



Education
Aboriginal Affairs

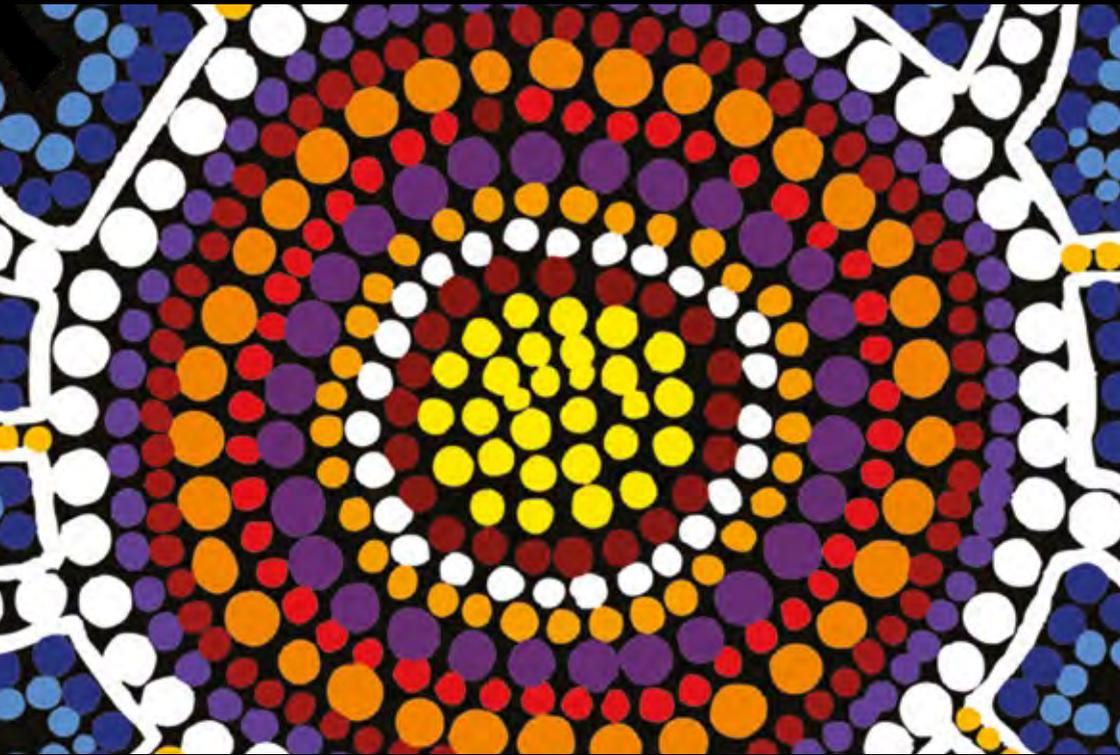


OCHRE

Opportunity, Choice, Healing, Responsibility, Empowerment

Creating a new relationship

Australian Governments and Aboriginal Nations
Interstate Forum Report 2017



Co-hosted by Aboriginal Affairs NSW and the Centre for Aboriginal Economic Policy Research

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This report has been prepared in partnership by the Centre for Aboriginal Economic Policy Research from the Australian National University and Aboriginal Affairs NSW



Each jurisdiction demonstrated they are progressing new relationships in different ways, however common themes were identified throughout the presentations

Executive Summary

Aboriginal Affairs New South Wales and the Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University co-hosted an Interstate Forum in Sydney on 11 August 2017. The Forum brought together government representatives from various jurisdictions who are working in Aboriginal and Torres Strait Islander Affairs to share good practice and insights on Aboriginal governance, local decision making and formal relationship setting between governments and First Nations people¹.

The agenda included presentations from each jurisdiction on their current relationship frameworks and a number of breakout sessions, which focused on three key issues:

1. What might new relationships with First Nations people look like?
2. What work do governments need to do internally to forge a new relationship with First Nations people?
3. How can governments support First Nations people to renegotiate relationships within their communities and with government?

Each jurisdiction demonstrated they are progressing new relationships in different ways, however common themes were identified throughout the presentations. These included:

Leader to leader approach: Jurisdictions are working towards place based, often regional engagements, with an intention of shifting more decision-making control to First Nations groupings, while developing ‘leader to leader’ relationships between government and First Nations leaders.

