social, cultural and political capital. The abovementioned ‘Land Management Frameworks’ could be developed through Regional Alliances and therefore introduce local led decision-making in relation to the Aboriginal land estate.

1.4.2. Growing New South Wales’ First Economy

The engagement of Aboriginal people in economic activity is a matter of long-standing public debate and concern. The Aboriginal land estate is central to growing Aboriginal economic engagement. The federal and New South Wales Governments agree on the importance of enabling Aboriginal economic development. In launching the *Closing the Gap* report in February 2016, the Prime Minister said that ‘Indigenous economic development is at the heart of the national agenda’, asserting that ‘economic participation, underpinned by cultural participation, leads to vastly improved social outcomes’. The Federal Minister for Aboriginal Affairs, Nigel Scullion, in announcing the 2015 COAG inquiry, similarly emphasised that the reform priority was to ‘support Indigenous land owners and native title holders to leverage their land assets for economic development as part of the mainstream economy’ (Minister for Indigenous affairs, 2015). The New South Wales Parliamentary Inquiry into Economic Development in Aboriginal Communities, 2016, also concluded that ‘economic development is considered key to unlock the spiral of shame’ (NSW Legislative Council, 2016). Yet, while the connection between the land estate and shifting Aboriginal disadvantage is at the forefront of government discourse, examples of this transformative effect are limited.

To illustrate, from the opening months of operation of the ALRA, ALCs have pursued enterprise development. Norman’s earlier work (2015), documenting the land rights movement and operations of the ALRA up until 2007, showed that despite considerable effort and commitment, most of the 400 or so enterprises funded from the compensation fund did not return a ‘profit’ in the decade from 1983, and many ceased to function beyond their first year. Since 1991, many LALCs have sold land to raise money for community development and to generate the necessary capital for enterprise

development. There has been little scrutiny of local-level efforts to improve social, cultural and material conditions for Aboriginal people. This means the successes, failures and the values that have guided LALC-initiated enterprises have not been thoroughly examined. New theoretical insights into Aboriginal modernity, however, cannot be generated without a re-evaluation of policy settings. Despite this, governments continue to hold Aboriginal development – particularly the leveraging of communal land holdings for economic advancement – as a leading public policy objective.

The relationship between land holdings and economic development, and consequent improvements in the lives of Aboriginal peoples, is little understood. This means policy is being made without the benefit of an evidence base that can tell us what works and what doesn’t, and why, or offers insights into how the benefits of land recovery are being realised and how those benefits – economic, social, cultural and wellbeing – can be measured and evaluated.

1.4.3. Local Aboriginal Land Councils: The Biggest Landholders in their Local Government Area

The expected escalation in the return of land, means LALCs will need to plan more effectively and to secure access to more resources than are currently available. LALCs, as the owners of the Aboriginal land estate in New South Wales, will increasingly become the biggest land-holders in their local government areas (LGAs). Therefore, they will be central to the future planning and development needs of regions, towns and cities across New South Wales.

1.4.4. Local Aboriginal Land Council Planning and Regional Economic Plans

Since 2008, each LALC has been required to develop and adopt a five-year Community Land and Business Plan (CLBP). These plans, conceived and approved by LALC members, inform the development of land and other assets and provide a blueprint for initiating and managing business enterprises and investments. The Aboriginal Land Agreement (ALA) process situates the LALC CLBP as a critical document to guide nominated representatives in the negotiation process, however, these documents – that guide LALC planning - are limited to existing land holdings and LALC priorities. As the Aboriginal land estate increases, additional planning documents may be required to guide broader development objectives in alignment with future focused Aboriginal aspirations.

The 2016 New South Wales Ombudsman report, *Fostering Economic Development for Aboriginal People in New South Wales* (NSW Government, 2016), emphasises the links between the regional alliances and relevant economic planning vehicles (such as the New South Wales Department of Industry's work under the Economic Development Strategy for Regional New South Wales and the Federal Government initiative, Regional Development Australia) in enabling Aboriginal communities to leverage their assets, where desired and by informed consent.

In addition, *OCHRE: Growing New South Wales's First Economy* (Aboriginal Affairs NSW, 2016), the three-part New South Wales Government framework to promote the economic prosperity of Aboriginal people and communities in New South Wales, commits to 'all regional and district plans to include Aboriginal economic participation by 2019'. Participation by LALCs, guided by their members' values and aspirations, will be critical. However, regional alliances (such as Barang Regional Alliance and Murdi Paaki Regional Assembly) might also contribute to the management of the Aboriginal estate, particularly planning and development through 'land management frameworks' or 'land planning frameworks'.

1.4.5. Aboriginal Land Rights: NSW Aboriginal Land Council Economic Development Policy

The NSWALC has had mixed success in the pursuit of land-based enterprises over the history of the ALRA. In relation to more recent initiatives, the NSWALC has pursued a cautious approach with careful project vetting, staging and support.

Starting in 2015, the NSWALC announced a new approach to supporting economic development by LALCs – the NSWALC Economic Development Policy – which commits \$16 million in investment funding to LALC enterprises over five years.

Under the NSWALC Economic Development Policy, resources available to LALCs are divided into three areas: business planning and feasibility studies; early stage investment loans; and equity loans. A LALC business development grant of up to \$50,000 is focused on conducting planning and feasibility studies of LALC-nominated business ideas. The pilot program resulted in two proposals nominated from each of the zones.

Under this program, the NSWALC facilitates the feasibility study, sometimes drawing on pro bono assistance. A 2015–16 trial facilitated the scoping of 18 proposed new enterprises. Of these, five did not proceed to the business development stage because they were not feasible, or because prevailing native title rights impacted the community's ability to deal in the land. Five are operational, five are in the planning stage and three are looking for funding to move forward. The second stage of investment is for up to \$500,000 from the NSWALC to a LALC in the form of a low-interest, flexible, long-term loan. The NSWALC contribution makes up 40–50 per cent of funding, with additional finance provided by the LALC and other partners. One LALC enterprise has been funded to date – a goat-farming business in far western New South Wales in partnership with the Indigenous Land Council. The third category of funding is equity investment and is capped at \$2 million. The NSWALC has not engaged in any equity investments to date (Personal communication, 2017). For the ALC network, resources to pursue economic activities are highly constrained. Research into enhancing options for economic development in relation to Aboriginal land holdings is needed. This should include diverse approaches to 'economic' issues, planning needs and how regional structures, such as regional economic development commissions, might support Aboriginal land holders to manage their estate and to pursue development for the benefit of the communities.

1.4.6. Planning and a Hostile Public

LALC-initiated enterprises have rarely operated on a regional basis, and instead tend to operate independently in their defined township or boundaries. They are also severely under-resourced. On top of these obstacles, LALCs also often meet broader community and local council resistance related to zoning.

Many local governments and residents assume Aboriginal land comprises green spaces and conservation zones. This point is highlighted by land rights lawyer Jason Behrendt (2011) in his study of land litigation under the ALRA, which includes cases involving the rezoning of land when land grants are pending and following land grants. Such zoning decisions can also include 'environmental overlays', such as flora and fauna corridor designations, which restrict the use of one's land (Behrendt, 2011, p. 832). With the exception of land of high conservation value that must be preserved, restrictions placed on land in the planning process may unnecessarily limit LALCs' activity on their land. For example, in 2008 the western Sydney-based

LALC Deerubbin discovered some 72 per cent of its landholdings designated for re-zoning in a draft Local Environment Plan, from rural use to a highly restrictive environmental status (Behrendt, 2011, p. 832). As Behrendt shows, many LALCs find their landholdings either rezoned or subject to environmental overlays. This activity is likely to reflect deeply flawed assumptions that Aboriginal land is continuous with public conservation lands.

This same flawed assumption – that Aboriginal land is continuous with public land and green spaces – was evident in Darkinjung LALC’s 2012 development application to Wyong Council for the construction of a 251-dwelling manufactured housing estate on the edge of Lake Munmorah at Halekulani. It attracted the highest number of submissions in the history of the council, most of which were objections. Of the submissions, 2,157 related to ‘Save the bushland’ and ‘Save the bush for future generations’. In an apparent appropriation of the discourse of Aboriginal connection to Country, residents expressed their opposition to development and their connection to the bushland over their lifetime. In the author’s analysis of the submissions, residents referenced a ‘green corridor’ and ‘public access way’ over what was freehold Aboriginal LALC land. Darkinjung LALC’s Halekulani DA experience reveals the deeply held views of the public that equate Aboriginal land to ‘public’ land and therefore view it as incompatible with development (Norman, in press). An education and awareness campaign for local governments, along with stronger input into planning decisions by Aboriginal land holders would assist in achieving beneficial outcomes for Aboriginal people.

1.4.7. A Treaty: Resetting the Relationship?

Scholar Marcia Langton argues that:

One of the most important, and fascinating, aspects of the debate about Aboriginal rights in the last two decades revolves around the legal personality of the Aboriginal polity, by which I mean the recognition of that social complex that is sometimes called sovereignty. Aboriginal people in Australia have continued to argue that just as British sovereignty did not wipe away Aboriginal title, neither did it wipe away Aboriginal jurisdiction. This is the logic of the many Aboriginal proponents of a treaty or treaties between the modern Australian state and Aboriginal peoples (Langton, as cited in Behrendt, Brennan, Strelein & Williams, 2005, p. ix).

Langton argues the call for a treaty goes to the heart of the juridical denial in case law of the existence of Aboriginal nations prior to the seizure of land and coming dispossession – a denial that is anomalous among settler-colonial states (Behrendt et al., 2005). The absence of a treaty or treaties is the denial of Aboriginal polity, however; as Langton’s research shows (Langton & Palmer, 2002), ‘agreement-making’ with Indigenous people has been a feature of the Australian policy landscape for over 20 years. There has been a proliferation of agreements between Australian Aboriginal and Torres Strait Islander people and resource extraction companies, railway, pipeline and other major infrastructure project proponents, local governments, state governments, farming and grazing representative bodies, universities, publishers, arts organisations and many other institutions and agencies. Some are simple contractual agreements that set out the framework for future developments while others are registered under the terms of the *Native Title Act 1993*. Legal scholar Lisa Strelein (Williams, 2001) noted that the accelerating process of agreement-making in Australia necessitated ‘a national framework and protection for those agreements’.

In New South Wales, land recovery under the ALRA and interests in land under NTA will see accelerated processes of agreement-making. This is unprecedented in the state’s history. The development of a bank of resources to support communities in the agreement making process, including training in agreement making, documentation and a database of agreements could enhance the outcomes and benefits.

Agreement-making, as well as the protection of agreement-making, was one proposed feature of constitutional change and the movement summarised as ‘recognition’. Approaches to agreement making or treaty are now underway in Victoria, South Australia and Western Australia. The Victorian Government has announced its commitment to negotiate a treaty with the 39 Indigenous nations residing within the state. A necessary first step was to decide who should represent these communities and who can, and should, negotiate a treaty on their behalf. Through a process of 16 community forums across Victoria in 2016, an Aboriginal Treaty Interim Working Group was established. The group’s role is to consult with Aboriginal communities to develop options for a representative body and to provide advice to community and government on the next steps in a treaty-making process.

Since then, work towards self-determination and a treaty has focused on creating a new relationship between the Victorian Government and the Aboriginal community, a partnership that will empower Aboriginal communities to achieve long-term generational change and improved outcomes. Another round of consultations will take place in early 2017. According to some assessments, the process of reaching a treaty could lead to an agreement within two years.

According to the Victorian Traditional Land Owner Justice Group, the aims of the Victorian Government Treaty are:

- recognition of past injustices
- recognition of all 39 Indigenous Nations and their clans' authority
- recognition of and respect for Country, traditions and customs
- a future fund to implement and establish the treaty
- the establishment of a democratic treaty commission
- land rights and land acquisition legislation and funding
- freshwater and sea water rights.

In December 2016, the South Australian Government announced the commencement of treaty discussions with the Aboriginal nations of the state to help address past injustices (Winter, 2016). The Government has set aside \$4.4 million over five years to support the treaty process and the appointment of an independent commissioner for treaty. At this stage, it is unclear what the treaties will cover or whether compensation will be included, but South Australian Aboriginal leaders quoted in the media said the process would set a positive course for the future and that the language alone – the word 'treaty' – has important meaning.

South Australian Aboriginal Affairs Minister Kym Maher said he expected initial negotiations with the Adnyamathanha Traditional Lands Association, Far West Coast Aboriginal Corporation and Ngarrindjeri Regional Authority to be followed up by 'several dozen' agreements. An independent treaty commissioner will be appointed to drive the program. Mr. Maher said he hoped would see the first treaties being written into law within a year and the remainder 'rolling out over time'. In preliminary discussions, he said financial compensation 'has not been widely mentioned but we are not ruling anything in or out.' According to the South Australian Government, the treaty discussions that were due to

commence from 2017, represent a 'historic moment' in Australia's history with the first government to tailor negotiations with separate Aboriginal nations, to recognise the cultural authority of Australia's first people, and consider the consequences of settlement (Government of South Australia, 2017).

The West Australian Government and the South West Aboriginal Land and Sea Council (SWLSC) concluded formal negotiations on a comprehensive settlement agreement in late 2016. The SWLSC council negotiated a benefits package worth more than \$1.3 billion, although the agreement was subsequently declared invalid in the Federal Court. Under the proposed settlement, native title over the south-west of the state would be exchanged for the formal recognition of the Noongar people as the Traditional Owners of Noongar country; annual payments of \$50 million would be made into a Noongar Future Fund over 12 years and approximately 320,000 hectares of land converted to Noongar ownership (Diss, 2015; Williams, 2016).

As Western Australia, South Australia and Victoria enter negotiations for treaties with Aboriginal peoples, the stage is set for a more active response from the New South Wales Government. A central feature is consideration of the defining features of the Aboriginal polity. Central to the Aboriginal polity in New South Wales is the ways in which the predominant land recovery regimes have constituted Aboriginal groups (the boundaries of LALC areas, for example, are not necessarily aligned with cultural or traditional associations with Country) as well as competition for scarce resources and benefits.

In New South Wales, where colonial dispossession took place over an extended period and at a varying pace and intensity, and where settler land dealings have been extensive, land recovery has been minimal. It has followed a different trajectory to the Aboriginal land recovery across Northern Australia, where roughly 33 per cent of Australian territory has been recovered by Traditional Owners.

The very different circumstances in New South Wales – by dint of its colonial history and the impact of statutes like the ALRA - are rarely canvassed in national land rights research and government inquiries. For example, the recent COAG Investigation into Aboriginal Land Administration (2015) described the circumstances of land recovery as being 'in a period of transition, from a focus on recognition and protection of Indigenous rights in land to being able to use those rights for economic development'.

As the circumstances of land repossession by Aboriginal communities in New South Wales are unique, more focused and detailed research is needed. The development of the ALRA demonstrates how, in New South Wales, the concepts of land recovery and resulting enterprise development were twinned from the outset. Unlike other state and territory land rights laws, the New South Wales ALRA was developed taking into account the reality that the potential pool of land available for recovery was limited and that compensation was therefore necessary for that loss. Part of this compensation funding was intended to be used to develop enterprises initiated by LALCs. This shows how legislative development in New South Wales was underpinned by the notion of an inextricable link between land holdings and community-led economic activity – however broadly defined. The incredible delays in the determination of native title claims in New South Wales - that will now be expedited - radically alters how we think about Aboriginal lands, land dealings and agreement making.

Thus, as land recovery will escalate over the next five to seven years, these circumstances require urgent consideration, policy reform and program innovation. In the 34 years of the ALRA, there has been no single empirical study documenting the landholdings recovered to date or the approaches LALCs (and to a lesser extent the NSWALC) have taken in relation to the management of their lands.

The New South Wales Crown Land estate, valued at some \$11 billion, is made up of 580,000 individual Crown land parcels covering over 33 million hectares.⁵ This reveals the enormous potential for Aboriginal land rights to create cultural, social and economic opportunities for Aboriginal people and communities across the state.⁶

The recognition of Aboriginal land rights has been slow and disappointing, but Aboriginal jurisdiction has continued without serious engagement. Agreement-making and local and regional alliances have created a new interface between the self-determining Aboriginal polity and the state. This expected substantial land returns identified in this report will increasingly place Aboriginal peoples as central actors in development and planning and conservation, as well as validating their own approaches to nation-building.

1.5. Research questions to explore

- How can the Native Title and Aboriginal Land Rights regimes be better aligned and complementary?
- How can creative and innovative approaches to achieve Aboriginal conservation and cultural heritage management aspirations alongside economic activity be achieved? Are examples of approaches to successful negotiation between Aboriginal landowners and the Office of Environment and Heritage, and what are they?
- What is the interaction between Local Aboriginal Land Councils and their land estate and Regional Alliances? What are the possibilities for enhanced responsibilities for Local Aboriginal Land Councils?
- What is the nexus between land and economy? What works and what does not? How are the benefits (economic, social, cultural and wellbeing) of land recovery realised and how can such benefits be measured and evaluated?
- How can options for economic development and the Indigenous estate be realised? What are the various approaches taken to 'economic', planning needs, and appropriate structure (e.g. state or regional)?
- How might conversations about land justice and land management be advanced?

⁵ Minister of Industry in the second reading speech for the *Crown Land Management Act (2016)* NSW.

⁶ Private email correspondence with NSW Aboriginal Land Council, dated 15 June 2017.

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2 Aboriginal languages



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2.1. Policy environment

2.1.1. The 2004 New South Wales Aboriginal Languages Policy

During 2003-2004, the New South Wales Government introduced the New South Wales Aboriginal Languages Policy and established the New South Wales Aboriginal Language Research and Resource Centre (ALRRC) to lead Aboriginal language revival in New South Wales. The Policy had influence over a range of areas including tourism products using language materials, support for arts and cultural institutions to incorporate Aboriginal languages into their activities, and for the Geographical Names Board and the New South Wales and local governments to use Aboriginal names and words in signage and place names. The Policy had four focus areas: Aboriginal communities, education systems (including schools) correctional centres and the broader community. At the same time, the K-10 Aboriginal Languages Syllabus was introduced (NSW Board of Studies, 2003).

The purpose of the 2004 *NSW Aboriginal Languages Policy* was to “assist Aboriginal people and communities across New South Wales to revitalise traditional languages, as a fundamental part of Aboriginal Culture and as a unique component of the Australian heritage”, and sought to place Aboriginal communities at the core of language revival activities. Associated Aboriginal Affairs NSW Aboriginal language grants targeted

community-based revival activities, especially the development of materials and resources to sustain and expand language revival activities. Aboriginal Affairs NSW (and the Commonwealth Government, see 2.1.4) funded regional Aboriginal Language Centres that were the drivers of much of the community-based work. The Policy also aimed to increase accessibility to language learning within correctional institutions. This aim was, however, limited by the restrictions within the institutions and the relatively short custodial sentences served by most Aboriginal people. The Policy underpinned the subsequent *Two Ways Together, New South Wales Aboriginal Languages Policy Strategic Plan (2006-2010)* that outlined the actions agreed to by government agencies to achieve the Policy's objectives.

The Policy also envisioned a Higher School Certificate level course, but this was not delivered until 2015. The teaching of Aboriginal Languages was professionalised through the development of high quality teaching methods and materials (see for example, NSW Education Standards Authority, 2017) and professional development, such as the Master of Indigenous Languages Education (University of Sydney, 2017). The Policy also envisioned adult education courses (through community colleges) and higher education at Tertiary and Further Education (TAFE) colleges and universities. TAFEs continues to offer nationally accredited certificate level courses in Aboriginal languages and universities have offered subjects in Aboriginal languages.

The State has also recognised the importance of Aboriginal languages and cultures through legislation. The Preamble to the *Aboriginal Land Rights Act 1983* recognises that "Land in the State of New South Wales was traditionally owned and occupied by Aboriginal people and ... is of spiritual, social, cultural and economic importance to Aboriginal people". Similarly, the *Constitution Act 1902* "acknowledges and honours the Aboriginal people as the State's first people and nations... and recognises that Aboriginal people, as the traditional custodians and occupants of the land in New South Wales have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and have made and continue to make a unique and lasting contribution to the identity of the State."

2.1.2. Review of the Aboriginal Language Research and Resource Centre

A 2010 review of the ALRRC, which included a review of the *2004 NSW Aboriginal Languages Policy*, found that in its seven years of operation it had achieved most of its objectives, but struggled with governance, leadership and sound administrative practices (Bob Morgan Consulting, 2010). The review found an ongoing need for a language centre to overcome challenges in language revival, and recommended a community-based centre with clearer functions, governance and operational procedures. The review concluded:

Analysis of the existing NSW Aboriginal Languages Policy and programs establish the existence of a clear and unequivocal set of Aboriginal language goals and aspirations. Additionally, all available evidence illustrates that there is a strong commitment by the NSW Government in general and the Minister for Aboriginal Affairs in particular to supporting Aboriginal language revitalization in NSW (Bob Morgan Consulting, 2010).

Changes followed in 2011, when the Centre for Aboriginal Language Co-ordination and Development (CALCD) was established as a partnership with the New South Wales Aboriginal Education Consultative Group Inc (AECG). CALCD's objectives were to:

- locate the Centre within an Aboriginal organisation considered accessible and appropriate by Aboriginal community members
- attract wider investment by the public and private sector in New South Wales Aboriginal language activities
- increase the number of Aboriginal language revival activities across New South Wales, and
- increase Aboriginal ownership and control of Aboriginal language revival.

The importance of Aboriginal languages to Aboriginal communities was a consistent message throughout the Ministerial Taskforce on Aboriginal Affairs community consultations in 2012. With respect to the New South Wales Aboriginal Languages Policy (2004), the Taskforce found:

In its current form, the policy is not sufficiently focused to recognise the unique requirements of each language and it contains no monitoring or evaluation mechanism to measure its success (Aboriginal Affairs NSW, 2012).

In response, through *OCHRE* proposed establishing five Aboriginal Language and Culture Nests were established, as well as further support for Aboriginal language revival and education activities. *OCHRE* committed Aboriginal Affairs NSW to reviewing the *NSW Aboriginal Languages Policy 2004*.

2.1.3. Current situation in New South Wales

The Department of Education administers the Aboriginal Language and Culture Nests program ('the Nests'), in partnership with the AECG. The Nests are local community networks working collectively on Aboriginal language revitalisation. The five Nests are North West Wiradjuri (Dubbo), Gumbayngirr (Coffs Harbour), Bundjalung (Lismore), Paakantji (Wilcannia) and Gamilaraay/Yuwaalaraay/Yuwaalayaay (Lightning Ridge).

Aboriginal languages are also taught in schools across New South Wales that are not connected to a Nest. Schools that are part of the Connected Communities strategy include Aboriginal languages in their curriculum. Aboriginal language programs in other schools are implemented in line with the Aboriginal Education Policy and in partnership with local communities and the AECG.

The New South Wales Education Standards Authority has released a Stage 6 (Higher School Certificate) Aboriginal Languages Course, which was piloted in two high schools in 2016.

In November 2016, the New South Wales Government announced plans to legislate to recognise and protect the Aboriginal languages of the State. The draft Aboriginal Languages Legislation will have two parts:

- statements acknowledging the importance of the Aboriginal Languages of New South Wales and the importance of preventing their loss, and
- measures to protect and revive New South Wales Aboriginal languages, including a Strategic Plan and a Centre for Aboriginal Languages of New South Wales.

The new legislation is expected to be put before New South Wales Parliament in late 2017. Once passed, New South Wales will become the first State in Australia with legislation to recognise the importance of Aboriginal languages. It will continue this State's leadership amongst Australian states and territories on the support and growth of Aboriginal languages.

2.1.4. Commonwealth Government Policy

The Commonwealth Government first introduced policy that addressed Aboriginal languages in 1987 with the National Policy on Languages. This policy, formed in the context of Australia's increasing multiculturalism, covered all language related activities across the country including the development of a National Aboriginal Languages Project and funding for Aboriginal language programs.

In 1991, the Australian Language and Literacy Policy led to the establishment of the Federation of Aboriginal and Torres Strait Islander Languages and Culture (FATSILC). This became the national peak body for community based Indigenous language programs in Australia and emphasised school-based educational programs.

The first National Indigenous Languages Survey (NILS) report was released in 2005, giving a comprehensive overview of the status of Aboriginal and Torres Strait Islander languages and activities to support and grow languages funding. The report also put forward recommendations to address the decline of Aboriginal languages.

In 2009, the Commonwealth Government released the National Indigenous languages policy: Indigenous Languages – A National Approach (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs [HRSCATSIA], 2012). The Policy recognised the centrality of language to strong Indigenous culture and the well-being of Indigenous communities.

The elements of the National Indigenous Languages Policy were:

- To bring national attention to Indigenous languages – the oldest surviving languages in the world – and the pressures they face
- Reinforce the use of critically endangered Indigenous languages that are being only partly spoken to help prevent the decline in use and to maintain or extend their common, everyday use as much as possible
- In areas where Indigenous languages are being spoken fully and passed on, making sure that government recognises and works with these languages in its agenda to 'Close the Gap'
- To restore the use of rarely spoken or unspoken Indigenous languages to the extent that the current language environment allows

- To support and maintain the teaching and learning of Indigenous languages in Australian schools.

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs reviewed the National Indigenous Languages Policy. In its report, *Our Land Our Languages*, the committee found:

...there is no evidence of an effective action plan for the implementation of the objectives of the National Indigenous Languages Policy. The Committee is of the view that without concrete actions, clear goals and accountability, the National Indigenous Languages Policy will not achieve its intended goals. If the National Policy is to be taken seriously, then it must contain more than aspirational words (HRSCATSIA, 2012).

The Committee recommended the Commonwealth Government develop an action plan with clear goals, accountability and reporting requirements, including a requirement that government agencies report annually. This action plan was incorporated into the Indigenous Advancement Strategy, which replaced the National Indigenous Language Policy. The Strategy was introduced in 2014 replacing more than 150 individual programs and activities with five broad-based programs. Under the Culture and Capability section of the Strategy, organisations and individuals aiming to support Indigenous Australians to maintain their culture are provided with funding.

In 2015 the Senate Finance and Public Administration Committee tabled its final report into the Indigenous Advancement Strategy tendering processes. The Committee found that the Policy did not appear to cover the field of programs required to meet the objectives of the Policy. As a result, changes were required to avoid repeating the 'blanket competitive process', to facilitate the awarding of longer contracts to Indigenous organisations to 'ensure stability' and to prioritise investment in smaller Indigenous organisations (Commonwealth of Australia, 2016). The Indigenous Advancement Strategy remains the policy mechanism for the delivery of Commonwealth funding for Aboriginal language revival with one exception. The Department of Communications and the Arts (Commonwealth) continues to administer the Indigenous Languages and Arts funding program that provides funding to organisations supporting the revival and maintenance of

Indigenous languages (Australian Government, n.d). In 2015-2016 the program invested \$1.8 million in projects that were based in New South Wales.

The National Aboriginal and Torres Strait Islander Education Strategy 2015 recognised the importance of Indigenous language education and committed to consistent approaches to developing Indigenous language curricula (Education Council, 2015). The Australian Curriculum, Assessment and Report Authority (ACARA) released its Aboriginal Framework for Aboriginal Languages and Torres Strait Islander Languages as part of the National Curriculum for Languages. The Framework supports the development of local Aboriginal language programs in schools.

The Commonwealth Government also recognises Aboriginal language through legislation, such as the *Native Title Act 1993*, *Aboriginal and Torres Strait Islander Act 2005*, and the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013*.

2.1.5. International approaches

Canadian provincial legislatures, which are structurally similar to Australian states, provide examples of Aboriginal Languages Acts to compare and contrast. They vary from the simple statements of recognition (such as the *Aboriginal Languages Recognition Act* (Manitoba), to the detailed *Official Languages Act* (Northwest Territories (NWT)) that enacts a system of governance, oversight and reporting to bring Aboriginal languages into the everyday business of government. The *Native American Languages Act 1990* (United States) includes recognition of Indigenous languages and policy objectives.

The Canadian *Official Languages Act* creates an authority responsible for handling complaints, driving and overseeing revitalisation efforts, and the monitoring and reporting of language activities. The NWT Act also provides guidance on the requirements of strategic planning mechanisms which include:

- input from community language speakers/workers who advise on the efficacy of programs
- Ministerial responsibility for development and implementation of strategic plans and
- oversight and accountability within government for delivery of the plan.

In April 2016, the *Māori Language Act 2016* was enacted in New Zealand, giving Maori language official status, meaning Te Reo Maori (Maori language) can be used to conduct business, in legal proceedings, and on signs and official notices. The Act creates Te Mātāwai, an organisation made up of government and Māori language stakeholders, to lead language revitalisation activities.

2.2. What the research tells us

2.2.1. Definitions and overview

In recent years, several publications have called for the protection of the world's languages that are declining in use, with more and more reports warning that the linguistic diversity of Australia, the USA, Canada and other nations is under threat. This heightened awareness has sparked many activities around the world to nurture and grow their languages and an intensified focus on documenting, recording and teaching them.

