

Jumbunna Institute  
Indigenous Policy Hub

# Accountability Frameworks between States and Indigenous peoples — a literature review



December 2020

UTS CRICOS 00099F

# Foreword

The NSW Government is committed to partnering with, and accountability to, Aboriginal communities to support self-determination and deliver improved outcomes.

This paper reviews literature from Aboriginal standpoints to explain differences between Aboriginal and government forms of accountability, and how they can work effectively together. The paper fills a critical knowledge gap and contributes to increasing public servant cultural competence.

With the signing of the July 2020 National Agreement on Closing the Gap, there has been a renewed focus on shared decision making and partnerships, and unprecedented collaboration among all levels of government and peak Aboriginal bodies.

This paper was written before the significance of the National Agreement had been made clear. It therefore focuses primarily on *OCHRE*, rather than Closing the Gap.

However, lessons learnt from *OCHRE* have laid the foundation for building healthy, respectful relationships between government and Aboriginal peoples.

In the changing policy landscape and regardless of the particular policy area being considered, this paper has relevance to all forms of government relationships with Aboriginal peoples, however they occur.

The research highlights the following key elements of an Aboriginal-centred accountability framework:

- accountability frameworks need to have authority from both government and Aboriginal stakeholders
- structural, policy and funding reforms need to shift government from service providers/funders to enablers of Aboriginal community-controlled service design and implementation
- genuine co-design and long-term, staged reform with targeted mutual capacity building and resourcing, and phased and flexible best practice change management
- effective relationships that support genuine self-determination and Aboriginal leadership, and Aboriginal-centred services, programs and evaluation processes.

Appreciating key differences between government and Aboriginal understandings of accountability will enhance the ability of public servants to work effectively in partnership with Aboriginal peoples, creating more empowering and effective outcomes for communities.

Aboriginal Affairs NSW

# Introduction

How do First Nations in NSW hold public institutions to account?

This is the concern raised by the NSW Aboriginal community and NSW oversight bodies that prompted Aboriginal Affairs NSW (AANSW) to contact the Jumbunna Institute Policy Hub. Along with the literature review into Practice Principles, conducted by the Jumbunna Institute Indigenous Nations and Collaborative Futures Hub, these two projects are crafted with First Nations in NSW in mind — how can existing knowledge inform a new relationship with the NSW Government?

This literature review, using existing knowledge about accountability, is intended only to inform those discussions. This is only foundational work. We have not made firm recommendations or independent analysis because we do not seek to speak on behalf of First Nations who will later shape discussions with AANSW. We caution that the scope of considerations for accountability between First Nations and the NSW Government should be broader than those conveyed here.

We commend AANSW for opening these questions for active consideration, and thank them for allowing us to take them on.

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# Executive summary

The Jumbunna Institute was approached by Aboriginal Affairs NSW to bring together existing published literature on accountability between First Nations and settler governments. This would inform ongoing discussions on accountability under the NSW *OCHRE* plan (Opportunity, Choice, Healing, Responsibility and Empowerment) — rather than be a determinative document in and of itself.

Accountability is at the core of relationships, and nowhere is that more true than in relationships between settler states and First Nations, people and communities. Without accountability, these relationships and the *OCHRE* strategy itself risk falling into empty rhetoric, frustrating the efforts of First Nations to enter into government-to-government relationships and realise their own aspirations.

Jumbunna was asked about —

- **key differences** between government and Aboriginal understandings of ‘accountability’;
- translating **Aboriginal conceptions of accountability or forms of expression**;
- **core elements of a successful accountability framework**;
- roles of **Aboriginal data sovereignty**;
- **shifting accountability of services** away from Government to the Aboriginal communities concerned;
- **challenges in agreeing, implementing and maintaining accountability frameworks** developed from Aboriginal standpoints and built from the local level; and
- **phased and flexible accountability frameworks**.

We found —

## Key differences

While there are important distinctions between Aboriginal and settler government understandings of accountability, these are not clear cut. There are many Aboriginal understandings of accountability, and many settler government understandings of accountability. Many First Nations and many Aboriginal people also have operational and theoretical expertise on Western liberal democratic accountability and operate strategically within it. However, there does seem to be limited understanding on behalf of government regarding First Nations expectations for accountability.

We have tabulated key differences from pages 12 to 13 for easy reference. The differences are marked across how accountability forms institutions and relationships. Aboriginal understandings of accountability may focus on relationships and relationality, rather than institutions and information which is the focus of Western liberal democratic accountability.

These concepts all meet in the ‘contact zone’, where they must find strategic ways of understanding each other. This is where accountability of settler governments to First Nations can take place. The ‘contact zone’ either has the terms of existing power relationships or it has terms crafted deliberately to make space for First Nations understandings, agency and aspirations.

## Translation

Translating accountability measures between Aboriginal and non-Aboriginal understandings is contested. Concepts of accountability are more than the language used around them. They are structures of power, institutions, values and ways of socially organising people and resources. If they are to be understood by governments, these structures must come with them to ensure they retain their meaning.

Internationally, accountability frameworks have been translated in numerous ways — including the imposition of settler government accountability on to First Nations, First Nations translating their accountability into government understandings, First Nations concepts being raised to settler government as generalist accountability mechanisms, and First Nations concepts existing concurrently with settler government concepts. The latter two enjoy the greatest support from First Nations.

Translation requires a more fundamental shift from Western liberal democratic norms as the frame in which First Nations concepts become legible — otherwise it will replicate the dominant government meaning.

## Core elements of accountability

Successful accountability projects require symbolic and practical measures be made in the 'contact zone'.

There are different core prerequisites for successful accountability frameworks from First Nations and settler government standpoints — including different prerequisites for what they can bring to the 'contact zone'. The risk is high that settler government standpoints will dominate accountability in the 'contact zone', so care is needed in to ensure the space is proactive, responsible, consequential, backed by capable institutions and individuals, and respects First Nations self-determination.

Accountability between First Nations and settler Governments requires at least the following elements (extended versions tabulated on pages 23 to 24 below for easy reference):

- internal accountability as a principal accountability mechanism for First Nations, necessitating state non-interference and, where applicable, derogation of state power;
- culturally and politically authoritative First Nations institutions, which act as decision-makers not as service providers; and
- horizontal and vertical integration across State governments, including protocols for initiating accountability without external complaints, protocols for negotiating resources, independent oversight mechanisms, and upskilling public servants for this new way of working.

There remains a role for social and independent accountability mechanisms like community participation and protest, and social media, which have their own core elements.

## Data sovereignty

Accountability relies on knowledge, research and data — processes Indigenous people are commonly subjected to, but spaces from which Indigenous people and knowledges are often excluded. Data sovereignty, Indigenous evaluation, Indigenous standpoints, Indigenous cultural and intellectual knowledge protection, and Indigenous-led research partnerships are crucial for informed accountability and for First Nations self-determination.

All of these approaches are highly-localised or concerned with inter-Nation relationships; many are focussed on intergenerationality and long time-frames; many are concerned with program delivery, caregiving, healing and justice; and, *all* are predicated on community control of information.

They require rethinking who produces data; how they produce data; how they publish, report and interpret data; what institutions they produce it in; and to what end the data is produced — which means both accountability of data and accountability *through* data.

## Shifting accountability

Accountability shifts must still place responsibility for long-term consequences of colonisation with State and Commonwealth governments. They cannot make First Nations accountable to State funders and auditors for outcomes largely in the control of the State. Internal accountability for service delivery — that is, First Nations being accountable to their own communities for services, without State oversight — is supported by the literature.

## Agreement, implementation and maintenance

Agreement-making must take into account power differentials, future enforcement mechanisms, relevant cultural and social protocols, locality, legitimacy of representation, devolution of decision-making, future-planning, trust, underpinning values, co-design processes, and the ongoing, cyclical nature of agreement-making and review.

Implementation should consider the capacity and soft skills of the public service, resourcing First Nations, and the scale of bureaucratic cost to First Nations.

Maintenance should have regard to permanency arrangements in the 'contact zone', the need for review and monitoring, and the role of contestation in institutional legitimacy.

## Phased and flexible approaches

Phased and flexible approaches should be considered for large-scale systems change that requires readiness, adaptability and sustainability. When State-wide changes are locally based, phasing and flexibility may lead to different paths or progress speeds. Community feedback and data are critical in any phased or flexible approach, to ensure the system change is working in the interests First Nations rather than of just the NSW Government.

There should be caution for New Public Management of First Nations, Aboriginal communities, and community-controlled services. This way of thinking has historically worked against self-determination and has led to inappropriate imposition of government oversight over community matters. Reciprocal accountability and

relational contracting are two tools that may assist with phased and flexible approaches that prioritise First Nations standpoints and contexts.

The phasing and flexibility should be directed to a government stewardship role, with the goal to surrender government oversight and control.

# Background, methodology and scope of literature review

## Background

*OCHRE* in 2011 marked a new strategy in NSW Aboriginal Affairs — Opportunity, Choice, Healing, Responsibility and Empowerment. The strategy ‘aims to support strong Aboriginal communities in which Aboriginal people actively influence and participate fully in social, economic and cultural life.’<sup>1</sup>

This research emerged because of crucial advice from First Nations in NSW (through UNSW SPRC’s evaluations and through earlier consultations from the Ministerial Taskforce) about gaps and lack in existing accountability frameworks under *OCHRE*. This feedback was supported by the NSW Ombudsman (Deputy Ombudsman (Aboriginal Programs)) and the NSW Auditor-General.

At the time of writing (December 2020), *OCHRE* draws its accountability from —

- NSW Government commitments to community input, co-design, planning and evaluation
- The NSW Deputy Ombudsman (Aboriginal Programs) under the *Ombudsman Act 1974* (NSW), p 3B
- A Solutions Brokerage program for long-standing, complex and relationship-critical issues and areas of concern<sup>2</sup>
- Public reporting by relevant agencies, and an annual report on implementation<sup>3</sup>
- A Secretaries Board of NSW Government departmental leaders, and
- Independent evaluation through UNSW Social Policy Research Centre.

It is also subject to other NSW Government accountability measures, including scrutiny by the NSW Legislature and applications for information under the *Government Information (Public Access) Act 2009* (NSW). In previous *OCHRE* plans,<sup>4</sup> the NSW Government also flagged the establishment of an independent Aboriginal Council established by legislation and a Coordinator General for Aboriginal Affairs. These initiatives, intended to strengthen accountability to First Nations, have not been implemented. As a result, existing accountability measures are overwhelmingly focused on ensuring accountability to the NSW Government, but very little accountability to First Nations, further entrenching power imbalances between First Nations and NSW Government.

Within this context, Aboriginal Affairs NSW asked the Jumbunna Institute Policy Hub to bring together existing knowledge on accountability between First Nations,<sup>5</sup> Aboriginal communities and people, and governments. We were instructed to bring together knowledge from Western liberal democratic frameworks and epistemologies (ways of knowing), methodologies (ways of doing), axiologies (values) and ontologies (ways of being) from global and local First Nations frameworks.

This literature review informs future discussions about accountability frameworks between AANSW (and through *OCHRE*, the NSW Government and all its agencies) and First Nations, Aboriginal communities and people in NSW. Our literature review is not intended to offer definitive answers, but provides a foundation of knowledge to ground future discussions between First Nations in NSW and the NSW Government.

## Methodology

We did so across three phases. First, we examined the literature AANSW provided. Second, we conducted our own searches for literature based on key terms from the questions below. Thirdly, we sought out literature that

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<sup>1</sup> See [aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/the-ochre-plan/](http://aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/the-ochre-plan/)

<sup>2</sup> This program has been criticised for its limited scope and structural stalling (NSW Ombudsman 2019).

<sup>3</sup> These reports can be found here: [aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/ochre-annual-reports](http://aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/ochre-annual-reports)

<sup>4</sup> See generally, [aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/the-ochre-plan/AA\\_OCHRE\\_final.pdf](http://aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre/the-ochre-plan/AA_OCHRE_final.pdf)

<sup>5</sup> In this paper, First Nations is used to refer to the political, social and legal organisation of Indigenous collectives around a concept of nationhood. For example, for Professor Lindon Coombes, is a member or citizen of the Yuallaraay, referring to the Indigenous political, cultural and social collective of the Yuallaraay people. We use Aboriginal or Indigenous to refer to people or non-Nation communities of Indigenous peoples (for instance, Aboriginal communities in Sydney and Western Sydney). As an individual, Lindon could be described as a Yuallaraay man or an Aboriginal, Indigenous or First Nations man.

was cited in both of the previous steps to better understand the knowledge they were drawing on. We then supplemented this process with a committee of experts who provided literature they thought we had missed.

In our review of the literature, we considered —

<b>Its category and form</b>	Is it peer reviewed? Is it written by government? Is it commentary? Is it a program evaluation or description? Is it Indigenous-led research?
<b>Its major findings and recommendations</b>	On its own terms, what does this piece of research or knowledge say?
<b>Its strengths and limitations in the context of this review</b>	Is it developed with or by Indigenous peoples? Does it concern accountability frameworks that Indigenous peoples have assessed as effective? Does it prioritise Aboriginal epistemologies, axiologies and ontologies? Does it clearly or directly relate to First Nations in NSW? Does it provide a sophisticated understanding of nation-building?
<b>Its relevance to First Nations in NSW (either directly, or as a comparative knowledge)</b>	Are there social, cultural, political, economic or other circumstances that helps this piece give or contextualise insight for First Nations in NSW?
<b>The insight it offers on accountability frameworks.</b>	What does this answer in the questions AANSW have provided to Jumbunna?

The result of this process was the annotated bibliography that accompanies this report. We reviewed some 103 pieces of literature. On the whole, the research and evidence produced was of high quality, but we flag that there are fewer published resources than we would prefer by First Nations authors, scholars and researchers. We caution that much of this knowledge has been produced *about* First Nations by non-Indigenous researchers, and only a limited number of publications do the inverse. This makes active discussions with expert and impacted First Nations and Aboriginal communities in NSW more crucial going forward, as this literature review could only ever be a baseline or an issues guide. We are unable to offer firm conclusions based on this literature. We have, where possible, contextualized non-Indigenous studies and elevated Indigenous-driven studies — especially where relevant to NSW mob.

The works overall include scholarly literature by First Nations peoples, commentary from First Nations scholars or impacted groups, grey literature from community-controlled organisations, books on nation-building and Indigenous governance, theoretical frameworks on accountability from Indigenous and non-Indigenous scholars, ethics frameworks, methodological texts and explanatory notes or evidence from existing First Nations-State accountability mechanisms. Necessarily as a matter of project design, we could not review every piece of knowledge out there in this highly-contested space. This is a selection that prioritises nation-building, localised contexts and comparative value for mob in NSW — the knowledge we saw to be most useful to inform future discussions.

The committee of experts met to discuss an issues paper, in **Annexure A**. Both the discussion paper and the feedback from the panel were integrated into this report, together with additional research arising from the discussion.

## Scope

In shaping our review of the literature, AANSW gave us seven key questions, which we answer below.