High-level government leadership:

There is a need for government leadership and commitment, including accountability arrangements which can bring all of government along, and ensure government is able to work differently; capacity has to be built within government to forge new relationships

Investment of resources: Jurisdictions indicated a strong need for the investment of additional resources into the development of First Nation bodies that governments are relating to so that they are able to come to the table as equal partners; recognising and building on existing capacity

Economic development: Further work is needed to enhance economic development and employment initiatives such as procurement targets to accompany this process, along with cultural heritage, land, language and other significant policy areas that are important to First Nations people.

¹ Governments relate to First Nations as nation groups in some contexts (such as in native title dealings), while in other service delivery contexts they deal with all people from First Nations in a jurisdiction. We have used the term First Nations people in this report to cover both situations, according to context.



What might new relationships with First Nations people look like?

The variety of relationship frameworks operating across the country reflects different contexts and complexities, but several jurisdictions are developing agreement making frameworks. This work requires long-term investment and it is critical that relationship and agreement frameworks are sustained through budget and political cycles. To ensure continued support for these frameworks it is extremely important that everyone is clear on the reasons for resetting relationships and that this is communicated clearly and broadly.

It is critical that governments understand who they are building relationships with and for what

purposes, and that they invest in the capability and capacity of both governments and First Nations to build relationships and negotiate agreements. Governments need to support First Nations people to identify appropriate representation through community-led processes. While First Nations people need to know who in government has decision-making authority. It was identified that longer term funding would also enhance the sustainability of relationships and, as with any partnership, shared power and trust are critical. Information sharing and tracking outcomes rather than outputs was identified as a mechanism for enhancing trust. Consideration of the relationship across government is also necessary to strengthen trust.

What work do governments need to do internally to forge a new relationship with First Nations people?

A common objective within government is to have broad engagement and structures that bring the right people to the table. The early involvement of central agencies, including Treasury, Premier and Cabinet and Chief Minister's departments, is seen as a key success factor. Aboriginal Affairs units need adequate resourcing for policy leadership, influence and communication and there needs to be clarity about the role of Aboriginal Affairs agencies in government.

Importantly, if resetting relationships is a whole of government goal, all departments need to account for how they contribute to relationships with First Nations people. Maintaining the momentum through budget and political cycles depends on how effectively the messages about change are communicated throughout government and to the public. Creating processes that support two way communication, so that governments are responsive to community priorities, will support deep and lasting engagement.

How can governments support First Nations people to renegotiate relationships within their communities and with government?

Government should articulate what services Aboriginal communities can make decisions about and have responsibility for. This will motivate and encourage Aboriginal communities to come together and form the governance structures they need to make decisions about service delivery. It is critical that all governance models, processes and structures for engagement are community-determined. Governments should provide the resources and tools that communities need to organise themselves for consultation, negotiation and agreement making.

Apart from providing resources and tools, and negotiating some principles to deal with disputes or disagreements, governments should not participate in community governance development. Governments should take a 'do no harm' approach and be responsive to communities' timelines for establishing their governance structures and engaging government in negotiation. It is acknowledged that representative community organisations need to be accountable to their own communities, and that communities also need to hold their representatives to account.



Government should provide the resources and tools that communities need to organise themselves for consultation, negotiation and agreement making.

Foreword from Jason Ardler, Head of Aboriginal Affairs NSW

The Constitutional Recognition Convention and the subsequent release of the Referendum Council Report and the Uluru Statement served as backdrops for this forum. It was timely for jurisdictions to come together to share insights and discuss how governments might shift their relationships with Aboriginal people and communities, and the process of, and mechanisms to support, agreement making.

Our experience in NSW suggests that there is growing optimism in Aboriginal communities for frameworks like Local Decision Making which are facilitating agreement making and assisting to shift the relationship between government and Aboriginal communities.

This sentiment was reinforced at the 2016 Local Decision Making Partnership and Collaboration Conference where delegates expressed the need for more investment in self-determination and for government partners to acknowledge the insights and experience community holds when making decisions about their communities.

This forum has demonstrated that the majority of jurisdictions in Australia are proactively addressing the relationship between governments and First Nations people, with treaty discussions currently underway in South Australia and Victoria, and local decision making models currently being implemented in New South Wales, South Australia and the Northern Territory.