Language revival is a general term that refers to efforts to bring a language back into regular use and often includes increasing the number of language speakers, especially in the younger generations. Leonard (2012, p. 359) defines it as “a larger effort by a community to claim its right to speak a language and to set associated goals in response to community needs and perspectives”. Language revival can include situations in which the language is declining in use (revival), in which the language is no longer spoken but there is sufficient language knowledge in the community to develop a program (renewal) or a complete break in transmission of a language but historical resources allow for the language to be reconstructed and learnt (reclamation) (Purdie et al., 2008). In reality, different language groups employ different terms and activities aimed at increasing the use of their languages and there is no one term that is agreed on by all.

In thinking about the status of a language, some use the number of speakers as a measure. This is highly problematic, as is identifying the ‘last speaker’ of a language (Evans, 2001). Different sources will cite different numbers of speakers for different languages, the definition of a ‘speaker’ can vary (does one need

to be considered ‘fluent’ to be a speaker?), and giving a headcount is not necessarily an indicator of language health.

All languages change over time, developing new functions and vocabulary, and therefore one cannot expect a revived language to be the same as the language that was spoken 250 or more years ago. Although the documented aspects of the language may have gaps in vocabulary and grammar, some consider the language to be just as valid and important as any other language (Crystal, 2000, as cited in Walsh, 2017). Amery (2009, p. 141) supports this view when he says:

For members of the Kurna community with whom I work, the aim of language revival is to have their own language to converse in, think in, and put out there for all to see and hear as a daily reminder of a distinctive language and culture that belong to the Kurna people and are intrinsically linked to the Adelaide Plains (Kurna traditional lands). The revived language is one that draws on the old, but is transformed to meet the needs of the future. This new language reflects modern cultural values, including changed attitudes to gender, equality, religious values, behavioral norms, etc.

Language revival worldwide

Communities worldwide have been working to revive their languages for some time, using a variety of methods. In both the revival of Te Reo Maori in New Zealand and the language of Hawaii, language immersion schools (known as language ‘nests’) were key to creating a new generation of speakers and to ultimately bringing the languages back into everyday use (Brenzinger & Heinrich, 2013). In other parts of the United States, First Nations communities have set up language schools, radio stations, television shows and various other channels for their languages to be used. Two language revival techniques which began in California, the Master-Apprentice program (which matches language speakers with non-language speakers in a mentoring-style relationship) and the Breath of Life workshops (aimed at uncovering new language documents from archives), have had such success that they are now being used around the world (Hinton, Vera & Steele, 2002; Olawsky, 2013). Similarly, in Canada various revival techniques are in use across the more than 90 First Nations languages, and recently the Canadian Government announced that it would introduce an Indigenous languages act to preserve and revive these languages.

Language revival in Australia

Although not always publicised, Aboriginal language revival is occurring on a broad scale all over Australia and many different language revival methods are being used. One only needs to attend Australia's biennial Puliima National Indigenous Language and Technology Forum, which attracts hundreds of community language activists, to realise that language revival programs are prevalent across the country.

The second NELS (Marmion, Obata & Troy, 2014) gives a comprehensive overview of the status of Aboriginal languages and of revival activities. The data shows that there are around 120 Aboriginal languages spoken around Australia, 13 of which that can be considered strong. These findings are neither better nor worse when compared to the original NELS report from 2005 – while some languages are showing signs of decline, others appear to be in recovery.

General Australian attitudes towards Aboriginal languages are positive and supportive. An Australian National University Poll of attitudes towards Aboriginal Australians found that more than 80 per cent of Australians support the recognition of 'continuing cultures, languages and heritage' of Aboriginal and Torres Strait Islander peoples as a basis of Commonwealth law making (Biddle & Weldeegzie, n.d.).

In Australia, many language projects are led by Aboriginal-run language centres, such as the Muurrbay Aboriginal Language and Culture Co-operative in Nambucca Heads, and the Victorian Aboriginal Corporation for Languages in Melbourne, which have been vital to language revival programs over the last 30 years (Meakins, 2015). As each language community has its own unique needs, language centres across Australia may take on a diversity of roles. However, all provide some strategic support to communities in language revival. Other activities may include research, the documentation of spoken language, the production of grammar references and dictionaries, and developing language learning resources (Ash, Hooler, Williams & Walker, 2010). Other organisations, such as the Resource Network for Linguistic Diversity, run training programs for Aboriginal community language activists to equip and empower them to undertake language revival activities.

It is clear from the literature that reviving a language is an ongoing activity, not a one-off project, and that community ownership is just as critical to success as adequate funding and resources.

Language revival in New South Wales

In 1788, there were 35 distinct Aboriginal languages within the area of what is now the State of New South Wales, with around 100 dialects of those languages (Wafer, Lissarrague & Harkins, 2008). These languages were spoken within defined Aboriginal nations; they communicated knowledge of Country, culture, kinship relationships, and lore. As well as the traditional Aboriginal languages of New South Wales, historical and contemporary interstate movements of Aboriginal and Torres Strait Islander peoples mean that other Aboriginal and Torres Strait Islander languages are now spoken in New South Wales. Furthermore, more recent languages such as Aboriginal English have become recognised as unique languages.

The forces of invasion, protectionism, and later assimilation caused broad scale loss of Aboriginal languages. Despite this, Aboriginal communities have shown incredible resilience and substantial progress has been made to maintain and revive languages (Walsh, 2003).

Today, the original languages of New South Wales are in various stages of revival. Aboriginal communities throughout New South Wales and the people who have worked with them to revive languages should be applauded for what they have achieved to date. The Muurrbay Aboriginal Language and Culture Co-operative in Nambucca Heads is recognised as a leading Aboriginal language centre, having developed learning resources that are used across seven language groups. Miromaa language revival technology, developed under the auspices of the Arwarbukal Cultural Resource Association in Newcastle, is recognised and used worldwide. There are now five Aboriginal Language and Culture Nests operating across the state, teaching students in over 60 schools. The Gamilaraay and Wiradjuri languages can both be studied at a tertiary level. Many other communities and individuals have spent countless hours, often unpaid, to teach, learn, revive and maintain the Aboriginal languages of New South Wales.

At present, there is no one source of published information about language revival programs that exist across New South Wales, nor a network to share information and resources.

2.2.2. Language custodianship and community control

Aboriginal people are the custodians of their languages. Language itself is a birthright – it is property inherited from parents and grandparents, and is a connection between an Aboriginal person and their ancestral land (Simpson, 2013). Lowe (2010, p. 54) explains “the revitalization of Indigenous languages is part of the larger renaissance of indigeneity where a community’s involvement is an act of reasserting their sovereignty in their own country and maintaining it, even when living elsewhere.”

Numerous studies point to the fact that local Aboriginal community control is essential to success in language revival programs (see Sometimes & Kelly, 2010; Walsh, 2010 and Marmion, Obata & Troy, 2014 for examples). Walsh (2010) notes that language revival programs often have a strong focus on teaching language in educational institutions, which are usually not community-run. This can lead to a discrepancy between community and school views on teaching methods, what is taught, and the ultimate aims of the language revival project.

The assertion of community language custodianship is one thing, but how this can be practically applied in the context of language revival raises many questions. Lowe (2010) notes that questions often arise about who is capable of and/or entitled to teach language and which languages may be taught in which locations. Other questions arise about culturally appropriate use of language as do more technical questions about language, such as how words should be spelled or how to create new words.

Some communities have formed advisory groups with the authority to resolve issues with language revival, use and development. Examples include the Barngarla Language Advisory Committee (BLAC) and the Kurna Warra Pityanthi group (KWP – meaning ‘creating Kurna language’). The KWP was initially formed to consider requests from government and organisations to provide Kurna names for buildings and other translations, and has now evolved to keep records of Kurna language use in the public arena and to make broader decisions about the use of the language (Amery, 2010). These groups create their own internal policies about the use of language.

First Languages Australia (2015) notes that language materials that are currently held in museums, libraries and other archives also belong to Aboriginal communities and must be accessible to them: “Agencies and institutions must move beyond their traditional views of First Australians and their ‘artefacts’, to a contemporary understanding of Aboriginal and Torres Strait Islander communities” (p. 3). Audio recordings, documents and other materials that make up these artefacts should therefore not be treated as pieces to be hidden in the archives of museums, but rather as current resources that are relevant to community needs today. One example is the State Library of New South Wales that has worked to make archived language materials more accessible to Aboriginal communities by digitizing, and making available online, historical language documents (Thorpe & Galassi, 2014). The Australian Institute for Aboriginal and Torres Strait Islander Studies (AIATSIS) has taken a similar approach, making many of its collections available online.¹

The topic of community control also raises questions about the role of linguists and other outsiders in language revival. It cannot be ignored that there have been, and in some cases still are, tensions between Aboriginal communities and professional linguists, both in Australia and worldwide. Historically this has stemmed from incompatible needs and interests, and ultimately different values in relation to language. Linguists have traditionally focused on language documentation and academic pursuits, while community members have sought language resources designed for everyday use (Rouvier, 2017). In 2009, Dr. Rob Amery of the University of Adelaide asked: “Whom are we documenting the languages for?” (p. 138), calling for linguists to take more of a community-minded and practical view when working in language revival. While these tensions still exist in many places, as language revival gains more attention, linguists are more frequently being held to account from both a practical and ethical perspective (Burge & Story, 2017; Czaykowaska-Higgins, Thom, Daniels & Urbanczyk, 2017).

¹ <http://aiatsis.gov.au/collections>

2.2.3. Impacts of language revival

As Aboriginal languages and culture are intertwined, they are of immense intrinsic value to the people and communities connected to them. Williams (2011) points out that languages are the core repositories of cultural knowledge and are the 'spiritual conduit between identity and country' (p. vii).

The Our Land Our Languages report (HRSCATSIA, 2012) observes that "language is integral in affirming and maintaining wellbeing, self-esteem and a strong sense of identity," and has a close relationship with cultural heritage, connection to Country, and feelings of pride and self-esteem. Jenna Richards, a Barnjarla woman from Port Lincoln, South Australia, states:

I believe that if we were to revive our sleeping language, we could not only gain recognition in the Aboriginal and wider community but we could also regain our sense of identity, we could start to become a strong community and family again (as cited in Marmion, Obata & Troy, 2014, p. xi).

While there have been some studies on the link between culture and health in Aboriginal communities (for example, see Rowley et al., 2008), the link between languages and health has only begun to be researched in recent years. Whalen, Moss and Baldwin (2016) published one of the first papers to explore the link between language and health in Indigenous communities worldwide. They confirmed that, not only does language loss have a negative impact on the health of Indigenous people across the globe, but there are also positive health benefits for individuals involved in the revival of their languages. In Australia, both the Aboriginal and Torres Strait Islander Commission (ATSIC) survey of New South Wales Aboriginal Languages (Hosking, 2000, cited in Walsh, 2017) and the Our Land Our Languages report (HRSCATSIA, 2012) support the view that language revival positively affects the quality of life of Aboriginal people.

Anderson (2010), a Wiradjuri man, discusses the role that language revival can play in healing, contributing to recovery from the suppression of culture and identity experienced by Aboriginal peoples. Anderson writes about his own personal experience of healing through learning and teaching Wiradjuri language and his observations of community healing; "learning the language that belongs inside will heal you. Learning your native language will make you feel more complete" (p. 73).

Two current Australian studies will help to bridge the gap in the research on language and wellbeing. One study is examining the health and wellbeing of Barnjarla community members who are actively involved in reviving their language over a five-year period (University of Adelaide, 2016). A further longitudinal study on the impact of culture (including language) on the health and wellbeing of Aboriginal peoples across Australia runs from 2015-2018, headed by Dr. Ray Lovett of the Australian National University (Research Data Australia, 2017).

In some parts of Australia, the teaching of Aboriginal languages has been shown to reduce rates of racism. In June 2012, the Australian Broadcasting Commission reported on a case of Wiradjuri language learning in Parkes, New South Wales. The town, which like many others has a history of racist attitudes and divisions between Aboriginal and non-Aboriginal peoples, was beginning to see signs of hope for a fresh future as both Aboriginal and non-Aboriginal children learnt the Wiradjuri language together. The fact that around 10 per cent of the population was learning Wiradjuri through schools and TAFE colleges appeared to be having an impact on non-Aboriginal student attitudes towards Aboriginal people, and this was reflected in attitudes in the wider community (Taylor, 2012).

Opportunities also exist for language skills to enhance speakers' employment prospects in the fields of language revival and teaching, cultural tourism, the arts, translating and interpreting and other types of employment that calls on specific cultural and language knowledge, such as eco-system preservation and environmental management (Mahboob, Jacobsen, Kemble & Xu, 2017; Aboriginal and Torres Strait Islander Social Justice Commissioner, 2009). Also, as Aboriginal languages continue to gain recognition from Australian governments and businesses, the demand for building names and other public signage in languages will grow, in turn creating further employment and/or business opportunities for language communities (Amery, 2010).

2.2.4. What is needed to revive languages?

A review of the literature shows many different perspectives about the elements that are needed for successful language revival, demonstrating that there is no single checklist a revival program should adhere to.

Walsh (2017) supports this by saying “By now there is abundant evidence that language revival is feasible. What is less clear is how best to go about it”.

One key element consistently highlighted in the literature is Aboriginal community control. Ash, Fermino and Hale (2001) also define other elements based on their experience working in language revival in Australia and Central and North America. They stress the importance of understanding the local conditions of the community and language, and implementing a program that is driven by community needs. Whether the program includes sharing or drawing on materials from other language communities, or if they engage linguists, language revival must also be informed by local conditions and community views. Other elements raised in the literature include community cohesion, integration with culture revival, access to language knowledge and information and funding, amongst other factors (Walsh, 2010).

Ultimately, it is only the language community themselves who can determine the aspects of language revival that are most relevant and useful to them, based on their unique language circumstances.

2.3. Research questions to explore

- Which language revival methods are most effective in different language contexts (according to community goals)?
- How is Aboriginal language custodianship determined and does this differ according to the status of the language? Who has the authority to make decisions about language and what responsibilities come with this? What relationship is there between activities to nurture and grow languages and community governance bodies that run or oversee these programs?
- What is the role of government, if any, in language revival? If government is involved, how does it navigate custodianship of language? What level and types of government support is required to revive languages in New South Wales?
- What are the ethical responsibilities of linguists, academics and other non-community members involved in language revival?
- What are the impacts (and potential impacts) of language revival in New South Wales in relation to health, employment and other benefits?

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3 The cultural capability of New South Wales public servants



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To achieve sustainable change in the way that governments work with and respond to Aboriginal communities those charged with implementing policies and programs must also be recognised as on a learning journey. As such, any successful approach must also focus on increasing the cultural capabilities of those engaging and working with Aboriginal communities. This chapter considers the normative narratives embedded in Australian society which affect the way Aboriginal communities are viewed by non-Aboriginal Australians and, consequently, impact significantly on the quality and nature of interactions and their outcomes. The chapter surveys the current policy landscape in New South Wales, addresses the literature on cultural capability and cultural competence and, finally, makes recommendations for focused research.

3.1 Cultural capability or cultural competence?

Cultural capability and cultural competence are similar but distinct concepts that differ in subtle but important ways. Roianne West and colleagues (2017) draw our attention to recent claims that cultural competence (which has gained some prominence since the 1980s) is tokenistic and has, in practice, become a ‘tick a box’ exercise. Cultural capability, on the other hand, suggests opportunities for improvements in practice (West et. al., 2017). Competence is seen as something a person is able to do – to be able to perform certain known tasks

to a set standard (Lester, 2014). Capability on the other hand suggests something more than competence, as it includes a person's ability to extend and adapt to varied and changing circumstances and responsibilities.

Capability has variously been described as the potential to become competent, as being similar to competence but less normative or prescriptive, as being virtually synonymous with a broad version of (internal) competency, and as encompassing competence but going beyond it in a number of ways (Lester, 2014 p. 37).

Queensland Health defines cultural capability as:

[T]he skills, knowledge, behaviours and systems that are required to plan, support, improve and deliver services in a culturally respectful and appropriate manner (Queensland Health, 2010).

Capability is also the term preferred in development theory and aligns with Sen's concept of freedom and agency (Klein, 2015; Sen, 1999). Having said that, there is much to be gleaned from the literature that considers both cultural capability and cultural competence, given the similarities and cross over. For example, the Queensland Health definition above has much in common with the most commonly cited definition of cultural competence (Cross, Bazron, Dennis, & Isaacs, 1989):

A set of congruent behaviours, attitudes, and policies that come together in a system, agency, or among professionals and enable that system, agency, or those professionals to work effectively in cross cultural situations.

In addition:

A culturally competent system of care acknowledges and incorporates – at all levels – the importance of culture, the assessment of cross-cultural relations, vigilance towards the dynamics that result from cultural differences, expansion of cultural knowledge and the adaptation of services to meet culturally-unique needs.

The Cross et al. (1989) definition grew out of efforts to improve the provision of health services for increasingly diverse populations who were experiencing severe disparities in access in the United States of America. Likewise, Queensland Health's definition of cultural capability emerged from similar concerns.

In the light of this background, cultural capability is the preferred terminology used in this chapter.

3.2 Policy environment

Narratives are embedded in every society. These are the shared understandings through which we form bonds and feel that we belong to a community. Narratives tell the story of how we came here, how our society developed and how we define cultural norms (Razack, 2000, p.182). Institutions such as the public service are not separate from, but reflect, the normative values of society which shape and influence how governments form and implement policies, programs and laws, and interact with different groups.

Interactions between Aboriginal¹ peoples and settler-colonialists in Australia are fraught, and have their origin in the forms of government, education, legal, economic and industrial systems inherited from the British (Moreton-Robinson, 2005). An understanding of what it meant to be British was very much part of the early days of the New South Wales Colony when exercising political rights including the right to local government and the demand for equality between the colonialists and the British (Curthoys, 2006, p. 15).

The British colonial culture brought to the colonies was embedded with pre-formed attitudes towards Aboriginal peoples. Watkin Tench, a member of the First Fleet, wrote "Our first object was to win their affections, and our next to convince them of the superiority we possessed..." (Beard, 2004, p. 179). This was the social norm on which the Colony was established and which ensured that early observations characterised Aboriginal peoples as 'needing' to be governed and as having a lack of ability to understand the basics of government (Curthoys, 2006).

Given such entrenched attitudes it is not surprising that the myriad of policies developed over the past two hundred years "demonstrate a lack of integrity surrounding equitable policy administration, leadership and governance" (Lee, 2017, p. 5) and continue to result in inequity between Aboriginal and non-Aboriginal peoples. There was also a failure on the part of settler-colonialists to negotiate a treaty or treaties. In the absence of a treaty, there has been no official recognition of the Aboriginal polity; that is, Aboriginal systems of governance, law, justice, and land tenure. Statutory land rights, native title law, and constitutional recognition are examples of belated attempts at recognising Aboriginal polity. Treaties offer mechanisms for mutual recognition of differing systems of laws,

¹ Aboriginal peoples is used in this paper and includes Aboriginal and Torres Strait Islander peoples. Indigenous peoples is also used when quoting or referring to other documents which use this terminology.

governance, and rights, for settling disputes, interpreting treaty instruments, and guiding policy development to achieve those ends.

The *Aborigines Protection Act 1909* cemented the role of the New South Wales Government as the guardian and regulator of the daily life of the State's Aboriginal peoples, facilitating the integration into legislation of a disastrous narrative of superiority and colonialism. The movement towards self-determination in the 1970s and reconciliation in the 1990s did little to shift the underlying sentiments embedded into policy that Aboriginal peoples are not capable of self-government.

In more recent years there has been a shift in Australian public policy towards a capability approach, which includes the concepts of freedom, agency and pluralism (Klein, 2015, p. 1). According to Sen (in Klein, 2015, p. 2), freedom and agency allow people to undertake initiatives and achieve desired and valued outcomes. For the capabilities approach to work it is necessary to understand the concepts and capabilities underpinning policy and whether these are the same as the capabilities valued by people affected by policy making (Klein, 2015, p. 4). This approach requires a shift away from the more familiar deficit policy towards discourse and consultation (Sullivan, 2015). The deficit policy discourse assumes that agency and capabilities are deficient and this approach can be used to justify top down and paternalistic approaches (Klein, 2015). By contrast, an even-handed approach to discourse and consultation will ensure that the capabilities of the public service are scrutinised and fostered and the adaptability of the system considered, rather than focusing only on the capabilities of Aboriginal peoples.

Recently, New South Wales has witnessed a fundamental shift in the way Government approaches engagement with Aboriginal peoples. The *OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment)* community-focused plan was developed on the promise of a different relationship between the New South Wales Government and Aboriginal communities. It embeds recognition of the right to self-determination and the right to participate in decision-making and exercise full authority and self-management consistent with the United Nations Declaration on the Rights of Indigenous Peoples (NSW Government,

2013). Importantly *OCHRE* supports Local Decision Making (LDM) underpinned by the following guiding principles:

1. Aboriginal peoples and communities have a spiritual, social, cultural and economic relationship with Country and/or place.
2. Aboriginal leaders and communities understand their own needs. They have the drive and ability to develop and manage their own solutions.
3. Respectful relationships and recognition of the need to heal the hurt and injury caused by past government policies.
4. Respectful consultation and negotiation between government and Aboriginal communities, with the free, prior, and informed consent of those communities.
5. Regional and local solutions for regional and local problems, with ideas and help from outside when and where required.
6. Responsible, accountable and transparent decision-making.
7. Continuous improvement and adjustment when needed.
8. Promotion of the participation of Aboriginal peoples residing in LDM locations.

Whilst *OCHRE* provides visionary goals for the New South Wales Government and public service, their realisation depends on the shape and details of policies and the nature of their implementation.

To better understand the State's policy landscape, in 2016 Aboriginal Affairs NSW commissioned a scan of the current public policies impacting Aboriginal peoples. One hundred and forty nine policies were identified, the majority of which were implemented by the Office of Environment and Heritage (25), the Department of Education (21), Family and Community Services (17) and the New South Wales Ministry of Health (17) (Aboriginal Affairs NSW, n.d.). Close to 80 per cent of the policies were directed towards providing services to individuals and communities. The purposes of the policies were diverse and varied. Just over 40 per cent were departmental strategies designed to meet particular departmental goals and objectives; 22 per cent focused on the internal operations of entities; 24 per cent focused on employment; 57 per cent focused solely on Aboriginal peoples; 27 per cent were

mainstream policies with an Aboriginal component and 16 per cent were mainstream policies that included an Aboriginal focus (Aboriginal Affairs NSW, n.d.).

Although this policy scan found challenges in identifying Aboriginal policies due to multiple interpretations of what was in and out of scope, it can be concluded that less than a third of internally-focused policies are aimed at building the cultural competency of public servants. In contrast, the focus of a high number of policies (31) was on building the capacity of Aboriginal communities. A continuation of this imbalance would point to an inherent deficit policy discourse that focuses unequally on Aboriginal capability (Klein, 2015) and would stymie the full implementation of the *OCHRE* principles. Further research is required to identify whether policy crossover in areas such as community capacity building, partnerships/participation and interagency collaboration are indicative of significant policy impetus in these areas, or whether there is high risk of overlap and confusion (Aboriginal Affairs NSW, n.d.). The scan also identified a need for analyses of reviews and evaluations of the policies to ascertain their effectiveness and impact on Aboriginal peoples in New South Wales (Aboriginal Affairs NSW, n.d.).

The large number of policies also raises important questions about their alignment with *OCHRE* and the need to identify the individual and systemic support systems required to effectively implement them. A policy framework needs to allow for a congruent approach across all departments whilst also enabling the flexibility needed for departments to localise implementation.

For *OCHRE* to be fully realised, the effect of the make-up and capabilities of the public service on the exercise of Aboriginal peoples' rights and opportunities provided must be fully considered. Achieving genuine engagement is predicated on a commitment to collaboration and the cultural capability to achieve this. Engagement opens up pathways for public servants to generate new understandings through the interface of Aboriginal and Western knowledge systems. This expands the knowledge base and shifts existing paradigms about what is and can be known.

In his discussion of citizen engagement in policymaking and the design of public services, Brenton Holmes concludes that "the theory and practice of public administration is increasingly concerned with placing the citizen at the centre of policymakers' considerations, not just as a target, but also as an agent" (Holmes, 2011, p.

i). The cultural change required to achieve this is considerable, with senior public servant Terry Moran suggesting that the cultural changes required have implications for the way public servants are trained, organised, motivated and rewarded (Moran, 2010).

In 2016, a group of Executive Master of Public Administration students with the Australian and New Zealand School of Government (ANZSOG), in collaboration with Aboriginal Affairs NSW, investigated the attitudinal and structural barriers within the New South Wales public service which affect the devolution of decision-making to Aboriginal communities and where improvements could be made. The study was explorative in nature.

Commencing in February 2016 and concluding in November 2016, the study included a systematic literature review, interviews with public service executives and focus groups with public servants at various level of seniority. Five agencies were involved in the study; the Aboriginal Housing Office of the Department of Family and Community Services, multiple policy units and districts of the Department of Family and Community Services; Cultural Heritage Division, the Office of Environment and Heritage; the National Parks and Wildlife Service, Office of Environment and Heritage; and the Office of the New South Wales Small Business Commissioner.

Their findings suggest collaborative partnerships could be achieved through:

- strengthening career paths for Aboriginal public servants as a critical component of a culturally competent New South Wales Public Service
- increasing the cultural competence of public servants, tailored to specific local contexts, and encouraging them to build relationships with Aboriginal communities
- devolving decision-making power to public servants who are closer to Aboriginal communities, and
- encouraging public sector leaders to demonstrate a commitment and visibility in developing their own cultural competence and that of their staff (Andrew et al., 2016).

In reviewing the literature, the ANZSOG research team concluded that:

From widely differing geographic and policy contexts, the barriers which hinder effective collaboration on public policy outcomes with Indigenous communities are well documented. Recommendations about how to overcome them however tend to be expressed rhetorically, and in the form of broad concepts such as “culturally appropriate” practices (Thomas, Williams, Ritchie & Zivi, 2015), “flexible approaches ... to focus on strengths” (Taylor, Bessarab, Hunter & Thompson, 2013, p. 1), and “genuine engagement” (Hunt, 2013; Hutcheson, 2011). This provides little guidance on practical implementation (Andrew et al., 2017, p. 17).

Interestingly, the report also identified that ‘devolving decision-making’ was not the primary concern of the public servants interviewed, nor did they see it as relevant to their work. Rather, their main concern was “to find and practice different ways of working with Aboriginal people that involve sharing knowledge and power, collaborating, responding to local contexts and ultimately, achieving better shared outcomes for communities” (Andrew et al., 2017, p. 8). This points to the need to develop a common understanding of, and aspiration for, the devolution of decision-making, as it is likely that common purpose is, in fact, essential for all participants to work towards achieving this goal. However, given that devolved decision-making was identified in extensive consultations with Aboriginal communities in developing *OCHRE*, and is a crucial principle in *OCHRE*, further research is required to confirm this apparent disconnect. If there is an inconsistency between the expressed priorities of Aboriginal communities and those of public servants, steps need to be taken to ensure a common understanding of devolved decision-making in practice.

The report also identified the importance of developing the cultural capability of public servants; however, there is a lack of clarity about what cultural capability is and the difference between cultural capability, cultural competence and cultural awareness. Under *OCHRE*, the responsibility for developing cultural competency in the workplace rests with the New South Wales Public Service Commission.

Improving Aboriginal cultural competency in the workplace is important for ensuring that New South Wales public sector departments and agencies develop and maintain workplaces that understand, respect and celebrate Aboriginal cultures. The ability to bridge cultural differences helps achieve a workplace that attracts, retains, supports and develops Aboriginal peoples.

This ANZSOG report also highlighted the importance of strong leaders to drive and facilitate change in the culture of the public service. Characteristics of good leaders were identified as:

- communicating a clear vision, purpose and process for improved outcomes for Aboriginal peoples in New South Wales
- leading by example – building relationships with Aboriginal peoples
- devolving decision-making to public servants who are closer to the communities
- fostering a culture that allows failure and learning, and
- practising reflective learning.

It was recognised that although some leaders exhibit these characteristics, they are exceptions. Recognising that leaders unconsciously embody particular values when making decisions, and that these values are culturally variable (Goldberg, 2003, p. 129), is essential for developing the cultural capability of public servants. Further investigation is required to understand what has enabled those people identified in the study to develop valued leadership attributes and how such characteristics could be more widely emulated across the New South Wales public sector.

It is not clear whether any participants in the ANZSOG study were Aboriginal. It is clear however that there is a distinct lack of research about the public service from the perspective of Aboriginal public servants. Biddle and Lahn (2016, p. 16-17) outline some of the difficulties Aboriginal public servants might face in general, including:

- The role, and impact of working in the public service, can be oversold. There needs to be a focus on retention as well as recruitment.
- Frustration at the politics that limit positive Indigenous policy initiatives and the effective delivery of programs.

- A lack of opportunities for career progression and support.
- The level of racism encountered.
- The lack of cultural awareness across the public service.