1. What are **key differences** between government and Aboriginal understandings of ‘accountability’? To what extent can these be reconciled while continuing to prioritise Aboriginal standpoints?
2. What **Aboriginal conceptions or forms of expression** would help translate the elements of accountability from government to Aboriginal understandings?
3. What are the **core elements of a successful accountability framework** (e.g. principles, relationships, knowledge, capacity, and structures)? Do the elements differ when accountability frameworks are developed from Aboriginal standpoints?
4. How can **Aboriginal data sovereignty**, and cultural knowledge protection be taken into account in a new **OCHRE** accountability framework?



5. What is required to **shift the accountability of services** provided in communities (either directly or indirectly provided by government) away from Government to the Aboriginal communities concerned? What does this reveal about the elements of a successful framework?
6. What can be learnt from the experiences in NSW and elsewhere about the **challenges in agreeing, implementing and maintaining accountability frameworks** developed from Aboriginal standpoints and built from the local level? Can these challenges be addressed through a staged implementation approach? What does this reveal about the elements of a successful framework?
7. What is known about the **success of phased and flexible accountability frameworks** that support Indigenous standpoints? How can such a framework take into account dynamic and diverse Aboriginal standpoints?

# Defining accountability

# Defining accountability & other key terms

Early in the literature review, it became clear that ‘accountability’ is a highly contested concept, not just between First Nations and Western liberal democratic ways of thinking, but among them as well.

We note that accountability is also a diffuse concept within *OCHRE* — with some uses referring to accountability over funds, others to accountability of outcomes, and others still to accountability in decisions and policies. This is replicated in some of the reports of public accountability (like the evaluations of SPRC and the reports of the NSW Ombudsman).

This occurred across three spaces —

## Internal accountability versus external accountability —

**Internal accountability** is how an individual or organisation is accountable to their own community, peers or members. **External accountability** is how an individual or organisation is accountable outside of their own community or membership. Because of the hybridity of the First Nations governance space in NSW, where a number of organisations have overlap in membership, a number of nations operate internally quite differently to how they present themselves institutionally, and because all of Aboriginal NSW is part (however small) of the electoral polity of the NSW Government (indeed, some cross-border First Nations are part of more than one State polity), these lines are commonly blurred. For mob, internal accountability is largely what they are asked of by their community (however defined) and external accountability is what is asked of them by governments or NGO funders.

## Bureaucratic accountability versus political accountability —

**Bureaucratic accountability**, as clarified in the expert panel, is something more commonly understood by governments. It is about principally accounting for funds, resources and procedure in a principal-agent relationship — although more holistic models like relational contracting exist. First Nations commonly experience bureaucratic accountability as acquitting grants or other funding procedures — ‘a power relationship where an accountability holder has the right to information, auditing and scrutiny of the actions of an accountability giver’ (Dwyer et al. 2014, p 1095) — not commonly a priority for First Nations with other internal accounting obligations, but a necessary and resource-intensive one.

Whereas, from background provided by AANSW, this project is focussed on **political or social accountability** — how First Nations peoples and governments cement their relationship with one another through responsibility for decisions, policies and outcomes. This can occur through periodic accountability, as occurs during election cycles, and through more immediate accountability like community campaigns for improved services.<sup>6</sup>

## Accountability of information versus accountability of consequences —

**Accountability of information** is the ability for an individual’s or organisation’s constituency to know details on the conduct, outcomes, information base and interests of decision-makers. This includes mechanisms in the Western liberal democratic sense in NSW like Freedom of Information schemes, the Independent Commission Against Corruption, annual reports or public interest investigative journalism.

**Accountability of consequences** is what occurs once that information is obtained, if it breaches agreed upon or implicit standards of conduct, outcomes, information bases and interests. It is not just punishment, but can include penalties. It includes things like formal sanctions, demotions, dissolution of Boards, fines, compensation, and changes to practice and procedure.

These are not exclusive processes — transparency, participation, complaint and redress are all critical accountability measures that take components of both.<sup>7</sup>

When any piece of literature uses the word ‘accountability’, they are referring to assumptions about what accountability is, what accountability is for, and to whom accountability is owed. Sometimes, this means that literature isn’t clearly comparable. We have worked to clarify distinctions as much as possible.

When we as First Nations researchers are talking about accountability, given the spirit of this project as a relationship between Indigenous peoples and NSW Governments, we are talking about *both* internal and external

<sup>6</sup> See, e.g., Ringold, D., Holla, A., Koziol, M., and Srinivasan, S., 2012. *Citizens and Service Delivery: Assessing the Use of Social Accountability Approaches in the Human Development Sectors*. World Bank: Washington DC. (Reference not included in annotated bibliography because of late inclusion following peer review.)

<sup>7</sup> We thank Reviewer A for their insight on this.

accountability (where required, we will clarify below), we are talking about political accountability, and we are talking about both accountability of information and accountability of consequences.

## Other definitions

### The contact zone

It is also necessary for us to define another concept we'll rely on in the paper related to internal and external accountability. **This concept is the 'contact zone'**. The 'contact zone' is where two government systems, ways of being and doing, and two separate sets of interests, come into contact. The 'contact zone' can be informal or ad hoc, but when it is it tends to set its terms according to its colonial context and the power structures of the two groups that come into a relationship. This tends to benefit governments. But a 'contact zone' can be deliberately constructed by one or both parties to work against these power structures. This tends to benefit First Nations, when it is led by them.

Rigney and Hemming (2014, p 544) offer this definition from their own review of the literature.

'For Mary Louise Pratt (1992, p. 6), the contact zone, broadly speaking, is understood as 'the space of colonial encounters, the space in which peoples geographically and historically separated come into contact with each other and establish relations, usually involving conditions of coercion, radical inequality, and intractable conflict'. In the Australian literature, recent scholarship highlights the potential of using the 'contact zone' as a conceptual framework for researching contemporary cross-cultural relations (Carter, 1992; Somerville & Perkins, 2003).'

In the Ngarrindjeri context, they write that Indigenous-state relations in the 'contact zone' (p 541) —

'easily become a masked homogenizing response serving the interests of the State and trivializing the theoretical complexity and the political potential of Indigenous perspectives for transformation. Ngarrindjeri are aware of the issue and construct resistance through developing a Ngarrindjeri-centred position from which the origins and arguments that sustain the oppression of Ngarrindjeri people are identified. This is supported by an organized process of cultural, political, economic and social knowledge transmission across generations. Engaging with State institutions both creates and threatens our existence as Indigenous peoples. However, disengagement from State mechanisms is not a choice in settler societies where the relationship between Indigenous peoples and the State continues to be constructed and mediated in multiple political, economic, social and educational environments.'

### Governance

From feedback from AANSW, it also became necessary to define governance. In the context of this research, **governance** is the systems, processes and structures by which formal power or organisation is controlled and produced. Governance is, effectively, how a government (Indigenous or otherwise) exerts its jurisdiction, or its 'legitimacy to act authoritatively' (Brigg and Murphy 2011, p 28). Settler governance and First Nations governances operate from different values and have different systems, processes and structures — as well as being done sometimes for different outcomes.

# Accountability — understandings of settler governments and First Nations

What are key differences between government and Aboriginal understandings of ‘accountability’? To what extent can these be reconciled while continuing to prioritise Aboriginal standpoints?

## Key points

- While there are important distinctions between Aboriginal and settler government understandings of accountability, these are not clear cut.
- There are many Aboriginal understandings of accountability, and many settler government understandings of accountability. Some of these are outlined below. Aboriginal understandings of accountability may focus on relationships and relationality, rather than institutions and information which is the focus on Western liberal democratic accountability.
- Many First Nations and many Aboriginal people also have operational and theoretical expertise on Western liberal democratic accountability and operate strategically within it.
- These concepts all meet in the ‘contact zone’, where they must find strategic ways of understanding each other. This is where accountability of settler governments to First Nations can take place.

Accountability will mean different things across every context — Indigenous or otherwise. However, there are distinctions between First Nations and Western liberal democratic understandings of accountability. These must be understood if the two systems are going to be brought together in conversation with one another. It is less a question of ‘reconciling’ accountabilities as much as it is strategising around them to prioritise Aboriginal standpoints. We note that settler governments routinely ask First Nations to be accountable to them, while themselves demonstrating impunity in Aboriginal Affairs.

Strategic accountability then necessitates balanced power structures, reparative gestures, a process of truth-telling and a demonstration from government that it is ready to be held accountable to First Nations. It is not enough to have more culturally appropriate NSW Government accountability if the NSW Government does not also shift the exercise of their power through those accountability mechanisms. The answer may be deliberately constraining settler government oversight to allow Aboriginal accountability standpoints to flourish.

## Aboriginal and government understandings and systems

It is difficult in this context to define what is an ‘Aboriginal’ understanding and what is a ‘government’ understanding of accountability, because as noted by Nakata (2007), Indigenous peoples have strategic engagement with Western epistemologies to suit their interests. First Nations organisations have two authorising environments — Indigenous and settler — to whom they report and are accountable. However, Indigenous (internal) authorising environments are critically important for First Nations —

‘There is a difference between Aboriginal and non-Aboriginal meanings of accountability, responsibility and legitimacy. Aboriginal people value internal accountability and mutual responsibility; while governments emphasise ‘upwards’ accountability, financial management and compliance reporting’ (Smith 2015, p 14)

Some, for instance, have transformed external accountability impulses of governments into resources for their internal accountability.

‘The reactions and strategies of those who manage Aboriginal organisations evidence the critical or reflexive vigilance of Aboriginal agency in the neoliberal age. Aboriginal agency and resistance is, for example, expressed as endeavours to pursue innovative funding solutions that will change the funding dynamic with the state, subsidise organisational initiatives, or lead to funding self-sufficiency, which are adopted creatively to bring about social change.’ (Howard-Wagner, in Howard Wagner et al. 2018, p 221)

This takes place within a colonial power relationship that means the two authorising environments are not equally resourced, and settler colonial ways of thinking about and doing accountability can dominate Indigenous ways of doing accountability.

As Hemming et al. (2016) also suggest, some First Nations (in their case, Ngarrindjeri) and Aboriginal peoples create rules, protocols and procedures within a ‘contact zone.’<sup>8</sup> For some Nations, it has become a strategic space in which they represent themselves in ways that make their interests cognisable to non-Indigenous governments without actually making themselves totally known to those governments. This reflects a strategy by which Indigenous peoples can mitigate the powerful influence of settler ways of doing accountability over their own ways of doing accountability. It is also a site through which First Nations can control and regulate accountable relationships between government and Aboriginal understandings —

‘The [Ngarrindjeri Regional Authority] not only is a key point of government contact, but also significantly decides the nature of the contact between Ngarrindjeri and the settler state....communication with non-Indigenous agencies would only be worthwhile if Ngarrindjeri could be sure that cultural knowledge would be listened to, acknowledged as authoritative, and treated respectfully.’ (p 33)

‘The governance strategies of the Ngarrindjeri Nation have resulted in numerous, mutually beneficial and highly successful inter-governmental relationships with state and local governments. The Gundiṯjmarra People, in what is now Victoria, until recently had a governing mechanism that used deliberative democracy strategies to fulfil their obligations to Country, to negotiate agreements with the Victorian government and to pursue their native title, cultural heritage and traditional owner aspirations. These bodies and mechanisms of self-government were designed by the Ngarrindjeri Nation and Gundiṯjmarra People themselves. Their aim was to create institutions that were effective and had cultural legitimacy. They also sought to be strategic, building governing systems and growing relationships that laid the groundwork for increased Ngarrindjeri and Gundiṯjmarra authority over the long term. (Vivian et al. 2017, p 217)

We suggest that this ‘contact zone’ is where attention should be directed to maximise internal accountability and recognise the inherent sovereignty of First Nations. External accountability in the ‘contact zone’ should thus take the form of government-to-government relationships and accountability.

Acknowledging the complexity involved, we suggest the following distinct aspects of accountability frameworks that are brought to the ‘contact zone’ should be acknowledged (see also *Core Elements of an Accountability Framework*). In practice, accountability is both more complex and nuanced than this, with variation within First Nations systems and Western systems.

Western liberal democratic accountability	First Nations accountability systems
<p>Concerned with transparency</p> <p>For example: the provision of annual reports, budget expenditures, Freedom of Information requests, centrality of parliamentary inquiries (Whittaker 2018, Cornell and Kalt in Jorgensen 2007)</p>	<p>Concerned with relationships and relationality as a path to transparency</p> <p>‘Aboriginal governance arrangements tend to be ‘networked’ through thick inter-connected layers of related individuals, groups, organisations and communities, each having their own mutual roles, responsibilities and accountabilities.’ (Smith 2015, p 15)</p> <p>(Foley 2003, Kornelsen et al. 2016, Thorburn 2007, Smith et al. 2019, Martin and Mirraoopa 2003, Vivian et al. 2016, Hemming et al. 2016)</p>
<p>Individual rights-based and individual authority-based</p> <p>For example: right to vote, right to stand for election as an individual, centrality of the Cabinet and Premier with ministry staff as supporting architecture (Morris 2018, Sullivan 2011)</p>	<p>Collective rights-based and collective authority-based, with individual rights existing in relation to the whole</p> <p>Responsibility, rather than ‘accountability’ is the dominant frame. Responsibility is an obligation to look after the interests of an organisation or group, obligations that are ‘contingent, nuanced and negotiable’ (Thorburn 2007, p 14)</p>

<sup>8</sup> See above for a definition of the ‘contact zone’.

<p>Rights to information, publicly distributed</p> <p>For example: the <i>Government Information (Public Access) Act 2009</i> (NSW), the proactive release register, and other public information systems (Fox 2015).</p>	<p>Rights to relationship, process and informed decision-making — both publicly and interpersonally distributed</p> <p>For example: the expectation that mob be present and seen in decision-making, able to be accessed by their community for comment and answers, expectations that Elders and other persons of significance are looped in (Thorburn 2007, Kovarch 2009, Tuhiwai Smith 1999, Behrendt and Kelly 2008, Victorian Treaty Advancement Commission 2018, Hunt and Campbell 2016, Smith in Kukutai and Taylor 2016)</p>
<p>Cycled around elections, key central monitoring and reporting events, and electoral consequences</p> <p>(Coalition of Peaks 2020, Sullivan 2009, Legislative Council Standing Committee on State Development 2016, NSW Ombudsman 2019, Referendum Council 2017)</p>	<p>Cycled around localised outcomes-based monitoring (which regards 'process' as an outcome), procedural compliance, and at the point of decision-making</p> <p>(Kornelsen et al. 2016, Thornburn 2007)</p>
<p>Siloed between professional/public and personal</p> <p>(Dreise and Mazurski 2018, Board of Studies 2008, Land 2011)</p>	<p>Whole-of-person accountability</p> <p>(Board of Studies 2008, Brereton et al. 2014, Land 2011)</p>
<p>Institution-based jurisdiction</p> <p>(SPRC 2018, Vivian et al. 2017, Rowse 2000)</p>	<p>Place-based, relationship-based jurisdiction</p> <p>(Moreton-Robinson 2013)</p>
<p>Claim to authority through statehood, popular electoral mandate, access to and provision of funding</p> <p>(Bauman 2007, Vivian et al. 2017, Adams 2011, Dwyer et al. 2014)</p>	<p>Claim to authority through and as Country, through community, through relationships, through process, and through outcomes</p> <p>(Rigney and Hemming 2014, Hemming et al. 2016, Martin and Miraboopa 2003, Yap and Yu in Kukutai and Taylor 2016, de Ishtar and Women Elders of Kapululangu Aboriginal Women's Law and Culture Centre in Maddison and Brigg 2011)</p>

These differences in accountability frameworks are reconciled regularly by Aboriginal peoples in the 'contact zone', but not without problems. The structures that mob adopt to become understood by Western accountability (including bureaucratic accountability), such as Aboriginal corporations, can do well in vertical accountability to settler governments but not always in horizontal accountability to their communities (Thorburn 2007, Hunt and Campbell 2016). Mob also tread that line across their internal and external accountability, operating in both, to great resource and efficiency costs (Yothu Yindi Foundation 2017, Bennett and Green in Kickett-Tucker et al. 2017, Muller 2008, Sullivan 2011, Zohl de Ishtar and the Women Elders of Kapululangu Aboriginal Women's Law and Culture Centre in Maddison and Brigg 2011, Dreise and Mazurski 2018).