Introduction

Approaches to relationship building between governments and First Nations vary across the country. There is growing recognition that past ways of delivering services and engaging with First Nations people has been inefficient. This inefficiency has delivered poor outcomes and this has increased governments' interest in resetting the relationship. Aboriginal and Torres Strait Islander peoples' pursuit of recognition of their rightful place as First Nations in the Australian political system and a fair and truthful relationship with the people of Australia were voiced in the 'Uluru Statement from the Heart'.

The Uluru Statement identified a Makarrata – a Yolŋu word meaning 'the coming together after a struggle' – as the culmination of its agenda. It called for a Makarrata Commission to supervise a process of agreement making between governments and First Nations and truth telling about our nation's history.

The Interstate Forum provided an opportunity for government representatives to come together to reflect on the statement and its intent, and to consider how governments of

Australia might shift the relationship and support and tailor agreement making processes to their varied histories and jurisdictions.

The forum which was co-hosted by Aboriginal Affairs New South Wales and the Centre for Aboriginal Economic Policy Research (CAEPR) from the Australian National University, included representatives from the Commonwealth Government and state and territory governments, with the exception of Western Australia.

The agenda was structured to include presentations by each jurisdiction on their relationship and agreement making frameworks, as well as breakout sessions, which focused on three key issues:

1. What might new relationships with First Nations people look like?
2. What work do Governments need to do internally to forge a new relationship with First Nations people?
3. How can Governments support First Nations people to renegotiate relationships within their communities and with government?

Forum Reflections

It is clear that Australian governments are dealing with many common challenges and complexities in their work to re-set relationships with First Nations people. The different contexts mean that approaches vary according to the specifics of location. However, there are some common principles. The forum emphasised many points that research (Hunt 2013a, 2013b, Jarvie 2008), has identified as necessary for effective engagement between governments and First Nations people.

Firstly, that work to re-set relationships requires high-level government engagement and regionally based senior government staff with decision making authority and high-level negotiation skills who are able to build trust and develop respectful relationships, a clear and adaptable policy framework which supports whole of government and place-based approaches, and strong leadership both within government and Aboriginal communities.

Secondly, it is critical that Aboriginal communities are able to set the agenda and build on community strengths, not deficits. Effective communication between parties is necessary, this includes clarity about processes, outcomes and indicators. It is also critical that time frames are flexible and align with Aboriginal communities' pace and direction. It is also key that resources are invested to build both partners' capacities to engage effectively with each other.

Thirdly, it is best to build on existing Indigenous governance structures and processes wherever possible, providing support and capacity building for communities and community

representatives to underpin their engagement with governments. Governance processes and structures must be designed by Aboriginal people and viewed by them as legitimate. Both community legitimacy and resourcing is needed for regional Aboriginal governance bodies to engage effectively with governments (*Hunt & Smith 2006, 2007; Hunt et al 2008*).

Many of these points were raised in the Forum sessions and are being put into practice in diverse ways. The Forum demonstrated that there is a desire for change emerging, and that governments and Aboriginal leaders are grasping opportunities to put agreement making into practice.

It is important that governments and Aboriginal communities are clear about the foundations of these agreements as they develop, so that expectations align. The Forum provided officials at the heart of fostering this change with a valuable opportunity to learn from each other about what is working, as they try to transform relationships between governments and First Nation people.



It is important that governments and Aboriginal communities are clear about the foundations of these agreements as they develop, so that expectations align.

Forum Sessions

What might new relationships with First Nations people look like?

Leading into the Forum, representatives from each of the jurisdictions discussed the principles that might underpin new relationships and the types of overarching policy frameworks which might assist governments to change their relationships with Aboriginal people.

The challenge of determining who should be engaged in decision making and agreement-making, at what scale and for what purposes was also discussed. While the notion of ‘partnerships’ was raised frequently it was clear that there was merit in clarifying what these partnerships look like. Some of the questions that emerged from conversations in the planning for the forum were:

- What are the limitations of current relationships?
- What are the principles underlying the new relationships we seek?
- What framework is being used to reset relationships? Are there stages in this policy framework?
- Is a change in legislation required?
- Who are relationships with? Nations? Traditional Owners? Service Organisations? Residents? Mix?
- At what scales? Regional groupings? How big? How internally diverse?
- What is working in terms of levels and types of relationships?