Aboriginal Affairs NSW commissioned some research to learn from the New South Wales public servants charged with developing and implementing *OCHRE* (Houston & Cavanagh, 2017). The study aimed to better understand the nexus of policy and public service capability, including cultural capability. This study unpacked the significant challenges that have arisen for public servants responsible for implementing a plan in which every initiative was new and built with Aboriginal communities. Achieving this required more than the usual time allocated to such endeavours. Much was necessitated the devolution of power from government to Aboriginal communities, convincing all levels of the public service of the merits of the approach, maintaining commitment in the face of opposition, embracing risk, a trial and error approach, and highly-developed cultural capabilities (Houston & Cavanagh, 2017).

This study has helped to understand how policy such as reflected in the *OCHRE* plan intersects with “institutional norms and rules” (DiMaggio and Powell, 1991, as cited in Berg, 2006, p. 557). The New South Wales Public Service may find itself responsible for implementing competing policy agendas, resulting in discrepancies in approaches to devolving decision-making between different portfolios, departments and offices. There may also be inconsistencies between the principles applied to Aboriginal and non-Aboriginal service delivery. Without consistency across agencies, it is hard to imagine devolved decision-making working.

3.3 What the research tells us

The Australian National Health and Medical Research Council [NH&MRC] (2003) highlight the need for cultural competence at an individual or professional level to be supported by a systemic and organisational commitment to, and capacity for, identifying the four dimensions of cultural competency — systemic, organisational, professional and individual.

It is also important to clearly articulate the need to understand one’s own identity and values and how these

impact on interactions with people with cultures that are different to one’s own. Lee et al. (as cited in Perso, 2012) state that:

Cultural competence means understanding one’s own identity and values, and how these influence one’s perceptions. Cultural competence requires knowledge, skills, experience and the ability to transform these into practices which result in improved services.

Caution is urged to ensure that focusing on self as a critical lever to developing cultural competence does not lead to a failure to address systemic responsibility (Downing & Kowal, 2011).

Like cultural capability (West et al., 2017), developing cultural competence is a cumulative, progressive and non-sequential process (Cross et al., 1989; Perso, 2012; Ranzin, McConnochie, & Nolan, 2009; Universities Australia, 2011). Some authors identify a continuum (Campinha-Bacote, 2002; Cross et al., 1989; Ranzin et al., 2009; Wells, 2000) which specifically includes the following:

Cultural destructiveness – where attitudes, policies, and practices are destructive to cultures and consequently the individuals within the culture. An example of this is the policies that led to the Stolen Generation.

Cultural incapacity – the system or agency do not intend to be culturally destructive but lack capacity. There may be extreme bias and a strong belief in the supremacy of the dominant culture leading to paternalism and racism.

Cultural blindness – services are provided with the express philosophy of being unbiased. There is a belief that culture or colour makes no difference and all people are the same. This can lead to a belief that a service does not have to change or adapt to meet the needs of Aboriginal peoples.

Cultural pre-competence – there is movement towards attempts to improve some aspect of services to a specific population, for example by trialling a service or hiring people from the minority group. There may be a lack of understanding of cultural differences and appropriate responses.

Cultural competence – acceptance and respect for difference, continuing self-assessment regarding culture, careful attention to the dynamics of difference, continuous expansion of cultural knowledge and

resources, and a variety of adaptations to service models in order to better meet the needs of different cultural groups. This will result in services being adapted and designed to meet the needs of Aboriginal peoples.

Cultural proficiency – culture is held in high esteem. Culturally proficient agencies seek to add to the knowledge base of culturally competent practice through research, new approaches based on culture, publishing and disseminating the results of demonstration projects and advocating for cultural competence throughout the system. In the Australian context this would mean Aboriginal self-determination is supported (Cross et al., 1989).

Ranzin, McConnochie and Nolan (2009) propose that to achieve greater cultural competence in an Aboriginal context there needs to be a progression from basic knowledge to professionally specific skills. In particular:

1. Obtaining a generic understanding of the nature and significance of culture.
2. Obtaining a general understanding of Indigenous cultures, histories, contemporary societies and issues.
3. Exploring individual and societal values and attitudes (individual, institutional and cultural racism).
4. Critically examining the nature of one's profession or occupation.
5. Developing generic skills for working in Indigenous contexts.
6. Developing professionally specific skills for working in Indigenous contexts.

It is clear from the literature that organisations need to take a systemic and multi-level approach to develop cultural capabilities and – as has already been stated – this must be contextualised to align with the specific service. For example, the NH&MRC (2003) guide to developing a culturally competent system focuses on:

- placing culturally and linguistically diverse (CALD) background communities at the centre of organisational approaches to promoting healthier living and environments
- ensuring that the health system can capture, enumerate and measure diversity, and consider diversity in programming, planning and resource allocations

- acknowledging that cultural competency at management level affects the service culture of every level of the organisation
- recognising the need for a culturally competent evidence base in health promotion and health service delivery, supported by research into cultural competency issues and leading to culturally competent monitoring and evaluation
- developing and implementing training and practice standards to ensure that information about people from CALD backgrounds is used as a context for interaction, not as a tool to assume behaviours or attitudes, and
- recognising the policy imperative to increase both the quality and resourcing of professional development as a key strategy in achieving culturally competent practice.

While the NH&MRC guide is comprehensive, further work is required to develop a framework specific to the Aboriginal context. Queensland Health has done just that, clearly setting out five cross-cultural capabilities which have been adapted for non-clinical and clinical staff (Queensland Health, 2010). The framework presents a series of transitions with identified capabilities. Each capability is addressed in turn, whilst recognising that developing cultural competence is an ongoing, non-linear and evolving process. The capabilities are:

1. Self-reflection – the need to know and understand your own culture and identity.
2. Cultural understanding – to critically reflect on culture and to seek out and improve understanding of cultural codes.
3. Context – to put culture in context and understand the individuality or particular situation of a client.
4. Communication – to overcome cultural and linguistic barriers to achieve shared understanding and to convey information.
5. Collaboration – organisations that promote and work collaboratively will increase the cultural competence of the organisation and individuals.

This model highlights the need for organisations to develop common understandings of cultural capabilities and competence specific to the context in which it is operating.

It is of the utmost importance in the Australian context that an understanding of cultural competence goes beyond an 'awareness' of other cultures, in this case Aboriginal cultures. While it is important to learn about Aboriginal cultures, such learning will not - on its own - lead to cultural competence. A more effective approach is understanding "the processes that contribute to culture and the way in which discourses of culture and cultural knowledge are used by colonial systems to obtain and maintain the power of the dominant culture" (Downing & Kowal, 2011, p. 5). Focusing on cultural awareness or acknowledging cultural differences fails to address issues of power, and can lead to reasserting "broad generalisations and stereotypes without an increased understanding of the broader context and contemporary relations of domination and how they are lived" (Razack, 1994, p. 919).

Structural issues and processes which maintain the power of the dominant culture must also be addressed (Downing & Kowal, 2011, p. 5). Fredericks (2006) states that cultural competence training must address white race, white race privilege, include anti-racism strategies and include support for people to "take action within themselves, their work environment, the system in which they work and the broader society" (Fredericks, 2006, p.95).

There is also a decolonising imperative which includes addressing trauma and racism (Fredericks & Marlene, 2010; Ranzin et al., 2009; Sherwood, 2009). Without looking through the lens of decolonisation, trauma and racism, there is a risk of propagating the discourse which casts Aboriginal people as problematic and reinforces stereotypes of dysfunction (Sherwood, 2009).

Developing cultural competence and culturally capable services takes time. It takes time to build relationships, build trust and to thoughtfully, and respectfully question cultural differences (Department of Human Services, Victoria, 2008, p. 25). Systems must be developed that foster relationships and recognise the time it takes to build them.

Developing a culturally capable public service, which embeds appropriate capabilities in its policies and practices, is essential for engaging in any meaningful and sustainable way with Aboriginal communities. To become 'business as usual' cultural capability needs to be fully understood and defined for the New South Wales Public Service. Defining and developing a context specific cultural capability framework is essential in achieving this.

3.4 Research questions to explore

The following research areas are suggested to support the development of the cultural capability of the public service.

To understand the culture of the public service, the points at which its normative philosophies and practices might clash with Aboriginal knowledges and practices, and to help identify what needs to be developed or perhaps dismantled:

1. How is cultural capability understood in the New South Wales Public Service and how is it practiced? What influences practice including attitudes, beliefs and levels of racism? How do the cultures and 'disciplinary' knowledges of different departments facilitate or hinder implementation of the key principles contained in *OCHRE*?

To develop a framework that supports a culturally capable workforce including professional development and training:

2. How is genuine interest in and commitment to culturally safe practice established and maintained in public service practice? What is required for a cultural capability framework in New South Wales to be effective?

To understand the leadership qualities required for a culturally capable workforce:

3. What factors enable and support public servants to develop leadership attributes? How can these factors be embedded across New South Wales?

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4 Economic prosperity

4.1. Policy environment

This chapter provides a summary of the historical and current policy context relevant to Aboriginal economic prosperity in New South Wales. Related policies are spread across a range of portfolios and are driven by both the Australian and state governments. On many measures, current approaches are failing to improve outcomes as intended (Department of the Prime Minister and Cabinet, 2017). It is only in the last several decades that measures relevant to Aboriginal economic prosperity have been statistically visible, as Aboriginal and Torres Strait Islander Australians have been comprehensively included in the national census and other statistical collections for the first time. This has coincided with an explicit policy aim at the Australian Government level of convergence between Indigenous and non-Indigenous people on a range of socioeconomic indicators, including historically through the Aboriginal Employment Development Policy and today under the *Closing the Gap* framework.

There is an increasing body of literature that argues that this policy focus on statistical gaps is insufficient, in that it orients analysis and decision-making towards a 'deficits approach' (Pholi, Black & Richards, 2009; Kukutaia & Walter, 2015). The literature suggests that policy approaches should instead build on and learn from the strengths and resilience within Aboriginal communities, including the successful initiatives already being taken at the local level (Brough, Bond, & Hunt,



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2004; Tsey, Wilson, Haswell-Elkins, Whiteside, McCalman & Cadet-James, 2007; Armstrong, Buckley, Lonsdale, Milgate, Bennetts Kneebone, Cook & Skelton, 2012).

One approach that may assist in moving away from a focus on deficits is to examine the notion of economic prosperity, with a particular emphasis on how this is defined by Aboriginal peoples. Focusing on economic prosperity, rather than the more usual 'economic development,' reflects trends in international development literature that show multiple notions of development co-exist (Escobar, 1995; Cowen & Shenton, 1996), and suggest that Indigenous and minority development programs should take local knowledges and worldviews into account (e.g. Gegeo, 1998; Sillitoe, Bicker & Pottier, 2002; Bicker & Sillitoe, 2003). This might encompass 'standard' socio-economic indicators such as employment and income, as well as broader concepts such as livelihoods, empowerment, self-sufficiency, individual and collective wellbeing and support for self-determined economic priorities.

This paper provides context for a proposed future research program related to Aboriginal economic prosperity in New South Wales. It first provides a brief introduction to the policy environment by reflecting on the historical context and the ways in which the concept of economic prosperity can inform policy direction. It then turns to an exploration of several associated factors that will likely require consideration in future research in this area, and identifies some research questions to explore. The factors identified as relevant to economic prosperity in this paper are:

- A genuine commitment to self-determination
- Demography and diversity
- Racism
- Education
- Employment
- Enterprise
- Land and sea management, and
- Housing.

These include the factors already recognised in the New South Wales Government's Aboriginal Economic Prosperity Framework ('Growing NSW's First Economy,' Aboriginal Affairs, 2016a, see Appendix 1), as well as a number of additional areas identified in international and Indigenous economic development literature (e.g. Cornell & Kalt, 2002; Carter, Kamau, & Barrett, 2011;

Fuller, Howard, & Cummings, 2004). However, to move beyond standard measures, Aboriginal peoples must be consulted on what the concept of 'economic prosperity' means to them. Hence, the list of factors above should in no way be seen as definitive. A key research task will be to establish how Aboriginal peoples in New South Wales define economic prosperity and what variables they identify as relevant.

4.1.1. Historical context

The profound impact of colonisation on Aboriginal peoples in New South Wales has been documented elsewhere, and is too complex to explore in detail here. Nonetheless, it is important to identify that the effects of colonisation on economic development and economic inequality in New South Wales are ongoing. For example, the often violent displacement of Aboriginal people from their lands and the establishment of the reserve system were not only a direct attack on people, their lands and cultures, but also an assault on peoples' livelihoods. They alienated successive generations from economic resources and the capacity for self-provisioning (Goodall, 1996). At the same time, the acquisition of land rapidly increased the wealth and power of settler communities and, consequently, their control over Aboriginal peoples' lives.

This effect was compounded by subsequent policies. From the 1940s the Aborigines Welfare Board had authority to indenture wards to jobs off the reserves and to domestic work. Many people forced into these employment relationships were further disadvantaged through the withholding of wages and allowances that were held in trust by the New South Wales Government but, in many cases, were never returned.¹ Following the First World War, returning Aboriginal servicemen were excluded from the 'soldier settlement' schemes that granted blocks of land to other returning soldiers (Australian War Memorial, n.d.). In addition, until at least the mid-1970s the rights of Aboriginal peoples to access loans were severely restricted, including loans to establish businesses or secure mortgages to enter the private housing market (Whitlam Institute, 2015). Aboriginal peoples were not only forced to endure these many waves of trauma and dispossession but they were simultaneously denied an economic base and the capacity to accrue economic resources to pass on to future generations.

¹ In 2005 the Aboriginal Trust Fund Repayment Scheme was established to assess claims and pay Aboriginal people and their descendants the money owed to them. It ceased processing claims in 2011. A new reparations scheme for members of the Stolen Generations was announced in 2016, but it will not include claims associated with stolen wages (Public Interest Advocacy Centre, 2016). Retrieved from <https://www.piac.asn.au>

This historical legacy continues to have real world effects. For example, a lack of personal economic resources across generations often means greater reliance on the public provision of housing and services, and discrimination (such as in housing and employment markets) based on both Aboriginality and socio-economic status persists. Although land rights and native title legislation now exist, the ability to utilise land and sea for economic prosperity often remains limited. In addition, intergenerational economic inequality has contributed to an ongoing inequality in political power, in which Aboriginal peoples in New South Wales have often been excluded from the political decision-making processes that affect their lives. All of these effects require concerted policy attention. They highlight, in particular, that a path towards economic prosperity for Aboriginal peoples in New South Wales should provide redress for both historical and continuing injustices, and that this is inseparable from the pursuit of self-determination and the rights of Aboriginal peoples to develop economic prosperity on their own terms.

4.1.2. Economic prosperity as a guiding principle in policy and research

The concept of ‘economic prosperity’ orients the policy and research focus away from pre-determined measures of economic development towards a notion of human flourishing. It is well established in international literature that such outcomes are most likely achieved where Indigenous and minority development programs take local knowledges and worldviews into account (e.g. Gegeo, 1998; Sillitoe, Bicker, & Pottier, 2002; Bicker & Sillitoe, 2003). The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) is often seen as a guide for appropriate development principles. It recognises the right of Indigenous peoples to ‘development in accordance with their own needs and interests.’ Articles 23 and 32 are of particular relevance, and are identified here in Box 1.

Box 1: United Nations Declaration of the Rights of Indigenous Peoples, Articles 23 and 32

Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.
3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.

Amartya Sen’s ‘capabilities approach’ has sometimes been held up as the development framework that can best accommodate cultural differences in aspirations and life choices, and is one that has some insight for discussions on economic prosperity (see for example, Statistics New Zealand, 2002). Sen maintains that the most appropriate space for evaluating development is not a prescriptive set of measures, but whether a society enables ‘substantive freedoms—the capabilities—to choose a life one has reason to value’ (Sen, 1999, p. 74). This moves the emphasis away from pre-determined measures of ‘development’ towards approaches that prioritise a population’s own conceptualisation of what constitutes ‘the good life.’

Enacting the UNDRIP principles in New South Wales may be facilitated by exploring what constitutes the ‘good life’ for Aboriginal peoples and how they define their economic development values, priorities and

interests. This is likely to vary significantly across New South Wales and its diverse Aboriginal groups and individuals, such that there may be a range of different location- and population-specific measures of economic prosperity across the State.

To date there have been few robust studies of what Aboriginal peoples in Australia identify as ‘the good life,’ or how this informs priorities for economic prosperity. A recent study measured community wellbeing among the Yawuru people in the Broome region of Western Australia. The research used a sequential mixed-methods approach to develop, test and conduct a large-scale Yawuru Wellbeing Survey, with Yawuru significantly shaping the survey design to ensure it would adequately capture Yawuru perspectives. It found that Yawuru understandings of ‘the good life’, or *liyan*, reflect a model of ‘living well in connection with Country, culture, and others as well as with oneself’ (Yap & Yu, 2016, p. 29). Major sources of attaining *liyan* included family and relatedness, strong culture and identity, the ability to be self-determining, and security in material living standards. This includes having a strong education (both Western and cultural), secure and meaningful work, and adequate cash flow. Although the research was not focused specifically on economic prosperity, it illustrates in the Yawuru case the need for balance across the domains so that material gains in employment, education and income sit alongside gains in autonomy, culture and connection to Country.

A smaller focus group study in Redfern in 2009 found similar results. Alongside a concern for basic material needs, participants ranked the top ten factors that influenced their wellbeing, with the highest overall scores being given to ‘spirituality’, followed by ‘knowing about my people’s history and culture’ and ‘education.’ Three factors were ranked equal third: ‘knowing family history’; ‘knowing about and exercising my rights as an Indigenous person’; and ‘being able to give to my family and friends’. While this study was not as large as the Yawuru research project, it raises interesting questions about whether there are culturally-informed development priorities for Aboriginal peoples in different urban settings (Grieves, 2009).

Internationally, Indigenous perspectives of the ‘good life’ are increasingly being utilised to inform Indigenous-led approaches to economic development. For example, Māori views on economic prosperity are documented in the *He Mangōpare Amohia: Strategies for Māori Economic Development* report. This draws on a three-year research project that sought to ‘design a self-defined aspirational framework for Māori economic

development’ and identify strategies to achieve it. The project engaged the views of the various iwi (kinship groups or tribes). The first stage was based around forums and assemblies to determine key questions for the overall research program. Supplementary questions were added where specific iwi deemed them relevant. These questions were therefore based on an iwi perspective, and set the parameters for what they wanted answered for the benefit of their people (Hingangaroa Smith, Tinirau, Gillies & Warriner, 2015, p. 32). This research suggested that cultural, social and economic development should be pursued in tandem to ensure that gains are balanced across each of these domains and contribute to overall wellbeing (Hingangaroa Smith et al., 2015, p. 56).

A similar conceptual framework has been developed regionally in the recent Manawatū-Whanganui Māori Economic Development Strategy. This incorporates a Māori perspective of economic development with a regional economic, demographic and environmental profile to identify values and strategic priorities for the region. The Strategy aims to identify common goals of several iwi in order to take advantage of regional economic opportunities (Mika, Bishara, Selwyn, KiwiScally, Taurau & Dickson, 2016). This growing body of research in New Zealand has identified that Māori definitions of economic development often see development as a means to achieving the realisation of ‘culturally strong’ and self-determining populations, rather than an end in itself (Carter, Kamau, & Barrett, 2011, p. 18).

It is therefore encouraging that some of the relationships between economic prosperity and self-determination are also recognised in the New South Wales Government’s *OCHRE* framework (NSW Government, 2013). However, the New South Wales Aboriginal Economic Prosperity Framework itself is more narrowly focused on three areas: jobs and employment, education and skills, and economic agency² (Aboriginal Affairs NSW, 2016a, p.2). It makes commitments related to Aboriginal employment and education, support for small-to-medium sized Aboriginal enterprises, procurement targets for government contracts, and targets for private rental and home ownership.

This narrower framing of economic prosperity likely reflects the intention to fully integrate the Aboriginal Economic Prosperity Framework into New South Wales’

² Where ‘economic agency’ is defined further to include Aboriginal economic participation in regional and district building infrastructure plans, support for Aboriginal owned and operated small and medium enterprises, and a target for Aboriginal households moving from social housing into private rental and/or home ownership.

whole-of-government economic development planning. However, a useful exercise in a future research program would be to identify additional elements of an economic prosperity framework from Aboriginal perspectives. Further development of an economic prosperity framework could also assist in coordinating programs across government. To date, the examination of economic opportunities and challenges for Aboriginal people in New South Wales has been inconsistently framed across different government agencies and investigations. This includes through the *OCHRE* Plan (NSW Government, 2013) and its Aboriginal Economic Prosperity Framework (Aboriginal Affairs NSW, 2016a) as well as the Roundtable on Aboriginal Economic Development (Aboriginal Affairs NSW, 2015b), the New South Wales Ombudsman's *Fostering economic development for Aboriginal people in New South Wales* report (NSW Ombudsman, 2016) and the New South Wales Legislative Council's inquiry into economic development in Aboriginal communities (NSW Legislative Council Standing Committee on State Development [NSWLCSC], 2016a).

All of these use different concepts that relate to the notion of economic prosperity, without specifically defining these concepts and notions, or how they relate to each other. These include 'economic empowerment,' (NSW Government, 2013, p.5) 'economic agency,' (Aboriginal Affairs NSW, 2016a) 'economic autonomy,' (NSWLCSC, 2016a, p. 2) individual 'wellbeing,' (NSWLCSC, 2016a, p.1) 'living standards,' (Aboriginal Affairs NSW, 2015b, p.2) and community strength and sustainability (NSWLCSC, 2016a, p. 7). Any work done to further develop an economic prosperity framework could encourage a more consistent and conceptually robust approach.

4.2. What the research tells us

Understanding how Aboriginal peoples across New South Wales define economic prosperity should be a priority in future research. However, in the absence of existing research this section sets out a number of potential elements of an expanded economic prosperity framework. While they do not constitute a definitive list, they are likely to be important factors to consider.

4.2.1. Potential elements of economic prosperity

A genuine commitment to self-determination

Context

Examining what constitutes economic prosperity from an Aboriginal perspective, as well as appropriate strategies and measures to achieve it, will require significant power-sharing and the genuine facilitation of diverse Aboriginal contributions to the framework's design (see also Dodson, 2016). For example, devolution of decision-making and some devolution of financial authority will be required for Aboriginal communities to outline a self-determined development agenda, and have the ability and resources to enact it. Communities would also need the support of appropriate local or regional governance institutions through which locally-driven development can be sustained. The Harvard Project on American Indian Economic Development found this foundational institutional environment to be 'the key dynamic in economic development' (Cornell & Kalt, 2002).

What is being done?

The *OCHRE* Plan has begun devolving some decision-making related to the delivery of services to regional alliances – made up of representatives selected by Aboriginal communities within defined regions – through the Local Decision Making (LDM) program. The need to progress economic development is identified in all the LDM Accords. It is not clear, though, whether these regional alliances will be the appropriate bodies to pursue economic development, nor is it yet clear how they will work in conjunction with the Local Aboriginal Land Council (LALC) network and its existing economic development function. Some alternative models of self-determination that could be useful in considering an economic prosperity framework are outlined by Janet Hunt in Chapter 5 of this document.

Demography and diversity

Context

A key factor to consider in developing any economic prosperity framework is the diversity of Aboriginal people and communities, and the differences in economic opportunity, across New South Wales. Each region has different needs based on its demographic composition, history, economy and cultural diversity.

Some areas face particular locational advantages or disadvantages (such as rates of unemployment, the

industrial profile of the region, and access to public transport and other infrastructure and services). Nationally, Biddle (2013a) developed an index of socioeconomic outcomes for 411 areas across Australia, based on the 2011 Census. This index, extending the time series from previous work on the 2001 and 2006 Censuses, identifies areas from across Australia where the Indigenous population has relatively favourable socioeconomic outcomes compared to the rest of the Indigenous population, as well as the non-Indigenous population in the same area. It also identifies those areas that are relatively disadvantaged. Across Australia, remote areas tend to have worse outcomes on average (in terms of employment, education, income and housing) than those in non-remote areas. The Australian Government's *Overcoming Indigenous Disadvantage* report also showed that at the individual level some important indicators of disadvantage tend to be worse for Aboriginal people in remote regions (SCRGSP, 2016). It is important to note, however, that there is no clear, linear relationship between remoteness and socioeconomic disadvantage. For example, Biddle identifies a number of highly urban areas (particularly in western Sydney) that are in the bottom quartile of the socioeconomic distribution (Biddle, 2013a). That is, Aboriginal residents in those areas were not only socioeconomically disadvantaged relative to the resident non-Aboriginal population, but also relative to the rest of the Indigenous population nationally.

Specific geographic and locational opportunities and constraints vary across New South Wales. Regional and remote areas may have fewer employment opportunities, and/or be dominated by a small number of industries and are therefore particularly susceptible to business cycles and to technological changes. Sustaining a small enterprise in these areas may also be difficult where there is limited access to consumer markets. On the other hand, some metropolitan areas may have unique economic challenges, even when they are close to established markets. For example, western Sydney faces particular constraints including the decline of traditional industries, very high rates of youth unemployment and a mismatch between accessible transport options and the location of jobs (see O'Neill, 2016; Biddle, 2009). Large parts of Sydney are also associated with significantly higher costs, including for people attempting to establish and maintain a business (rent, material and labour costs).

A significant demographic feature to consider in an economic prosperity framework is the relatively young age profile of the New South Wales Aboriginal

population (see Taylor, 2006, p. 11). At the 2011 Census, a much higher proportion of the Aboriginal population was aged 24 years or less (56.5 per cent) than the non-Aboriginal population (31.5 per cent). This age structure means it is likely the Aboriginal population in New South Wales will grow relatively rapidly. A young age profile can be an economic opportunity if there is appropriate education, training and employment available (the so called demographic dividend) (Bloom, Canning, & Sevilla, 2003). On the other hand, this opportunity can become a substantial problem as young people enter the labour market if there are insufficient jobs to absorb the demographic growth.

Coupled with this young (and demographically increasing) population is a very high rate of identification change observed within New South Wales. Over the 2006 – 2011 inter-censal period, New South Wales experienced one of the largest increases in the proportion of people who had not previously identified as being Aboriginal or Torres Strait Islander in 2006, but who identified as such in 2011. There are structural reasons to suggest this trend will continue, including high rates of mixed partnering and a large cohort of young people entering the age at which identification change occurs. If it does, then the Aboriginal population is likely to grow much faster than would be predicted by the excess of births over deaths. At the same time, the characteristics of the Aboriginal population are also likely to change (Biddle, 2015), with an urbanising and ageing Aboriginal population.

Small enterprise is sometimes put forward as a solution to the challenge of a young and growing population. However, international evidence suggests that although younger people may have significant entrepreneurial motivation (Levesque & Minniti, 2006), successful entrepreneurship tends to be correlated with higher human capital and work or industry experience, as well as financial capital (especially in the form of housing wealth) (e.g. Unger, Rauch, Frese, & Rosenbusch, 2011; Che Rose, Kumar, & Lim, 2006). This accumulates over time and may therefore be correlated to older age.

Alongside these demographic characteristics, Aboriginal cultural diversity may also have implications for economic opportunity. For instance, a cultural tourism enterprise in Gumbaynggirr country (North Coast) could be very different to one in Paakintji country (Western New South Wales), offering an opportunity to market Aboriginal cultural tourism in New South Wales as 'strong, vibrant and diverse' (Destination NSW, n.d.). Regional and remote areas may present greater

opportunity for the continuation of aspects of the customary economy and for the development of niche enterprises in this sector, such as in cultural tourism, bush food and medicine and the production of art and craft. However, there are also successful examples of cultural tourism and arts enterprises in urban areas such as the Sydney region.

What is being done?

The diversity of regions across New South Wales necessitates a flexible and localised approach to driving economic prosperity, taking local strengths into account alongside economic circumstances. Developing a framework for Aboriginal economic prosperity could, therefore, usefully include a detailed examination of demographic, economic, environmental and institutional features by region. Part of the analysis of each region should include a survey of existing Aboriginal organisations and successful programs to build on this base.

Some basic analysis of Aboriginal demographic trends in New South Wales has already been undertaken by LALCs, which are required to publish data on the demographic profile of their regions in their Community, Land and Business Plans. Local governments often undertake similar regional profiling for their economic and social plans, and some have tailored this to develop targeted plans for their regions' Aboriginal and Torres Strait Islander populations. For example, the City of Sydney's (2016) draft *Eora Journey Economic Development Plan* drew on community consultations to develop a plan for cultural, economic and social sustainability for Aboriginal and Torres Strait Islander people in the council area. At a state and Australian Government level, Regional Development Australia (RDA) committees are also responsible for developing regional economic development plans that take into account relevant local, state and Australian government initiatives. However, there is an opportunity to tailor this research to focus more specifically on Aboriginal economic prosperity in New South Wales, by examining the ways in which broader economic and demographic trends relate to the circumstances, strengths, and priorities of local Aboriginal populations. This detailed analysis could be undertaken in collaboration with LALCs and Local governments, and might be facilitated through the *OCHRE* Plan's Local Decision Making process or regional Industry-Based Agreements.