One way to observe the difference between accountability systems is to examine how they address disputes, that is, how they process an accountability of consequences.<sup>9</sup> Behrendt and Kelly (2008) offer the following generalised typology —

Australian litigation	Aboriginal resolution processes
<ul style="list-style-type: none"> <li>• Written complaint</li> <li>• Formal, emotionless response</li> <li>• Stranger disputes</li> </ul>	<ul style="list-style-type: none"> <li>• Oral complaint</li> <li>• Expressive, informal response</li> <li>• Co-habitation of disputants</li> </ul>

<sup>9</sup> See above for a generalist definition of 'accountability of consequences'.

- Jury of peers
- Legal training required for arbitrator
- Fixed rules of evidence
- Precise, generalised procedure
- Strangers observing
- Lawyers address arbitrators
- Deadline intensive
- Formal judicial culture
- Judgement delivered to disputants
- Hierarchical judicial appeal available
- 

- Elder juries
- Experience required for recognition as arbitrator
- No rules of evidence
- Procedure evolves as dispute does
- Process occurs with community present
- Disputants address arbitrators
- No time constraints
- Circle informality
- Settlements discussed with disputants
- Communal appeal available.

## Bringing accountabilities together

Some settler governments have also opened up their own internal accountability frameworks to First Nations peoples — notably with the establishment of the ACT's Aboriginal and Torres Strait Islander Elected Body ('ATSIEB') by agreement (ACT Government and ATSIEB, 2019) and its parliamentary-style oversight of key Ministries and departments (ATSIEB 2020). The Agreement is guided by five accountability principles (2019, p 3)—

- Respectful interaction with communities
- Work differently with different communities
- Increase value for the community
- Improve the level of services provided to Indigenous people
- Enable information sharing and interaction across the ACT Government to these ends.

Another notable negotiation recently culminated in the design of the First Peoples Assembly in Victoria to be focussed on Traditional Owners, Elders and electorates approximating the geographical distribution of First Nations peoples (VTAC 2018a, VTAC 2018b). Both ATSIEB and the First Peoples Assembly are hotly contested in how they construct a First Nations electorate around settler colonial constructs and their capacity to represent Nations, rather than a generalist Indigenous polity. However flawed, they represent a 'contact zone' where accountability values and cultures are decided upon — sometimes by First Nations people strategising within them, but often by dominant government structures. It is not the easy 'reconciliation' envisioned by AANSW's question.

Some earlier literature argues that culturally reconciled bureaucratic accountability frameworks (where First Nations are made to account to settler governments) are not essential. They instead suggest that the reach of Western bureaucratic accountability be limited over First Nations and communities (Rowse 2000). This is certainly consistent with a nation-building approach that prioritises internal accountability to a First Nation's constituents over external accountability and prioritises the need for communities to drive their own internal accountability without interference (Adams 2011, Howard-Wagner in Howard-Wagner et al. 2018, Page in Howard-Wagner et al. 2018, Cornell and Kalt in Jorgensen 2007, Hendrix et al. 2019, Kornelsen et al. 2016). This includes the ability to make and be internally accountable for policy and administrative mistakes, as a settler government would be, without intervention (Martin and Miraboopa 2003, Native Nations Institute and HPAIED 2006, Cornell and Kalt in Jorgensen 2007). This approach, of stepping back Western external accountability and not merging or reconciling it with internal First Nations accountability, may be the most appropriate to 'prioritise Aboriginal standpoints.'

In contrast to external state accountability, which are arms-length and generalised, locally-defined Indigenous forms of relational accountability support community control over their own affairs. The relevance of locality is likely to shift across contexts 'dependent upon such factors as the relevant issue, who is seen as having legitimate interests in it, and how much support they can command over that issue' (Marin and Finlayson 1996, p 5). Organisations which are more carefully attuned to precisely which groups and people make up their constituencies are 'more likely to achieve internal accountability than those which attempt to legitimate themselves whether internally or externally based on some unexamined notion of being "community" or "grassroots"' (p 22). First Nations organisations with strengthened internal accountability tend also to be more effective with their external accountability (Martin and Finlayson 1996).

Collisions between these measures of internal and external accountability are often cast as program failures or mismanagement, rather than a values or jurisdictional dispute (Muller 2008). Apparent 'neutrality' in accountability often masks 'values of a dominant culture' pulling 'Indigenous organisations into processes of conflicting multiple accountability requirements' (Muller 2008, p 410).



Accountability may also be concerned with historic and present colonial redress, rather than just focussed on matters occurring after potential agreement. Both Western and First Nations accountability have historic, not just cultural, contexts that inform them. These have not yet been addressed. In this colonial context, First Nations are unfairly asked to be party to 'agreements forged by government on the [untruthful] basis that government has already met its responsibility and is accountable, while the Aboriginal parties need to amend their behaviour to meet their obligations and become more accountable' (Sullivan 2011, p 49). This must not continue.

### **Institutionalising accountability and relating in the 'contact zone'**

In comparative contexts, Ngarrindjeri have developed formal, community-controlled mechanisms in the 'contact zone' as a way to bring two governments (themselves and the SA government) into an accountable relationship without relying on individuals. Through the Yarlularu Ruwe Program, these include:

- formal Ngarrindjeri representation (including Ngarrindjeri Heritage Committee and Ngarrindjeri Tendi)
- devolved decision-making from the NRA Board to Ngarrindjeri specialists
- establishing a Statement of Commitments that frame and direct Ngarrindjeri projects
- cultural knowledge protection clauses in all contracts
- Ngarrindjeri culturally-appropriate decision-making
- long-term coordinated empowerment of Ngarrindjeri
- dealing with multiple issues and projects, including research projects
- developing strategies to change culture of government policy, programs and practices
- stakeholder involvement outside of Ngarrindjeri
- media and technology teams
- engagement and partnership building with research, education and business sector
- supporting business opportunities for Ngarrindjeri enterprise.

Others have done differently by systematically focussing on individual bridges to the 'contact zone' rather than building institutions there. Kapululangu women, for instance, have grown up selected women 'skilled in Settler governance, who are able to operate as a bridge of communication and the conduit of resources between the two worlds' (de Ishtar and the Women Elders of Kapululangu Aboriginal Women's Law and Culture Centre in Maddison and Brigg 2011, p 79).

Others still have developed a 'contact zone' between different First Nations who may then develop united accountability strategies for settler governments. Murray Lower Darling Rivers Indigenous Nations came together as a coalition of First Nations advancing the rights of their cultural flows and waterways, under the following principles between themselves (Morgan, Strelein and Weir in Langton et al. 2006, pp 153-156) —

- prioritising shared values
- recognising shared authority
- opening up of varying levels of government to First Nations voices
- certainty, process and outcomes ('process, not personality').

Another example of this is how Murdi Paaki Regional Alliance has implemented a regional cross-Nation representative model, which required thinking about the 'contact zone' and the accountability assumptions that settler governments and First Nations make in it.

Murdi Paaki communities worked 'to think differently about their own accountability, as a more autonomous decision-making process also meant a new kind of accountability to community and not just to government funder' (Jeffries, Maddison and Menham 2011, p 128). Meanwhile the NSW Government 'had to change the way they thought about engaging with Indigenous people in the region: they were no longer merely engaging with [Indigenous peoples as] service providers; they now had to engage with a whole community whose wishes could be expressed through a regional forum.' (p 128)

The 'contact zone' increasingly involves inter-First Nations relationships like these that are expressed, locally and internationally, as intergovernmental relationships. For these institutions to be internally accountable and be useful as external accountability sites in relation to the state, ideally they (Hicks in Jorgensen 2007) —

<b>are built in the context of</b> (pp 252-256)	<b>are built to enhance</b> (pp 256-258)	<b>are primed for growth via</b> (pp 258-267)
<ul style="list-style-type: none"> <li>• the State devolving powers to First Nations;</li> <li>• First Nations asserting governing power through governance institutions in the 'contact zone' that</li> </ul>	<ul style="list-style-type: none"> <li>• tribal sovereignty</li> <li>• jurisdiction, authority and influence of First Nations</li> <li>• tribal impact</li> <li>• First Nations proactively addressing their concerns</li> </ul>	<ul style="list-style-type: none"> <li>• a formal commitment to mutual cooperation</li> <li>• mutual understanding and respect</li> <li>• communication</li> </ul>

<p>States can form relationships with;</p> <ul style="list-style-type: none"> <li>• First Nations making formal sites of jurisdictional and political conflict with States (like litigation, contested legislation, conflict between States and Federal agencies) that incentivise State cooperation.</li> </ul>	<ul style="list-style-type: none"> <li>• mutually beneficial community development actions</li> </ul>	<ul style="list-style-type: none"> <li>• a process for addressing disagreements and concerns, including meetings, reviews, recommendations and a means of holding government departments accountable</li> <li>• institutionalisation, so that progress does not rely on key individuals</li> </ul>
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In even larger coalitions, like those proposed by the Coalition of Peaks (2020), representative mandate flows upwards from elected local representation to nation-wide representation and involves the creation of community forums, committees and regional groups. Among the suite of changes (pp 27-29), the Coalition suggested critically — direct access to Premiers and Ministers, resourced relationships beyond funding agreements for services, access to government decision-making data, and Indigenous groups being resourced to develop their own policy, monitoring and evaluation knowledge base.

# Translating accountability

What Aboriginal conceptions or forms of expression would help translate the elements of accountability from government to Aboriginal understandings?

## Key points

- Translation is contested — concepts, whether settler government or Aboriginal, are more than the language used around them. They are structures of power, institutions, values and ways of socially organising people and resources.
- Translation requires a more fundamental shift from Western liberal democratic norms as the frame in which First Nations concepts become legible — otherwise it will replicate the dominant government meaning.
- Some First Nations may translate concepts between themselves, or some concepts from First Nations may be translated into English for governments to understand them. This is not without careful strategic compromises that should be led by First Nations, if they are to happen at all.
- Internationally, accountability frameworks have been translated in numerous ways — including the imposition of settler government accountability on to First Nations, First Nations translating their accountability into government understandings, First Nations concepts being raised to settler government as generalist accountability mechanisms, and First Nations concepts existing concurrently with settler government concepts. The latter two enjoy the greatest support from First Nations.

Translation might be seen as an easy answer by governments, but it is not a solution to clashes between First Nations and government accountability systems. Where it has worked, it has been backed by fundamental institutional change. But the risks remain that translation means taking First Nations concepts from their context and depriving them of their power to do accountability properly in the social and cultural systems for which they were designed.

## Translation contested

There are some issues with the concept of translation identified in the literature. In order to be truly grounded in Indigenous epistemologies and standpoints, concepts should first be recorded and grounded in the relevant language where possible — with English only as a translation to share amongst First Nations or other groups (Foley 2003). There may also be accountability concepts that deliberately evade Western understanding or understanding by outsiders, whose translation would be culturally inappropriate (de Ishtar and Women Elders of Kapululangu Aboriginal Women's Law and Culture Centre in Maddison and Brigg 2011).

Nakata (2007, p 9) suggests that removing Indigenous concepts from their context separates it 'from the social institutions that uphold and reinforce its efficacy, and cleaves it from the practices that constantly renew its meanings.' Where appropriate, convergence between First Nations' and Western accountability systems must go beyond changing the names of Western concepts that 'call for a specific behaviour that does not link to the cultural context of Indigenous communities...the issues are much deeper than just language' (Rossingh 2012, p 68). Nakata (2007, p 9) suggests that removing Indigenous concepts from their context separates it 'from the social institutions that uphold and reinforce its efficacy, and cleaves it from the practices that constantly renew its meanings.'

However, there is capacity to translate concepts of *method* (i.e., how to get to an accountability framework, rather than the framework itself) between First Nations. Kovarch (2009, p 38) clarifies:

'we understand each other because we share a worldview that holds common, enduring beliefs about the world...other Indigenous people will understand [through disclosing tribal affiliations] that though the specific custom and protocol may vary, the underlying epistemology [...] is known.'

In Australia, this has emerged in the Aboriginal Carbon Foundation's<sup>10</sup> Core Benefits Verification Framework (2019), with local Indigenous evaluations being verified by a central, adaptive Indigenous standard-setter in a culturally-appropriate localised site review.

'In practice, this 'Indigenous to Indigenous' philosophy sees verification of core-benefits conducted by a team of trained Aboriginal experts, including rangers, Traditional Owners and community members from across the projects. **This principle prevents the extraction of information by external agencies to be used and interpreted without the understanding of, or any required benefit to, the affected community.** This approach safeguards Aboriginal data sovereignty and ensures the people verifying have strong cultural and project-based knowledge' (Aboriginal Carbon Foundation 2019, p 7)

## Translation methods

As it stands, we observed four different forms of translation between settler government and First Nations understandings.

### **Settler government models of external accountability, translated for Aboriginal bodies corporate to function as modes of internal accountability.**

There is a long history of external accountability purporting to represent internal Indigenous accountability as a rhetorical gesture that opens up First Nations community organisations to greater settler government scrutiny (Rowse 2000, pp 1517-1518). Rowse suggests that external institutional representation is strategic on the part of many First Nations and, aside from increased government oversight, the dominance of government regulation, and resource cost, may not impact on how some Nations conduct their internal business beyond legal standing. Albeit grounded in a liberalism philosophic framework, in remote communities distinct from those in NSW, from some time ago in the context of ATSIC, and as a non-Indigenous author, Rowse suggests to remedy this —

'We should avoid assigning evaluative priority [on accountability] to custom and culture as if they were realities preceding contemporary Indigenous organisations [as the ways mob present in the contact zone to governments]. Any behaviours to which we refer as customary and traditional now coexist with Indigenous social forms that are recently developed and consciously contrived' (p 1530)

### **First Nations translating internal accountability concepts for external state legibility**

Some First Nations in comparative contexts, whose recognised sovereignty was threatened by state accountability measures like individual rights protections, took steps to ensure their accountability frameworks were cognisable to settler law. They published their tribal court decisions in a format that mirrors Western common law development, and named various processes 'public defenders offices' to safeguard against policy incursion. The literature focusses on this practice's potential as a 'contact zone' in an even power relationship, but we caution that such a power relationship does not exist. It is possible to imagine a translation for shared understanding that occurs outside of a threat to First Nations sovereignty, but it requires a significant shift in legal and political relations. The potential —

'lies with its capacity to lay a foundation for discursive approaches capable of giving rise to new, mutual traditions [of legal understanding]...As tribal legal cultures do this, so too should dominant legal cultures...[make themselves legible and flexible to First Nations understandings, but these must be done] under circumstances of genuine understanding and reciprocity.' (Hendry and Tatum 2018, p 178)

### **First Nations concepts are moved into settler government, with governments working to understand and implement them in their own practice across the board**

In this model, First Nations concepts have a general utility in settler governments — they become organising principles in their own right not just for First Nations, but for settler governments on their land. Critically, First Nations concepts in this framework are not translated, but multilingualism and a deeper understanding of their context by non-Indigenous peoples allows them to stand independently of English meaning. One example is the language of 'whanau', which through consistent advocacy and use from Maori in Aotearoa has become a (imperfect) way of understanding expanded family and kin in New Zealand settler government policy and law. Whanau Ora, an accountability program in Aotearoa<sup>11</sup> is a key example of this — as are the negotiations around Waitangi Treaty Settlements (Tuhiwai Smith 1999, see especially O'Regan, Palmer and Langton in Langton et al. 2006).