- How are these relationships being framed/viewed?
- Where on the engagement continuum (from information-giving/ consultation to negotiation and decision-making) are relationships?
- Are they partnerships yet? What would that entail?
- Are there different layers and types of relationships within a framework?
- What is the role of ‘peak’ service organisations and big land councils where they exist?
- Are there principles that apply across diverse contexts? About process or substance?

The variety of relationship frameworks operating across the country reflects the complexities arising from many of these questions. Agreement making is on the increase with several jurisdictions developing frameworks for these processes in recent years.

The nature of the agreements and the language used varies, with some jurisdictions opting for the term ‘Treaty’ and others consciously avoiding it because of concerns that the concept is not widely understood or accepted. This points to a need for a broader understanding of why these relationships between governments and First Nations people are so important, with a clear purpose communicated across social and political spectra. The basic point needs to be reiterated, as stated in the Uluru Statement from the Heart, that Aboriginal



and Torres Strait Islander people have an ancient sovereignty which was never ceded or extinguished and therefore co-exists to this day with the sovereignty of the British/Australian Crown.

A concern to ensure that relationship and agreement frameworks are sustainable through budget and political cycles was commonly expressed on the day. Legislation to embed relationship frameworks and strengthen resulting agreements may be one way to increase sustainability.

Broadening support for stronger relationships across all sides of politics, throughout government bureaucracies, and among the general public, (as well as ensuring that this communication involves relevant First Nations people), will be needed to achieve stability and long term sustainability. It is extremely important that everyone is clear on the reasons for resetting relationships.

The development of principles that ensure consistent engagement, a focus on agreed high level outcomes and

associated measurement processes, and structures to give First Nations people a strong voice were identified as important factors contributing to successful and sustainable relationship building. It is important that governments trust First Nation communities to drive results.

Understanding who relationships are being built with, for what purposes, and investing in the capability and capacity for relationship building and agreement making of both governments and First Nations people was seen as critical. The power imbalance between government and communities can be reduced by providing strong support and resourcing for the First Nations partners to come to the table prepared and ready to make decisions.

First Nation representative bodies exist across the country for a range of purposes. These include statutory land councils, native title bodies and entities advising governments at all levels on a range of issues. Different relationships may be required for different purposes. While the complexity

of existing representative structures cannot be denied, supporting First Nations people to identify appropriate groupings and representation through community-led processes is consistent with a self-determination objective. It is also important to build on existing capacity, and acknowledge existing strengths. Processes that are inclusive and representative, engaging elders to provide cultural authority, are conducive to the sustainability of agreements. Government's role in agreement making should be focussed on supporting First Nation communities to identify and form these agreement making bodies and investing in their capacity and capability.

Similarly, First Nation people need to know who in government to engage with, in particular who has the authority to make decisions. This needs to be clear for First Nation groups. Governments need to recognise their own strengths and weaknesses, seeking to build their own capability and capacity to engage. Governments must ensure they have processes that provide their representatives with the legitimacy to engage in building sustainable relationships and negotiating agreements.

Longer term funding will enhance First Nation financial independence and the sustainability of relationships. As with any partnership, shared power and trust are critical. Communities must feel that power is shared. Tracking outcomes rather than outputs demonstrates trust. And one of the priority outcomes should be strengthening the relationship itself. Another key to the success of partnerships is the ability to air

disagreements and have clear processes to resolve differences. It is also important to recognise that change needs the right steps taken on both sides and this takes time.

Governments need to be conscious of unintended harm or the weakening of First Nations people's voices across the range of interactions. This was identified as important to the sustainability of relationship frameworks. This requires more holistic consideration of the relationship across all government services, whether First Nations specific or generic. Coordination across levels of government would also ease frustrations and the burden on First Nations people.

While there are risks involved in the formation of agreement making relationships, there are also risks in not engaging. These risks can be considered, managed or mitigated by governments or First Nations themselves or as part of the engagement process, but there has to be a willingness to make mistakes along the way. Again, ensuring that there are resources available for these risk management strategies is critical to the success and sustainability of agreements.

In summary, it is critical that the public and all relevant parts of government are clear about *why* they need to change the nature of their relationships with First People. Governments need to be clear about *who* within government is entering into agreements with whom and for what purposes. They need to be clear about *how* relationships will be negotiated, agreed, and sustained, as well as *what* can be covered by an agreement and how the outcomes will be jointly assessed.