It may be more useful to examine the constraints and opportunities of regions based around their common 'structural settings' (such as high-unemployment city suburbs, industrial towns, discrete communities) rather

than the standard classifications (remote, regional and urban) which tend to gloss over quite profound differences, for example among regional areas or even within cities (Taylor, 2006).

Racism

Context

The prevalence of racism is sometimes overlooked in thinking about economic prosperity, but it can have a profound effect. For example, it can impact employment opportunities and job search if jobseekers anticipate they might encounter a negative response (Biddle, Howlett, Hunter, & Paradies, 2013). It can also effect the experience of Aboriginal people at work, and therefore undermine job retention. Likewise, it can limit educational outcomes for Aboriginal students (Bodkin-Andrews, Paradies, Parada, Denson, Priest & Bansel, 2012) and present challenges for Aboriginal entrepreneurs in engaging with non-Aboriginal customers and suppliers (Foley, 2004). The indirect effects of racism on economic opportunity are also felt through the limits it can impose on access to housing, appropriate health care and other services, and through the interrelationship between racism and interactions with the criminal justice system (Paradies, Harris, & Anderson, 2008).

Booth, Leigh and Vargonova (2012) conducted a large-scale field experiment in 2007 to examine the impact of perceived ethnicity on call back rates to job applicants. In what is commonly referred to as an 'audit study' (List, 2004), applicants with 'Indigenous-sounding' names were significantly less likely than applicants with 'Anglo-Saxon-sounding' names to get a call back for an interview. There are several limitations to this study. First, there is the subjective nature of what constitutes an 'Indigenous sounding name' and, second, the study does not enable us to see beyond the call back stage to discrimination in the interview stage or in employment. Nonetheless, it provides some evidence of a significant barrier for Aboriginal and Torres Strait Islander people seeking employment, with a call back rate of 26 per cent compared to 35 per cent for the Anglo-Saxon-sounding group.³ A smaller study of 25 Indigenous entrepreneurs in 2004 also identified racism as among the biggest barriers to Indigenous business success (Foley, 2004). There is a strong need to expand this style of analysis. There is, for example, potential to go both beyond the labour market (to examine, for example, the private

³ This was higher only than for the Middle Eastern and Chinese groups, at 22 and 21 per cent, respectively.

rental market, financial markets and customer relations) and to use more realistic signalling of Indigenous status, either through trained actors or through photographs.

Biddle et al. (2013) have examined the prevalence of different types of self-reported discrimination in the 2008 National Aboriginal and Torres Strait Islander Social Survey (NATSISS). When asked specifically about labour market discrimination (having felt discriminated against when applying for work or when at work), 8.4 per cent of the Indigenous working-age population reported experiencing such discrimination in the previous year (Biddle et al., 2013, p. 97). The likelihood of reporting labour market discrimination in the previous 12 months was correlated with older age, higher levels of education and unemployment (Biddle et al., 2013, pp. 100-106). The research also found that self-reported labour market discrimination was lower among Indigenous people who lived in a household with non-Indigenous people, and those who had predominantly non-Indigenous friends (Biddle et al., 2013, p. 5).

More recent data from the 2014/15 NATSISS shows that unfair treatment because of a person's Aboriginal or Torres Strait Islander status continues to be quite high in New South Wales. In the most recent survey, 33.1 per cent of respondents in New South Wales reported such unfair treatment in the previous 12 months. Of those who did experience unfair treatment, 16.7 per cent reported this occurred when applying for work or when at work. The most common source of reported unfair treatment was interactions or engagements with members of the public (26.5 per cent).

There is little published research about the prevalence and experiences of racism in different regions of New South Wales. However, a 2001 report found that some areas of western and southwestern Sydney had particularly high levels of racist sentiment (as did the densely settled regions of the Hunter and Illawarra, and the Mid North Coast). Specifically, anti-Indigenous sentiment was highest in the Richmond-Tweed and North Western/Far West regions (Dunn, Forrest, & McDonald, 2001). A follow up survey in 2007, that focused only on Sydney, confirmed higher levels of intolerance for cultural difference were still apparent in several western and southwestern Local Government Areas, as well as parts of the rural-urban fringe (Forrest & Dunn, 2007).

What is being done?

While an effective legislative framework is essential to address racism and discrimination, laws on their own

are not enough. Cultural and institutional change is often needed. Work to reduce the incidence of racism and discrimination in New South Wales occurs at various levels including local government, Australian and state government agencies, and through universities, schools and non-government organisations such as Reconciliation Australia. Some key initiatives are identified here.

As noted above, NATSISS data suggests that in New South Wales the most commonly reported source of unfair treatment because of a person's Aboriginal or Torres Strait Islander status is interactions with members of the public. International literature suggests that initiatives focused on combatting this 'everyday racism' – including racist incidents on public transport and in other public places – should be locally-developed and locally-owned (Forrest, Dunn, Burnley & McDonald, 2002, p.10). Such everyday racism is targeted in programs like Western Sydney University's Bystander Anti-Racism Project (Pedersen, Paradies, Hartley & Dunn, 2011).

At the national level, the Australian Human Rights Commission's (2015a) National Anti-Racism Strategy seeks to work with all levels of government to identify and build on good practice in anti-racism initiatives. It has focused on developing a number of strategic projects including:

- online anti-racism resources for young people
- training resources to address systemic racism against Aboriginal and Torres Strait Islander people using government services
- a workplace cultural diversity tool
- education resources on racism for schools
- a national forum on diversity training for police
- resources for building social cohesion through local government.

Under the National Anti-Racism Strategy local governments are encouraged to measure social cohesion in their communities using a standardised tool, and commit to social cohesion as an explicit priority in strategic planning (Australian Human Rights Commission 2015b).

Many initiatives to reduce racism and discrimination have focused on the workplace. The New South Wales Public Service Commission's Aboriginal Employment Strategy 2014-17 includes provisions for improved cultural competence in the New South Wales Public

Sector (NSW Public Service Commission, 2015). Private sector employers may also be encouraged to facilitate improved cultural competence in the workplace through voluntary participation in the Reconciliation Action Plan (RAP) program.

Inter-state, the Victorian State Government has recently introduced a broad ranging ‘anti-racism action plan’ which also seeks to address other forms of discrimination. Key elements include a focus on empowering people to respond to everyday racism, developing school and early childhood curriculum materials to address discrimination, targeting discrimination in rental housing, and a review of how racism is reported and recorded in that State (Victorian Government, 2017, p.37).

Education

Context

Education is fundamental to economic prosperity, with clear links to other variables including health, employment opportunities, entrepreneurship and income. Biddle (2013b) provided a (national) summary of the education data for Aboriginal and Torres Strait Islander Australians, highlighting both the very large economic returns generated through education (those who complete school or post-school qualifications have significantly improved employment, income and occupation levels) and the many remaining barriers to equity in access to education.

There are several provisions in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP, 2007) with direct relevance to education. UNDRIP recognises the right of Indigenous families and communities to ‘retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,’ and the right to ‘establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning’. It further states that Indigenous peoples ‘have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information’ (UNDRIP, 2007). There is substantial literature related to putting these principles into practice, focusing particularly on engaging Indigenous people and communities in the design and delivery of education.

System design, pedagogy and curriculum

In their review of approaches to Indigenous education in Australia, Whatman and Duncan (2015) found that ‘the more successful programs correlated with greater Indigenous community participation in education’. Several studies have identified a strong preference among some Aboriginal families and communities for ‘two-way learning’ that gives children a solid formal education as well as retaining and strengthening their Aboriginal identity and culture (Whatman & Duncan, 2005; Malin & Maidment, 2003).

Schwab and Sutherland (2001, p.5) propose the concept of building ‘Indigenous learning communities’ around schools to engender a sense of empowerment through the education process. This approach extends the traditional role of the school to incorporate other initiatives—like adult education and child and family services—that engage the broader community in an ongoing relationship with the school. This identifies learning as a life-long process linking families, schools and communities, including businesses and governments.

Schwab and Sutherland (2001, p.5) caution against approaches that profess to empower Aboriginal communities in schooling processes but in practice retain decision-making power within the school and education department. In this model, Aboriginal families find their advice is ignored, are faced with continually needing to re-educate teachers and administrators, and are often disempowered by the process. By contrast, a learning community model is based on a genuine partnership.

Langton and Ma Rhea (2009) also recommend a ‘systems approach’ to Indigenous education based on a ‘partnership model between all stakeholders,’ including local Indigenous families and communities, the school and administrators, as well as networks with universities, TAFEs and businesses to facilitate pathway opportunities.

Current education outcomes

Aboriginal and Torres Strait Islander people make up around three per cent of the total Australian population but, because of the younger age profile, comprise 5.3 per cent of school enrolments nationally. New South Wales has the largest share of Aboriginal and Torres Strait Islander students in Australia (32 per cent of the national total) (ABS, 2016).

A key focus in education policy at the national level is attendance. The reasons for low attendance among

some Aboriginal and Torres Strait Islander students are very complex, and may include a range of home-based, school-based and other factors (Purdie & Buckley, 2010; Biddle, 2014). A 2010 review of the literature on attendance and retention programs for Indigenous students found, while there was little high-quality evidence, a common feature of successful educational programs was ‘creative collaboration’ between public agencies and the community, such as by engaging parents and community-based organisations in partnerships. It also stressed the value of education practitioners and policy makers being ‘well versed in the importance of cultural factors in schooling,’ developing ‘expanded understandings of what it means to participate and engage in education’ and developing policy and programs that ‘take account of Indigenous cultures and history’ (Purdie & Buckley, 2010).

Another main focus at the national level has been the measurement of literacy and numeracy skills, particularly as assessed through the National Assessment program – Literacy and Numeracy (NAPLAN) and the Longitudinal Survey of Australian Youth (LSAY). A study of academic outcomes from LSAY found that, once academic achievement at age 15 was controlled for, there was no significant difference in subsequent educational outcomes of Indigenous and non-Indigenous students (Mahuteau, Karmel, Mavromaras, & Zhu, 2015, p. 35). In a 2007 review of relevant research, Fordham and Schwab also identified that completion of Year 10 appeared to be ‘the critical point with respect to lifetime employability’ (see Hunter, 2010, p.2). These findings indicate that the greatest scope for improving educational and employment outcomes for Aboriginal and Torres Strait Islander students lies in improving performance in the early and middle levels of schooling.

NAPLAN results for Aboriginal and Torres Strait Islander students vary significantly by region. While this is also true for the non-Aboriginal population, for most year levels and for most jurisdictions the variation is greater for Indigenous students. In New South Wales, there was an increase in the proportion of Aboriginal and Torres Strait Islander students reaching the National Minimum Standard (NMS) for Year 5 reading from 78 per cent in 2008 to 81 per cent in 2015. The figure of 81 per cent puts New South Wales roughly in line with Victoria, Queensland and Tasmania on this measure, but a little behind the ACT and significantly ahead of South Australia, Western Australia and the Northern Territory (Department of the Prime Minister and Cabinet, 2016).

Debates about the merits of NAPLAN testing are beyond the scope of this review. However, some studies of

Aboriginal and Torres Strait Islander education have cautioned against putting a disproportionate emphasis on measuring student outcomes to the exclusion of ‘system outcomes’ (e.g. Whatman & Duncan, 2005). These might include, for example, teacher professional development, Indigenous staffing ratios, and feedback from families and communities about their influence in school decision-making. They may also include the effectiveness of anti-discrimination efforts in the schooling process.

Another key policy issue is improving access to high quality early childhood education (see Arcos Holzinger and Biddle, 2015). However, as argued in Biddle and Bath (2013), access is more than just physical access, and includes ensuring all early childhood education spaces are designed to meet the needs and aspirations of the parents of Aboriginal children. This could include ensuring, where possible, the availability of early childhood workers who identify as being Aboriginal, access to Aboriginal language instruction in the classroom, careful and well-evaluated policy interventions that minimise biases and negative stereotypes, and a concerted effort to make sure the carers of Aboriginal students are welcome in the early childhood environment (regardless of whether they themselves identify as being Aboriginal). A potential policy response to help achieve this would be to encourage all schools and early learning services in New South Wales to engage with *Narragunnawali*, Reconciliation Australia’s schools and early learning program (Reconciliation Australia, n.d.), though it should be noted that all interventions should be carefully evaluated for their causal impact.

Transitions to higher education and work

The Ministerial Taskforce on Aboriginal Affairs’ consultations with Aboriginal people in New South Wales identified the importance of supporting the transition from school to further training, higher education or employment. There are multiple pathways for Aboriginal and Torres Strait Islander people into higher education and paid employment. Vocational Education and Training (VET) plays a critical role, with a relatively high proportion of the Aboriginal and Torres Strait Islander population undertaking VET (compared to the non-Aboriginal population) (SCRGSP, 2016).

A 2012 report on youth transitions found that transition outcomes were much better for Aboriginal and Torres Strait Islander youth who complete Year 12 than for those who leave school early (Karmel, Misko, Blomberg, Bednarz, & Atkinson, 2014). However, VET courses provided in secondary school can offer a pathway to

local employment. Work placement components of school-based VET courses seem to aid in the transition to jobs and apprenticeships (Hunter, 2010).

Among VET students, the Aboriginal and Torres Strait Islander population is overrepresented in the lower level qualifications at Certificate II or below (Mahuteau et al., 2015). However, in New South Wales there is a strong trend towards Aboriginal students enrolling in higher-level qualifications, particularly among the 15 to 24-year age group (NSWLCS, 2016b, p. 32).

VET may be particularly important in non-metropolitan areas where access to higher education institutions is limited (SCRGSP, 2016). In their submission to the New South Wales Legislative Council's inquiry into economic development in Aboriginal communities, the New South Wales Aboriginal Land Council (NSWALC) noted the central role TAFE New South Wales plays in post-school training for Aboriginal people, especially in these rural and regional areas (NSWLCS, 2016a, p. 31). The New South Wales Aboriginal Land Council and other stakeholders raised concerns that funding cuts to TAFE New South Wales by the New South Wales Government have had a 'significant' negative impact on Aboriginal people (NSWLCS, 2016a, p. 31).

For Aboriginal and Torres Strait Islander people, university graduation is strongly correlated with employment (Biddle, 2007). According to the 2011 Census, Aboriginal and Torres Strait Islander people with bachelor or higher-level qualifications have very high employment levels when compared to those with qualifications of Certificate II and below and those with no post-school qualifications (Department of the Prime Minister and Cabinet, 2016, p. 25). In addition, Aboriginal and Torres Strait Islander Australians with degrees have employment outcomes largely on par with their non-Indigenous counterparts (Karmel et al., 2014, p. 41).

What is being done?

While there is considerable potential for national policy changes to impact on Aboriginal educational outcomes in New South Wales,⁴ there is also significant scope for

⁴ The Australian Government plays a substantial role in the provision of funding, the delivery of specific programs and development of the national curriculum and national testing. This arrangement may place some limits on school autonomy and the capacity of State and territory governments to enact certain types of reform, although some cooperation has been struck through National Partnership Agreements. National collaborative action to improve outcomes for Aboriginal and Torres Strait Islander students has been endorsed by COAG's Education Council in the National Aboriginal and Torres Strait Islander Education Strategy. The Australian Government's programs for Aboriginal and Torres Strait Islander education are focused on 'early intervention, engaging with parents, encouraging school attendance, adaptive teaching methods and training and supporting high quality school leaders and teachers.'

jurisdiction-specific approaches and priorities. The Aboriginal Economic Prosperity Framework commits the New South Wales Government to targets relating to Aboriginal participation in early childhood education and improved NAPLAN results for Aboriginal and Torres Strait Islander students, as well as scholarships, apprenticeships and traineeships for Aboriginal people (Aboriginal Affairs NSW, 2016a).

Under *OCHRE*, the New South Wales Government has established several programs aimed at improving education participation, retention and outcomes:

- Opportunity Hubs
- Connected Communities
- Aboriginal Language and Culture Nests.

The four Opportunity Hubs are designed to support Aboriginal students to stay at school, and strengthen the transition between education, training and employment. They directly respond to the recommendation of the Ministerial Taskforce on Aboriginal Affairs (2013, p.8) to trial this approach. The Opportunity Hubs are contracted to work with students and job seekers to develop individual learning and career plans, help to coordinate local services to broker personalised support, and assist with job-matching with employers (Aboriginal Affairs NSW, 2014, p.16; Aboriginal Affairs NSW, 2015a, p.30). A further goal of the Opportunity Hub program is to develop governance structures for the Hubs that 'give local Aboriginal communities a strong voice in determining and directing their priorities and operations' (Aboriginal Affairs NSW, 2014, p.16). Opportunity Hubs are currently operating in the Upper Hunter, Dubbo, Tamworth and Campbelltown regions (Aboriginal Affairs NSW, 2016b, p. 10).

The *OCHRE* progress reports recognise potential for relationships between the Opportunity Hubs and the Australian Government's Vocational Training and Employment Centres (VTECs), suggesting that the two programs should work together. However, there is no published analysis to determine if there is a duplication of services across these two very similar programs where they operate in the same regions, or how such partnerships would value add. VTECs are discussed in more detail below.

Within the *OCHRE* framework, the establishment of five 'Aboriginal Language and Culture Nests' (Aboriginal Affairs NSW, 2014, p. 11) and the Connected Communities program are additional tools aimed at

improving education outcomes. Connected Communities is currently implemented in 15 schools and has several aspects:

- Embedding Aboriginal culture and language into the curriculum
- Actively engaging Aboriginal families and communities in shared decision-making
- Cross-agency coordination and service delivery to address student needs, using schools as community hubs to link school education to other related services.

Employment

Context

The participation of Aboriginal people in New South Wales in employment will be crucial to any economic prosperity framework and will likely be central to a future research plan. Nationally, the Indigenous employment rate fell significantly between 2008 and 2012-13 (Department of the Prime Minister and Cabinet, 2016). New South Wales has also seen increasing unemployment, especially among young Aboriginal people (Aboriginal Affairs NSW, 2015b, p.2). There are several initiatives in public and private sector employment with potential to improve outcomes for Aboriginal job seekers.

Public sector employment

The representation of Aboriginal and Torres Strait Islander people in the New South Wales public sector has tended to be relatively high compared to other sectors and has grown reasonably steadily over the last decade, up from 1.9 per cent in 2006 to 3.1 per cent in 2016 (NSW Public Service Commission, 2016). This is a significant proportion given that Aboriginal people make up 2.9 per cent of the total New South Wales population (Aboriginal Affairs NSW, 2017, p.1). However, Aboriginal and Torres Strait Islander employment in the New South Wales public sector is disproportionately at the lower end of salary levels (NSW Public Service Commission, 2016). One factor that may be limiting representation at the higher salary levels is retention. Median tenure for Aboriginal and Torres Strait Islander employees in the New South Wales public sector is two years shorter than the sector average, and separation rates are higher (NSW Public Service Commission, 2016, p. 40).

In the New South Wales public sector, Aboriginal and Torres Strait Islander staff are more likely to see their cultural background as a barrier to success in their

organisation than other employees do, including those with languages other than English (NSW Public Service Commission, 2016, p.37). This is despite most agencies having diversity and inclusion goals for Aboriginal and Torres Strait Islander representation and offering cultural competency training (NSW Public Service Commission, 2016). There is a small but growing literature on Indigenous people's experiences of working in the Australian and state and territory public services. Some of the factors identified as important for retention include greater inclusion and respect for Aboriginal and Torres Strait Islander staff within the workplace, strategies for cultural awareness and cultural competency training, and strategies to address stereotyping, discrimination and bullying (Biddle & Lahn, 2016). In research with senior Indigenous bureaucrats in the Northern Territory, Ganter (2016) highlights that some were uncomfortable if there was an expectation that they would speak on behalf of Aboriginal or Torres Strait Islander people as a whole or if they felt they could not adequately contribute to their community. In some cases, such feelings of being 'inefficacious' or 'illegitimate' led to their decisions to leave.

Additional challenges for the retention of Aboriginal and Torres Strait Islander public sector employees include work-family balance. Biddle and Lahn (2016, p.3) suggest that provisions for cultural leave and flexible working arrangements 'may be insufficient to address this issue, as these provisions are not always taken up.' Further barriers to retention may include a perception among Aboriginal and Torres Strait Islander staff that there is a lack of professional development and career advancement available to them, or that their pre-existing and informal skills and knowledge are not recognised (Biddle & Lahn, 2016, p.3).

Industry commitments and partnerships

Increasing Aboriginal and Torres Strait Islander employment through industry commitments and partnerships has been a growing area of interest among both Australian and state governments. There is little published evidence to date about 'what works' in industry programs and partnerships, although most programs adopt a number of similar key elements. For example, the Reconciliation Action Plan (RAP) program includes a number of features that are seen as critical for success in Aboriginal and Torres Strait Islander employment and retention. Participating organisations must take practical action to increase understanding of, and respect for, Aboriginal and Torres Strait Islander cultures within the workplace. They are also encouraged to implement plans for the professional development

and career progression of Aboriginal and Torres Strait Islander staff, as well as programs for professional mentoring. All organisations are also asked to build external relationships with Aboriginal and Torres Strait Islander people, communities and organisations in the local area. Many RAP organisations commit to measurable employment targets (Reconciliation Australia, 2015). The inclusion of not-for-profit organisations in this program is significant in that it demonstrates the potential for Aboriginal employment in the not-for-profit and non-government sectors.

Two case study reviews of private sector employment programs have identified what they see as elements for success. In a 2012 review of six employment programs (GenerationOne, 2012) that were deemed to have successful Indigenous employment outcomes, the key features included:

- a leadership and management that are wholly committed to the program
- adequate resourcing with sufficient staff, facilities and budget
- clear, consistent expectations of participants
- pre-employment and accredited training/preparation
- appropriate selection and placement, including a focus on capabilities rather than experience and qualifications
- on the job support and career progression, including ongoing mentoring and exposure to progression pathways
- the whole organisation is educated on Indigenous culture and history
- developing wider links and partnerships with the Aboriginal and Torres Strait Islander community.

A similar study of seven employment programs suggested success factors also included preparation of the workplace (e.g. through cultural awareness training); the availability of mentoring for participants; recognition and support where there are multiple barriers to employment; and adaptation of pedagogical methods to meet participants' needs (Hugh Watson Consulting, 2012).

The programs included in the above analysis were selected because they also offered a specified job which was available to the participant, either at the outset of the program or upon successful completion. This is the same principle relied upon by the Australian Government's trial Vocational Training and Employment Centres, seven of

which are in New South Wales (principally along the eastern seaboard, except for programs in Orange and Dubbo). VTECs are designed to be 'demand-driven', in that targeted training and support are delivered to unemployed job-seekers where an employer has 'guaranteed' an identified job upon the successful completion of training. Official data on the trial VTECs have not yet been released. However, their design does support a number of principles identified above, including partnering with employers to target job vacancies, investment in preparatory pre-employment training relevant to the targeted industries/employers, sustained and intensive pre- and post-placement mentoring and the wrapping of a suite of support services around the individual to ensure long term retention.

What is being done?

The Aboriginal Economic Prosperity Framework requires that each cluster/agency in the New South Wales public sector doubles the number of Aboriginal people in senior leadership roles, and that a rate of 1.8 per cent Aboriginal employment be achieved in each cluster and salary level by 2017 (Aboriginal Affairs NSW, 2016a). The New South Wales Public Service Commission describes the latter as an aspirational goal. It would result in an increase in total Aboriginal representation across the New South Wales public sector workforce from 3.1 per cent to 3.3 per cent (NSW Public Service Commission, 2016), including by increasing representation in more senior levels. There is also a New South Wales Premier's Priority goal of 114 Aboriginal or Torres Strait Islander people in senior leadership roles by 2025 (NSW Public Service Commission, 2016).

The New South Wales Public Service Commission introduced the New South Wales public sector's Aboriginal Employment Strategy 2014-17 which focuses on career development, increasing Aboriginal representation in senior roles, and improving cultural competence. It supports the sector-wide Aboriginal Career and Leadership Development Program (NSW Public Service Commission, 2015). Under *OCHRE* the New South Wales Government has also provided an additional entry point into the New South Wales public sector at grade 3/4. Entrants complete a diploma-level qualification while working in a temporary position and, upon satisfactory completion, then move into a permanent role (Aboriginal Affairs NSW, 2016b).

The *OCHRE* Industry-Based Agreements (IBAs) are partnerships between peak industry bodies and the New South Wales Government that aim to increase Aboriginal employment and business opportunities. Four industry-

based agreements have been signed – with the New South Wales Minerals Council, the Master Builders Association of New South Wales, the Civil Contractors Federation of New South Wales and the New South Wales Indigenous Chamber of Commerce. The government is also progressing two regional IBAs which will be negotiated as part of the Local Decision Making accord process, with Illawarra-Wingecarribee and Three Rivers Regional Assembly.

Enterprise

Context

There are a growing number of Aboriginal enterprises in New South Wales, and they are entering an increasing number of sectors. It should be noted that Aboriginal enterprises include community-based social enterprises as well as private entrepreneurship and Aboriginal businesses. The importance of this distinction is often overlooked in enterprise development strategies, but there is a clear difference between the characteristics of community-based enterprises – and what is required to support their functioning – and conventional businesses.

For example, community-based enterprises may operate within a very complex environment of social and cultural obligations and are likely to need tailored assistance with governance and with developing systems of community accountability (Morley, 2014). This kind of support for governance of community-based enterprises, and the Aboriginal organisations that try to facilitate them, has not been as forthcoming as support for private Aboriginal enterprises, such as through business mentorship and procurement plans (NSWLCSC, 2016b).

Morley (2014) has reviewed the literature on success factors for Aboriginal and Torres Strait Islander businesses and community-based enterprises. Although different businesses define ‘success’ differently, common success factors include:

- government programs that assist Aboriginal and Torres Strait Islander people to access finance that has otherwise not been available through commercial avenues
- support with ‘reality testing’ of business ideas
- services that provide financial literacy, business advice and ongoing support
- membership bodies that link Indigenous businesses into the supply chains of large companies and government agencies.

Additionally, success factors for community-based enterprises include:

- embedding culture within the business and its operations, such as through rigorous approvals processes around cultural issues, and ensuring that corporate structure is consistent with accepted community governance protocols
- developing and maintaining community engagement.

The New South Wales Legislative Council’s inquiry into economic development in Aboriginal communities heard that although there are many services and government agencies providing support for Aboriginal enterprises, needs are not being fully met. For example, there is a need for services specifically designed to support small businesses, and a greater focus on culturally appropriate and ‘wraparound’ services (NSWLCSC, 2016a).

Foley (2016) has suggested that policy-makers promoting Aboriginal enterprise should proceed with a degree of caution, in that establishing and managing an enterprise is a difficult task which can generate significant stress and be detrimental to physical health and social, emotional and financial wellbeing. The stresses of running a business may be exacerbated by real or perceived discrimination.

What is being done?

Supporting Aboriginal enterprise is a key focus of the New South Wales Government’s Aboriginal Economic Prosperity Framework, particularly through procurement strategies (Aboriginal Affairs NSW, 2016a). The Framework also commits the New South Wales Government to ensuring that all Regional and District Plans for building community infrastructure include Aboriginal economic participation by 2019. In addition, the Framework requires barriers to Aboriginal employment to be addressed, ‘so NSW becomes the best State for Aboriginal people to work under the NSW Government’s Jobs for the future commitment’ (Aboriginal Affairs NSW, 2016a). ‘Jobs for the future’ is a strategy to add one million ‘rewarding jobs’ to the New South Wales economy by 2036. It is centred on ‘Jobs for NSW’, a private-sector led, government-backed scheme to expand private sector jobs (NSW Government, 2016a). This includes:

- assistance for fast-growing, small-to-medium size companies to access finance through a \$50 million loan guarantee program and a \$3.5 million direct loan pilot program

- assistance for start-up companies through \$10 million to grow the State's network of incubators and accelerators, and \$3 million in 2016-17 for direct grants to start-ups
- a dedicated \$30 million grant program to grow regional companies
- a \$30 million fund to attract large and international companies to base their headquarters in New South Wales.

As noted in the preceding section, *OCHRE* includes several Industry-Based Agreements that aim to improve Aboriginal business opportunities. The Aboriginal Participation in Construction (APIC) program also requires government construction projects to allocate a percentage of their spending to Aboriginal business, employment and training. There is additional support for Indigenous businesses through the New South Wales Indigenous Chamber of Commerce, Indigenous Business Australia, the Indigenous Land Corporation and Supply Nation. The New South Wales Government and New South Wales Indigenous Chamber of Commerce launched the New South Wales Aboriginal Business Portal in 2015. This helps companies locate Aboriginal businesses and identify the services they offer. The Law Society of New South Wales has also partnered with the New South Wales Indigenous Chamber of Commerce to develop an Indigenous Enterprise Legal Assistance Scheme to support Aboriginal businesses in the establishment phase.

The New South Wales Ministerial Taskforce on Aboriginal Affairs has noted the importance of Aboriginal NGO capacity building, including for economic development. It recommended that procurement processes across government also support the purchasing of services from Aboriginal NGOs (Ministerial Taskforce on Aboriginal Affairs, 2013, p.8).