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<sup>10</sup> The Aboriginal Carbon Foundation is a verification body for Indigenous-led carbon banking community enterprise initiatives. See [abcfoundation.org.au](http://abcfoundation.org.au).

<sup>11</sup> Described in greater detail on page 40.

## **First Nations concepts exist concurrently with settler government concepts, but governments are expected to adapt, implement, co-translate and understand them as sites of engagement with First Nations**

In this model, governments consider Indigenous concepts of accountability and ontology as ways of operating in their engagement with First Nations peoples. Key examples of this include implementing cultural and political concepts at the cultural interface (Nakata 2007) or in the 'contact zone' (Rigney and Hemming 2014), where First Nations can assert (taking the example of the Ngarrindjerri Nation, p 544, 542) —

'their presence and control in the lands and waters within the Ngarrindjerri Native Title claim; their status as the traditional owners of the land according to Ngarrindjerri traditions, customs and spiritual beliefs; and, finally, the rights, interests and obligations of Ngarrindjerri to speak and care for their traditional country, lands and waters in accordance with their laws, customs, beliefs and traditions. [...] The links between a rehabilitated, healthy Ngarrindjerri Ruwe and the health of the Ngarrindjerri people, individually, as families and as a nation, are encompassed in Ngarrindjerri laws, traditions and philosophy'

This model was not fully realised in the literature, but is an aspirational model which weaves together multiple evidence bases.

## **Two crucial translations**

Despite the tensions in translation, there are **crucial concepts from First Nations as a polity** with which settler governments must grapple.

### **Race versus nationhood**

While governments in Australia tend to think of, at least institutionally, Indigenous peoples as a race, it is distinct to how First Nations peoples think of themselves as nations, communities and other organised socio-political units. It is to these units and their own internal rules, rather than the diffuse conception of race and racialisation, that the accountability is owed. Rigney suggests that 'To participate in [that understanding of the First Nations polities] means denying, at least to some extent, the value and authenticity of the Indigenous social formations that have been replaced and suppressed by the colonial formations' (1999, p 113). First Nations, Aboriginal people and communities are constantly translating in that zone between being treated as nations, races and peoples — but by governments, predominately as a disadvantaged racial minority. This undermines accountability efforts for First Nations, which are long-standing political and social structures, in favour of what governments find convenient — imagining First Nations as only a single homogenous racial group of disadvantaged people.

Sanders explains the tension between 'populations' (disadvantaged groups) and 'peoples' (Nations that are socially and politically organised) —

'Decolonisation in a settler majority is clearly never simple, and Indigenous activists can legitimately work in both the populations and peoples idioms. The language of political communities, peoples and First Nations opens a whole other terrain in Indigenous affairs, as too does the language of colonisation and decolonisation. Without these languages, Indigenous affairs conducted solely in the populations idiom is severely lacking' (Sanders in Howard-Wagner et al. 2018, p 123, 125)

### **Translating jurisdiction**

That's not to say that there is no opportunity to form mutual understandings between First Nations concepts and Western liberal democratic understandings — just that these understandings require a more fundamental shift from 'settler-liberalism' as the frame in which ideas become legible. That happens as a question of jurisdiction.

These are at their core, contestations of jurisdiction — which is not only as it is defined by settler law, but a broader concept about the 'legitimacy to act authoritatively' (Brigg and Murphy in Maddison and Brigg 2011, p 28). To not consider jurisdiction means subsuming Indigenous concepts of expression out of the public realm of accountability and into 'into the realm of private expression or belief' (p 29).

'Opening dialogue about the values and ideas that underpin governance in our society requires openness to difference and a willingness to be surprised about the possibilities...but it does not mean that partners in dialogue will be alien or opposed to one another....we are not hermetically sealed from each other in ways that prevent meaningful exchange' (p 25)

# Accountability frameworks

# Accountability frameworks — core elements

What are the core elements of a successful accountability framework (e.g. principles, relationships, knowledge, capacity, and structures)? Do the elements differ when accountability frameworks are developed from Aboriginal standpoints?

## Key points

- Successful accountability projects require recognition and practical measures in the ‘contact zone’
- There are different core prerequisites for successful accountability frameworks from First Nations and settler government standpoints — including different prerequisites for what they can bring to the ‘contact zone’.
- Successful accountability between First Nations and settler Governments requires:
  - internal accountability as a principal accountability mechanism for First Nations, necessitating state non-interference and, where applicable, derogation of state power
  - culturally and politically authoritative institutions, which act as decision-makers not as service providers
  - horizontal and vertical integration across State governments, including protocols for initiating accountability without external complaints, protocols for negotiating resources, independent oversight mechanisms, and upskilling public servants for this new way of working
- There remains a role for social and independent accountability mechanisms like community participation and protest, and social media, which have their own core elements.
- The risk is high that settler-government standpoints will dominate accountability in the ‘contact zone’, so care is needed to ensure the space is proactive, responsible, consequential, backed by capable institutions and individuals, and respects First Nations self-determination.

Accountability frameworks require certain knowledges, commitments, values and procedures — their core elements. But all of these change across their contexts. In this section, we look at literature that suggests what those core elements are across Indigenous-settler contexts and what happens when they meet. While there are contrasts between the prerequisites, principles, relationships and knowledge required in Indigenous and settler-government contexts, there are also core elements to bring these two domains into a successful accountable relationship with one another.

As a normative framework, UNDRIP (2007) theoretically guarantees Indigenous rights to self-government (internal accountability) *and* the right to participate in the political and social life of the state, including decision-making that would impact their rights and impartial review and redress schemes (imposing external accountability on settler governments). So, what happens when these accountability systems come together to hold one another accountable is critical, and must, if it is to be successful, be within the control of First Nations, Aboriginal communities, and Aboriginal peoples. Above all, it requires moving beyond Western liberal democratic norms of political accountability.

The literature on this is quite comprehensive. We have included core elements of settler government accountability where relevant to First Nations. For manageability, we have kept this analysis at a high level. We recommend, for greater detail, turning to the annotated bibliography.

## Core elements of successful accountability frameworks

### On either side of the relationship

In the literature, we observed the following generalist core elements, prerequisites and characteristics of settler government accountability and First Nations accountability. These are from programs, initiatives and structures that actively sought accountability between settler governments and First Nations. In this context —

Settler government accountability requires	First Nations accountability requires
<ul style="list-style-type: none"> <li>horizontal (Fox 2015) and vertical (Sullivan 2011) integration across governments</li> <li>balancing power and resources for 'equal partnerships' with First Nations (Vivian et al. 2017, Land 2011, Morris 2018, Vivian et al. 2016, Walter in Kukutai and Taylor 2016, UNDRIP 2007, SNAICC 2012, Coalition of Peaks 2020, Dreise and Mazurski 2018)</li> <li>opening up to First Nations auditing and scrutiny in a proactive, rather than reactive, way (Synot 2019, Land 2011, VicHealth 2017, ATSIEB 2020, Referendum Council 2017, Martin and Mirraboopa 2003)</li> <li>independent mechanisms (Smith et al. 2019, Sullivan 2011, Whittaker 2018, UNDRIP 2007, Legislative Council Standing Committee on State Development 2016, ATSIEB 2020, Queensland Productivity Commission 2017, Watson 2015, VTAC 2018, Productivity Commission 2020)</li> <li>its own internal accountability, capable of being initiated without First Nations peoples raising grievance (Land 2011), and practice principles (see partner Jumbunna Project on AANSW Practice Principles)</li> <li>openness to negotiation about resources (O'Regan, Palmer and Langton in Langton et al. 2006)</li> </ul>	<ul style="list-style-type: none"> <li>internal accountability as principal accountability mechanism (rather than external dispute/litigation) (Kovarch 2009, Cornell and Kalt in Jorgensen 2007)</li> <li>the establishment of clear terms of engagement and strategy, by First Nations, in a defined 'contact zone' (Rigney and Hemming 2014)</li> <li>culturally and politically authoritative, capable institutions that are adept to their contexts and capable (Hunt and Campbell 2016, Native Nations Institute and HPAIED 2006, Muller 2008)</li> <li>cultural and social match of those institutions to the First Nation or community (Cornell and Kalt in Jorgensen 2007, Hicks in Jorgensen 2007, Nakata 2007)</li> <li>institutions as decision-makers, not <i>only</i> institutional service providers (Arabena in Schultz and Phillips 2018, Jeffries, Maddison, and Menham in Maddison and Brigg 2011, Kornelsen et al. 2016, Smith et al. 2019, Sullivan 2011, Coalition of Peaks 2020, Te Puni Kokiri 2015, Queensland Productivity Commission 2017, Vivian et al. 2017)</li> <li>State understanding and non-interference (Hendry and Tatum 2018, Cornell and Kalt in Jorgensen 2007)</li> <li>State derogation of power, or (preferably) State recognition of inherent sovereignty and self-determination (Native Nations Institute and HPAIED 2006, APONT 2017, Morgan, Strelein and Weir in Langton et al. 2006)</li> </ul>

We regard these as the prerequisite core elements of accountability frameworks that each party should bring to an accountable settler government—Indigenous relationship. But there is something else that is necessary in the literature — specific core prerequisites for accountability in the 'contact zone' where these accountability systems meet.

### In the relationship itself

The literature tells us that, in order to be accountable and produce desired outcomes for First Nations, this 'contact zone'<sup>12</sup> itself requires —

- equal relationships predicated on good faith, treated as a government-to-government relationship (Vivian et al. 2016, UNDRIP 2007, Coalition of Peaks 2020, Rigney and Hemming 2014, Dreise and Mazurski 2018)<sup>13</sup>
- Indigenous proactivity and instigation, on an ongoing basis (Rigney and Hemming 2014, O'Regan, Palmer and Langton in Langton et al. 2006, Morgan, Strelein and Weir in Langton et al. 2006, Watson 2015, Martin and Mirraboopa 2003)
- living and adaptable frameworks (Shain, Genat and Wensing in Langton et al. 2006)

<sup>12</sup> For a definition of the 'contact zone', see *Defining Accountability & other key terms*.

<sup>13</sup> Peer review from Reviewer B pointed out to us that these equal relationships take place in a colonial power imbalance, and that considerable attention on an ongoing basis must go into ensuring they are equitable. This includes acknowledging difference in ways of knowing and being.



- evaluation to centralised standards that weaves First Nations and Western knowledges, with local supplementary evaluation (Williams 2018, Walter and Andersen 2013, Rigney and Hemming 2014, Muller 2008, Aboriginal Carbon Foundation 2019, Roche and Ensor 2014, SPRC 2018, Dreise and Mazurski 2018, Productivity Commission 2020, Wehipeihana 2008, Secretariat of the Pacific Community 2013)
- institutional capability (see above, Rigney 1999, SNAICC 2012, SPRC 2018)
- individual capability within those institutions (Land 2011, Cornell and Kalt 2007 in Jorgensen 2007, NSW Ombudsman 2019, Bauman 2007, Roche and Ensor 2014)
- enforceability, through governance, legal or political relationships (Land 2011, Smith et al. 2019, Hicks in Jorgensen 2007, Dwyer et al. 2011, Fox 2015, Day 2020)

While this may set the terms of both sides of the accountability relationship, and the core principles and practices of how they meet, it is not the full picture of necessary conditions required in the literature. Accountability is not always set on the terms of the institutions involved, even in carefully constructed ‘contact zones.’

A critical example in the literature of other, extraneous core elements of accountability, pertinent to Indigenous-settler state relationships, is media, lobbying, and citizen participation.

## Accounting for external, independent mechanisms

### Media

In Western liberal democracy, media plays a key role in holding public institutions accountable — with political and electoral consequences being, at least theoretically, the instrument by which information in the media helps keep government accountable. ‘While management of ministerial performance is the aim, the proximate activity is the management of the perception of ministerial performance’ (Sullivan 2009, p 60).

In Aboriginal affairs however, the relative proportion of Aboriginal voters means that governments treat Aboriginal affairs as a perception problem with the electorate writ large, rather than directly accountable to First Nations in Australia. This influences the process of decision-making, and the substance of decision-making, with First Nations voices losing out in both.

‘[Aboriginal affairs] is driven by the management of public perception. [...] and] results in, the production of policies aimed at the non-Aboriginal population. [...] Lacking electoral power, except through the manipulation of public opinion, the targets of development are subject to one-way accountability always upward, always to non-Aboriginal Australia’ (Sullivan 2011, p 72-73, 78)

Despite considerable attempts of Indigenous polities to bring accountability and change models to non-Indigenous governments, any mainstream media coverage has tended to focus on government responses and personalities, rather than on substantive issues and Aboriginal standpoints (Thomas et al. 2020). This raises doubts about mainstream media as an accountability mechanism that’s useful for mob, because the supposed teeth of electoral consequences relies on a First Nations voice<sup>14</sup> that goes unheard. For instance, in the Commonwealth context —

‘Aboriginal people are [presented by the media as] either cultural and ceremonial people from the bush, who may even be naïve and idealistic about their chances of effecting change, or they are angry radicals [...] Ultimately, Aboriginal people and their interests become a colourful backdrop to the political drama in Canberra’ (Allam in Thomas et al. 2020, p 96)

‘[T]he views of the prime minister and the opposition leader were prioritised over Aboriginal aspirations and any form of Aboriginal opinion that did not fit the discourse [...] agreement-making fell outside the very limited confines of what was deemed acceptable discourse’ (McQuire in Thomas et al. 2020, p 96, 215)

This is, however, a dynamic space in which First Nations have intervened to represent their own interests and platforms outside of formal accountability frameworks and institutions. Even these extraneous and independent accountability mechanisms demonstrate how critical it is that Indigenous accountability (as we reluctantly essentialise it here) is conversational, reputational and relational.

<sup>14</sup> See below (Fox, 2015) for notes on Voice and Teeth.

## Conversational, reputational, relational: social media and public participation

Social media, in recent times, has become an accountability mechanism for First Nations people in their relationships with their own community, NGOs, companies and with governments. Mob use social media in distinct ways, and its use has complex ramifications for core presumptions of accountability frameworks.

Social media offers spontaneous, frequent and up-to-the-minute insights on communities' 'attitudes and opinions' and their 'specific relationships' (Yeung 2018, pp 98-99) outside of normal mediating structures between governance and citizenry. In comparative jurisdictions and on an international scale, minoritised people have used social media to act socially and with agency in a newfound online 'sociocritical consciousness' (Scott Nixon 2009, Rahim 2012) for those with 'the least power in the aid chain', treating reputational risk as an accountability tool (Australian Council for International Development 2009, p 24). In Australia social media has been especially powerful in amplifying the power of Indigenous media.