... it is critical that the public and all relevant parts of government are clear about why they need to change the nature of their relationships with First People.

What work do Governments need to do internally to forge a new relationship with First Nations people?

Those working in Aboriginal affairs across the country recognise that one of the keys to changing relationships between governments and First Nations people is bringing all relevant parts of government along. This requires concerted strategies to engender a cultural change across government in relation to First Nations people. Different jurisdictions are approaching this in different ways and the forum considered the various approaches and what seems to be most effective in each context. Another consideration was the intersection of State or Territory jurisdictions with what the Commonwealth and local governments are doing. It was useful to reflect on changes needed to existing complex governance arrangements to facilitate new relationships with First Nations people.

Specific questions that were raised ahead of the forum included:

- What processes are being used within jurisdictions to achieve buy-in across government?
- Does a central administrative location help? Can a line department achieve broad buy-in?
- How do you achieve whole of government culture change towards new relationships?
- Can budget and Treasury processes facilitate more Aboriginal (local/regional) decision making?
- How do Commonwealth agendas intersect with State/Territory agendas?

- Do Closing the Gap refresh, constitutional recognition and other Commonwealth priorities have things to offer?
- Can COAG help support the changed relationships which States/Territories are seeking?
- How do Local Government relationships fit in this process?

Having structures within government that ensure the right people are engaged is a common objective across jurisdictions. The early involvement of central agencies, including Treasury and Premier's or Chief Minister's departments, is seen as a key success factor. This ensures that the reasons for doing things differently (the 'why') are clearly communicated between political leaders and the community. It is recognised that Treasuries can be key allies, with a shared desire for more cost-effective services and better outcomes. Attorney General's departments need to be engaged on issues such as legislative and other legal matters.

It is also important that at interdepartmental meetings the people authorised to make decisions are at the table. Importantly, if resetting relationships with First Nations people is a whole of government goal, all departments need to account for how they contribute.

Getting buy-in and support across government, while maintaining agility and momentum, is the challenge of Aboriginal Affairs agencies or units. Adequate resourcing is critical to achieve policy leadership and the necessary communication. The location

of Aboriginal Affairs within government varies. When it is within a central agency, or can work closely with one, the extent of Aboriginal Affairs agencies' power to influence across government, and particularly budgets, can be raised. Associated with this is the need for clarity about the role of Aboriginal Affairs agencies in government, whether that be as expert advisers on First Nation people, champions for change, advocates for the community, or guiding the process for changing the relationship between government and First Nation people. The degree of devolution of accountability needs to reflect the roles of individuals and agencies, with devolved accountability maximising responsiveness.

Resetting relationships is a long term process. Maintaining the momentum beyond budget and political cycles depends on how effectively the messages about the need for change are communicated. Messages need to be simple to understand. Communication to effect sustainable change needs to be clear and consistent about the reasons why. It also needs to ensure broad based support across political, social and community groups. Creating processes that support two way communication, enabling governments to be responsive to First Nations community priorities, will support deep and longer lasting engagement. Communication is a vital investment to ensure sustained bipartisan support and buy-in from constituent bodies and communities. Consistency in language across government and community is also essential.

How can Governments support First Nations people to renegotiate relationships within their communities and with government?

The final focus of the forum was the question of how governments support First Nations people to organise themselves to negotiate new relationships with government. The sometimes dispersed or fractured nature of Indigenous communities can present challenges for governments wanting to engage. Homogeneous communities may be more imagined than real. The reality may be family networks and organisational forms which have arisen from historical circumstance, statutory or funding requirements, or Aboriginal initiative.

These are likely to reflect a range of diverse interests in a particular location. First Nation group membership may be contested and will certainly not include all First Nation citizens in a region, to whom governments have service delivery obligations. First Nations people may need to reconfigure their relationships with each other in order to forge effective new relationships with governments. The forum considered the role of governments in supporting or facilitating processes and conversations in First Nation communities to enable these nations to determine how they could best interact with each other to engage with governments. Interjurisdictional issues arise given Aboriginal boundaries do not necessarily align with jurisdictional ones.