The Australian Government also has a focus on procurement under its Indigenous Procurement Policy (IPP). The IPP sets a target for purchasing from Indigenous enterprises (defined as 51 per cent owned, managed and controlled by Aboriginal or Torres Strait Islander people), as well as a mandatory 'set-aside' to direct some Australian Government contracts to Indigenous enterprises, and minimum Indigenous participation requirements for certain contracts (Australian Government, 2015, p.6). The number and value of Australian Government contracts awarded to Indigenous enterprises has increased very significantly under the IPP. However, some concerns have recently

been raised that the scheme is encouraging the cynical creation of joint ventures that meet the ownership rules but deny genuine engagement with the Indigenous partners (so called 'black cladding'), and that it is benefitting a small number of individual business owners rather than generating broader benefits such as in Aboriginal and Torres Strait Islander employment. Critics suggest that businesses certified as Indigenous under the scheme should have to make commitments to Aboriginal and Torres Strait Islander employment targets (Hutchinson & Aikman, 2017; Loussikian & Hutchinson, 2017).

Land and sea management

Context

Land and sea management is very significant to Aboriginal economic prosperity across much of New South Wales. Water and other natural resources form part of the Indigenous estate that can be central to cultural, social and economic needs. The regulatory environment for land management in New South Wales is mediated through the intersection of State land rights legislation and Commonwealth native title legislation. The *Aboriginal Land Rights Act 1983* (NSW) (ALRA) establishes a network of Local Aboriginal Land Councils (LALCs) and provides a mechanism for LALCs to claim certain Crown Lands and to manage granted lands as an economic base for their members. When the ALRA was enacted a principal concern was the need to provide Aboriginal people with economic opportunity that could be leveraged from land. In practice, though, the capacity for LALCs to realise economic benefits from land acquired under the ALRA has often been limited (Behrendt, 2011). Some of the larger LALCs, particularly in urban and some coastal areas, have had more success in leveraging economic opportunity from their land base than smaller LALCs elsewhere.

The recognition of native title can be claimed under the *Native Title Act 1993* (*Cth*) (NTA) in New South Wales, over Crown land and waters, national parks, State forests, and certain leased and licenced lands. Registered Native Title Bodies Corporate, also known as Prescribed Bodies Corporate, manage native title rights as trustees on behalf of native title holders.⁵ To date, successful native title determinations in New South Wales have been brought by the Dunghutti, Githabul, Bandjalang, Gumbaynggirr, Barkandji, Yaegl and

⁵ The NTA provides procedural rights for native title claimants and title holders when 'future acts' are undertaken that may affect or impair native title. Depending on the 'future act' activated the procedural right can include the right to be notified, the right to comment, the right to object, or the right to negotiate with the party proposing to undertake the activity.

Western Bundjalung peoples. There have been 44 negative determinations in New South Wales where native title was found not to exist (National Native Title Tribunal, n.d.). A number of mining agreements, agreements with developers and Indigenous Land Use Agreements (ILUAs) are also in place. ILUAs are voluntary agreements between various parties and native title holders that are used to manage native title interests in perpetuity. ILUAs usually provide the means for access to and use of lands and waters by native title holders, and can include the transfer of land in freehold in certain circumstances. Several ILUAs in New South Wales relate to the development of a nature reserve or park, and co-management arrangements have often resulted (Hunt, Altman, & May, 2009).

The Indigenous Land Corporation can also assist Aboriginal and Torres Strait Islander peoples to acquire land and manage it for economic, environmental, social and cultural benefits. The Our Land Our Future program can assist Aboriginal land owners to establish certain enterprises. Aboriginal land owners in this context are usually corporations or community organisations rather than individuals (NSWLCSC, 2016b).

The New South Wales Legislative Council's inquiry into economic development in Aboriginal communities canvassed a range of concerns about the functioning of these legislative arrangements and the implications for leveraging land for economic opportunity (NSWLCSC, 2016a). There were four major concerns:

- A perception that land held under ALRA is subject to too many legislative restrictions that limit opportunity for utilising the land for commercial development
- Concern that land owning bodies are often not resourced or supported enough to develop and manage robust governance and economic projects
- A large backlog of undetermined land claims under the ALRA as well as a number of successful land claims where the land is yet to be transferred to the claimant Land Council
- Access to fisheries resources for commercial and customary use, and allocations of water rights including cultural flows.

The New South Wales Legislative Council's inquiry into economic development in Aboriginal communities recommended expediting the backlog of claims made under the ALRA through the use of priority lists, by first processing claims that are seen as a priority by the New South Wales Government and Aboriginal Land Councils (NSWLCSC, 2016a, p. 61).

A 2015 COAG report on an investigation into Indigenous land administration and use also noted the ability to expedite claims under the NTA through the use of priority lists, and where native title is determined by consent. The report noted the preference of both native title claimants and governments for negotiated native title determinations by consent, rather than contesting claims through litigation (Senior Officers Working Group, 2015, p.27).

In addition to land rights and native title legislation, there are a number of regulatory and administrative issues that influence the ability of communities to leverage land and water for economic development. Aboriginal Affairs NSW and the Department of Planning and Environment have commenced work to remove barriers in the planning system affecting the management of Aboriginal lands. For example, special attention is being paid to the development of a coordinated response to land-use planning and municipal infrastructure issues on Aboriginal lands across New South Wales, and to land-based economic development opportunities for the Eden Local Aboriginal Land Council (Aboriginal Affairs NSW, 2016b).⁶

There are a growing number of parks and reserves covered by National Park Co-management Agreements (MOUs), which often include Aboriginal employment in conservation activities or as guides, or in tourism or other businesses (Hunt et al., 2009, p.21-22). While co-management can place limits on what is possible (such as the requirement to expend rental income within the National Park), there are also a number of encouraging developments emerging. For example, the 2015-2025 management plan for Booderee National Park at Jervis Bay (Director of National Parks, 2015) lays out a 'road map' for transitioning from joint management of the park to sole management by the Wreck Bay Aboriginal Community Council (although this is within the Commonwealth's jurisdiction). There may also be emerging opportunities resulting from the

⁶ Under the *Premier's Memorandum 2015-02 – Solution Brokerage*, the Head of Aboriginal Affairs has declared these issues for solution brokerage. When an issue for solution brokerage has been declared, an officer is appointed to manage the development and implementation of a response plan within six months.

introduction of multi-tenured Indigenous Protected Areas (such as the Giringun IPA in Far North Queensland) that can involve land acquired under the ALRA as well as private and public land, overseen by a community governance panel.

The management of both coastal and inland waters is highly complex and contentious. Along the New South Wales coast, Sea Country has been an important part of Aboriginal livelihoods. There are a number of ways in which access to marine resources is impeded by current regulatory frameworks, including equity in marine allocation and usage (Aboriginal Affairs NSW, 2016b, p. 25). For example, for the Yuin people on the far South Coast the creation of marine sanctuaries along the coastline, and prosecution of Aboriginal fishers, have restricted their ability both to access traditional foods and develop employment and enterprise in a traditional industry.

The Yaegl people on the North Coast have recently become the first group in New South Wales to have their native title rights over Sea Country recognised, after the Federal Court agreed that their rights under a native title consent determination extend to 200 metres east of the mean low water mark. This means the Yaegl have recognised rights to access the area, use the resources within it for non-commercial purposes, and maintain and protect places of significance within it. NTSCORP has noted that they see the Yaegl decision as a precedent for other native title claims on the New South Wales coast (Rotumah, as cited in Thorpe, 2017). The decision does not relate to commercial fishing, but recognises the right to take, use, share and exchange resources in the area for non-commercial purposes, including traditional trade (Yaegl People #2 v Attorney General of New South Wales [2017]).

There are significant challenges for Aboriginal access to freshwater and associated resources in New South Wales, with cross-cultural contestation over both water values and property rights. The Murray Lower Darling Rivers Indigenous Nations (MLDRIN) continue to seek influence in the management of the Murray Darling Basin. NSWALC has identified an urgent need for the New South Wales Government to acknowledge and legislate for the rights of Aboriginal people to cultural flows of water, including allocations for cultural, environmental and economic purposes (NSWALC, 2016a).

What is being done?

Both the New South Wales and Australian Governments have undertaken substantial work on reviewing legislative arrangements for Aboriginal land recovery and land management (Aboriginal Affairs NSW, 2014; Aboriginal Affairs NSW, 2015a, p. 23). In New South Wales, recent amendments to ALRA include:

- faster and more flexible ways to obtain land, including the option for Aboriginal Land Councils and the New South Wales Government to negotiate agreements to settle multiple land claims simultaneously, by entering into a written 'Aboriginal Land Agreement'
- more flexibility in the management and operation of Aboriginal Land Councils, along with more accountability
- more clarity about how business enterprises can be established and run by Land Councils through related corporate entities
- a capacity building alternative to appointing administrators to LALCs, in the form of authority to issue Performance Improvement Orders.

More information about the future of land recovery in New South Wales is provided by Heidi Norman in Chapter 1 of this document.

Housing

Context

One of the key determinants of economic prosperity for individuals, families and communities is stable housing. Without stable and adequate housing, health outcomes are put at risk (NSW Government, 2016b) and maintaining employment and engagement with formal education becomes more difficult.

It is well known that New South Wales and parts of Sydney, in particular, have some of the least affordable housing in the world (Birrell & McCloskey, 2015). There are many factors that contribute to this situation including population growth, the geographic structure of Sydney, housing supply, as well as State and/or Commonwealth tax systems and incentives. Regardless of the cause, housing affordability is likely to be having a significant impact on the New South Wales Aboriginal population given the combined effect of financial and employment disadvantage noted above. Crawford and Biddle (2016) showed that across Australia 'Even with an extensive range of controls, Indigenous Australians

are significantly and substantially less likely to transition into home ownership and significantly more likely to transition out of it.’

Analysis by the Centre for Aboriginal Economic Policy Research (CAEPR) identified Indigenous adults and children living in a home that is owned or being purchased by the household as having superior outcomes across a range of wellbeing measures (Biddle, 2011). However, the relationship between home ownership and wellbeing may not be directly causal. For example, it is possible that those with higher levels of wellbeing are more likely to own their own home, rather than the other way around. In addition, it is not clear that private home ownership is always preferred. In research conducted in both New South Wales Aboriginal communities and Northern Territory Town Camps, Crabtree (2016) has stressed the importance of diversity in housing tenure options, and genuine discussion with communities about preferred tenure choices and processes, instead of top-down decision-making. Rather than assuming private ownership is the best outcome, a more appropriate policy approach may therefore be to enhance opportunities for those Aboriginal Australians who wish to own their own homes to realise this goal.

Crabtree’s (2016) research in the Northern Territory suggested that where there were preferences for private home ownership this was often due to poor experiences with the management of public housing. Hence, a desire for ‘community, stability, dignity and autonomy’ featured far more prominently in peoples’ justification for wanting private home ownership than did expectations of capital gain. There was frequent concern among residents about excising individual lots from community control, and a strong desire in many households to see community governance and control reinvigorated. The New South Wales study also highlighted the need for local consultation. It led to a model for diversifying tenure options on communal title through long term leases, under which underlying title would remain with the community organisation to protect against the loss of housing stock from the community if residents were unable to sustain their payments.

There is strong evidence that Aboriginal and Torres Strait Islander people who live in dwellings rented from community organisations have better outcomes than those who live in dwellings rented through the private rental market (Biddle, 2011; Sanders, 2005). One potential reason for this is the relative lack of security when renting privately. Another potential explanation is exposure to discrimination in the private rental market.

What is being done?

Under the Aboriginal Economic Prosperity Framework, the New South Wales Government is targeting a 20 per cent increase in the proportion of Aboriginal households successfully transitioning out of social housing into private rental and/or home ownership by 2019. The quantitative and qualitative evidence suggests that careful consideration should be given to separating home ownership and renting privately in the setting of targets, and to consultation over preferences and needs at the local level.

Concluding comments

The New South Wales Government has developed an Aboriginal Economic Prosperity Framework that provides a very useful starting point for the consideration of policy options to enhance and support economic prosperity for the Aboriginal population of the State. This document has discussed some of the options and determinants of economic prosperity, building on an extensive review of the available literature and policy evaluations. Some elements that were considered are:

- Demography and diversity – The Aboriginal population of New South Wales is relatively young, and growing, with people in New South Wales appearing to become increasingly comfortable identifying as Aboriginal or Torres Strait Islander. Economic outcomes and opportunities vary considerably across New South Wales with measures tending to be worse in more remote parts of the State. However, a simple linear relationship between remoteness and economic prosperity should in no way be assumed. Previous research by CAEPR has shown, for example, that there are areas in Western Sydney with socioeconomic outcomes in the bottom quartile of the Indigenous (national) distribution and that in remote areas many aspects of subjective wellbeing are higher. Policy responses in this area would begin with careful projections and planning for the growth and change in the Aboriginal population, with programs and policies tailored to local circumstances.
- Racism – There is very strong evidence that Aboriginal Australians experience very high levels of racism in the labour market, the housing market, the criminal justice system, and in interactions with the general public. Policy in this area should be focused on the perpetrators, rather than the victims of racism and discrimination, with evidence-based interventions targeted to large companies, government and private housing providers, the law and justice system, and

responses to ‘everyday racism.’ A key focus should be on reducing the incidence and impact of implicit or unconscious biases, that have been shown to have large and detrimental effects on visible minority groups (Biddle, 2016).

- Education – There is a large body of evidence that suggests the economic returns of education are larger for the Aboriginal and Torres Strait Islander population, relative to the non-Indigenous population. Sustained economic prosperity will not occur for the Aboriginal population of New South Wales without considerable improvement in educational attainment and access, with the highest returns (across the life span) likely to be generated through access to high quality early childhood education, the foundation of future learning (Heckman, 2011).
- Employment – Stable, meaningful employment is key to a range of wellbeing measures. However, the Aboriginal population of New South Wales continues to be excluded from equitable employment outcomes. As a large employer within the State and a large purchaser of private sector services, there is scope for the New South Wales Government to enhance Aboriginal employment through its own recruitment and procurement policies. However, there is also a need to ‘nudge’ the private sector, through careful and well evaluated programs that target the ongoing barriers to employment.
- Enterprise – There are many successful Aboriginal enterprises within New South Wales and the New South Wales Government has the opportunity to showcase and highlight these, providing a means for inspiration and mentoring. However, the research suggests there are ongoing barriers to self-employment due to discrimination in the goods/ products and financial markets, as well as a relative lack of financial and certain types of social capital.
- Land and sea management – There is strong potential across the geographic distribution of New South Wales for Aboriginal engagement with land and sea management. Leveraging benefits from land and sea management could be improved in a number of ways including improved access to fisheries and inland water allocations, appropriate resourcing of land owning bodies, and the timely processing of claims and transfer of successfully claimed land.

- Housing – Stable housing is key to economic prosperity both directly, in terms of cost, and indirectly, through its effect on health, education and a range of other important domains. Stable housing may take different forms and there is a demonstrated need to consult locally about preferred tenure type. Aboriginal peoples in New South Wales are likely to be particularly affected by barriers to home ownership, especially housing affordability. There is strong evidence of a link between home ownership and economic and financial wellbeing. There is also strong evidence that those who rent from a community or State housing authority have better wellbeing outcomes than those who rent through the private rental market.

Sitting across all seven of the areas outlined above is a need to enhance and support self-determination in the setting of goals and the design of policy related to economic prosperity. An appropriate research program would begin by conducting further exploration of what economic prosperity means for different Aboriginal people, communities and organisations in New South Wales. This is likely to identify strong overlaps with some aspects of the Aboriginal Economic Prosperity Framework, but will also likely identify new variables; a different prioritisation of goals; and innovative approaches to achieve these outcomes.

4.3. Areas of research to explore

To assist in adopting the UNDRIP principles across the workings of the New South Wales Government, further attention should be given to developing an overarching conceptual framework for Aboriginal economic prosperity. The first theme in an associated research program could usefully examine what economic prosperity means for different Aboriginal people, communities and organisations across New South Wales. Appropriate methodologies would include participatory local or regional research, and key questions would ask what constitutes Aboriginal economic prosperity, who defines it and how it should be enacted and measured. There are likely to be different ideas about what economic prosperity is, and what strategies are appropriate to achieve it. However, an overarching conceptual framework, and an associated implementation strategy, should be broad enough to reflect the diversity that is evident across New South Wales.

A second major theme in a research program would identify the points at which economic prosperity could be improved through policy interventions. This is

complicated to some extent by the overlapping of Local, State and Australian Government jurisdictions. Appropriate research questions may not all be directly related to specific priority areas identified by Aboriginal Affairs NSW, or cover issues that are entirely within the New South Wales Government's jurisdiction. However, given the interdependent nature of economic prosperity, exploring such research questions will still be useful where they directly impact on the ability of Aboriginal Affairs NSW to meet their priorities and should be considered in a comprehensive approach to economic prosperity.

A third research theme would focus on effective evaluation and implementation framed by Aboriginal priorities. The Productivity Commission has highlighted the almost complete dearth of evaluations of Indigenous-specific policies and programs that identify (a) whether there has been any demonstrable positive impact (b) whether there have been any negative unintended consequences and (c) whether the benefits that have been identified have been achieved in a cost-effective manner (SCRGSP 2016). The *Closing the Gap* Clearinghouse, administered by the Australian Institute of Health and Welfare⁷ also found a similar lack of empirical guidance within the literature to help determine what works and what doesn't work. While there is some guidance about general principles for 'success,' there is little evidence about the actual causal impact of most of the policies and programs designed to improve the lives of the Aboriginal population.

It is very rarely possible to obtain causal estimates of the effectiveness of a program after it has been designed and implemented. It is often the case that selection into the program either at the community or individual level means that it is not possible to identify whether those who participated in a program, or were affected by a policy, had better outcomes because of the program/policy itself, or because those with better outcomes were more likely to have participated. To undertake effective evaluation, it is necessary to embed evaluation into the program from the start, control for self-selection (ideally through randomisation or similar exogenous variations) and measure outcomes that are of priority to the communities involved.

However, the appropriate evaluation of policies and programs designed to improve outcomes for Aboriginal people should also include 'downward accountability' and reporting back to communities. The implementation

of the *OCHRE* plan includes an accountability framework and states a commitment to 'work with Aboriginal communities to set the measures of success' (Aboriginal Affairs NSW, 2014, p.6). This 'downward accountability' might ask, for example, whether Aboriginal people, communities and organisations feel they are getting what they need from policies and programs, whether they are effectively able to have a say over policy decisions, and whether programs are improving livelihoods in the ways they envision.

Specific research questions to explore are outlined below under three themes.

Theme 1: How is economic prosperity defined, and who decides?

This theme explores definitions of economic prosperity, with a principal focus on Aboriginal perspectives. It also investigates how this question relates to the local level by exploring the opportunities and resources of local and regional economies.

- What do Aboriginal people in different locations and regions across New South Wales see as a good life, and how does this inform definitions of economic prosperity?
- What factors are associated with economic prosperity as defined above?
- How do Aboriginal people perceive the local and broader economy (market, state, sharing), and what are their economic development priorities?
- What is the economic 'ecosystem' for Aboriginal people in New South Wales at the local or regional level, including the economic, demographic, environmental and existing institutional profile? What economic opportunities and challenges does this represent?
- How can an economic prosperity framework move beyond a deficit approach?

⁷ <http://www.aihw.gov.au/closingthegap/>

Theme 2: How can economic prosperity be improved through policy interventions?

Once the factors associated with economic prosperity are understood, this theme focuses on identifying ‘policy levers’ which can be used to intervene to support improved outcomes.

- How can governments best ensure support for successful Aboriginal initiatives, organisations and programs?
- What factors influence the probability of staying in school and work, which of these are amenable to policy intervention, and what works in a causal and cost-effective way to increase education attainment across the life course?
- Are there appropriate ‘system targets’ for evaluating schooling, such as Aboriginal and Torres Strait Islander input into schooling processes, that could usefully complement evaluation of student outcomes?
- What works in a causal and cost-effective way in employment programs, industry partnerships and enterprise development?
- How can governments best support capacity development in Aboriginal organisations and community-based and private enterprises?
- What are the most effective strategies for overcoming labour market discrimination and stereotyping, among prospective employers and in the school and workplace?
- What works in a causal and cost-effective way in cultural awareness, anti-racism and cultural competency programs?
- What are the regulatory barriers to Aboriginal economic prosperity in New South Wales, particularly as they relate to land and water?
- Should the New South Wales Government review the general environmental legislation to remove any negative and disproportionate effect on Aboriginal people?
- How are Aboriginal priorities for economic development best reconciled with other regulatory goals such as environmental protection?
- How can the unique cultures, languages, identities and knowledges of Aboriginal peoples be harnessed for economic prosperity? What are the associated issues of Aboriginal ownership and control of

business activities, protection of intellectual and cultural property rights, and balancing Aboriginal preferences with market demands?

- What is the role of the customary economy in New South Wales, in terms of the good life, and what are the threats to survival of the customary economy in New South Wales?
- With regards to the above questions, what research exists on how Aboriginal people are improving their situations?

Theme 3: Evaluation and implementation

This theme focuses on determining an appropriate evaluation framework, that includes downward accountability to Aboriginal people, communities and organisations. It also examines the ‘governance of government’ and the ways in which the processes of service delivery and implementation can best support improvements in economic prosperity.

- How can economic prosperity, as identified in Theme 1, be measured in a consistent and comparable way through time and across geographies? What would be an appropriate research methodology, and scale?
- What are the measures for downward accountability (accountability to Aboriginal people, communities and organisations)?
- Are there common principles of effective government interventions that can be used to inform the specific strategies and policies identified in Theme 2?
- How has the introduction of specific quotas, targets or indicators to measure Aboriginal economic prosperity led to improved outcomes?
- Where are there duplications or gaps in government programs and services?
- How can government agencies and different levels of government coordinate service-delivery most effectively?

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4.5. Appendix 1 Aboriginal Economic Prosperity Framework, 'Growing NSW's First Economy'

From Aboriginal Affairs (2016a).

ECONOMIC PILLARS	NSW GOVERNMENT PRIORITY	COMMITMENT TO ABORIGINAL PEOPLE IN NSW
Jobs and employment	Driving public sector diversity	<ul style="list-style-type: none"> The NSW Public Service to double the number of Aboriginal people in senior leadership roles Aboriginal employment in all clusters and salary bands to reach 1.8% by 2021
	Creating jobs and supporting businesses	<ul style="list-style-type: none"> Every government construction contract over \$1 million (and/or contracts specifically for Aboriginal communities), includes a target for expenditure on Aboriginal participation. The target must be at least 1.5% of the construction and design costs. The NSW Government will strengthen its current procurement commitment beyond construction contracts. Barriers to Aboriginal employment to be addressed, so NSW becomes the best State for Aboriginal people to work under the NSW Government's <i>Jobs for the future</i> commitment.
Education and skills	Improving Aboriginal education outcomes	<ul style="list-style-type: none"> 95% of Aboriginal children to be enrolled in the year before full-time school in quality early childhood education programs The proportion of Aboriginal and Torres Strait Islander students in top two NAPLAN bands for reading and numeracy to increase by 30%
	Boosting apprenticeships	<ul style="list-style-type: none"> 15% of 25,000 Jobs of Tomorrow Scholarship Fund scholarships to be awarded to Aboriginal young people Completion rate for Aboriginal apprentices and trainees to reach 65% by 2021
Economic agency	Building infrastructure	<ul style="list-style-type: none"> All regional and district plans to include Aboriginal economic participation by 2019
	Making NSW the easiest State to start a business	<ul style="list-style-type: none"> At least 5% of Aboriginal owned and operated small and medium enterprises (SMEs) in NSW are supported by the NSW Government's small business advisory services each year
	Creating sustainable social housing	<ul style="list-style-type: none"> The proportion of Aboriginal households successfully transitioning from social housing into private rental and/or home ownership to increase by 20% by 2019



5 Self-determination



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The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises Indigenous peoples' right to self-determination. Article 3 states: "Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." Article 4 further recognises Indigenous peoples' right "to autonomy or self-government in matters relating to their internal and local affairs as well as ways and means for financing their autonomous functions." Article 5 also protects their right "to maintain and strengthen their distinct political, legal, economic, social and cultural institutions while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the state" (United Nations, 2007). The Australian Government indicated its support for the UN Declaration in 2009. This declaration is legally non-binding, but it sets an international standard to aspire to. It emphasises that Indigenous people have an inherent right to self-determination, whatever government policy they live with, which they may exercise in the best ways they can.

This paper explores ways in which a strengthened policy of self-determination might be understood and implemented in New South Wales and what research is needed to move towards that goal.

5.1. Aboriginal and Torres Strait Islander perspectives on self-determination

While there have been no recent studies we are aware of into how Aboriginal people in New South Wales view self-determination, one study has explored what the term ‘self-determination’ meant to Indigenous people in Victoria, finding:

One fundamental theme that emerged from our discussions was self-determination as a right to ‘determine priorities, direction and the path forward for economic, social and cultural development’. Some of the terms that people used were ‘empowerment’, ‘control of destiny’, ‘autonomy’ and ‘authority to control’. Self-determination covered all aspects of control from partnership with government in developing policy and programs to service delivery by Aboriginal organisations to overseeing implementation of policy’ (Behrendt & Vivian, 2010, p. 21).

They emphasise that people’s ideas of self-determination and their aspirations vary. Among the issues mentioned are the capacity to be self-determining, long-term strategic planning, cultural integrity, equality and non-discrimination, identity, economic development, and partnerships with government and the private sector. Thus, care needs to be taken as people may wish to define for themselves what self-determination means to them.

Since there appear to have been no similar studies in New South Wales, one essential area for research is to find out what Aboriginal and Torres Strait Islander people living in this state themselves understand self-determination to mean. Research is needed to explore what Aboriginal and Torres Strait Islander people seek when they call for self-determination or assert it as an inherent right in line with the UNDRIP. Calls for self-determination may emphasise both a rights claim and the need for policy changes. It would be valuable to know how Aboriginal and Torres Strait Islander people consider that they already exercise aspects of self-determination, in what areas of their lives they would like to exercise greater self-determination, and how they feel governments or other actors could operate differently to facilitate their ability to fully exercise their right to self-determination. In line with the Victorian study, research is needed to identify how Aboriginal and Torres Strait Islander people in New South Wales wish to “determine

priorities, direction and the path forward for economic, social and cultural development” (Behrendt & Vivian, 2010, p. 21). To what extent do they wish to do this through partnerships with government in the development and/or oversight of policies and programs and through their own organisations?

Research is also needed to clarify the aspirations and goals Aboriginal and Torres Strait Islander people have in emphasising their right to self-determination. Related to this is the further need to understand what Aboriginal and Torres Strait Islander people see as important to their own wellbeing. Understanding both the wellbeing aspirations and the views about self-determination of New South Wales Aboriginal and Torres Strait Islander people will lay a foundation for further research and policy development in this area.

5.2. What has self-determination as a policy framework looked like to date in New South Wales?

In New South Wales, government policy on self-determination has been primarily effected through the New South Wales Aboriginal Land Council and its up to 120 Local Aboriginal Land Councils (LALCs). These have some statutory authority in relation to land and cultural heritage matters under the *New South Wales Aboriginal Land Rights Act 1983 (ALRA)*. The process of land recovery under this statute has to date been extremely slow but is likely to move more quickly in future. Since 2008, LALCs have been required to develop community land and business plans which articulate LALC goals in relation to their land and guide investments. Recognition of native title rights in New South Wales under the *Commonwealth Native Title Act 1993 (NTA)* is also expected to extend more widely across the state in coming years (Norman, 2017). These two legislative frameworks provide some assets and rights which Aboriginal and Torres Strait Islander people have fought hard for and are now using to work towards realising their wider aspirations. However, the scope of their ability to be self-determining under both pieces of legislation is constrained by wider policy frameworks.

More recently, the ministerial task force which led to the current *OCHRE* policy noted the ‘concerns raised by Aboriginal communities over the absence of genuinely shared decision making’ (Aboriginal Affairs NSW, 2013, p. 7). It stressed two ways to respond to this: the Local Decision Making (LDM) program and the establishment

of an independent Indigenous council to give a stronger voice to Aboriginal people in government decision making (Aboriginal Affairs NSW, 2013).

The LDM program has begun a process of shifting some decision-making control over government services to Aboriginal regional alliances in seven locations.¹ However, exactly how this will occur beyond the first (advisory delegation) phase is still being worked out. At this stage, an initial accord defines a negotiated agreement between the New South Wales Government and the relevant regional alliance on spending priorities. In phase 2 of the process (planning delegation), alliances will direct funding from a pooled fund managed by a senior officer in line with an accord negotiated with the New South Wales Government. In phase 3 (implementation delegation) the alliances will manage some government resources and/or services themselves, for example in areas such as justice or human services. Thus, some decision making about financial resources is planned to be passed to regional alliances once an alliance is deemed ready to take this responsibility (Aboriginal Affairs NSW, 2016).