'The social coalition afforded by Twitter and Facebook fosters communities of dissent that pose vital and often real-time challenge to existing social orders too often blindly reproduced by mainstream media. [...] Policy-making is now more media-tised than ever before — particularly for Indigenous policy — and we realise there is significant opportunity in being able to set new agendas in public conversation. Our intention is to forge new media systems that produce improved representation for First Nations Peoples... simply by providing new pathways for our brothers and sisters to have their voices heard and participate in the dialogues and decision-making that affects them' (Latimore in Schultz and Phillips 2018, pp 51, 57)

However, mob are still — in calling out racist government conduct on social media, conventional media, or in scholarly research — facing barriers to accountability even in the 'contact zone' posed by the values and procedures of Western accountability which can dominate this space. This has both a chilling effect on accountability speech and also makes legally-protected forms of speaking out such as Parliamentary inquiries appear extractive without reciprocation (Whittaker, 2018). Gilbert (2016), for instance, was repeatedly denied access to transcripts of her own testimony as a Stolen Generations survivor to the Bringing Them Home inquiry on the grounds of privacy and defamation concerns:

'Whilst story-telling is a tool highly valued for information sharing...within Indigenous communities, prioritising legal concerns about defamation or privacy are new challenges for storytelling's age old process and its implementation as a research methodology' (p 108)

## Shared core elements, explained

Returning to the institutional context of accountability, we note the following core elements and practices as deserving and receiving particular attention in the literature.

### Responsibility

Accountability, from Indigenous standpoints, is not an abstract concept — it is an ongoing responsibility. That responsibility, unlike many public mechanisms in Western liberal democratic frameworks, is not discharged by a government party sharing information or being penalised for a breach. It is an enduring relationship with no end date, rather than a transactional duty or penalised wrong. When First Nations demand accountability, it takes place within this context. Accountability, then, can't take place without a responsible relationship. In comparative contexts, this has been constructed as a unique public law fiduciary duty (Kornelsen et. al., 2016). In NSW and other Australian contexts, the relationship is political and social in nature —

'Demanding accountability presumes a particular kind of idealised relationship between two parties: at a minimum, a common understanding of the rights of one, and the obligations of the other...[These obligations are] contingent, nuanced and negotiable' (Thorburn 2007, p 14)

Accountability is also contingent on clearly-defined Indigenous-settler relationships. It 'is essential to define what those rights are and whose responsibility it is to meet those rights' (Bennett and Green in Kickett-Tucker et al. 2017, p 132).

### Proactivity

Accountability to First Nations must be proactive, rather than reactive to crises. Royal Commissions, inquiries and inquests as accountability mechanisms, for instance, have been criticised in recent decades for being reactive and stalling change in Indigenous affairs (Whittaker 2018).

If it is to be proactive on both sides of the relationship, it is necessary to deal with self-instigation of accountability — where First Nations do not have to repeatedly raise grievances in order to commence a review and change process, and where there are tools for settler governments and individuals to identify and rectify identified issues as they arise. This is obviously an area for caution in a colonial context. 'One problem with [self-instigated] accountability is that it relies on self-reflection and a lot of guesswork, and can for some non-Indigenous people lead to a sense that it is better not to engage with Indigenous people' (Land 2011, p 61).

Auto-accountability can also become ritualised sharing of information and condemnation. Instead, it must be empowered to reach a satisfactory outcome. For instance, non-Indigenous scholar Land (2011, p 64) suggests that agreements between Indigenous and non-Indigenous parties, in order to be accountable, 'must enshrine Indigenous rights rather than equal rights'.

## Consequences

States often think of accountability as the uncovering and sharing of information to the public through transparency mechanisms or from agents to principals in funding arrangements. However, to be effective, accountability frameworks must not only provide information, but result in action, or they will fatigue and undermine trust in change across Indigenous-settler relationships (including those under *OCHRE* initiatives). Accountability, whether self-instigated or otherwise, requires both *Voice* (being heard) and *Teeth* (being actionable) to be legitimate and effective across any context (Fox, 2015). 'Social accountability cannot assume that access to information alone will [...] generate sufficient power to influence public sector performance' (p 346). Accountability, when driven internally or externally in Indigenous, settler or 'contact zone' contexts, must instead 'deploy multiple tactics, encourage enabling environments for collective action for accountability, and coordinate citizen voice initiatives with reforms that bolster public sector responsiveness' (p 346).

Non-Indigenous peoples working in Indigenous spaces warn that, with the ritualising of reporting government and NGO wrongdoing without consequence, there remains no trust in accountability processes unless they offer actionable change (Land 2011). Complaint about the number of ritualistic reports in Aboriginal Affairs is noticed by First Nations people with some frustration. Whittaker suggests (2018, p 28):

'Creating repetitive and increasingly particulate knowledge about Indigenous suffering using soft law not only derails reparative or substantive justice for Indigenous peoples, it creates new paths of suffering and new paths for governments to deny justice.'

## Strong, culturally and politically appropriate institutions

For consequences and relationships to be enforceable and legitimate, there must be strong institutions on both sides of the accountability relationship. What makes them strong is to be assessed by the standards of the relevant group. For First Nations to ensure the strength and viability of their own institutions, there must be (Native Nations Institute and Harvard Project on American Indian Economic Development 2006, pp 13-14):

- a recognition or assertion of sovereignty or self-rule, not just of the parties involved, but a determination over 'who controls the primary relationship between the sovereigns' (depending on the context, usually the First Nations or institutions established in the 'contact zone')
- capable, resourced internal governing institutions
- match between those institutions and a First Nation's political culture— with First Nations determining 'how self-governing institutions should be structured' and governments just 'accept the variety of relationships and governance solutions that will surely result.' (p 27); 'Governing systems that are legitimate in the eyes of the citizenry mean that governing systems will vary from nation to nation and community to community' (Vivian et al. 2017, p 224)
- leaders within First Nations serving as mobilisers and nation-builders (Cornell and Kalt in Jorgensen 2007, p 19)

## Self-determination

In supporting these institutions and self-determination in accountability, settler governments require as a core practice (as some have in the United States; Cornell and Kalt in Jorgensen 2007, pp 27-28) —

- a focus on institutional capacity building and institutional development for practical self-rule
- a move to block grants, so Native communities can make their own resourcing decisions without conditions
- developing evaluation criteria that reflect Native needs and aspirations set by their own Nations
- shifting from making decisions for First Nations to consulting First Nations on their own internal State decisions (a reversal of the current dynamic)
- recognising that self-governing Nations (like all governments) make mistakes, and that sovereignty means the freedom to make those mistakes and be accountable to their own citizenry.

In comparative contexts like the United States, the role of supporting First Nations accountability and institutions

has partially been undertaken through decentralising contracting to First Nations and eventually moving into compacts or long-term agreements to deliver services outside of ongoing government oversight. So, there is a relationship between accountability in service provision and the move to accountability as political decision-makers. When accountability in service provision is not used as a form of settler jurisdiction over First Nations, but rather as an agreement for autonomy that *enables* First Nations jurisdiction, a First Nation's internal and external political accountability can flourish. This is not a linear relationship — it is one possible enabling environment, but on the literature it appears to be the strongest one.

'The combined effect of these policies is to allow tribes to engage in whole-of-government planning for themselves, rather than having it carried out at higher levels for them. The model [...] requires federal bureaucracies to treat Indigenous tribes as the primary coordinative nodes for planning and implementing policy outcomes at the local level.' (Hendrix et al. 2019, p 32)

These 'coordinative nodes' are effectively treated in US law and policy as Australian local council equivalents with expanded jurisdiction over service delivery and law enforcement, but First Nations have used this policy as a means of expanding their resources, jurisdiction and their capacity to influence state and Federal policy to meet their internal aspirations. These strategies require the relinquishing of government control over decision making, resourcing and funding in Aboriginal Affairs. Put more succinctly in 1973 by Kevin Gilbert — 'independence takes money' and resources 'and that is the catch in all Aboriginal affairs' (p 140).

However, this process requires careful phasing and flexibility, as identified by AANSW in later research questions. This stewardship role of government as First Nations resume control of their affairs and as accountability mechanisms develop, is distinct from governance and control (Lowitja Institute 2015). Other literature and policy suggests that a viable course of action for governments and NGOs alike is to develop clear exit strategies to prioritise community self-determination and their own internal accountability (rather than only seek, however important, robust external accountability to a community; Aboriginal Peak Organisations NT 2017).

# Data sovereignty & knowledge protection

How can Aboriginal data sovereignty,<sup>15</sup> and cultural knowledge protection be taken into account in a new *OCHRE* accountability framework?

## Key points

- 'In every society there are cultural determinants of what constitutes leadership, decision-making, representation, group membership, participation, legitimacy and accountability... Serious problems arise when supposedly objective statistics do not adequately reflect these differences.' (Kovarch 2009, p 145)
- Accountability relies on knowledge, research and data — processes Indigenous people are commonly subjected to, but spaces from which Indigenous people and knowledges are often excluded.
- Data sovereignty, Indigenous evaluation, Indigenous standpoints, Indigenous cultural and intellectual knowledge protection, and Indigenous-led research partnerships are crucial for informed accountability and for First Nations self-determination.
- All of these approaches are highly-localised or concerned with inter-Nation relationships; many are focussed on intergenerationality and long time-frames; many are concerned with program delivery, caregiving, healing and justice; and, all are predicated on community control of information.
- They require rethinking who produces data; how they produce data; how they publish, report and interpret data; what institutions they produce it in; and to what end the data is produced.

Accountability under any contextual framework relies on knowledge and research — which in turn relies on data. In this chapter, we outline the literature on community control of knowledge, the power of knowledge formation in articulating disputes, and the need for a First Nations-driven evaluative and transparency base for accountability projects to be successful. The current system is problematic, and data sovereignty offers an urgent way forward.

## Data central to accountability

Data is already recognised by the NSW Government as crucial to Indigenous-State accountability. It will already know that data is contested in the Indigenous accountability space — from Closing the Gap agreements, standards and reports, to the appointment of a Commonwealth Indigenous Productivity Commission.

*OCHRE*'s existing accountability framework relies heavily on evaluation through contracted third parties like the SPRC (SPRC, 2018). It is worth noting that any university-based evaluation is likely to be bound by AH&MRC Guidelines for Research into Aboriginal Health (AH&MRC 2016), and the Guidelines for Ethical Research in Australian Indigenous Studies (AIATSIS, 2012) which address community consultation and benefit from research, but do not fully address data sovereignty.<sup>16</sup>

While evaluation is not the only *OCHRE* accountability mechanism,<sup>17</sup> it is the most data-centric and the most reliant on Indigenous data sovereignty. It is also the most commonly referred to accountability mechanism in the literature, and a significant interest of the NSW Government. During the first three years of *OCHRE*, a NSW Standing Committee on State Development (2016) proposed 'a mechanism for accountability of government initiatives, measuring and evaluating outcomes, and reviewing action where progress stalls' (p 10). The quality and integrity of evaluation of Indigenous programs is especially in the spotlight in grey literature, like the kind that governments and Indigenous community organisers produce.

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<sup>15</sup> While acknowledging the language used by AANSW is 'Aboriginal data sovereignty', we note in peer review of this matter that there was concern that this frame ignored the large-scale global work done by Indigenous people on data sovereignty — and excluded the notable contributions of Torres Strait Islander scholars. In the below, we use the preferred language 'Indigenous data sovereignty.'

<sup>16</sup> Soon to be replaced with [AIATSIS Research Code](#).

<sup>17</sup> *OCHRE* is also bound by NSW government standards for evaluation and internal ethical research practices. In the final round of feedback for this review, we were reminded that *OCHRE* is one of the few areas in Aboriginal Affairs to (soon) complete a full public policy development cycle (through identification of issues, information gathering, decision-making, implementation, evaluation and renewal).

How, then, can *OCHRE* evaluation centre the sovereignty of First Nations in NSW and protect their knowledge? Indigenous scholars offer us some answers.

## Indigenous knowledge production — intervening on Western systems & beyond

### Indigenous evaluation

Indigenous evaluators have cautioned that ‘Indigenous evaluation is [often] be resigned to the fringes of evaluation, and for the most part, subsumed within current theories and approaches such as: participatory, collaborative, responsive and empowerment evaluation’ (Wehipeihana 2008, p 43). The Australian Productivity Commission (2020), in its draft Indigenous Evaluation Strategy<sup>18</sup> in consultation with community, government and industry, advised that evaluations should ‘centre [Indigenous] people, perspectives, priorities and knowledges (p 8) with four overarching principles synthesise existing best practice models (pp 11-19):

- *Credibility* — evaluation is rigorous, technically defensible, done by a mix of internal and external evaluators, and done systematically based on importance to Indigenous peoples and its significance to the Commonwealth
- *Usefulness* — evaluations fill knowledge gaps and attend to what’s most relevant, are communicated in useful ways, are systematically used to improve programs, and address issues of importance to Indigenous people
- *Ethics* — evaluations are done according to the values of established research guidelines and done with Indigenous communities, agencies systematically assess ethical risks, and are subject to review by an Indigenous ethics research committee (as is common in health research, but not across the board for public Indigenous programs), and
- *Transparency* — evaluations have their terms published in advance, have teams selected through a transparent process, there is access to evaluation data by communities, findings are clearly justified, and evaluation reports are easy to find.

These principles are highly localised.<sup>19</sup> To this end, the literature offers a few evaluation frameworks specific to First Nations in NSW. Williams (2018) proposes the Ngaa-bi-nya Evaluation Framework, which —

‘acknowledges that the past affects the present, and that the present affects the future, and that the future cannot be shaped without a consideration of and reckoning with the past. It thereby acknowledges the need for an intergenerational perspective to program delivery, caregiving, and healing. Ngaa-bi-nya privileges Aboriginal and Torres Strait Islander people’s priorities, perspectives, and voices, given that programs are most successful when Aboriginal and Torres Strait Islander community members have power over governance, design, and delivery, including building capacity of community members to do so, aligned with cultural practices and values’ (p 9)

While institutions like Parliamentary Standing Committees, consultants and universities have a strong history of evaluation, and capacity to do culturally-appropriate evaluation, their exclusive use as accountability mechanisms is inconsistent with data sovereignty. Indigenous data sovereignty and accountability requires Indigenous leadership. The following treatment is required if evaluation data is to be used as either in a nation-building framework (Vivian et al. 2016, pp 68-69) —

- cultural knowledge should not be thought of as a special kind of intellectual property
- cultural knowledge can only be shared with the consent of a collective, on their own terms of decision-making authority
- cultural knowledge must be protected across all processes — not just where ‘data’ is most obvious
- research protocols for academic or government partners must be drafted and agreed upon by the First Nation themselves.

### Indigenous standpoints

Even when Indigenous knowledge production and standpoints are prioritised, Nakata (2007, p 9) proposes that Western disciplinary knowledge has the following relationship with Indigenous knowledge production —

‘What aspect of Indigenous knowledge gets representation, and how it is represented in this space reflects a complex set of intersections of interests and contestations: from what aspects of knowledge

<sup>18</sup> At the time of writing, the Productivity Commission released its final Strategy (out of scope of this review). You can find the final Strategy [here](#).