Questions that emerged from the forum planning discussions are:

- Is encouraging First Nations people and communities towards a new relationship a challenge?
- What processes achieve thorough community buy-in and ownership? What don't?
- Are there challenges in the complex variety of identities among different Aboriginal groupings? (E.g. Native title holders/claimants, historical people, community residents, land council members/traditional owners etc.)
- Can this variety of identities make relationships with governments difficult or fractured?
- What role is there for governments to assist identity groupings to find ways to have new relationships with each other that will enable new relationships with governments?
- Are there challenges from lack of alignment between First Nations boundaries and those of the 8 State/Territory jurisdictions? If so, how can jurisdictions respond to these situations?

The complexity of communities was identified as a strong reason for governments to avoid defining boundaries or definitions, and instead to create opportunities for communities to organise themselves and self-identify. Models, processes and structures for engagement need to be community-determined, and governments need to be flexible and take some risks in responding to these.

Government should articulate what sorts of services communities could have responsibility for. This will encourage communities to come together. Governments should also

provide resources and tools to enable communities to organise themselves for relationship building. This support could include governance capability development, and investment in planning a sustainable pathway for the community. One jurisdiction provided governance and nation-building training for regional community governance bodies and senior bureaucrats who work with them, to foster a shared understanding. Apart from this, and perhaps identifying principles to deal with disputes or disagreements, governments should not engage in community governance development and take a 'do no harm' approach.

Building trust, respect and mutual understanding is critical to successful relationship building. Communities should have the power to opt in and out, and control the pace of negotiations. This signifies an appropriate power balance for a true partnership. Where contentious issues present roadblocks in building relationships it may be better to set them aside and work on what can be agreed.

Communities need to be able to provide input at all stages of relationship building and should be supported to self-define their boundaries and scope of decision-making, and decide how they govern themselves. This includes dealing with things like gender balance, youth engagement and leadership succession, and being involved in research and evaluation. Representative organisations need to be accountable to their own communities, and communities need to understand their role in holding those representatives to account.

There may be opportunities for jurisdictions to share resources to achieve better capacity through collaboration.

Jurisdiction Updates



Education
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New South Wales (NSW)

OCHRE, the NSW Government's community focused plan for Aboriginal affairs seeks to change the way government goes about its business and is underpinned by a commitment to ongoing partnerships. Through OCHRE, the NSW Government is supporting community aspirations by investing in strength based outcomes rather than a deficit approach.

Respect for self-determination, cultural rights, healing and the recognition of past wrongs are important aspects of OCHRE. This has been reflected through the introduction of new legislation to empower Aboriginal people to strengthen and conserve Aboriginal languages in NSW and the comprehensive Stolen Generations reparations package, which provides

financial support for Stolen Generations survivors and their families.

Through OCHRE Aboriginal Affairs is also partnering with the Healing Foundation and Aboriginal communities to deliver Healing Forums around the state. These forums are focused on increasing understanding of intergenerational trauma, and building local partnerships and support for healing.

Local Decision Making, a key initiative of OCHRE, is focused on resetting the relationship between the NSW Government and First Nations people. Local Decision Making enables the staged devolution of decision-making and accountability to the regional level and seeks to place Aboriginal people at the centre of government service design, planning and delivery.

Through Local Decision Making, the NSW Government and regional Aboriginal governance bodies (Aboriginal regional alliances) enter into agreements (Accords) committing parties to jointly



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address agreed service delivery priorities, including timeframes, responsibilities and measures of success.