To date no Indigenous council has been established, but other aspects of *OCHRE* help to strengthen self-determination. For example, FACS assists Aboriginal NGOs to design and deliver more community and family services to Aboriginal communities in New South Wales.

However, the wider policy context in which both Aboriginal and Torres Strait Islander communities in New South Wales and the New South Wales Government operate has moved away from earlier policy approaches which supported self-determination.

5.3. The wider Australian policy context

From the 1970s to 1990s Indigenous policy in Australia went through what has become known as the self-determination era. In this period, many Aboriginal organisations were created as an expression of self-determination. These included statutory bodies such as land councils, native title bodies, and many Indigenous associations and corporations providing legal, employment, health, housing, education and other

¹ The seven Regional alliances are: Murdi Paaki Regional Assembly [Far West NSW]; Illawarra and Wingecarribee Regional Partnership Alliance [Illawarra South East]; Regional Aboriginal Development Alliance [North Coast]; Barang Regional Partnership [Central Coast]; Three Rivers Regional Assembly [Central West]; Northern Region Aboriginal Alliance [New England North West]; Tribal Wave Regional Assembly [Lower North Coast].
Source: <http://www.aboriginalaffairs.nsw.gov.au/local-decision-making>.

services (Rowse, 2005). The breadth of these organisations' activities indicates something of the scope of self-determination that Aboriginal and Torres Strait Islander people want to exercise.

In addition, a statutory body, the Aboriginal and Torres Strait Islander Commission (ATSIC), was formed in 1990. It had a national council and regional councils elected by Aboriginal and Torres Strait Islander people. ATSIC's objectives were:

- to ensure maximum participation of Aboriginal and Torres Strait Islander people in government policy formulation and implementation
- to promote Indigenous self-management and self-sufficiency
- to further Indigenous economic, social and cultural development, and
- to ensure co-ordination of Commonwealth, state, territory and local government policy affecting Indigenous people. (Pratt & Bennett, 2004, p.7).

In practice ATSIC was both to manage some key Aboriginal and Torres Strait Islander programs, predominantly in relation to housing and employment, and to interact with other government agencies in relation to Aboriginal and Torres Strait Islander priorities.

However, this self-determination policy era is better termed 'self-management' (Moreton-Robinson, 2007). The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) recognised that the years of self-determination were 'a cruel hoax' for Aboriginal people, who tried to exercise it within complex and siloed funding arrangements (RCIADIC, 1991 Vol 4, 27.3.13). Through ATSIC however, people were able – to some degree at least – to build programs that reflected Aboriginal and Torres Strait Islander priorities. In addition, the social infrastructure of ATSIC's regional councils connected regions to national policy discussions, and brought together and built regional capacities and leadership.

In the early 2000s, the Council of Australian Governments (COAG) shifted away from the policy of self-determination to a new approach – mainstreaming. This meant that Indigenous people would be provided with services through mainstream government departments rather than Indigenous-specific services. The COAG trials were established in 2002–03 to better coordinate government services, streamline funding, and respond to community priorities. By 2006, COAG

trial evaluations indicated that the funding frameworks that had frustrated earlier self-determination policies were equally capable of frustrating positive outcomes from the ‘new arrangements’ (Gray, 2006; Morgan Disney & Associates et al., 2006). However, the Commonwealth had already abolished ATSIC (in 2004–05) and had proceeded with a mainstreaming approach to Indigenous programming. In 2014 the Abbott Government responded to the funding complexity by bringing most Indigenous programs under the Department of the Prime Minister and Cabinet and creating five broad funding streams in the Indigenous Advancement Strategy.

Over the last decade this mainstreaming trend has exposed Indigenous affairs to competitive tendering and contracting to a far greater degree than before. This has reduced the role of the Indigenous community-controlled organisations and has strengthened that of non-Indigenous NGOs and private sector contractors (Colyer, 2014). A statutory national representative body no longer exists, although the National Congress of Australia’s First Peoples has been formed as an independent organisation. However, its funding has been precarious in recent years. Many Indigenous community sector organisations founded in the self-determination era have been defunded and have closed their doors, although under the *Native Title Act 1993* new Prescribed Bodies Corporate are still being formed with ongoing native title settlements. Thus, the potential for Aboriginal and Torres Strait Islander people to exercise their right to self-determination has been reduced.

5.4. The Indigenous community sector model

Throughout the period in which Commonwealth policy shifted away from self-determination, New South Wales Government policy continued to be based on self-determination – even though it was operating in a contradictory national policy environment. In essence, approaches to self-determination in Australia and New South Wales have been somewhat piecemeal. They have been limited in scope, and have involved governments at state and national level setting frameworks that have facilitated the restoration of some Aboriginal and Torres Strait Islander control over decision making in specific sectors or in relation to specific activities.

This right to self-determination has been largely exercised through Aboriginal and Torres Strait Islander organisations, some formed as a result of statutes, others formed voluntarily to achieve goals determined by Aboriginal and Torres Strait Islander people. We might term this approach to self-determination, the ‘Indigenous community sector’ model. In general, this model has involved governments setting policy and program frameworks, though with some consultation with Aboriginal and Torres Strait Islander communities which varies in quality and impact. Within these frameworks, Aboriginal organisations have delivered a range of services and programs to their people in ways which they determine. Competitive contracting policies have reduced the proportion of Indigenous funding going to such organisations. Those that remain funded have been constrained by detailed accountability mechanisms which reflect government priorities. These mechanisms tend to transform them from expressions of self-determination to service delivery mechanisms accountable to governments for precise program outcomes (Howard-Wagner, in press; Sullivan, 2009).

In some instances, Aboriginal organisations in New South Wales, often through peak bodies, have had more significant input to policies and program directions than elsewhere, helping shape the frameworks within which the Indigenous community sector operates. This strengthens the level of self-determination. One example of this is the National Health Leadership Forum, an Aboriginal and Torres Strait Islander health leadership group which has worked closely with the Department of Health to develop the National Aboriginal and Torres Strait Islander Health Plan 2013–23 (Department of Health, 2013).

The New South Wales LDM policy tries to develop this Indigenous community sector approach further by inviting community-based organisations to join together in regional alliances with a view to taking more control over programs and funding in their regions. It is building on the capacities of Aboriginal and Torres Strait Islander organisations to enable them to contribute to priority setting and program delivery, including eventually making some funding decisions. It is an effort to expand the scope of Aboriginal and Torres Strait Islander decision making within that framework.

5.5. Other approaches to self-determination

5.5.1. Nation building

Within the Aboriginal governance literature, another approach to self-determination is called ‘nation building’. This refers to ‘the processes by which a Native Nation enhances its own foundational capacity for effective self-governance and for self-determined community and economic development’ (Jorgensen, 2007, p. xii). It is about decision making, capacity building and building economic development, maintaining culture and sustaining culturally distinct political communities (Jorgensen, 2007, p. viii). One example of this occurring in Australia is led by the Ngarrindjeri nation in South Australia (Hemming, Rigney & Berg, 2011). The Ngarrindjeri have developed a contemporary regional governance body, grounded in traditional practice, but inclusive of modern organisations and the diverse community. This body has developed legal contracts with all levels of government to advance its self-determination goals and to operate a range of programs in its Country.

Such an approach depends on Aboriginal people collectively identifying as a nation group. It may also require them to consider relations with other Aboriginal people living in their region who do not identify as members of their nation group to determine how they will be accommodated in these arrangements. Matters of ‘Country’ or cultural heritage and matters of service delivery in relation to issues such as housing, employment, aged care etc. may be treated differently in terms of decision-making.

The nation groups that work closely with the Murray-Darling Basin Authority through the Northern Basin Aboriginal Nations (NBAN) and Murray Lower Darling Rivers Indigenous Nations (MLDRIN) are an expression of Aboriginal nationhood in New South Wales (Murray-Darling Basin Authority, n.d.). These traditional owner groups are focused on land, water and natural resource issues in the Murray-Darling Basin rather than the delivery of other services. Their engagement with governments remains within the framework of the Murray-Darling Basin Authority and there is no government policy to build up those nation groups for broader purposes.

In addition, the growing number of native title claims and determinations, including consent determinations, in New South Wales is recognising native title groups that

represent Aboriginal peoples such as the Githabul, Yaegl, Gumbaynggirr, and Barkandji. The Prescribed Bodies Corporate established as an outcome of each of these determinations represent nation-type groups. As with the nation groups around the Murray-Darling, there is no government policy to build up those nation groups for broader purposes.

5.5.2. Treaty making

Another approach to self-determination involves the negotiation of a treaty or treaties with Aboriginal peoples. Other comparable settler colonial countries such as New Zealand, Canada and the United States have negotiated treaties with their First Peoples but Australia alone has not. Contemporary calls for a treaty in Australia were rekindled in 1979 when the prominent economist and prime ministerial adviser, H. C. ‘Nugget’ Coombs, led the Aboriginal Treaty Committee (Wright, 1985). Subsequently, Prime Minister Bob Hawke accepted the Barunga Statement in 1988 (AIATSIS, n.d.) which led to the decade-long Reconciliation process from 1990–2000. However, this process did not result in a treaty as originally envisaged. Still, calls for a treaty or treaties continue and have been reignited through the debates about constitutional recognition. Indeed, in both the Sydney and Dubbo regional dialogues held by the Referendum Council in early 2017, Aboriginal people specifically called for agreements or treaties with governments, among other measures (Referendum Council, 2017c, 2017d).

Generally, governments have been hesitant to discuss a treaty or treaties as they argue that Aboriginal nations are not sovereign entities in international law. Terms such as ‘compact’, ‘contract’, ‘Makarrata’ (a Yolngu word), or simply ‘agreement’ have generally been preferred, as they do not acknowledge Aboriginal sovereignty (Senate Standing Committee on Legal and Constitutional Affairs, 1981); the concept of ‘tribal sovereignty’², recognised elsewhere, has not been accepted by governments in Australia to date. This concept refers to the right of tribal nations to effectively govern themselves and to enter into government-government type relations with the nation state within which they operate; it enables them to have governing constitutions, to undertake economic development activities and to provide services to their people (Jorgensen, 2007). Despite this reluctance, Australian governments have already entered into many agreements, particularly concerning land use, many of them with traditional owner groups under the

² see <http://archives.civilrights.org/indigenous/tribal-sovereignty/>

Native Title Act 1993. Clearly, a ‘treaty’ or ‘treaties’ approach could support Aboriginal self-determination over many more areas of jurisdiction within the framework of the Australian state.

In Victoria and South Australia this approach to self-determination is under way.

The Victorian Government has entered into discussions with Aboriginal people ‘to advance self-determination, a treaty, and an Aboriginal representative body’, with a view to enabling Aboriginal people to shape decisions that affect them (Aboriginal Victoria, 2017). An Aboriginal Treaty Interim Working Group was established to work until 16 December 2016 ‘to develop options for a representative body and to provide advice to community and government on the next steps in a treaty-making process’. This group’s report, released on 22 February 2017 (Aboriginal Treaty Interim Working Group, 2017), sets out design principles for the establishment of a representative body. Further consultation in 2017 was working towards agreement over the selection and nature of the representative body. This work builds on other initiatives in Victoria such as the *Traditional Owner Settlement Act (2010)* and the *Right People for Country* program (Aboriginal Victoria, n.d.), which are endeavouring to resolve Aboriginal collective identity and boundary issues and to achieve negotiated native title settlements across Victoria.

The South Australian Government announced in December 2016 that it would “commence treaty discussions with Aboriginal South Australians as the next step towards reconciliation and building Aboriginal governance in the state” (Maher, 2016). It has entered into a five-year process, to be led by an independent Treaty Commissioner appointed in February 2017. He will initially undertake consultations with Aboriginal people across South Australia about a suitable framework for treaty discussions (Maher, 2017).

South Australia’s treaty initiative builds on its evolving policy on Aboriginal regional authorities. Since 2013 that policy, although it includes many different types of Aboriginal organisations, has come to focus more clearly on nation groups. It is now operating within a nation-building (or rebuilding) framework. In July 2016 the South Australian Government recognised three regional authority groups: the Adnyamathanha Traditional Lands Association, representing the Adnyamathanha People of the Flinders Ranges; the Far West Coast Aboriginal Corporation, representing the Far West Coast Aboriginal People, made up of the Wirangu, Mirning, Kokatha, Maralinga Tjarutja, and Yalata People, as well as the

descendants of Edward Roberts; and the Ngarrindjeri Regional Authority, representing the Ngarrindjeri People of the Lower River Murray and Coorong’ (Department of State Development, n.d.).

The South Australian Aboriginal Regional Authority Policy is designed to:

- formally recognise the authority of Aboriginal governance structures
- introduce a leader-to-leader relationship between the South Australian Government and Aboriginal governance structures
- strengthen and expand opportunities for Aboriginal representation, self-governance and self-determination through a nation-rebuilding approach
- ensure maximum participation of Aboriginal people in the development and implementation of government policies, programs and services.

Through this Policy, the government will recognise Aboriginal governance structures as Aboriginal Regional Authorities (ARAs) and commit to consulting, negotiating and engaging with ARAs in policy, programs and service delivery.” (Department of State Development, 2016, p. 4). It also sees the creation of regional authorities as an essential step towards treaty making in South Australia.³

The South Australian Government intends to gradually recognise new regional authorities which self-define their boundaries and meet various criteria, including demonstrated support from the people and organisations they intend to represent and their authority to speak for them within the scope of their activities (Department of State Development, 2016).

Self-determination approaches through treaty-making such as in New Zealand, Canada and the United States vary, from a national (Treaty of Waitangi) to a more regional scale. In New Zealand, for example, the Treaty of Waitangi was signed in 1840, and has been given new life since the 1975 passing of the *Treaty of Waitangi Act 1975*. This established the Waitangi Tribunal to hear claims by Maori of breaches to the original treaty that have been prejudicial to them. Tribal groups may take claims to the tribunal; following a detailed process, each claim is determined. This opens the way for a settlement to be reached with the Crown which provides redress for the breach. In this case the treaty has facilitated a process whereby historical wrongs can be recognised

³ The South Australian Minister for Aboriginal Affairs and Reconciliation, the Hon. Kym Maher, made this clear in his speech to the Garma Key Forum on 6 August 2017.

and some compensatory agreements reached with Maori tribes.

This is somewhat different to the situation in Canada. There, the constitution (*Constitution Act 1982 s35*) recognises an Aboriginal inherent right to self-government, which can be implemented through treaties, legislation, contracts and non-binding Memoranda of Understanding. “Canada has signed 22 self-government agreements recognising a wide range of Aboriginal jurisdictions that involve 36 Aboriginal communities across Canada. Of those, 18 are part of a comprehensive land claim agreement (modern treaty)” (Indigenous and Northern Affairs Canada, 2015). This modern treaty-making process has finalised 26 comprehensive land claims since 1973. These claims have provided land ownership rights, capital, access to resource development and participation in natural resources decision-making, cultural protection, provisions for self-government in 18 cases, and political recognition. Land claims that have been settled may be supplemented with self-government agreements (Indigenous and Northern Affairs Canada, 2016).

In the United States, contemporary tribal self-determination can be traced to the *Indian Self-Determination and Education Act 1975*, which gave legal and policy weight to tribal sovereignty. Over the following decades Native nations turned this situation to their advantage and began to put self-determination into practice, taking control of their resources (such as forests) and the services to their people. They also generated economic development (Cornell & Kalt, 2007, p. 20-22).

5.6. The Uluru Statement from the Heart

In a somewhat interesting development, the Commonwealth Government process for constitutional recognition of First Australians has transformed from the five initial proposals set out in the report of the expert panel established to make recommendations for change, to align much more strongly with the self-determination agenda. The process began in 2011 and the expert panel made recommendations for constitutional reform (Expert Panel, 2012) that have since been promulgated by Recognise, the campaign to recognise Indigenous Australians in the constitution, and considered by a parliamentary joint select committee. The expert panel and the select committee agreed substantially about four of the proposals. These included the statement of recognition of First Peoples, and the

removal or replacement of two sections of the constitution, the race power (s51 xxvi) and s25, which enables states to exclude people from voting on the basis of race. The former would need to be replaced with a new power to allow the Federal Parliament to make laws for Aboriginal and Torres Strait Islander people. A further recommendation was the insertion of a new clause in the constitution against racial discrimination, which the select committee did not accept. However, the select committee recognised the need for further discussions among Aboriginal and Torres Strait Islander communities of the concept of a First Peoples’ Voice to Parliament with the right to be consulted about legislation and policies that may affect them – a proposal made in light of the rejection of the racial discrimination provision. To further the process, in December 2015 the Australian Government appointed the Referendum Council to undertake consultations with Aboriginal and Torres Strait Islander peoples in order to prepare options for and steps to achieve a referendum (Referendum Council, 2017a). The Referendum Council held 13 regional dialogues with Aboriginal and Torres Strait Islander people from December 2016 to May 2017. Two of these dialogues were held in New South Wales (Dubbo and Sydney). From 23–26 May 2017 the Referendum Council then convened a national meeting at Uluru attended by elected representatives from the regional dialogues.

The meeting at Uluru released a statement (Referendum Council, 2017b) which gave priority to constitutional change to entrench an Aboriginal and Torres Strait Islander Voice to Parliament, and to the establishment of “a Makarrata Commission to supervise a process of agreement making between governments and First Nations and truth telling about our history”. The statement makes it very clear that “sovereignty was never ceded or extinguished, and co-exists with the sovereignty of the Crown”. Thus, the issues emerging from Uluru are a strong expression of inherent and continuing Indigenous self-determination and a call for treaty making at local and regional levels. A paper on general parameters for the design of the Voice was subsequently prepared for the Referendum Council. It recommends a bottom-up design that empowers local First Nations voices, but also stresses the need for further consultation to determine the design (Cape York Institute for Policy and Leadership, 2017). It is too soon to know whether these design parameters would have the necessary Aboriginal and Torres Strait Islander support, and further consultations about the design of the First Nations Voice will be necessary. In considering self-determination in New South Wales these national

developments must now be taken into account in order both to respond to Aboriginal and Torres Strait Islander concepts and ideas, and to reduce the complexity of Aboriginal and Torres Strait Islander arrangements between the different layers of government.

5.7. Differing approaches to self-determination

It is clear that self-determination can be interpreted in several ways – to mean an Indigenous community sector model, or nation building of Aboriginal first-nation groups to drive self-determination, and/or the possibility of treaty discussions, all with a view to shifting more decision-making power to Aboriginal groups. Aboriginal groups and individuals in different locations, contexts and roles may seek any combination of these approaches and in every case need the necessary governance and decision-making approaches to exercise self-determination. Within government there may also be different assumptions about what self-determination may mean and how it can be progressed.

In New South Wales, the New South Wales Aboriginal Land Council and the land council system across the state is the most significant contemporary expression of self-determination. The system is based on residential-membership control, rather than the traditional owner control seen in land councils in the Northern Territory. NSWALC has nine of its own regions⁴ within the land council system, although 13 regional land council structures it initially included were abolished in a restructure in 2006 (NSWALC, 2009). In addition, the seven regional LDM alliances each represent collective Aboriginal desires for greater self-determination. The LDM alliances are not nation groups, but rather are organisational groupings with a sense of a common region and a common interest in a greater level of decision-making over the services delivered there. Some (though not all) of the groups that have entered the LDM process have a long record of working together to advance their own goals. These have a regional identity, governance structures and processes which they have sustained over many years and through various changes of government (Jeffries, Maddison & Menham, 2011). The LDM process they have entered into aims to move them towards greater self-determination. From a nation building perspective, the nation groups associated with the Murray-Darling Basin Authority, and a growing number of Prescribed Bodies Corporate and native title claim groups in New South

Wales, also reflect self-determination initiatives. The New South Wales Government's self-determination framework is currently silent about nation groups or the more customary Aboriginal forms of governance which these display, and has not to date considered treaty making.

5.8. Aboriginal community governance for self-determination

One necessity for self-determination is legitimate and effective governance. International research on Indigenous community governance suggests that four preconditions are required for governance success:

- power (de facto sovereignty)
- effective governing institutions
- legitimacy and cultural match
- resources and assets (Cornell, 2006).

The research suggests that having power and authority strengthens Aboriginal governance capacity. The Indigenous Community Governance Project (ICGP, 2004–08) explored how valid those international findings might be in the Australian context (CAEPR, n.d.).

It found that in Australia:

- Indigenous people do not have sufficient decision-making power or control to govern successfully.
- There is generally insufficient support for Indigenous communities and organisations to develop their institutions, but where it does exist, communities and organisations are innovative and creative in developing institutions to successfully accommodate and reconcile two cultures.
- Indigenous organisations have to struggle to use processes, structures and governance arrangements which may be viewed by their members or constituents as culturally legitimate; they have to constantly challenge non-Indigenous systems which are assumed to be superior.
- Resources are not sufficient or consistent, and the constantly changing conditions under which Indigenous governance bodies have to obtain them is not conducive to good capacity development (Hunt & Smith, 2006, 2007; Hunt et al., 2008).

⁴ <http://alc.org.au/land-councils/lalc-boundaries--contact-details.aspx>

In relation to the third point in particular, the ICGP found that Indigenous governance in Australia is networked governance (Burriss, Drahos & Shearing, 2005). It is a form of dispersed governance (Sanders, 2005), with 'bottom-up federalism' whereby different kinds of decision-making powers, actions, leadership, responsibilities and accountabilities are attached to different social layers and cultural geographies. Relational networked solutions are a fundamental design feature of contemporary Indigenous thinking about governance. This was true in the Aboriginal community organisation from New South Wales included in the ICGP study (Smith, 2008).

Indigenous organisations in communities find themselves struggling to manage the intercultural nature of their work, operating within two different authorising environments, the first from their own communities, reflecting their values, world views, and modes of Aboriginal governing, and the second the very different systems, world views, values, governing ideas and assumptions of the settler state. In practice, these organisations constantly struggle to manage the interaction of the two intertwined cultural systems simultaneously through their day-to-day work. The mismatch of systemic values and approaches makes achieving successful network partnerships very difficult (Hunt et al., 2008; Maddison & Brigg, 2011; Morphy, 2008).

Unequal power relations and rigid systemic accountability structures also underpin the relationships between Indigenous Australians and the state and frustrate Indigenous efforts to be self-determining (Pitts & Mundine, 2011; Campbell, Wunungmurra & Nyomba, 2007). This power imbalance between Aboriginal communities and their organisations and the various levels of government means that government perspectives, priorities and demands eventually override Aboriginal efforts to set their own priorities and determine how things are done in their communities (Walden, 2016). This disempowers them and constrains their ability to develop the programs they believe will be effective in overcoming social and economic disadvantage.

The challenge is to consider how to change this situation so that Aboriginal communities in the diverse regions and towns of New South Wales can organise effective community governance to enable them to be genuinely self-determining. In some localities, the intersecting networks and histories of communities and organisations are complex. Such complexities can themselves reflect

local power differentials and may require sensitive facilitation to enable them to engage inclusively and effectively with governments.

The process of change is the key issue. Governments will need to work differently to enable Aboriginal people to take the lead in decision-making, determine their own priorities, manage resources, plan programs, resolve differences, evaluate program effectiveness, and learn and adapt over time for improved outcomes. Research based on complexity theory indicates that working in the sort of complexity that Aboriginal policy requires, involves using adaptive management approaches, collaborative management and leadership styles, and decentralised management (Hummelbrunner & Jones, 2013a, 2013b).

It is important to distinguish here between self-administration and self-government. The former simply allows communities to administer services within externally-determined frameworks; the latter enables genuinely self-determined development, with governance and programs designed by Aboriginal people. It is likely to deliver better socio-economic outcomes. In self-management, governments consult Aboriginal people; in self-government, they partner with them 'in a relationship of mutual respect' (Cornell, 2007, p.75).

One recent example where positive, community-driven change appears to be occurring comes from Bourke, where a Justice Reinvestment trial is being developed with leadership from the Bourke Aboriginal Community Working Party (BACWP), a community governance body that has operated since 2002. The BACWP is engaging some 18 government, non-government and Aboriginal service providers in the Bourke region to develop an integrated plan to reduce the high level of youth offending and incarceration and create a safer, stronger community (Australian Human Rights Commission, Aboriginal Legal Service & Just Reinvest, NSW 2013).

The Bourke example takes a collective impact approach (Kania & Kramer, 2013) to solving what is evidently a complex social problem. Collective impact is a new approach to addressing so-called 'wicked' problems such as the disadvantage faced by Aboriginal communities. It may also suggest one process for shifting governance arrangements in New South Wales to enable greater Aboriginal self-determination through strengthening and building on Aboriginal community governance. It depends on an enquiry approach and continuous learning by all partners in a local context.

Collective impact approaches recognise that in such complex settings, isolated interventions have limited value. It provides a framework for developing a collaborative approach to a challenging problem, bringing many players together in a location to work towards a shared goal, through an emergent process and mutual learning. It is thus a clear example of working in the ways recommended by Hummelbrunner and Jones (2013a, 2013b) through adaptive management, collaborative leadership and decentralisation.

In the Bourke example, the leadership of the process rests with the Bourke Aboriginal Community Working Party. This shifts them towards greater self-determination, yet recognises that at this time they need the support and the engagement of other agencies, especially government agencies, to achieve their goal. Program timeframes clearly need to be longer than usual to allow relationships to build, understandings to develop, programs to be developed and allowed to evolve in response to ongoing evaluation, and outcomes to emerge gradually. It appears the approach here is becoming more of a partnership - which is consistent with self-determination.

In the South Australian case, Aboriginal Regional Authorities began as a governance-building concept, but have now become mechanisms for a much stronger concept of self-determination, potentially within a treaty framework.

5.9. Re-organising government to support self-determination

For government, a key issue is what powers would be exercised by Aboriginal and Torres Strait Islander people to enable Aboriginal self-determination, with or without a treaty process. While self-determination may be an inherent right of Aboriginal and Torres Strait Islander people, the fact is that they are unable at present to exercise that right fully unless governments at all levels change their ways of operating. This requires governments to shift more of their powers under Australian law into Aboriginal and Torres Strait Islander hands. A government self-determination policy is about power; it involves shifting defined powers to Aboriginal and Torres Strait Islander bodies, whether these be community-sector organisations, regional alliances, native nations, regional authorities or other bodies.

In a 2002 paper, Smith examines the concept of 'jurisdictional devolution', explaining it as *the transfer of specified power and authority 'to legitimate, representative institutions'* (Smith, 2002, p. 4), *giving effect to self-government*. She points out that current funding and administrative arrangements seriously reduce the capacity for Aboriginal self-determination. In particular, she says, "Funds are:

- administered by multiple departments which retain financial authority
- delivered in a stop-start process via a multitude of small separate grants
- subject to changing policy and externally controlled program priorities, inflexible conditions and timeframes, and
- overloaded with heavy burdens of administrative and 'upward' accountability." (p. 6)

As Smith points out, this transference of power may be, 'in respect to any possible combination of administrative, political, financial, functional and policy domains' (p. 4). Devolving power differs from decentralisation in that it requires the transference of *authority* from central to other jurisdictional levels.

Smith goes on to explain that little financial authority has been passed to Aboriginal groups, and insufficient sustained effort has been made to build the 'governance institutions and capacities necessary for the effective implementation of self-determination' (p. 6). However, she argues that localised federal systems allow for greater diversity and local voices. Smaller jurisdictions strengthen the accountability links, although the scale of jurisdictions has trade-offs between equity and efficiency. Local autonomy has to be balanced with wider relatedness. A representative regional body which has layers of responsibility and associated accountability within it is likely to be the most workable – a form of local federalism. Reilly, Behrend, Williams, McCausland and McMillan (2007) review a range of legislative regional governance arrangements and suggest that regional governance structures, with a clearly defined scope and mandate which match community expectations of their powers and functions, have been most successful to date. And such bodies must "... reflect the diversity of Aboriginal 'communities' experiences, priorities and aspirations..." (Reilly et al., 2007, p. 166).

Smith (2002) highlights a number of lessons drawn from US experience of governments shifting welfare responsibilities to native nations. Summarised, and considering their application in an Australian state-level jurisdiction, rather than at the national level, these include:

- a legislative, policy and regulatory framework to support devolution and shared and equitable program standards
- a statutory mechanism to coordinate programs and pool funds
- adequate baseline funding for planning, set up, infrastructure, administration, technical support and program evaluation
- realistic timeframes for planning and start up, and incremental implementation, with periodic evaluation
- flexible coordination and agreement-making mechanisms between Aboriginal groups and state government
- local-level data collection, management and reporting systems, and technical assistance and data sharing by governments
- institutional and governance capacity-building at local level (adapted from Smith, 2002, p. 18).