<sup>19</sup> See generally, Secretariat of the Pacific Community, 2013, for a model of allowing for highly-localised evaluations with diverging cultural frameworks.

are recognised or valued; what can be envisioned in terms of representation or utility; what sorts of collaborations are practical or possible; the capacity of current technologies to represent aspects of IK without destroying its integrity; to what research projects are funded; to the quality of experts in both knowledge traditions; to the particular interests of scientists or disciplinary sectors; to what is finally included in databases, or published and circulated in the public or scholarly domain'

The consequences of this are not just limited to the research sphere, and nor is research the only influence that undermines the production of Indigenous knowledge. As Moreton-Robinson (2013, p 336) puts it:

'There is an inextricable link between a nation state's sovereignty and what counts as knowledge, where and when it is produced and by whom.'

But First Nations may also 'explicitly operationalise Western knowledge in order to engage' this power from their own standpoint (p 338). With the caution that Rigney (1999, p 114) raises, 'Aboriginal researchers who wish to construct, rediscover and/or reaffirm Indigenous knowledges must function in traditions of classical methods of physical and/or social sciences.'

Vivian et al. (2016, p 56) propose the accountable balance between these two ideas the following way:

'A methodology that is all principles and no method is unlikely to produce defensible or usable results; a methodology that is all method and no principles may end up replicating western ways of viewing the world and reinforcing the colonial project'

In practicality, this requires an approach that (pp 52-54):

- supports Indigenous community self-determination
- promotes an Indigenous vision of social justice
- respects Indigenous peoples' agency and humanity
- respects Indigenous knowledge in theory and in research design
- supports Indigenous communities in reclaiming knowledge, language and culture
- recognises joint intellectual effort and mutual learning
- rejects research ethics that doesn't go beyond risk mitigation
- works towards transforming research institutions

Martin and Miraboopa (2003, pp 212-213)<sup>20</sup> propose instead a procedure for Indigenist research, a bridge to data sovereignty. The process requires that outsider researchers seek out primary sources about the community before visiting; ensure the design process occurs between researchers Country and peoples concerned; follow codes and protocols for data set out by the community; prioritise community and Country in interpretation; and, ensure cultural regulation of data reporting.

## Data sovereignty

Data sovereignty is an urgent and complex task in accountability mechanisms. 'In every society there are cultural determinants of what constitutes leadership, decision-making, representation, group membership, participation, legitimacy and accountability... Serious problems arise when supposedly objective statistics do not adequately reflect these differences.' (Smith, in Kukutai and Taylor (eds) 2016, p 128). Equally serious is when communities do not control the knowledge produced about them.

Data sovereignty is a concept of much excitement, but isn't often understood by public institutions. It requires the following principles (Snipp, in Kukutai and Taylor (eds) 2016, pp 52-53):

- the power of Indigenous people to decide who counts among them and who counts as an epistemic, cultural and political authority among them
- the context of this data must reflect the interests, values and priorities of Indigenous people
- Indigenous people must control who has access to these data (including governments)
- institutional support for this must include significant representative Indigenous oversight and Indigenous capabilities in data technology.

Kovarch (2009, p 145) suggests core mechanisms for the community control of data — ownership, process control, process and outcome access, and legal possession. Smith (in Kukutai and Taylor (eds), 2016) expands on these to recommend the following necessary preconditions for accountability through research:

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<sup>20</sup> Martin and Miraboopa are one person writing under two different contextual names. We have chosen to name both in this paper.

What institutional resources are required? (pp 124-125)	What data is required? (pp 125-127)
<ul style="list-style-type: none"> <li>• Cultural geography and legitimacy</li> <li>• Power and authority</li> <li>• Leadership/governors</li> <li>• Decision-making</li> <li>• Institutional bases</li> <li>• Strategic direction</li> <li>• Participation and voice</li> <li>• Accountability</li> <li>• Resource governance</li> <li>• Governance of nation state</li> <li>• Governance environment</li> <li>• Capacity development</li> <li>• Governance self-evaluation</li> </ul>	<ul style="list-style-type: none"> <li>• Collective cultural identity and internal relationships</li> <li>• Hard demographic facts</li> <li>• Governance performance</li> <li>• Financial planning and accountability</li> <li>• Strengths, assets, resources and expertise</li> </ul>

## Producing data for First Nations accountability

Research and data are not always produced alone. Research institutions, including universities, consultancies and even government, may have research relationships in an accountability mechanism with First Nations people.

### Keeping research itself accountable

But how are those relationships themselves accountable? Relationships between researchers (be they university, private or public sector) should be accountable through — *symbiosis* (mutual reliance on one another to achieve each party's goals); *hierarchies* (prioritising the decisions of First Nations and resourcing and building institutional decision-making mechanisms that ensure their own internal accountability), and; *equity* rather than equality (conferring priority to the First Nation because it is mutually beneficial that as a First Nation grows, the opportunities for mutual gain also grow)(Vivian et al. 2016, p 65).

### Using data for accountability

Indigenous evaluation and data sovereignty in an accountability framework cannot just be confined to matters a State perceives to be within the scope of Indigenous Affairs. All government data plays a role in creating the reality it describes, especially so for Indigenous subjects. For statistical outcomes, futures modelling, and social indicators to have value for First Nations, they must be directed by those Nations, and their ways of thinking and doing. One possible pathway (of many) suggested in the literature is that First Nations communities develop their own data to create and influence policy:

Indigenous communities must become literate in the entire statistical cycle of the construction, collection, interpretation and dissemination of quantitative information...open the possibility of levelling the relations of power within which statistical information is accorded its legitimacy in a manner that refusal or replacement with qualitative research cannot. (Walter and Andersen 2013, p 134)

On Yawuru Country, Yawuru have put data sovereignty at the centre of internal accountability by developing indicators 'collected for the purpose of informing government frameworks' (Yap and Yu in Kukutai and Taylor (eds) 2016, p 234). This is both for their internal use and for external recognition of governance capacity. Within the 'recognition space is a framework for examining the different positioning, world views and aspirations on the [Indigenous] side and national and international targets set by governments and international bodies on the other' (p 234). Their measures for accountability moved from a data sovereignty framework of Yawuru values and aspirations 'knowing our country, knowing our stories, and knowing our community. Together these key pillars can bring about health country, strong community and mabu liyan in parallel with the pursuit of economic development' (p 246).

Finally, accountability models can be sites for First Nations developing ways of conceptualising, researching and thinking about themselves in relation to the State and outside of that relationship. They are also opportunities for the settler state to rethink its own ways of thinking and relating. Tuhiwai Smith (1999) writes on the Waitangi Tribunal and surrounding negotiations and litigation with Maori iwi (pp 132, 170, 115):

'The process of mounting a treaty claim and preparing it for an eventual hearing requires the collective knowledge, effort and commitment of people in the various sections of the tribe [...] it gave a very concrete focus for recovering and/or representing Maori versions of colonial history, and for situating the



impact of colonialism in Maori world views and value systems. [...] Research priorities were determined by the nature of the claim being made and driven by the sense of injustice felt by the iwi concerned'

'Challenges made by Indigenous nations have deeply disturbed the colonial comfort of some states [...and] the legitimacy of the doctrines upon which colonial states have built their foundations'

# Shifting accountability

What is required to shift the accountability of services provided in communities (either directly or indirectly provided by government) away from Government to the Aboriginal communities concerned? What does this reveal about the elements of a successful framework?

## Key points

- Accountability shifts must still place responsibility for long-term consequences of colonisation with State and Commonwealth governments. They cannot make First Nations accountable to State funders and auditors for outcomes largely in the control of the State.
- Internal accountability for service provision — that is, First Nations being accountable to their own communities without State oversight — is supported by the literature.

The literature offers caution in transferring accountability for service-provision from governments to communities. Recent transfers at a federal level have developed as a means of 'displacing responsibility for Indigenous disadvantage away from federal and state governments towards Indigenous groups. [...] Such statements serve to reinforce popular perceptions about Indigenous (in)capacity for self-governance' driving governments towards tighter external auditing rather than systemic change that respects internal accountability (Muller, 2008, p 395).

If the accountability transfer is for internal Aboriginal accountability, that is supported by the literature (Queensland Productivity Commission 2017, Arabena in Schultz and Phillips 2018; Sullivan 2011, Muller 2008, Thorburn 2007, Hunt and Campbell 2016, Martin and Finlayson 1996). However, if the transfer is to Aboriginal accountability to report to external bodies like settler governments, that is not supported by the literature.

Queensland Productivity Commission (2017) recommends, for service delivery accountability in discrete Indigenous communities (p viii):

- transferring accountability and decision-making to communities (currently weak accountability exists through public, NGO and provider pressure on governments as decision-makers. This reform would centre community as decision-makers and establish mutual accountability, see diagram on p xviii)
- capability and capacity building within government, service providers and communities to support this new way of doing things
- independent oversight, timely and transparent data collection and reporting 'to ensure performance and accountability'.

See above at *Accountability Frameworks — Core Elements* for discussion on shifting accountability and stewardship.

# Accountability practice

# Challenges in agreeing, implementing and maintaining accountability frameworks

What can be learnt from the experiences in NSW and elsewhere about the challenges in agreeing, implementing and maintaining accountability frameworks developed from Aboriginal standpoints and built from the local level? Can these challenges be addressed through a staged implementation approach? What does this reveal about the elements of a successful framework?

## Key points

- Agreement-making must take into account power differentials, future enforcement mechanisms, relevant cultural and social protocols, locality, legitimacy of representation, devolution of decision-making, future-planning, trust, underpinning values, co-design processes, and the ongoing, cyclical nature of agreement-making and review.
- Implementation should consider the capacity and soft skills of the public service, resourcing First Nations, and bureaucratic cost to First Nations.
- Maintenance should have regard to permanency arrangements in the 'contact zone', the need for review and monitoring, and the role of contestation in institutional legitimacy.

No agreement-making or accountability design, as AANSW has anticipated in this question, can transfer unilaterally into another context. But there are lessons to be taken on the pitfalls and triumphs of comparative jurisdictions, and knowledge that First Nations can offer one another across contexts — especially on agreement-making, co-design, staging, and change management.

## Agreeing

### Treaties and agreement-making for decision-making

Treaties are not guaranteed mechanisms for the agreement and implementation of accountability standards. As Watson (2015) notes,

'treaties entered into with First Nations favoured one treaty party in every instance — the states [...] in the contemporary context conflicts on the interpretation of treaties have arisen between states and First Nations. States view treaties as a means of acquiring territory and jurisdiction. First Nations view the same treaties as peace agreements and evidence of their sovereignty.' (p 149)

While they may have a mandate from First Nations at a local level, their uneven enforcement by a resourced state party to the treaty itself means that they lack teeth. The same applies, Smallwood (2015) argues, to generalist Western protections when First Nations peoples seek to enforce them: 'When First Australians come into contact with key Western institutions, the laws and procedures of those same institutions [tend to be] laid aside' (p 164).

Davis (2018) also warns that the States' own internal accountability in the context of the Commonwealth shapes how and by whom agreements can be made: 'Treaty is a nation-to-nation process that requires leverage and resources. The state-based process, and especially the territories, are extremely vulnerable to Commonwealth power in a variety of ways.' (p 43).

Clearly, not all challenges in accountability or agreement-making are a question of capacity. Many are a question of ways of thinking, values and ways of doing. Those that are a question of capacity, be it systems capacity, institutional barriers, or unbalanced economic resourcing, may be assisted (but not totally remedied) using a staged implementation approach for both First Nations and government.

A recent review of *OCHRE's* Local Decision Making (LDM) by the NSW Ombudsman<sup>21</sup> suggested that LDM and Accord development 'shift the power differential...including by devolving certain decision-making and budgetary control' (NSW Ombudsman 2019, p 12). This process has been slow, and the Ombudsman recommended urgency and government investment in training its public servants for 'power sharing'.

In NSW, LDMs have been evaluated (by external university researchers; SPRC, 2018) as being insufficiently local, under resourced to 'maintain engagement with the diverse views and needs of Aboriginal communities in each area' (p g), insufficiently differentiated by responsibility, and not demonstrating meaningful change to First Nations communities. However, it offers 'ongoing open dialogue between Aboriginal communities and government...in some ways the furthest towards actual expression of self-determination in Australia' (p h).

Agreement making is emerging between First Nations and local councils as a site of interest. While successful agreements like these are novel, vary significantly across contexts and are reciprocally rather than legally enforced, they share the following characteristics (Shain, Genat and Wensing in Langton et al. 2006):

- leadership and institutional auspice
- commitment and compromise from both parties
- participation based on mutual respect
- Commonwealth, State and Territory support
- tangible outcomes to benefit local community
- dispute resolution, monitoring and review
- flexibility, with agreements being 'a living document'.

Dodson (in Schultz and Phillips 2018, p 59) offers a sobering reminder of where negotiation occurs — somewhere in the 'contact zone' that is not squarely in either treaty party's control: 'Recognition and treaty-making involves two parties. Both parties must want to engage and both must then negotiate and agree on terms. First Nations aspirations alone will not win the day.'

## Co-design

Co-design is a popular framework for understanding agreement-making in accountability and accountable agreement-making institutions in Australia in the last decade. It is not always correctly used, and sometimes is 'stakeholder feedback once a policy or a plan has been formulated by specialist professionals' (Blomkamp, 2018, p 732). 'It is only co-design if people who are affected by the issue are active participants in the design process' (p 733) at every level. Co-design must run 'as a thread' through any process (VicHealth, 2017).

This ambiguity in the public sector around co-design and existing paternalism in Indigenous affairs mean that co-design has become an empty signifier for many First Nations, people and communities. For instance, on the Closing the Gap co-design, First Nations scholars have written:

'The issue is the failure - or rather refusal - to commit to structural reform that meaningfully attends to the relationship between Indigenous peoples and the state' (Bond, 2020)

'COAG has offered support to "discuss" the co-design process that would explore a First Nations voice to parliament. However, there has been no mention of specific targets for Indigenous empowerment and self-determination. Rather, COAG's communique emphasises "strengthening mechanisms to ensure Aboriginal and Torres Strait Islander peoples have an integral role in decision-making and accountability processes"' (Synot, 2019)

The literature cautions that co-design without institutional guarantees and an eventual goal of self-determination is 'a form of rights ritualism: it appears to support Indigenous rights without implementing them' (Synot, 2019). In international literature, co-design with First Nations is described as necessarily being in community control (rather than being extracted from them), requiring participants to do 'positive disruption' in the interests of their communities, and needing resourcing for time-intensity, flexibility and responsiveness (Te Noho Kotahitanga Marae, 2016). Co-design, even in general non-Indigenous models, requires significant surrender of power from the public sector, including diminished control, increased complexity and project scale, enduring involvement of the community, new skills and infrastructure, public transparency and preparation for distrust, and significant outreach to those not already engaged (Blomkamp 2018, pp 717-739).

Co-design requires, as a practical matter (Evans and Terrey 2016, p 254) — action-orientation, centring citizens, negotiating skillsets, multi-disciplinarity, rapid prototyping, and balance between desire, possibility and viability. In NSW, it is essential that in co-design with First Nations (Dreise and Mazurski, p 17):

- community members understand what co-design is
- they are briefed in advance (where they represent others or need to seek community input)

<sup>21</sup> An internal State accountability mechanism required by the *Ombudsman Act 1974* (NSW), Part 3B and the *Ombudsman Regulation 2016* (NSW).

- they are treated as equal partners, including through being provided relevant information about theories and practice
- community have multiple opportunities to engage
- lessons learned are systematically introduced into what happens next
- each phase follows smoothly for community members
- the design process be flexible to communities' needs
- cultural protocol is followed.

In comparative Australian jurisdictions, what has been required to negotiate accountability frameworks was a shift in understanding First Nations as stakeholders to understanding First Nations as sovereign traditional owners, with their own government and right to self-government. Agreement-making from Indigenous standpoints will necessarily disrupt the idea of 'a singular State sovereignty' and therefore the idea of singular state authority over accountability (Rigney and Hemming, 2014).

## Building representative institutions

There are no shortage of contemporary institutions built by First Nations peoples that are capable of entering into representative accountability with government. Each have faced the challenge of building from the local level in an internally equitable and culturally-appropriate way. In its early days, National Congress proposed being a political and representative organisation with an electoral mandate that could speak to government but could not speak on behalf of local communities and First Nations — that accountability, and the duty to consult, remained with those communities who were unbound by Congress (Calma and Dick in Maddison and Brigg 2011, Sanders in Howard-Wagner et al. 2018).

## Service agreement-making

Service agreement making has been a feature of Aboriginal Affairs for the last half century. Aboriginal community controlled organisations are a critical part of Aboriginal civic life in NSW. While they are not themselves social or political organisations in the same way that First Nations themselves are, there are lessons from their agreement-making and its embedded accountability mechanisms that offer insights for other parts of Aboriginal civic life that may wish to enter into other agreements with the State.

One key lesson from this agreement-making is that states with resources and legislative or executive functions will have an imbalanced negotiating and power relationship with Aboriginal organisations with fewer resources and little legal power. To balance this, agreements that 'create a level of accountability' between parties with imbalanced power relationships (Secretariat of National Aboriginal and Islander Child Care, 2012, p 31) must at a minimum have:

- clear commitments from both parties
- flexibility in day to day operations
- be part of an ongoing agreement process that is about larger systemic change and strategy — 'a basis for future growth' (p 27), and
- sustainability within institutions, rather than with influential individuals.

They also, critically, must come 'from a position of trust' and, in the forming of agreements 'create negotiating strength for smaller partners.' (p 29) As an example of this, the Victorian Government (2018) has entered into the Wungurilwil Gagpduir Agreement, guided by principles that operationalise these requirements in a child and family wellbeing context (p 7):

- Aboriginal self-determination ('Aboriginal community control makes service providers more accountable to community members, increases the likelihood that service offerings will be tailored to the community's particular priorities, and improves client satisfaction and health outcomes...Aboriginal Victorians have [already] enacted self-determination with their own communities.' (p 14))
- culture and community (including representation and inclusion, communication, time, cultural respect, relationship building and historical truth-telling (p 36)).
- family-centricity
- respect
- strengths and success-based
- relationships of trust and accountability (through — the establishment of a monitoring body, the Aboriginal Children's Forum, representing Aboriginal organisations, government agencies and family services, Elders, leaders and communities; an Outcomes Framework to measure progress; and shared responsibility for evaluation, implementation, advising, updating the Agreement, designing policies around the Agreement and embedding 'cultural strengthening as a core feature' (p 22))
- resource equity.

## Implementing

### Staged approaches and capacity-building

A staged implementation approach<sup>22</sup> only relieves some of the power imbalance identified above. It is crucial that any staged approaches also address the urgent capacity-building required for the NSW Government to change its way of thinking, rather than the usual focus Indigenous institutional capacity. Bauman (2007, p 15) suggests that:

'The missing link in government approaches to Indigenous issues is thus an adequately resourced infrastructure of community decision-making, engagement, problem solving and negotiation, based on the understanding that outcomes will not be sustainable unless they are owned by the Indigenous people involved. [...] . Being aware of issues which impact on Indigenous people does not equate to the necessary skills of engagement and communication, and not all individuals will be suited to effective engagement with Indigenous people. Moreover, governments and government departments themselves have major organisational communication problems and a range of 'cultures' within them which give rise to internal misunderstandings and conflict which have a flow-on effect to Indigenous communities. These in turn intersect with those of other departments as whole-of-government approaches flounder' (p 15)

Capacity-building, while critical in institutions, is not only institutional. It requires building a public service which is attuned to the skills required to work in the unique context of negotiating and surrendering power — an uncommon skillset in any professional setting. Government dysfunction and organisational tensions, while common in government regardless of the soft regulatory power that discourages them, produce adverse consequences for First Nations people and threaten the implementation of and trust in any agreement with First Nations, Aboriginal communities and Aboriginal peoples.

Further to this point, staged approaches for accountability on service delivery are a popular option for transferring responsibility and service provision to affected communities. This tendency must be resisted. The Queensland Productivity Commission suggests (2017, p 247):

'An agreed, transparent pathway for progressing through reform stages would provide surety for communities and lend authority to decisions made in the agreement-making process. The agreed pathway would allow communities to identify where they sit on a spectrum of readiness to adopt greater decision-making and accountability, and what further capacity needs to be built... These criteria should consider good governance principles such as legitimacy and leadership, community participation and voice, strategic direction, accountability (internal and external), resource governance and organisational performance'

Control in this model of the staged approach rests with an Authorising Body comprised of independent First Nations representatives. This supports self-determination and regional cooperation, but also offers (Queensland Productivity Commission 2017, p 137):

- scope and scale efficiencies
- reduced bureaucratic cost
- attentive local decision-making within a scaled-up collective decision-maker
- reduced need to establish infrastructure that smaller communities would not otherwise find useful.

A further independent oversight body led by First Nations representatives and experts would manage evaluation, indicators and accountability, and ensure 'agreement on the scope of reforms, keep all parties informed as implementation progresses, and serve as a forum for engaging broader stakeholder groups.' (Queensland Productivity Commission 2017, p 246).

## Maintaining

### Permanency and change

With the axing of ATSIC, the short-lived nature of other Aboriginal political bodies, and the decisive weakening of judicial decisions that benefit First Nations, it is worth considering models of accountability that can effectively bind governments.

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<sup>22</sup> See the final chapter of this paper for more detail on staged and phased approaches

### **Constitutional permanency**

One suggestion is a constitutionally-bound accountability framework. As Morris (2018, p 650) argues, 'The easy axing of ATSIC demonstrates why it is important that any new Indigenous body is underpinned by a constitutional guarantee. The body should not be abolished the moment there are difficulties'. In the NSW context, of course, the Constitution is not as binding and can be amended by statute. There is contestation, on the Constitutional question, as to whether binding duties and justiciability of potential Constitutional guarantees of accountability disrupt Parliamentary supremacy (Morris 2018). The Referendum Council (2017) developed the following Guiding Principles for a constitutional guarantee at a Commonwealth level that has generalist applications for States seeking permanence guarantees in Indigenous accountability mechanisms. It must (pp 22-28):

- Not diminish Indigenous sovereignty
- Be substantive and structural
- Advance self-determination and UNDRIP
- Recognise the rights and status of First Nations
- Tell the truth about colonisation and history
- Not foreclose future advancement
- Not waste the opportunity of reform on sentiment
- Provide a mechanism for agreement-making
- Be supported by First Nations and Indigenous peoples
- Not interfere with positive legal arrangements

### **Dispute is not impermanence**

Internal opposition and trust in the process of agreement-making are crucial to its accountability — when it is led by First Nations peoples.

Central Land Council's community development program, for instance, was 'not an intervention that is being imposed by government or initiated by a non-Aboriginal organisation... Nor is it a change that has been universally sought, developed or supported by all Aboriginal people involved at the outset' (Hunt and Campbell 2016, p 5). The program was successful because it was Aboriginal-led and known as culturally and economically capable, and had an overarching commitment to action, reflection and adaptation in all projects, structures and relationships. Further evaluation demonstrated that the impact of both the development and the governance project produced outcomes greater than the sum of their funding in sites of priority set out by their own constituents (Roche and Ensor, 2014).



# Phased and flexible accountability frameworks

What is known about the success of phased and flexible accountability frameworks that support Indigenous standpoints? How can such a framework take into account dynamic and diverse Aboriginal standpoints?

## Key points

- Phased and flexible approaches should be considered for large-scale systems change that requires readiness, adaptability and sustainability
- Community feedback and data are critical in any phased or flexible approach, to ensure the system change is working in the interests First Nations rather than of just the NSW Government
- There should be caution for New Public Management of First Nations, Aboriginal communities, and community-controlled services. This way of thinking has historically worked against self-determination and has led to inappropriate imposition of government oversight over community matters.
- Reciprocal accountability and relational contracting are two tools that may assist with phased and flexible approaches that prioritise First Nations standpoints and contexts.
- The phasing and flexibility should be directed to a government stewardship role, with the goal to surrender government oversight and control.

Accountability, taken in the context of relationships and negotiation in the literature, requires being mindful of capacity. Both sides of the institutional relationship must have a base level of preparedness for accountability frameworks and be ready to adapt them to changing or as yet unknown circumstances. In development literature, there has been a focus on capacity-building in First Nations governance to ensure they are adequately internally and externally accountable. We agree that capable institutions led by local ways of structuring decision-making are essential, but caution that, from Indigenous standpoints and as we were reminded by the expert panel on 20 October, institutional readiness is most sorely needed on the side of government. First Nations are ready, they just go unresourced in the colony.

Phased and flexible approaches account for different stages of readiness and ensure adaptability and sustainability of any large-scale systems change. A **phased approach** is a way of transitioning from one way of doing things to another in overlapping stages to allow institutions to meet change and adapt it to their own capacity and functions. A **flexible approach** is its natural meaning — institutions, agreements and strategies are all adaptable to changing circumstances and new insights. We see these concepts as synchronous. They account for learnings, feedback, implementation strategies and disputes.

## Data and reporting in phasing and flexibility

What is crucial in both a phased and flexible approach is regular **community feedback and data**, which can then be used to adapt (see, for example, Evans and Terrey 2016, ACFID 2009). Co-design over a sustained period of time and with institutional commitment also can resemble a phased and flexible approach that works with community to structure how they would move towards their own aspirations. It has three key stages which are actually a cycle — sharing insight, experimental prototyping and evaluation/scaling/adaptation. Other Indigenous approaches internationally have considered a double-loop evaluation strategy — where evaluations not only consider how to meet aspirations but to also inform the aspirations themselves (Secretariat of the Pacific Community 2013). Data gathered from each phase of the roll-out of any program, under this model, not only tests the efficacy of the program it seeks to measure, but also, through a deeper review process, interrogates the aim of the projects and whether they are meeting community goals, whether those goals have been misunderstood, whether they require adaptation, and whether they should adapt to changing community realities.

It is important that these data, and the mechanisms for regularly refining and prototyping accountability models (or the phased approach itself) do not themselves become mechanisms for government review of First Nations goals, approaches or autonomy. This is the tendency in New Public Management practices that link data with flexibility and provide

'a particularistic advantage not to organisations that will deliver the best program, but to organisations with the consultants' best trained in NPM rhetoric, logic and processes' (Adams 2011, p 12)

New Public Management methods of review may also exert a soft coercive power on Aboriginal interests and local policy through funding and reporting constraints, with 'different priorities, expectations, levels of commitment of policy, and implementation frameworks that have never been resolved to enable effective working with Aboriginal partners.' (Bennet and Green in Kickett-Tucker et al. 2017, p 133)

## Relation, reciprocity and flexibility

**Relational contracting** involves longer-term funding and support agreements with First Nations, where those First Nations set their own performance goals and adapt the block grant resourcing accordingly. It is supported by closer communication and direct advocacy to funders and government — relying on relationships for proactive enforcement and negotiation of obligations rather than legal or political enforcement mechanisms after a breach or perceived breach.

It is one way that service providers and government funders can have more flexible relationships, plan to phase system change and retain reciprocal accountability. It is part of a suite of changes to how governments do business with mob that 'truncates [...] vertical accountability' (Sullivan 2011, p 82), along with other flexible approaches like 'client appraisals, surveys, community juries'.

Relational contracting, and accountability generally, relies on reciprocity, relationships and identity. Sullivan (2009) posits —

'Accountability in a communal setting is primarily the rendering of reciprocal account between individuals and groups so that the person and the group define themselves, both to themselves and to others, as who they are, why they matter, that they are fundamentally ethical within their cultural norms. Accountability is not only an instance of relations of power. It is constitutive, making the people who they are [...]. This is no less true of the bureaucrats and politicians who involve themselves in Aboriginal lives than it is among Aboriginal people themselves' (p 66)

This kind of **reciprocal accountability** (as it is referred to in the literature) is crucial in any phased or flexible approach for First Nations because it recognises and addresses the imbalance of power in Indigenous-State partnerships — ensuring that the cost of flexibility is borne by government, but is available to and benefits First Nations. Reciprocal accountability makes self-determination and partnership real in both the *form* of the Indigenous-State relationship, and the *outcome* — consistent with a phased approach (Kornelsen et al. 2016).

It relies on the mutual vulnerability of states and First Nations to create a 'non-hierarchical arrangement that emphasises partnership' (Kornelsen et al. 2016, p 19). To honour this may require **surrendering**, even under the most conservative of the relational contracting, phased or flexible model, some degree of **government oversight and control**.

'Relational contracting recognises the interdependence of contractor and supplier, and seeks to maximise the common interests of the parties in the enterprise. It is characterised by greater flexibility and cooperation, as well as reliance on trust. Relational contracting assumes that transactions are likely to recur, and recognises that the nature of the contracted services makes it difficult to specify and monitor outputs, which are therefore less detailed [...] While the need for accountability for public funds is accepted, there is a need to ensure that the compliance, monitoring and reporting arrangements justified on the basis of accountability are meaningful and proportionate, and address [internal] accountabilities to [their communities] as well as [governments]' (Dwyer et al. 2011, pp 36-37)

The focus in this approach remains on the 'contact zone' and the relationship, and retains its local and regional drive from First Nations.

We caution that, as Dwyer et al (2014, pp 1104-1106) argue, the 'more relational approach' to accountability in the last decade in Australia, at least in policy discourse, has not yet resulted in 'any general changes in practice...While other accountability pulls are recognised, they do not yet [in the eyes of governments] compete as the focus of effort and consequences.'

## Comparative contexts

In a comparative context, phased and flexible approaches have considered smaller decision-making units than nations or communities — and drawn from reciprocal accountability and relational contracting.

Whanau Ora, a phased health accountability project in Aotearoa, organised its vision of control and capacity around families — decentring both accountability and resourcing in community decision-making from states and Nations' governance. Families were given funding with which to develop their own goals and phased plans. It was governed through relational contracting and the community organising principle of whakapapa (Te Puni

Kokiri 2015). Its hyper-localisation and decentralisation allowed for flexible and novel paths towards the old public health equity goals, with families setting phases for development. Evaluations of the model have highlighted the role of community members in helping families and nations navigate and access the program, as 'navigators' of government that ensured its transparency to Maori (Smith et al 2019 p 519). While the project was not centrally measured for its efficacy (instead measured to each whanau's goals), 'principles such as coherent service delivery were less important than supporting innovation and whanau integrity' (p 520).