5.10. Conclusion

For the State Government to move towards greater Aboriginal self-determination it will have to consider or recognise:

- that the right to self-determination is an inherent right of Indigenous people
- that New South Wales's own history and institutional arrangements will shape the processes and directions government and Aboriginal people can take, providing opportunity and perhaps constraining directions simultaneously
- that the Commonwealth Government's policy environment does not currently support self-determination, although some state jurisdictions are moving towards treaties as approaches to self-determination
- that ideas about what self-determination might look like in practice may vary significantly across the state, so processes will be necessary to enable Aboriginal people to consider this among themselves

- that Aboriginal people will need their own capable governance institutions that are perceived as legitimate and effective in order to exercise self-determination, and these are likely to be regional federated governance bodies that can balance efficiency and equity
- the scope of any renewed State Government self-determination policy will need to be clearly agreed and determined, implemented incrementally, with authority and financial resources flowing to where responsibility lies, with the relevant accountability arrangements in place
- that in further developing its approach to self-determination, the State Government will need to work very closely with Aboriginal organisations, and give them a genuine say in both policy processes and outcomes. It will be important that they shape the framework within which the process occurs.

5.11. Research questions to explore

The following research questions, though inter-related, need to be undertaken in the following order, so that Aboriginal and Torres Strait Islander people in New South Wales can clarify their aspirations and frameworks for self-determination to which government can respond.

1. What are the aspirations of Aboriginal and Torres Strait Islander people in New South Wales for their own and their community's wellbeing and for self-determination? This would need to explore: How do they understand wellbeing and how do they think their wellbeing could be improved? What does self-determination mean to them? In what areas of life do they want greater decision-making and control?
2. By what mechanisms do Aboriginal people in New South Wales seek to exercise self-determination? How do they currently and in future want to exercise decision-making in priority areas (i.e. through what types of institutional arrangements)? What role do they see for government in moving towards their desired level of decision-making authority? How will any future national Makarrata Commission processes align with developments in the regions of New South Wales?
3. What processes do Aboriginal and Torres Strait Islander people require (particularly in more complex urban contexts with diverse Aboriginal and Torres Strait Islander populations, e.g. traditional owners, historical people, representatives of diverse

Aboriginal nation or tribal groups, recent residents etc.), to determine appropriate arrangements for community governance that would be perceived as legitimate and effective by their people? What are appropriate scales for successful Aboriginal community governance in New South Wales? Can there be 'nested' networked arrangements which facilitate high levels of local autonomy among Aboriginal groups yet which allow for the benefits of larger-scale regional arrangements where relevant?

4. How do government agencies understand Indigenous self-determination? In what ways do they currently work in partnerships with Aboriginal governance bodies? How do they think they could work in more supportive and effective partnerships with Aboriginal governance bodies and transform government processes to enable Aboriginal and Torres Strait Islander people to exercise greater self-determination? What do they need to enable this to happen?

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6 Influencing the public discourse



Jeff McMullen AM, journalist, author and film-maker

As my ABC television program ended one night in 2007 and the dialogue on the future of Australia's First Peoples was moving to another phase of intervention without consultation, Patrick Dodson leant across the panel desk and said in a quiet, measured tone to the Federal Indigenous Affairs Minister, Mal Brough: "Minister, it is not fundamentally about policy. It is about how you value Aboriginal people as human beings." (Dodson, 2007). Fast forward to June 2014, and on the ABC's Q&A, Rosalie Kunoth-Monks, the Arrrente/ Alyawarra elder from Utopia, cries out: "Don't try to suppress me and don't call me a problem. I am not the problem." (Kunoth-Monks, 2014).

These are the constants in the Australian discourse. If we draw a line from Lt James Cook's journals written in 1770 (McMullen, 2014) to the mainstream media's portrayal today (McMullen, 2011), there is a relentless, humiliating devaluing of Aboriginal and Torres Strait Islander people as human beings and a misconceived, one-sided fixation on the 'Aboriginal problem'. It is a deficit discourse, emphasising victimhood, social marginalisation, violence, criminality and racialised difference. In this matrix of negativity, the media messages saturate the public perception of Aboriginal people and frequently impact the policy agenda. If, on the other hand, the media messages are positive, as in the case of the campaign before the 1967 referendum

and the blanket coverage of the Sydney Harbour Bridge walk in 2000 in support of an apology to the Stolen Generations, the nation accepts bold policy changes.

The single most important positive influence on the discourse is the eloquence, patience and persistence of Aboriginal and Torres Strait Islander men and women. Senator Pat Dodson, the Yawaru man from Broome, hailed as the ‘father of Reconciliation,’ has given decades to various efforts to build bridges when perhaps no more than one in six non-Indigenous families knows an Aboriginal family (Dale, 2014, 2016). Rosalie Kunoth-Monks, the star of the movie *Jedda* who is frequently described as a ‘national treasure’, travels the land at 80 years of age advocating for the beliefs and the human rights of her people. In public, these highly respected elders display enormous poise and dignity, and yet I have seen them both in tears over the staggering loss of life and culture across the country. What is heart-breaking is the widespread feeling that no one is *really* listening, despite a long tradition of powerful voices explaining to the nation how Aboriginal people want to determine their own destiny.

Dr Chris Sarra, a Gurang Gurang man and founder of the Stronger Smarter Institute, recently has made a significant and observable impact on Prime Minister Malcolm Turnbull with his call to “do things with us, not to us” (Sarra, 2015). Appealing for a more positive relationship and more hopeful policies with “higher expectations” for the First Peoples, Sarra has employed the strategies he developed as a leading Aboriginal education reformer (Sarra, 2012). In February 2017, this former school principal with a PhD in psychology told me that the current mood in Canberra is open to new possibilities. He senses something different is arising around the country and above all, a palpable increase in enthusiasm for change.

The increasing power and reach of the Aboriginal voice is illustrated by Stan Grant’s speech on the Australian Dream going viral (Grant, 2016); Noel Pearson eulogising Gough Whitlam; Patrick Dodson, Ken Wyatt, Linda Burney, Malarndirri McCarthy and Jacqui Lambie standing together in Federal Parliament. Australian history is replete with shining hours and even hopeful seasons of political expectation, thanks to determined campaigning by men like William Cooper, William Ferguson, Jack Patten and Fred Maynard, as well as women such as Pearl Gibbs, Essie Coffey, Evelyn Scott and Faith Bandler. As Professor John Maynard (2007) writes about his grandfather’s impressive role in the Australian Aboriginal Progressive Association, the use of newspapers, letter writing and petitions allowed some

voices to be heard as early as the 1920s. Overwhelmingly, the reform agenda has been formulated by Aboriginal people, banking on solid support from non-Indigenous allies who have listened.

Capturing attention for the First People’s agenda has required political imagination and ingenuity. The Day of Mourning (1938), Freedom Ride (1965), Wave Hill Walkoff (1966) and Aboriginal Tent Embassy (1972) confronted the nation’s amnesia about the loss of land, rights and freedoms. I recall the performance of the first Aboriginal journalist in mainstream media, John Newfong, brilliantly shaping messages that challenged the numbing indifference to the intergenerational trauma that has accompanied dispossession (McMullen, 2010). Gary Foley understood that Australian society needed to be shocked to pay any attention to genuine land rights. Charles Perkins decided to penetrate the halls of white political privilege, believing that he could influence policy and the national discourse from within. Rosalie Kunoth-Monks and Djiniyini Gondarra turned their backs on the Howard Government and travelled to the United Nations Committee for the Elimination of Racism (CERD) in Geneva to plead for an end to the *Northern Territory Emergency Response 2007* (The Intervention).

No matter how impressive this advocacy has been, every committed Aboriginal leader I have encountered has complained of how exhausting it is to justify historic demands over and over again to politicians, bureaucrats and the public. The late Charles Perkins told me, “The road to emancipation is a very long road.” In a recent address to the ALP Caucus, Senator Pat Dodson echoed this sentiment saying, “We need to be free from constantly needing you to understand us. We need to be free from explaining ourselves to you. We need to be free to do the things that are important to us.”¹

Ironically, the public discourse on Aboriginal issues is heavily influenced by what we don’t know ... about the views of Aboriginal people, about their varied and complex circumstances, about their languages and cultures, and especially about their world view and relationship to country. The Australian study of history rarely starts with the longer timelines, the journey of the continent itself from the Gondwana period. We spend little time studying the epic treks by the children of the sunrise or their survival despite extraordinary environmental changes on this continent including an Ice Age. We see ourselves today as multiculturalism’s shining success story but know less about the 250 languages and 700 dialects, the diverse cultural

¹ Dodson, Patrick. Address to ALP Caucus. Canberra. Cited in *The Weekend Australian*. 18-19 February 2017.

practices, social structures and trading patterns that in fact created an ancient multiculturalism (Trudgeon, 2000). Collectively we have a deficit of knowledge about the world's oldest unbroken stream of human learning and especially the custodianship that is a foundation for modern earth science to manage our life-sustaining resources (Gammage, 2011). Is it any wonder the discourse is hollow?

My experiences, including over fifty years of journalism, writing, filming and learning about the First Peoples in the Amazon, Guatemala, the United States, Canada, New Zealand and the Saami Lands, have me convinced that our discourse is shaped by the distinctly Australian matrix we occupy with limited contact, knowledge and understanding. This matrix is not a virtual world like the one in the Keanu Reeves movie, although social media bullying, chat room rants and outbursts on Twitter do sometimes fuel the negativity. We live in a matrix of self-interest, shaped by the degree of our family comfort, cultural upbringing, education and, to a considerable degree, by a fear of difference. The latter is an evolutionary trait but it fuels suspicion of anyone different whom we perceive as a threat to our concerns (Wilson, 2003). From the moment English sails entered the waters of the Great South Land it has usually been a case of 'us' and 'them'.

What we do know about the First Peoples is shaped by information we receive in the matrix. Like history, anthropology and medicine, journalism has some standards to test the veracity of the 'facts'. Are endlessly looped images of drunken Aboriginal people staggering through the streets of impoverished communities authentic? Well yes, sometimes, but too often this is a cruel stereotype, demonising all Aboriginal and Torres Strait Islander people when statistics confirm that most are less likely to drink alcohol than non-Indigenous people (ABS, 2016). When the actor, Ernie Dingo, was asked about his portrayal of a homeless Aboriginal alcoholic in the film, *Bran Nue Dae*, he replied, "There are more white alcoholics than there are black people in this country." (Bahbah & Phillips, 2009).

The truth about what causes painful social collapse and how to overcome it is obscured by constant stereotyping in current affairs, cartoons and commentary. These media players collude, not for the common good, but for maximum attention and sometimes applause. As a result, the public loses interest in policy solutions. The humanity of individuals and entire communities is diminished by a media gaze that pins them to a victimhood supposedly of Aboriginal making. In this way, the mass media contributed enormously to the

demonising of all Aboriginal men for allegedly joining organised paedophile rings. Before the NT Intervention. Federal Ministers had made this claim but it was later rejected by the Australian Crimes Commission. A confected outrage over the wellbeing of little children did not lead to any improvement in their wellbeing or even their current rate of death, as reflected in Prime Minister Malcolm Turnbull's latest *Closing the Gap* annual report (DPM&C, 2017) on Aboriginal and Torres Strait Islander disadvantage. Significantly, many government approaches follow the deficit discourse, usually headlining where depressing gaps in disadvantage persist, with far less attention to the community efforts to improve wellbeing.

Aboriginal people have long complained that it is 'all bad news' for them. As journalist Amy McQuire, laments 'reality' television frequently exploits Aboriginal poverty, trauma and even the vulnerability of children as a form of 'entertainment' based on conflict but such media rarely challenges the frequent outbursts of blatant racism by some of the non-Indigenous 'celebrities' that make these choreographed programs popular (McQuire, 2016).

In 2004, as a contribution to Reconciliation Australia's efforts, I surveyed the media coverage and how it impacted the national discourse (McMullen, 2004). REDFERN RIOTS, PALM ISLAND BURNS, BLACKS DRAGGED ON LEASHES, PM'S BLACKS NOT THAT SORRY, SIT-DOWN CASH ENDS FOR BLACKS and WELFARE PLAN RACIST, the newspaper headlines screamed of conflict (McMullen, 2004). This is how Australia began the 21st Century.

It is confronting to discover, however, after examining the longer timelines of this discourse that while some things have changed such as the visibility of Aboriginal people in commercials, magazines and media generally, there is nonetheless a deeply troubling fatalism that maintains the space between us.

6.1. What the research tells us

In the colonial period, newspapers reflected settler concerns with 'marauding blacks', brutal tales from the Frontier Wars and only occasional editorialising against inhumane treatment of Aboriginal people. After reading fifty such newspapers, Professor Henry Reynolds (1999, pp. 11–120) was "shocked" to see graphic accounts by journalists boasting of taking part in atrocities and editors calling for a 'war of extermination'. While invariably some responding letter-writers called for

clemency and understanding of Aboriginal people, a white terror permeated the discourse. Accompanying the brutality of the English invasion, settlers displayed a strong fear of people who were different and a growing concern that the new arrivals must not lose their grip on lands suitable for agriculture (Reynolds, 2013, pp. 159–160). Any Aboriginal cry, to borrow Rosalie Kunoth-Monks's words that “the land holds us” and “we are whole human beings on our country”, was drowned out. This became a long-term pattern in our national discourse. White noise, black static.

Despite its scientific emptiness, the concept of race is frequently taken up by Australian media and some politicians to perpetuate the alienation of Aboriginal people. The calls by Pauline Hanson and the One Nation Party for all Australians to be ‘treated the same’ are hardly new and nor are a young girl’s jeering abuse of Sydney Swan’s footballer, Adam Goodes, in 2013, calling him an “ape”. Racism is the jarring dissonance in the Australian media that negates human respect and mutual understanding. As Ta-Nehisi Coates (2015, p. 7) puts it, too many people believe in race as “a defined, indubitable feature of the natural world. Racism – the need to ascribe bone-deep features to people and then to humiliate, reduce, and destroy them – inevitably follows from this inalterable condition.” From first contact with the English crew of the *Endeavour* in 1770 when muskets were fired at Aboriginal people on all four landings along the coast, through the White Australia policy and the ‘race powers’ of the Australian Constitution, racism and the exclusion of Aboriginal people from their human rights can be seen as foundational and now institutional qualities.

As Megan Davis and George Williams (2015, pp. 17–19) observe, Australia’s first Prime Minister, Edmund Barton, expressed the lowly, fringe status of Aboriginal people by declaring that they were “not deserving of a share of government income” and it would “not be considered fair to include the Aborigines in the population counts.” According to Aileen Moreton-Robinson (2015, pp. 176–185), the ‘white possessive’ has ruled the public discourse, shaping the Australian view on Aboriginal and Torres Strait Islander self-determination; law, language and cultural practice; lands and resources; the aspirations of the First Peoples and the dominant views on who occupies the moral high ground. At the federal level, Henry Reynolds asserts in the documentary *Our generation* (Curtis & Saban, 2010), it is hard to find a major Aboriginal policy that is not based on assimilation. The discourse reflects a message that Aboriginal people must change.

In the neo-liberal era, the late Helen Hughes rejected all concepts of Aboriginal self-determination and communal land holdings, proposing instead a rapid transformation to private home ownership (McMullen, 2013). This argument that Aboriginal people must become acquisitive and ‘modernise’ was taken up by Aboriginal public intellectuals including Noel Pearson and Marcia Langton. Their most vigorous promoters were News Corp newspapers. *The Australian* was particularly supportive of the Pearson case for transforming Aboriginal welfare dependency through an agenda of mutual responsibility or loss of benefits, a discourse that flowed into the contemporary Basic Card policy. This same media sector, with useful links to television chat shows and radio shock jocks, has maintained strong opposition to Aboriginal and Torres Strait Islander self-determination, recognition of sovereignty on tribal lands and treaties at a national, state or territory level. After abandoning hope of a non-discrimination clause in a reformed Australian Constitution, Noel Pearson has directed his advocacy towards creation of a new national Aboriginal and Torres Strait Islander advisory body. A majority of Aboriginal people still call for a treaty or treaties. Here there is a significant split between the federal discourse and state government willingness to discuss regional treaties. Arguably, state governments in Victoria, South Australia and New South Wales have made some progress towards a better relationship with Aboriginal people.

The dominant influence on discussions of Aboriginal policy remains the influence of neo-liberalism. Opposition to community controlled health services and the utilisation of Aboriginal and Torres Strait Islander cultural values in education is widely recognised in literature reviews covering recent decades. The Australian Council for Educational Research (ACER) has stressed the importance of cultural awareness and language for Aboriginal and Torres Strait Islander students, approaches deemed less important than mainstream literacy and numeracy (Krakouer, 2015) by neo-liberal critics with prominent media platforms. The Australian Human Rights Commission has gathered evidence on the benefits of a culturally-responsive approach to Aboriginal and Torres Strait Islander health services but this too is rejected in neo-liberal discourse as exceptionalism (Calma & Dick, 2007).

Although national media, including the Australian Broadcasting Corporation, SBS networks and the 17 Fairfax newspapers have given less weight to the neo-liberal arguments for mainstreaming, the capability of Aboriginal people to manage and deliver their own

solutions in health and education has been obscured by the media's tendency to endlessly replay the history wars, the culture wars and the eternal policy divide. Aboriginal and Torres Strait Islander media spends more time on innovative solutions to problems and additional investment in this area could build a more positive discourse. Media surveys show, however, that the more intractable an issue becomes, the fiercer the conflict in the discourse (McCallum, Waller & Meadows, 2012). My conclusion is that policy announcements and media generally should include, where possible, Aboriginal responses and solutions.

Unquestionably, the best journalistic practice can give voice to the gravest Aboriginal concerns. After the ABC's *Four Corners* investigated the death of an Aboriginal man in a West Australian prison transport van, another inquiry followed. A *Four Corners* report on the Northern Territory's treatment of juveniles in Dondale Detention Centre led to the current royal commission with relevance to over incarceration of young Aboriginal and Torres Strait Islander men and women around the country. Aboriginal people are still let down by the reality that in the contemporary era no police or prison officer has been convicted for the deaths or abuse of Aboriginal and Torres Strait Islander people in custody. Media studies establish an additional complexity in that from a public perspective even determined investigations of over-incarceration have contributed to the pervasive sense that Aboriginal people are addicted to criminal and anti-social behaviour (McCausland, 2004, pp. 93–94). This is explored in Ruth McCausland's extensive research on the impact of what the media reports and does not report (McCausland, 2004, pp. 84–98). Of relevance to New South Wales Government compensation to surviving members of the Stolen Generations, McCausland's analysis of the extensive media coverage of these individual lives shows that when the media and policy-makers make the effort to listen carefully we can have an extraordinarily positive influence and help bring about a just outcome (McCausland, 2004, pp. 94–96). It is the art of listening that will give voice to Aboriginal people who hold the key to a positive discourse.

6.2. Research questions to explore

- What impact has the deficit discourse had on Aboriginal efforts to be self-determining in health, education and social programs?
- How can mainstream media be encouraged (beyond self-regulation) to end negative stereotyping?
- What is best practice advocacy, policy promotion and media reporting that highlights the strengths of Aboriginal people?
- Would investment in Aboriginal and Torres Strait Islander newspapers, digital platforms and television programming positively influence the discourse?
- Should the New South Wales education curriculum devote more effort to the longer timelines of Australian history?
- How can New South Wales bureaucrats undergo professional development to improve their knowledge and working relationships with Aboriginal people?

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7 Improving research and evaluation practice with Aboriginal peoples and communities



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7.1. Introduction

In November 2015 researchers at the Social Policy Research Centre (SPRC) began the evaluation of the *OCHRE* initiatives, referred to in communities as the *continuing conversation*. As part of this evaluation the literature on evaluation theories and how they apply to Aboriginal evaluation was reviewed (Katz, Newton, Bates & Raven, 2016). This paper draws on this review and on our experience from the *OCHRE* evaluation to date. The paper provides an overview of current guidelines on ethical practices in research with Aboriginal people and communities, and identifies areas where further work is needed to better understand the complexities, dilemmas, strengths and benefits of conducting ethical and good-practice Aboriginal research. Although there are some differences between ‘research’ and ‘evaluation’, the distinction between Aboriginal and Torres Strait Islander research and evaluation is fairly arbitrary, and some Aboriginal and Torres Strait Islander communities consider both as political acts (Johnston-Goodstar, 2012). This paper focuses on applied social policy research and evaluation. Information about the *OCHRE* initiative and about the evaluation/continuing conversation and the literature review is available on the *OCHRE* website (<http://www.aboriginalaffairs.nsw.gov.au/nsw-government-aboriginal-affairs-strategy>).

This paper should not be read as a statement of best practice in research with Aboriginal peoples. Rather it is a reflection on the literature and how it engages with particular types of research programs involving Aboriginal communities and our learnings from the evaluation to date.

7.2. Policy environment of in Aboriginal research and evaluation

Research is one of a range of areas where Aboriginal people have suffered exploitation and injustice as part of Australia's colonial history. Traditionally, research 'on' Aboriginal peoples has been conducted from a Western perspective, to benefit the interests and enhance the knowledge of white society. Aboriginal people have been deeply harmed in this process and in this way the legacy of research practices has contributed to the trauma experienced by Aboriginal people and communities (Taylor, 2003).

It is only in recent years that scholars have used this injustice against Aboriginal people to argue for policies and protocols to ensure good practice when conducting research with Aboriginal people and communities. Good practice in Aboriginal and Torres Strait Islander research involves 'de-colonisation' of the research process, in which Indigenous peoples take control of the research and use it for their own purposes and to further their own interests (Tuhiwai Smith, 1999).

Today, researchers wanting to conduct research involving Aboriginal and Torres Strait Islander peoples in Australia are held accountable to the principles stated in the *Guidelines for ethical research in Australian Indigenous Studies* (AIATSIS, 2012), the *National statement on ethical conduct in human research* (NH&MRC, 2007), and *Values and ethics: Guidelines for ethical conduct in Aboriginal and Torres Strait Islander health research* (NH&MRC, 2003).

Other key documents to guide Aboriginal and Torres Strait Islander research include:

- *Keeping research on track: A guide for Aboriginal and Torres Strait Islander peoples about health research ethics* (NH&MRC, 2006).
- *Guidelines for Indigenous ecological knowledge management* (Holcombe, 2009).
- *Researching Indigenous health: a practical guide for researchers* (Laycock et al., 2011).

- *Supporting Indigenous researchers: A practical guide for supervisors* (Laycock et al., 2009).
- *Ten principles relevant to health research among Indigenous Australian populations* (Jamieson et al., 2012).

All research conducted in New South Wales that has a focus or component on Aboriginal health or wellbeing must be approved by the Aboriginal Health and Medical Research Council (AH&MRC) Ethics Committee. 'Wellbeing' covers a wide range of issues, and in practice the majority of social research is covered by the AH&MRC. The AH&MRC is recognised by university human research ethics committees (HRECS) in New South Wales, so Aboriginal research and evaluation is primarily dealt with by AH&MRC. To be approved, research must demonstrate consistency with the AIATSIS and NH&MRC documents, and must show it will be advantageous to Aboriginal people by implementing the following five ethical principles for conducting Aboriginal research set out by the *Guidelines for Research into Aboriginal Health: Key Principles* (AH&MRC, 2013):

- **Net benefits for Aboriginal people and communities:** The research will advance scientific knowledge and result in a demonstrated net benefit for the health of Aboriginal people and communities.
- **Aboriginal community control of research:** There is Aboriginal community control over all aspects of the proposed research including research design, ownership of data, data interpretation and publication of research findings.
- **Cultural sensitivity:** The research will be conducted in a manner sensitive to the cultural principles of Aboriginal society and will recognise the historical aspects and impact of colonisation on Aboriginal people.
- **Reimbursement of costs:** Aboriginal communities and organisations will be reimbursed for all costs arising from their participation in the research process.
- **Enhancing Aboriginal skills and knowledge:** The project will use available opportunities to enhance the skills and knowledge of Aboriginal people, communities and organisations that are participating in the project.

These are very high-level principles which may sometimes be difficult to interpret and implement. One of the key conclusions of the *OCHRE* literature review was that:

There is now a considerable literature on Indigenous research and evaluation, but there are still considerable gaps and problems (with) the literature (sic). Most importantly, there is little consideration in the literature about the actual implementation of the principles (Katz et al., 2016, p.38).

As more culturally sensitive and empowering approaches to research and evaluation with Aboriginal communities are being sought, the need has grown for more, and more rigorous, evaluations of Aboriginal programs in order to understand better what works in Aboriginal affairs (Productivity Commission, 2012; Hudson, 2017) and to avoid funding ineffective programs. “Rigorous” in this sense refers to randomised controlled trials or other experimental designs. This raises two significant tensions: first, the appropriateness of these designs for many programs and communities, and second, the potential burden on Aboriginal communities of a significant increase in government-imposed and designed evaluations.

The following section will draw on recent literature, and our experiences from conducting the early stages of the *OCHRE* evaluation, and discuss how meeting these principles works in practice, particularly in the context of government-funded policy evaluations.

7.3. Lessons to date

7.3.1. Trust and inclusion

A key component of best practice in Aboriginal evaluations involves actively including communities in the evaluation. However, there are a number of challenges and this can prove difficult due to research staffing capacities and budget constraints. Scougall commented on the challenges for researchers conducting large evaluations in Aboriginal communities:

The hard reality is that evaluators are most often outsiders with limited resources and precious little time to spend in the field... They are typically short on contextual understandings and need to work across many project sites. This precludes the possibility of any real bonding with the participants (Scougall, 2006, p.49).

These challenges are true for the *OCHRE* evaluation. We have attempted in the evaluation to create meaningful partnerships and participation with communities through extra field visits, including week-long trips to different communities, as the evaluation region covers a vast geographic area. This has enabled us to meet different people in the communities and to learn about the diversity of their views and experiences, so that our exposure is not limited to those members who are able to attend evaluation meetings. We are also using the research processes – in particular, a participatory approach to the evaluation – to establish connections with communities. A participatory approach is particularly important because it ensures the research participants’ voice is heard, valued and prioritised, and – a consideration specific to Aboriginal groups – that Aboriginal knowledge systems are respected and promoted (Cochran, Marshall, Garcia-Downing, Kendall, Cook & McCubbin, 2008). Kendall and colleagues argue that participatory research is significant because it promotes a shared understanding between the researchers and the community (Kendall, Sunderland, Barnett, Nalder & Matthews, 2011, p.1724). In this way, the community takes ownership of the research process and outcomes, and the research therefore becomes a manifestation of empowerment and emancipation. However, Kendall and colleagues also comment that true participatory action research is rarely implemented in a meaningful way in Australia because researchers lack ‘exposure, training, and preparation for community-based participatory action research’ (Kendall et al., 2011, p.1724).

7.3.2. Time

The flexibility to engage communities at their pace and at a time that suits them is essential for implementing participatory and ethical Aboriginal research principles in a meaningful way. Yet evaluations are generally short-term projects. And even in long-term projects, government generally expects interim findings quite soon. This tension must be negotiated with government and communities throughout the project and is one of the key risks in government-funded research and evaluation.

7.3.3. Independence

One of the key tensions in Aboriginal evaluation is for the evaluators to maintain independence while at the same time ensuring community ownership of the project as well as satisfying contractual and accountability requirements to government. Evaluations must be independent of both government and communities, and

yet must work very closely with both in order to conduct the research. Similarly, although the community owns the data and research findings, the evaluators also must exercise their own judgement based on analysis of the data with reference to the research literature. Thus the evaluators must constantly negotiate the expectations of community and government while maintaining the ethical requirement for independence and objectivity. This also involves developing over time a mutual understanding of what ‘independence’ and ‘ownership’ mean in the context of Aboriginal research, and negotiating these issues as the project progresses.

7.3.4. Community involvement and co-design

A key part of community ownership of research and evaluation is for communities to own the design of the research.

One of the biggest challenges for the *OCHRE* evaluation has been identifying the nature and meaning of ‘community consent’ to undertake research in Aboriginal communities. Who authorises consent depends on the context of the research. For some sites, it has taken time to identify who has authority to provide consent. Indeed, the term ‘consent’ has proved to be problematic for this evaluation, as has the nature of the consent provided. For example, there have been discussions about whether this refers to permission to come on to Country, permission to conduct the evaluation, approval of the evaluation, or agreement by the particular group who were involved in the co-design. These have raised more fundamental issues about the governance arrangements in communities, and how government (and evaluators) engage with these structures. This also means that consent may not be a simple, one-off process as it is in conventional research, but could be seen as part of the ongoing conversation. The AH&MRC was originally set up to approve medical research, and processes in this area are more straightforward: each community has a local Aboriginal Medical Service that is empowered to consent to medical research. Social research is more complex, as no single body covers this area uniformly in each community. The complexity of consent, and of obtaining community consent, has not really been discussed in the literature and further commentary in this area is needed.

Community control goes beyond consent and involves developing mechanisms for communities to contribute to the design of a project and to approve the methods to be used. In the *OCHRE* evaluation this has involved discussions on some relatively technical issues with communities to enable them to make informed choices

between different methods, given the budget and time constraints of the project. For all projects, these choices need to be provided in a meaningful way to communities, who may also have their own suggestions as to what the project should focus on, who should be involved and how this process should be managed locally. Ultimately it is not possible for the whole group to approve every aspect of the work, and so a mechanism must be established to ensure community ownership while maintaining the progress of the research. This may involve, for example, appointing an individual or a small group of people to negotiate the specifics of the project design. Control also involves data collection, analysis and dissemination, which will be negotiated at each stage with communities.