## Driving from community

The CLC case study outlined above at page 38 is a fantastic example in the literature of driving internal accountability in a phased and flexible program. Key to growing their **community-driven internal accountability** without formal evaluation were 'adaptive management [by community and selected skilled outsiders] and regular reflection.' (Hunt and Campbell 2016, p 12) These are supplemented with 'light-touch planning, which is being gradually elaborated and systematised' (p 12). With care, this logic can also be applied comparatively to other First Nations. As Brereton et al. (2014, p 4) suggest, 'Local [phased and flexible] designs can be read and understood for their contextual details to assess how they arose and how they might transfer and mutate to a different context.'

The recent NSW Ombudsman review of *OCHRE* made suggestions for phased and flexible approaches for its Local Decision Making initiative. The Ombudsman proposed multiple new avenues for direct engagement for First Nations and communities be created for those who are not (or who are not *yet*) suited for negotiating Accords or LDM (NSW Ombudsman 2019, p 24) as it is currently phased and planned.

# Conclusions

This literature review is just the start of an ongoing and necessary conversation. As will be apparent in the answers above, First Nations and Aboriginal communities must drive this conversation and its terms for accountability to be part of a meaningful, long-term government-to-government relationship in NSW.

The Jumbunna Institute was approached by Aboriginal Affairs NSW to bring together existing published literature on accountability between First Nations and settler governments. This would inform ongoing discussions on accountability under the *OCHRE* strategy — rather than be a determinative document in and of itself.

We have not made firm recommendations or independent analysis because we do not seek to speak on behalf of First Nations who will later shape discussions with AANSW. This is only our review of existing published knowledge on this subject, put to the questions asked. We caution that the scope of considerations for accountability between First Nations and the NSW Government should be broader than those conveyed here.

Comments about *OCHRE* from First Nations communities that suggest it lacks rigorous accountability, are supported by even this cursory review of the literature, which holds a much higher standard than that currently available to mob in NSW. This review of the literature, in answering questions posed by AANSW, has revealed only a baseline of standards. They include, but are not limited to:

- The need for an established, funded, First Nations-led and –principled ‘contact zone’ through which First Nations can have an accountability relationship with the NSW Government;
- Proactivity, rather than reactivity, in NSW Government responses to events, structures and histories for which they should be accountable to First Nations;
- Consequences and enforceability, including assurances of reform and potential compensation, as part of an accountability framework, not just information-sharing;
- Non-interference in the internal accountability of First Nations, and a stewardship process for the transfer of this power back to communities and away from governments and government agencies;
- Resource-sharing and genuine efforts to equalise the balance of power in agreement-making and negotiations during this process for First Nations;
- A commitment to flexibility, capacity-building and growth in individuals and institutions from both First Nations and the NSW Government;
- A focus on relationships, relationality and processes as their own outcomes in Aboriginal Affairs in NSW;
- Reflection, adaptation and evaluation through First Nations research and data mechanisms that centre data sovereignty and localised values and Indigenous ways of thinking; and
- These processes cannot be Indigenised through translation or adaptation of existing governance mechanisms, they require starting from the roots of First Nations accountability frameworks and building upwards from there.

Accountability is at the core of relationships, and nowhere is that more true than in relationships between settler states and First Nations, people and communities.

Without accountability, these relationships and the *OCHRE* strategy itself risk falling into empty rhetoric, frustrating the efforts of First Nations to enter into government-to-government relationships and realise their own aspirations. But with accountability on the terms outlined above, both First Nations and the NSW Government stand to gain this and more.

# Annexure A — Issues paper

## Accountability Frameworks in NSW: Literature review issues paper

Jumbunna Institute — Indigenous Policy Hub  
Professor Lindon Coombes and Ms Alison Whittaker  
For Aboriginal Affairs NSW  
20 October 2020

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This project is being conducted at the UTS Jumbunna Institute by Yuallaraay Professor Lindon Coombes and Gomerioi Senior Researcher Alison Whittaker.

We have been asked to undertake a literature review to bring together knowledge from Western liberal democratic frameworks and epistemologies, frameworks and ontologies from First Nations frameworks. When approached by AANSW, we were asked to answer these questions —

1. What are key differences between government and Aboriginal understandings of ‘accountability’? To what extent can these be reconciled while continuing to prioritise Aboriginal standpoints?
2. What Aboriginal conceptions or forms of expression would help translate the elements of accountability from government to Aboriginal understandings?
3. What are the core elements of a successful accountability framework (e.g. principles, relationships, knowledge, capacity, and structures)? Do the elements differ when accountability frameworks are developed from Aboriginal standpoints?
4. How can Aboriginal data sovereignty, and cultural knowledge protection be taken into account in a new *OCHRE* accountability framework?
5. What is required to shift the accountability of services provided in communities (either directly or indirectly provided by government) away from Government to the Aboriginal communities concerned? What does this reveal about the elements of a successful framework?
6. What can be learnt from the experiences in NSW and elsewhere about the challenges in agreeing, implementing and maintaining accountability frameworks developed from Aboriginal standpoints and built from the local level? Can these challenges be addressed through a staged implementation approach? What does this reveal about the elements of a successful framework?
7. What is known about the success of phased and flexible accountability frameworks that support Indigenous standpoints? How can such a framework take into account dynamic and diverse Aboriginal standpoints?

So far, we’ve reviewed around eighty pieces of literature, including those provided to us by AANSW. These include scholarly literature by First Nations peoples, commentary, grey literature from community-controlled organisations and explanatory notes or evidence from existing First Nations—State accountability mechanisms. You can find these in the bibliography below. To keep the conversation on general terms, we haven’t directly cited any scholarship, but remarked generally on the field.

Today, we seek your feedback on whether you think we are on the right track to answering these questions. Below is a summary of our answers at this early stage of the research.

**Overall question for discussion —**

What have we got right and wrong in answering these questions? What have we missed?

## 1. Key differences in accountability

Across the literature, it was clear that Western liberal democratic concepts of accountability were not only distinct in principle from many First Nations' concepts of accountability, but were also distinct in their basic procedure. At the risk of generalising, we have summarised some of these differences below.

<b>Western liberal democratic accountability</b>	<b>First Nations accountability systems</b>
Concerned with transparency	Concerned with relationships and relationality
Individual rights-based	Collective rights-based
Rights to information, publicly distributed	Rights to relationship, process and informed decision-making — both publicly and interpersonally distributed
Cycled around elections, key reporting events, and electoral consequences	Cycled around outcomes-based monitoring, procedural compliance, and at the point of decision-making
Siloed between professional/public and personal	Whole-of-person accountability
Institution-based jurisdiction	Place-based, relationship-based jurisdiction
Claim to authority through statehood, popular electoral mandate, access to and provision of funding	Claim to authority through and as Country, through community, through relationships, through process, and through outcomes

So, while for Western liberal democratic accountability, a core mechanism might be annual reports, a First Nations accountability practice means being present, seen and queried in a community over an extended period of time by those with authority to do so.

We caution that defining First Nations accountability systems homogeneously and in opposition to settler systems risks diminishing them and limiting them to being reactive. First Nations peoples have knowledge of and strategise about Western liberal democratic accountability mechanisms in ways that work to their interests. Some literature argues that there is not a need for culturally appropriate mechanisms in the way that communities are accountable to government, more than there is a requirement for reduced government oversight of community affairs.

There are opportunities in the 'contact zone' to create new understandings and practices between accountability systems — acknowledging the imbalanced power relationship between First Nations peoples and settler states when doing so. Numerous information mechanisms, for instance, have been set up at state and territory levels across the continent, like the ACT's ATSIEB and its budget estimates process which allows questioning of government officials.

**Questions for discussion —**

How do communities participate in a state-wide, central accountability mechanism that represents state-wide Aboriginal interests, without compromising local accountability mechanisms and interests?

When state accountability systems meet First Nations accountability systems in an Accountability Framework, how can we best identify and manage these issues?

## 2. Aboriginal conceptions or forms of expression

One thing the literature made clear is that translating Western accountability frameworks into First Nations concepts is not enough to make them compatible or comparable. They are not often translatable, and sometimes they are opposed. In comparative jurisdictions and at smaller scales in NSW, what has worked is centring First Nations models of accountability and translating them to governments and agencies. This requires a change of practice and structure, rather than 'rights ritualism' that Indigenises in form, rather than substance.

In the literature, we were cautioned about external government accountability presenting itself as cultural or internal forms of community accountability. This has, in some contexts, impacted local decision-makers standing and trust and interfered with their internal governance and self-determination. It cannot just be a form of 'renaming' or 'reinscribing'.

Internationally, some First Nations with domestic dependent sovereignty (under settler law) have worked to make their concepts of law and accountability more easily understood by State law without changing their nature. This includes publishing information about accountability mechanisms, providing translations of concepts to their Western equivalent, and, where appropriate, exercising accountability mechanisms publicly as would occur in a Western court. These are appropriate to their histories and cultures and may not transfer to the NSW context.

However, some First Nations organisations in NSW have decided to formulate themselves as Aboriginal corporations, and work with that accountability framework, because of the strategic benefits it offers them in terms of having governments understand them. These associations are consistent with other forms of Indigenous government and have varied kinds of community relationships within them.

## 3. Core elements of a successful accountability framework

A variety of scholarship suggests that accountability frameworks in the 'contact zone' between First Nations peoples and settler states require —

### From First Nations communities

- Cultural and social match with First Nations accountability frameworks
- Cognisability to settler states (related to, but not solely, recognition)
- Authoritative, resourced and capable institutions on the part of First Nations people, organized regionally, locally and statewide
- Meaningful derogation of government power and funding to these institutions; *or* recognition, resourcing and non-interference of their inherent power and jurisdiction
- Development of knowledges and research skills within communities to drive their own evaluation and research agenda
- Accountability and decision-making led not by service providers, but by decision-making organisations that represent an Indigenous political institution

### From settler governments

- Horizontal integration across all agencies
- Balancing power and resources so that the partnership can be considered 'equal' — this may mean relatively one-sided accountability where governments are accountable to First Nations
- Integrated, long-term resourcing of accountability mechanisms without being in them or presiding over them
- Opening up to auditing and scrutiny by Indigenous nations, organisations and communities

### At the 'contact zone'

- Indigenous-initiated accountability — ongoing and proactive, rather than government-initiated and crisis-driven
- Recognising the accountability relationship as a government-to-government relationship, or a sovereign-to-sovereign relationship, rather than a government-citizenry or government-organisation relationship
- Agreement-making that produces living, adaptable agreements
- Evaluation to a set of central standards and adaptive locally-relevant standards
- Consequences, binding and material, that are not reliant on electoral sanction by the Australian public
- Capability on both sides of the relationship, both in terms of staff training and institutionalization of the accountability framework
- Internal accountability on both sides of the relationship (for First Nations organisations, to their relevant communities in the relevant way; for Western liberal democracies, to their constituencies)

#### Questions for discussion

How do settler governments self-initiate accountability or change procedures when they've identified something not yet communicated to communities?

How do we account for the relationship between internal and external accountability that Indigenous communities and settler governments have?

The literature we encountered on Western accountability in the 'contact zone' either related to funding agreements with government, informal social justice projects with non-Indigenous communities, the application of treaty law, or to the issuing of reports based on outcomes and benchmarks. Is there knowledge being produced about other forms of Western accountability with Indigenous peoples that is not in these areas?

How do we better distinguish between where accountability flows — from government to community or from community to government?

## 4. Data sovereignty and cultural knowledge protection

First Nations scholars were concerned that accountability frameworks which rely on data to drive transparency about particular outcomes in First Nations communities, build that data and frame those outcomes through Western ways of thinking about accountability. When they do that, they create 'deficit' subjects of Indigenous people, and ignore other methodologies and data questions that emerge from First Nations communities who drive the accountability relationship. This makes accountability look like it's dealing with 'the Indigenous problem' — rather than being accountable for the colonial one.

Another concern is that communities do not control the data that is made about them and do not set their own benchmarks by which data is collected. Data sovereignty means legal protections and ownership of the data produced about First Nations peoples.

Data sovereignty means controlling the data that is made, making it from an appropriate way of thinking for and by its community, and setting the questions.

#### Questions for discussion

What is the role of data in accountability?



Can settler governments self-initiate accountability when they observe something in themselves, without requiring community action?

## 5. Shifting accountability away from Government to Aboriginal communities — what is required?

As noted above, long-term resourcing is key. Also significant is building accountability frameworks that are locally relevant, have a good conceptual grounding in Indigenous epistemologies and ontologies, and that fit with empowered Indigenous decision-making institutions. These are built through collaboration in 'the contact zone' that is respectful and that has measures in place to balance the power in that relationship between First Nations and the State.

What is required is also mutual capacity building for both governments and First Nations, within institutions and for individuals, for this way of thinking between the two systems to work. It may require substantial effort *before* collaboration begins to ensure an equal footing, through a phased framework for both communities and government.

## 6. Agreeing, implementing and maintaining accountability frameworks

Accountability frameworks work best when based on situated relationships. In the research surveyed, co-design, even when appropriately done at all levels of policy development and implementation, is not sufficient without a plan to move towards self-determination.

Accountability in the longer-term requires government resourcing, commitment to cultural and institutional change, and avenues of redress for violations.

Agreement must form (rather than inform) the design and terms of accountability in order to ensure its legitimacy with First Nations and to set its terms in ways that are useful to First Nations.

## 7. Phased and flexible accountability frameworks supporting Indigenous standpoints

Phased accountability frameworks are crucial in a context where some First Nations and communities are less institutionally prepared than others to enter into agreements or to participate in more formal accountability projects.

One way a phased accountability framework might work, explored by the literature, is by setting a baseline accountability process by which any Indigenous representative entity (or individual) can hold a NSW government agency directly accountable, while institutional capacity is being built. As local accountability mechanisms that are both socially and culturally appropriate are developed, they may supplement this baseline of activity. This allows for multiple standpoints reflecting the internal diversity of Aboriginal NSW, and the power that comes with a central and consistent baseline of accountability.

Dynamic and diverse Indigenous standpoints are best reflected through deliberate agreement-making with regionally and locally authoritative institutions, but there is a balance to be struck in also having the negotiating and enforcement power of regionally-organised First Nations decision-makers and state-wide representation.

### Questions for discussion

What does a phased approach look like for government departments that are being brought into an Accountability Framework?

Are there other ways to phase accountability for First Nations in NSW?

## Bibliography

We are keen to hear from those present today if you think we are missing any key texts that might help us answer these questions.

We note that there is significant literature produced *about* Indigenous accountability that is not produced *by* Indigenous peoples. We would especially appreciate recommendations *about* Indigenous or Western accountability *by* Indigenous authors.

### Question for discussion

What literature are we missing out on that will help us answer the above questions?

We will review, but have not yet reviewed —

- Works of Larissa Behrendt
- Works of Megan Davis
- Kevin Gilbert's *Because a White Man'll Never Do It*

We have reviewed (which has informed the above insights):

Aboriginal Health and Medical Research Council of NSW, 2016. *AH&MRC Guidelines for Research into Aboriginal Health: Key Principles*, AH&MRC: Sydney.

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