Overall, what ‘community control’ actually means in Aboriginal research is a challenging issue. Most of the literature on this question comes from Canada and New Zealand, where community governance structures appear to be much more uniform than in Australia. Here, many communities are divided in various ways, and often no single body exists that can represent the communities in New South Wales. Thus, it is often necessary to engage multiple organisations and individuals, and even then ‘community’ consent or control is not necessarily achieved. In order to better understand the challenges and tensions, including the meaning of consent and the management of consent processes, Aboriginal Affairs NSW has commissioned a separate study (<http://www.aboriginalaffairs.nsw.gov.au/research-evaluation/research-projects>).

Ultimately community ownership of research must go beyond consent or permission for researchers to work in the community. In Canada and New Zealand, Aboriginal communities are initiating research themselves and commissioning research as part of the process of self-determination. This is less common in Australia other than, for example, the Lowitja Institute, but as Aboriginal research capacity grows, it is hoped that more communities can take full ownership of the whole research process.

7.3.5. Capacity building

Engaging community members as co-researchers is increasingly considered good practice in Aboriginal research and can prove beneficial to both the research and the community. For instance, Scougall (2006) argues that using community researchers helps to put research participants at ease, as they are more likely to feel they can safely express their views in familiar company. Participants’ responses are also less likely to

be misinterpreted, as community researchers will have a lived understanding of the perspectives of participants, ensuring that the findings are reported accurately and reflect what the community has said (Scougall, 2006, p.52). This approach can also increase the capacity of the community by increasing its skills to conduct research, analyse data and to use research findings.

Part of the *OCHRE* evaluation involves discussing with communities the possibility of inviting local Aboriginal community members to conduct some of the research, to which the response has been generally positive. Although this approach is acknowledged to be good practice and is arguably a necessary component of community ownership, it raises a number of questions, including:

- What is the process for recruiting community researchers?
- Who decides who is appropriate to be a community researcher?
- What do we expect from community researchers?
- What is the best way to train community researchers?
- What accountability and support structures should be put into place?
- How should they be paid?

The role of community researchers may vary across the different sites and initiatives. There are a number of ways to engage community researchers – whether as volunteers who give some of their time or as researchers who are paid employees.

Previous literature on Aboriginal and Torres Strait Islander evaluations stress the importance of identifying the knowledge and expertise of all involved in the research (for example, Taylor, 2003; Scougall, 2006). An important learning point has been about recognising the different roles of key stakeholders in the evaluation. As researchers, we bring an understanding of research, evaluation, and Aboriginal social policy. Aboriginal researchers additionally bring their cultural knowledge and lived experience to the evaluation. However, we all acknowledge that we lack the local contextual knowledge of Aboriginal communities in this evaluation, and to develop that rich understanding we rely on local community members, including Aboriginal Affairs NSW staff. The Aboriginal Affairs Regional Representatives, most of whom are also local Aboriginal community

members within the evaluation sites, have played a pivotal role in the evaluation by engaging the different communities; they have worked very closely with both the local communities and the evaluation team to ensure that successful relationships may be developed. This is very different to the traditional ways of conducting evaluations, where government agencies have minimal input into the relationship between evaluators and research participants. In this way, this evaluation is developing a new model for conducting evaluations in Aboriginal communities. The dual role of some Aboriginal Affairs NSW staff, as both local community members and government employees, and how these dual roles are navigated throughout the evaluation will require ongoing discussion and reflection. Aboriginal Affairs NSW has commissioned Tony Dreise, from the Australian National University, to undertake research in this area. His report (Dreise, 2017) has been published and provides new and important insights into this area. However more research is needed to explore the experiences of Aboriginal people who have a dual role as community members and government employees or academic researchers and how this affects their engagement with evaluations. Related to this is the role of Aboriginal Affairs NSW workers and Aboriginal researchers in the communities.

7.3.6. Methodology

The vast majority of the literature on Aboriginal and Torres Strait islander research indicates that the most appropriate methodologies are qualitative, because qualitative research fits into the world view of Indigenous peoples.

The literature lacks depth in relation to managing the tensions between Aboriginal research paradigms and government-sponsored evaluation and research which requires set work plans, and deliverables. It should be noted that this is not just about white bureaucrats and institutions versus Aboriginal communities. In the *OCHRE* evaluation some community members, for example, are keen for *OCHRE* to report against clear KPIs and regard access to hard data as important for the empowerment of Aboriginal communities. On the other hand, many community members have expressed the wish for the evaluation to involve methods such as yarning and group discussions with community members. This issue is therefore more about two different paradigms for research in tension with each other, with different requirements for outputs, timescales and processes. Overall there needs to be a combination of qualitative and quantitative research, but there is no

established way of combining these methods in the Aboriginal context. This is an ongoing challenge for Aboriginal research.

As the *OCHRE* evaluation proceeds through its 10-year lifespan, significant learnings will emerge that will fill practice gaps in the literature. Seen in this way, the evaluation provides a case study unfolding in front of us in the operation of research with Aboriginal peoples and communities. Learnings have already been identified in a range of areas including: obtaining community consent for research activities; the role of and challenges for Aboriginal public servants undertaking and supporting research; working in Aboriginal and Western knowledge and practice systems in co-designing research, and nurturing Aboriginal communities to participate in research as participants and researchers.

We have also identified some of the tensions that arise during the process of trying to conduct Aboriginal research in a way that aligns with good practice principles. These are:

- flexibility and community control vs resources and budgeting
- Western versus Aboriginal research paradigms and success criteria
- independence versus community control versus government accountability.

Community engagement is a long process involving ongoing consultation between the evaluation team, government officials and community members. However, this approach to the evaluation ensures that the communities are not only involved in decision-making for the research, but also obtain the power to have knowledgeable and informed conversations with government. Ideally, in this way evaluations can contribute to the success of programs as well as providing independent insights into the strengths and weaknesses of the programs.

7.4. Research questions to explore

- What is the role of research in the process of empowerment and self-determination for Aboriginal peoples?
- What are the processes and experiences for the monitoring and governance of research with Aboriginal communities? In particular, how can communities control all aspects of the research process?
- What is the role and potential of community researchers? What models exist for how they can be supported? What are the guiding principles?
- How can Aboriginal communities and organisations better use the findings of research and evaluation to support better service delivery and improved wellbeing of community members?
- How do Aboriginal communities engage with different research methods and different uses of research?
- What are the most appropriate ways of combining qualitative and quantitative research in evaluations of Aboriginal programs?

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8 The impact of Aboriginal perspectives on policy development



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In this paper, I reflect on some of my experiences in the New South Wales public sector where Aboriginal perspectives have made an impact in the policy development process. I highlight both the changing approach to policy development in Aboriginal affairs and the enhanced role of Aboriginal people and communities in the policy-making process in order to explore the capacity, contestation, aspirations and possibilities that this new approach to policy design creates for those it is intended to benefit.

8.1. Changing approaches to policy development

As Aboriginal people, we engage in the policy arena with historical memory of policy as a colonising practice and with a desire to now make positive change. The ability of Aboriginal people to impact policy development has occurred in a relatively compressed period of time. It is fair to say that significant change is now under way in New South Wales Aboriginal affairs policy: that is transforming not only the way policy is developed, but also how government engages Aboriginal communities and what Aboriginal communities now expect of government. This change in government-Aboriginal relations has emerged from the so-called self-determination policy era that began in the early 1970s – a period preceded in turn by authoritarian rule, in which policies variously sought to protect, contain, segregate and assimilate Aboriginal people. Professor

Patrick Sullivan offers a useful overview of the phases of government approaches or ‘policy’ in relation to Aboriginal peoples. He refers to: conflict and appropriation; protection and segregation; assimilation and integration; and self-determination or self-management (Sullivan, 2011, p. 1).

Perhaps with greater focus on Commonwealth Government policies, Sullivan offers an account of Aboriginal affairs policy from the mid-1990s as a period of ‘normalisation’ characterised by the intention to re-engage the state with Aboriginal peoples and normalise their relations within their communities and with the wider population (Sullivan, 2011, p. 100). Sullivan makes a distinction between this policy era and the earlier distinct vision of a semi-autonomous, decolonised, discrete Aboriginal state.

In recent years in Australia there has been a change from a top-down, centralised approach to one in which policy is developed with citizens using the emerging concepts of co-creation, co-design and co-production. This approach has progressed in fits and starts over the past 20 years or so as governments and subsequently the public service have struggled to implement it in more than isolated examples. As Brenton Holmes (2011) reminds us, public servants with responsibility for policy development can collaborate in its development “only to the extent that ministers prescribe, department heads direct, and budgets allow” (p. 39). It remains the case in Australia that policy development is government-sponsored and undertaken on the government’s terms, often to achieve purposes which are predetermined.

We have entered a new period in Aboriginal affairs policy in New South Wales. It offers a form of self-determination in which the state’s role is transformed so that it accepts, supports and sustains Aboriginal modes of governance. This is a ‘quiet movement’. A key feature is the centrality of Aboriginal communities in the design and delivery of policy and services. Pressure from Aboriginal people to be included in decisions that affect their lives has been an enduring demand. Aboriginal people have long said that we know what is best, what works for us, and how best to rebuild our communities. This is about creating a space that allows Aboriginal worlds to thrive with the backing, resources and validation of government. It necessitates an unfamiliar power-sharing by government with a community that both asserts difference and seeks to exercise difference; to activate community and belonging.

However, it is necessary to consider critically how Aboriginal worlds can be understood and appreciated by government, how Aboriginal voices can be heard in policy design, implementation, measurement and evaluation. It was to enable the appreciation of a richer account of Aboriginal worlds in policy that I came to work in Aboriginal affairs

While I do not intend to journey through the policy development process, it is worth reflecting on the circumstances that create opportunities for policy development in the first place, since it is here that I think the Aboriginal voice has the greatest chance of being heard. I turn here to John Kingdon’s (2010) work on agenda setting and policy formation. A political scientist, Kingdon concludes that for an issue to get on the political agenda in the first place the problem needs clear definition with a viable solution available, and the political will to act. For Kingdon, the coming together of these “streams” creates a window of opportunity. You might say that it is when the stars align that policy change becomes possible. As public servants, we need to recognise the signs and be ready to act. Such a circumstance arose for me with the introduction of *Two ways together – the NSW Aboriginal Affairs Policy 2003–12*, and again with the New South Wales Auditor-General’s performance audit of the policy in 2011 (Audit Office of NSW, 2011).

The release of *Two ways together* was the catalyst for change in the prominence given to Aboriginal perspectives in policy development. The inclusion of Culture and Heritage as one of seven priority areas for action brought the National Parks and Wildlife Service (NPWS) (and me personally) directly into broader Aboriginal affairs policy as a lead agency. Protecting Aboriginal heritage and managing Aboriginal country became more salient in NPWS’s work. Add to this a then Minister for the Environment who understood the importance of Aboriginal people’s connection to culture and country to improvements in community wellbeing, and the stars began to align.

As a lead agency, NPWS had one seat at the Aboriginal affairs policy table. The other seats were taken entirely by justice and human service agencies. This imbalance meant a large and important part of Aboriginal people’s world was significantly under-represented. As NPWS’s representative I would hear value-laden words – *perpetrators, victims, clients* – used about Aboriginal people. That was in stark contrast to the way I thought about my Aboriginal family and community, and was completely at odds with my agency’s relationship with Aboriginal communities as *rights holders, owners,*

knowledge holders and co-managers. Just as the conversation within NPWS in relation to Aboriginal heritage had shifted from one dominated by technical and scientific attributes to one emphasising connections and values, I determined to use my position at the Aboriginal affairs policy table to challenge the dominant discourse, and to open the possibility of a policy driven, not by the wicked problems suggested by headline social indicators, but rather by the aspirations of Aboriginal people for the improved wellbeing of their communities.

The 15 years since the release of *Two ways together* have seen considerable change in the way government policy is made, and a greater acceptance that Aboriginal perspectives are key to successful policy and service design and impact. Changes were achieved in large part because, at the point in the political cycle most conducive to making significant policy change, there was a political and bureaucratic acceptance that the existing policy was not working.

In May 2011, the New South Wales Auditor-General audited the performance of *Two ways together*. Although the audit found the policy wanting, the Auditor-General commented that the establishment under the policy of community governance bodies to “bridge the gap between people who need services and those who deliver the services” was a promising development (Audit Office of NSW, 2011). The Auditor-General’s report was released shortly after the election of a new Liberal-National Government in March 2011. The incoming Premier, Barry O’Farrell, acted on the findings, committing to genuine engagement with Aboriginal communities in the development of a new Aboriginal affairs plan.

8.2. Developing an Aboriginal affairs policy – 2012 and 2013

Although the practice is still patchy, Aboriginal perspectives now have greater prominence in setting goals, negotiating aspirations, and designing policy and program development in government. Over the past several years there has been evidence of changing expectations within Aboriginal communities: more and more, they expect increased participation in the development of policies that impact them. This has worked hand-in-hand with a greater government emphasis on localised decision-making which is strengths-based, which understands the local context, and which focuses on empowering Aboriginal communities. The founding elements of this approach

are relationships: power-sharing between government and Aboriginal communities, and sustained conversation with communities. The process of developing *OCHRE*, the current New South Wales Aboriginal affairs plan, offers some useful insights into how this can be achieved (Houston & Cavanough, 2017).

In August 2011, the New South Wales Government established the Ministerial Taskforce on Aboriginal Affairs, comprising seven Cabinet ministers, two department heads and four independent Aboriginal members. The composition of the Ministerial Taskforce signalled the Government’s intention to develop a new Aboriginal affairs plan that was underpinned by political commitment, and grounded in both the realities of public-sector administration and a deep understanding of Aboriginal worlds.

The taskforce embarked on a series of community consultation forums. Consultations were extensive: 27 community and industry workshops and meetings were attended by an unprecedented 2,700 people. Further, consultations were held in two rounds and over an extended period, providing time for mutual understandings to develop between the ministerial, departmental and Aboriginal community’s perspectives. A key feature was that every forum was attended by taskforce members who heard directly from Aboriginal people. Over the consultation process the taskforce met on nine occasions to deliberate on what they had heard and how this might be given effect in a new plan.

A few observations are instructive in thinking about the Aboriginal voice in policy development. The first is that it was clear that community members were wary of the repetitive and cyclical nature of policy development, but at the same time embraced the opportunity to have their say and to “put the government on notice” that a sustained commitment to Aboriginal affairs was required.

The second is that the Aboriginal community was clearly concerned about the level of accountability and transparency in the design of services, the absence of genuinely shared decision-making, the duplication of services, the lack of coordination, the unclear accountability and, despite significant investment, the limited demonstrable improvement in the lives of Aboriginal people (Aboriginal Affairs NSW, 2013). The new plan included a number of initiatives to strengthen accountability and government oversight, making services accountable to the people they seek to benefit.

My third observation relates to the terms of reference of the Ministerial Taskforce, which unlike previous Aboriginal affairs policy that sought to address the full breadth of issues of relevance to Aboriginal people, were narrow. This enabled the taskforce to focus on key levers for shifting the situation for Aboriginal people at the population level and at the community level, and not to duplicate or cut across service-delivery reforms already under way across government. This was an important shift, which replaced conversations about ‘fixing up’ the most vulnerable or disadvantaged with conversations about how to bring about genuine change for the Aboriginal population. It allowed Aboriginal community views to emerge about a different approach which emphasised addressing the root causes of disadvantage – that is, the trauma that communities and families are dealing with often as a direct result of past government practices and policies – and which consistently identified strong culture, self-determination and respectful relationships with government as priorities.

8.2.1. Healing as policy – an example of Aboriginal perspectives informing policy

How the issue of healing became central to *OCHRE* is instructive in considering how the voice of Aboriginal people finds its way into policy.

Community consultations emphasised how critically important it was to the healing process to reconnect people with culture, community and Country. The question for the Ministerial Taskforce then became: What is the role of government in healing? For Aboriginal people healing is a process and a journey, and necessarily different for each person, family and community. That being so, healing cannot be attained through a single program, event or service. The notion of healing as a policy without a program being directly attached to it, or a clear definition of its meaning, was challenging. The Taskforce’s terms of reference and its commitment to respond positively to community priorities, nonetheless required that this issue be addressed.

Because the Ministerial Taskforce was so committed to co-production, a non-tangible, non-scientific, concept of healing was included for the first time in an Aboriginal affairs plan. At the specific request of Aboriginal communities, no direct program or service was proposed, but rather a commitment to continue the dialogue between Aboriginal communities and government about healing and about the role of government in supporting community-led healing

processes. This response not only demonstrated the Government’s commitment to bringing the voice of Aboriginal people to the core of policy development at the highest level (NSW Government, 2011), it also provided the Government with a solution to what had been a seemingly intractable policy challenge.

We see here the combined power of the Ministerial Taskforce that signalled political commitment to real co-production with Aboriginal communities, empowered Aboriginal community leadership with a mechanism for their voices to be heard, and a willingness to take risks.

8.3. Community participation, self-determination, and quality relationships

The operations of the Ministerial Taskforce and the resulting Aboriginal affairs plan, Opportunity, Choice, Healing, Responsibility, Empowerment (*OCHRE*) (NSW Government, 2013) places Aboriginal communities at the centre of the design and delivery of programs. The plan’s name represents both Aboriginal people’s deep connection to Country and the aspirations articulated through the Ministerial Taskforce’s consultations.

Local Decision Making (LDM) is a key initiative of *OCHRE* that sets up an entirely new relationship between Aboriginal communities and the New South Wales Government. Through LDM, Aboriginal community decision-making bodies negotiate regional priorities with senior government officials. This agreement making on the issues that are important to Aboriginal communities represents a very real shift in how governments have traditionally worked with Aboriginal communities. It allows Aboriginal perspectives – voice, knowledge, insights, aspirations – to inform policy and service design rather than government perspectives and agendas. It also enables Aboriginal communities, through locally determined governance structures, to hold government accountable for service investment, delivery and outcomes. The relationship is managed through a Premier’s Memorandum that states the intent of LDM and outlines the roles and responsibilities of New South Wales Government agencies in participating in LDM (M2015-01-Local Decision Making).

NSW Government agencies are required to work respectfully, constructively and cooperatively with Aboriginal regional alliances, to develop Accords [negotiated agreements]. Agencies are obligated to

adhere to the principles of LDM, to negotiate openly and in good faith, and to share service provision and indicator data with Aboriginal regional alliances (Aboriginal Affairs NSW, 2013, p. 23).

Not only does this support power-sharing between government and Aboriginal communities but it also requires government agencies to respond directly to Aboriginal perspectives. The empowerment of Aboriginal communities, the sharing of decision-making, and transparency, all mean that government is now accountable to those communities. Certainty of government funding means the operation of LDM will endure. LDM is not a pilot. It responds to the strong Aboriginal community view that that community had had their fill of three-year pilots.

A leading feature of LDM is that it is flexible and evolving so that it can respond to Aboriginal perspectives. It is in part a recognition that there are inherent differences between Aboriginal and non-Aboriginal worlds and ways of doing business. This extends to the process for determining the communities that will take part, their governance models, geographic boundaries, structure and representation – all of which are determined at the community level.

In contrast to the common practice, the Government did not determine which Aboriginal communities would participate. Instead expressions of interest were called for. Communities could themselves choose to put up their hands to participate in one of the three initial launch locations – one each in remote, regional and urban New South Wales. While some communities were reluctant to be involved because of past government practices, including dictating the terms of any arrangement, the Government ultimately found itself overwhelmed with interest and extended the initiative into six sites.

Several different governance models exist and operate within the LDM framework. When LDM was introduced, a small number of regional community governance bodies already existed as a result of separate Commonwealth-State regional partnership agreements. Others were developed specifically to be part of LDM. One of these became an incorporated body. Whatever the governance model, they are there for their own purposes.

Changes in the boundaries of local decision-making bodies provide another example of flexibility. After operating for a time, one Aboriginal community decision-making body decided its footprint was too large and too

complex to manage as one, so it divided into two. That meant that from the three initially planned, the LDM sites had become six and then seven. Elsewhere, in a true expression of self-determination, another new regional decision-making body formed independently and commenced operating under the framework of LDM. Seven LDM sites thus became eight.

Over time, Aboriginal community decision-making bodies participating in LDM can be delegated greater authority, possibly right through to controlling budgets and staff. That is to say, LDM has the potential to expand and evolve to a model similar to, for example, a Catchment Management Authority (CMA). CMAs were established by the New South Wales Government to ensure regional communities have a say in how natural resources are managed in their catchments. CMAs commenced as advisory bodies and over time, through legislation, were strengthened to become boards of management with their own staff, and evolved ultimately into the Local Land Service entities we see today.

While LDM is slowly shifting the power relationship between Aboriginal communities and government, progress is not inevitable and we must be vigilant. These governance bodies do not have the capacity to make law; they have no staff; they are volunteers. The terms of the partnership can thus never really be equal. The relationship requires respect for culture and a belief in the value of Aboriginal perspectives. Government continues to ask questions about what the Aboriginal community bring to the negotiating table. I often find myself emphasising that it is only when the Aboriginal voice, knowledge and views shape service delivery that government will deliver what is needed.

Nonetheless, there is great optimism within participating Aboriginal communities for the opportunity that LDM promises. We can see great diligence in the way Aboriginal communities approach the task of establishing good governance – in whom they represent, how, and what about; how they structure themselves, how they operate and make decisions; how they resolve internal conflicts; and how they determine the priorities they bring to the negotiating table with government. Their big concern for the future is that LDM – at least in its policy intent – transcends the inevitable changes in senior officials, ministers and governments. As the chair of one regional decision-making body has said, people want to “know the ground they are standing on is solid ... Governments have to go the distance on this one...”

8.4. Responsive public service structures

My observations over the past 15 years as a senior public servant with responsibilities in Aboriginal affairs portfolios, convince me that the policy process is not linear nor rational; rather it is complex, circular and messy. There are always competing agendas and interests, facts and values entangled, and a favouring of some perspectives at the expense of others.

In thinking about the means for Aboriginal perspectives to influence the policy discourse it is important that we reflect what I would describe as structural factors, since these impede or promote the hearing of the Aboriginal voice.

In NPWS, the structural changes required to bring Aboriginal perspectives into the policy debate were significant. These included a restructure and the creation of a new division, the appointment of an Aboriginal person as division head, the inclusion of the division head as a member of the Department's executive, and changes to staffing, program outcomes and resourcing to support the new directions. All this brought a deeper understanding of the Aboriginal perspective into the debate, embedding it in a genuine way into the purpose and strategy of the whole Department.

We see this again in the way the new Aboriginal affairs policy was delivered. The Ministerial Taskforce recommended that Aboriginal Affairs NSW be "repositioned as a strengths-based agency, focusing on opening up economic opportunities, capacity building and whole-of-government policy". In response, the New South Wales Government realigned the Aboriginal Affairs agency. To achieve this new mandate required structural changes. The central office structure, roles and responsibilities, and the operating model all changed to support the agency's new strategic intent. The work of the agency's regional arm refocused on keeping the conversation between Aboriginal communities and government open and responsive. The agency's ongoing work occurs under the banner of a continuing conversation – to make it clear that the New South Wales Government is committed to responding to Aboriginal perspectives as they emerge and develop. In many ways, the structural changes have institutionalised the co-production of policy and its evaluation.

Any discussion of structural change needs to include the impact of the structure of the New South Wales Public

Service itself, since this organises how Aboriginal affairs are addressed. The cluster structure introduced in 2009 (NSW Government, 2010) requires individuals to be serviced in 'parts' rather than as 'wholes'. The spiritual and cultural beliefs of Aboriginal people do not bend easily to these service-delivery structures. Open policy development – as occurred with the Ministerial Taskforce – does not so much canvass what services are needed, but rather investigates issues such as accountability and transparency in service delivery, examines the causes of disadvantage – the trauma caused by past government policies and practices – and plans policy that will address culture and healing. The inclusion of healing in the new Aboriginal affairs policy brings a new meaning to 'whole of government' and the structures required for realising the policy intent.

The structure of the Memoranda of Understanding (MoU) which inform policy in a given area must also be considered here. MoUs commonly set the relationship between a service delivery agency and an Aboriginal peak body. Examples include the MoU between New South Wales Health and the Aboriginal Health and Medical Research Council; and that between the Department of Education and the Aboriginal Education Consultative Group. There are three issues here. The first is that while peak bodies in Australia have no official status, it is widely accepted within government that they are the legitimate voice or representative of a particular group or issue. The second is that peak bodies by their very nature often represent a single area of community concern or service need. The third follows from the second – that in representing a particular issue or service, they do not necessarily bring the breadth of community priorities to the table. To some extent LDM with its whole-of-community and whole-of-government focus is creating tension for agencies as they respond to the sometimes competing interests of regional decision-making bodies and peak bodies.

Advisory committees and advisory councils are another structure used by government to bring Aboriginal perspectives to the policy table. Membership and role are the issues here. Examples remain where the Aboriginal voice is given token representation: one or two Aboriginal people sitting at the table are expected to know, reconcile and represent the breadth of views of Aboriginal people across New South Wales. This means that the particular issues or diverse contexts of Aboriginal lives are not considered or addressed adequately. Domestic and family violence provides one example. There is no question that domestic violence is

a concern in both Aboriginal communities and the broader community, but the contexts are not necessarily the same. As far back as 2006 the Aboriginal and Torres Strait Islander Social Justice Commissioner, Tim Calma, noted that Aboriginal concepts of violence are much broader than the mainstream definitions of domestic violence, and that holistic approaches are needed to address the causes and the consequences of family violence. “If we treat these issues as simply a law-and-order, legal-compliance or health matter, we will not achieve lasting improvements to the lives of Indigenous peoples” (AHRC, 2006, p. 6). With insufficient Aboriginal input, the policy response in New South Wales is universal. It is based on Western understandings of community, cause and effect. Policy devised this way leads to the disengagement of Aboriginal citizens, and a government bewildered when policies do not have the hoped-for impact in Aboriginal communities.

To have one or two Aboriginal people among 20 on an advisory council which seeks to represent a broad range of views and contexts has not been effective. An alternative is to create an Aboriginal specific group. While positive in intention, this structure can marginalise Aboriginal community concerns. The issues are positioned as special, or outliers to mainstream issues – or worse, not core business. While this is a perennial tension we face in Aboriginal affairs, it doesn’t always have to be a case of one or the other. For example, while the *NSW Heritage Act, 1977*, provides for only one Aboriginal member to be appointed to the New South Wales Heritage Council, the council has established a non-statutory Aboriginal Heritage Advisory Panel, comprised of Aboriginal men and women representing a broad geographic spread of Aboriginal communities across New South Wales. The panel provides guidance and support to the Aboriginal representative on the council and to the council as a whole. While this may not be appropriate in every situation, it was effective in this circumstance.

8.5. Concluding comments

I have been describing the start of a new era in which Aboriginal people genuinely participate in the policy discourse. It is characterised by LDM, self-determination and community leadership, and a whole-of-government approach. This new approach is full of possibilities, but it also brings complexities and challenges. Questions arise about context, aspirations, the priority given to Aboriginal affairs policy within government and departments, cultural capability and the capacity to

engage with and work within Aboriginal perspectives. Addressing these requires innovative and flexible policy development, commitment, continual self-reflection and an acknowledgement that many aspects of Aboriginal worlds sit outside the traditional Aboriginal-government service delivery partnership.

Looking back over my now two decades working in New South Wales Aboriginal affairs policy, I am left in no doubt that there have been some significant shifts in the approach to policy development wherever the conditions are right. In my experience, these conditions include:

- Acceptance at the political level that existing approaches are not working. The bureaucracy, left to its own devices, may be too conservative to effect the difficult systemic change required.
- A culture of innovation and safe failure that is necessary for true co-design – a willingness to test, evaluate and keep going together.
- The idea that culture, connection and healing are important to Aboriginal peoples’ wellbeing isn’t new, but trends and events around the Ministerial Taskforce aligned perfectly, to make healing the right concept at the right time.
- Deep engagement with, and trust (or at least the benefit of the doubt) from Aboriginal communities. Only when we are genuinely hearing and understanding each other can we focus on solutions which support community aspirations, not just on programs and services to fix people up.
- Vigilance, and checking regularly that we haven’t lost sight of our policy intent. LDM is a mechanism for communities to hold government to account, not just a mechanism for government to consult with communities. Are we walking our talk, or falling back into old ways of doing business?
- Investment in the capacity of community leaders to come to the table as equal partners and make informed decisions.
- Valuing the unique insights and capabilities of Aboriginal public servants, and the contribution they make to all of the above.

8.6. Research questions to explore

- How is policy developed in New South Wales? What are the political and public-sector structural environments in which policy is made? And what mechanisms can be used to bring Aboriginal voices most effectively into this process?
- What mechanisms exist in New South Wales government agencies to govern the incorporation of Aboriginal perspectives into policy in New South Wales? How well do agencies know and understand them? To what degree are they used? How can they be improved?

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