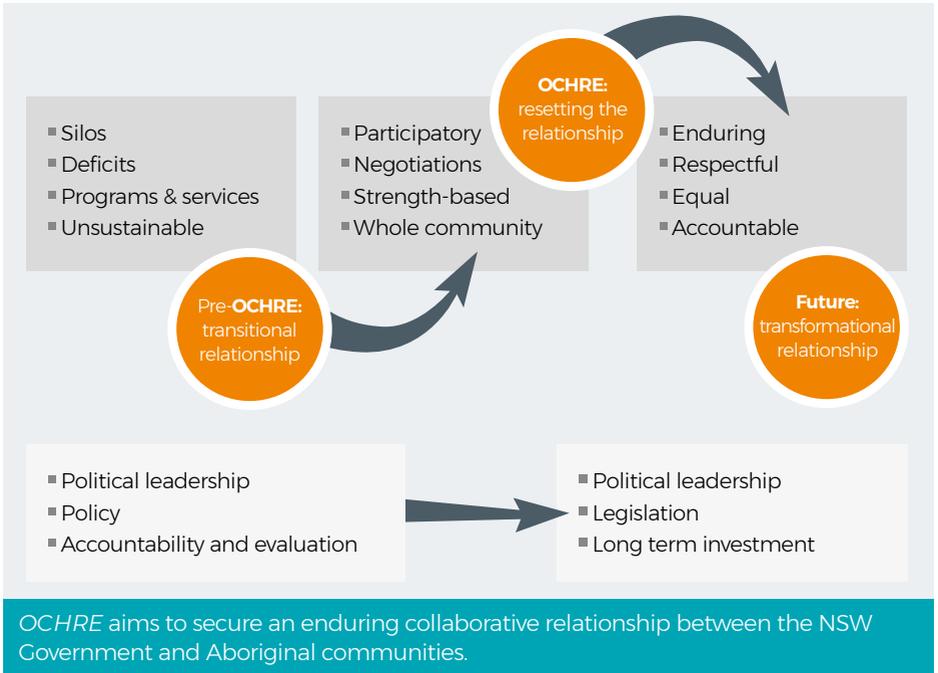
Local Decision Making recognises that Aboriginal communities are best placed to make decisions about their own development. It also acknowledges that in order for government to work in partnership with Aboriginal communities and devolve decisionmaking, it needs to develop the mechanisms needed to shift from a siloed and inflexible approach, to one that is collaborative and responsive to the needs of Aboriginal people and communities.

Research from the United States Harvard Project on American Indian Economic Development shows that when Native Indian Nations make their own decisions about development approaches, they

consistently outperform external decision-makers such as government agencies on issues as diverse as natural resource management, economic development, health care, and social service provision.

Similarly, CAEPR research shows self-governance and self-determination is a fundamental factor in generating sustained socio-economic development and well-being in Aboriginal and Torres Strait Islander communities, and that socio-economic development appears to be best achieved where effective Indigenous governance and effective governance of government coexist.

A preliminary review of the Murdi Paaki Accord Negotiation Process (2015), and the Local Decision Making Partnership and Collaboration Conference (2016), have identified some early successes



and challenges with the Local Decision Making framework. Community trust in government has grown through the improved exchange of information and data. Aboriginal community and government have developed a shared purpose and commitment to the approach, and the relationship is moving from service provider-recipient, to a genuine partnership.

Key issues and challenges which have been identified include the need to develop mechanisms that support co-design of service delivery. Flexible funding with lower delegations to work across government could overcome the siloed accountability arrangements that inhibit collaborative decision making. Further investment in the capacity of government to improve cultural competency and

engagement with Aboriginal people and communities is also a key factor.

Resourcing continues to be a challenge for Local Decision Making and greater investment in the Aboriginal regional alliances would increase their capacity to remunerate members to further engage in the process. Currently, regional alliance members are volunteers, making it difficult for community to come to the table as equal partners. Similar to other jurisdictions, NSW has identified bipartisan government commitment and political leadership as crucial to the certainty and longevity of current approaches to formal relationships and local decision making.



Victoria (VIC)

The Victorian Government is pursuing a significant new agenda in Aboriginal Affairs. The three key policy areas of treaty, self-determination and economic development are designed to strengthen and empower Aboriginal Victorians and reframe their relationship with the State. Overall funding of \$140 million has been committed in the 2017/18 Victorian Budget, for progressing self determination and treaty, community infrastructure, addressing family violence against Aboriginal Victorians and across a range of portfolios to support Aboriginal social and emotional wellbeing, mental health, education and early years.

In March 2016, the Victorian Government committed to entering into treaty discussions with Aboriginal Victorians. Treaty has the potential to reshape relationships between the Victorian Government, Aboriginal and non-Aboriginal communities, and lead to improved outcomes for current and future generations. The first step in Victoria's treaty process is to support the development of an overarching structure to represent Aboriginal Victorians in the treaty process.

The Aboriginal Treaty Working Group was formed in 2016 to work with Aboriginal Victorians on the most appropriate model for an Aboriginal Representative Body. The Working Group has led forums, consultations and feedback from Aboriginal people across

Victoria. An Aboriginal Community Assembly, made up of 31 Aboriginal Victorians using a culturally appropriate citizens' jury model, recently made recommendations to the Working Group on the design of the Aboriginal Representative Body. The Working Group will consider the Community Assembly's recommendations, as well as feedback from prior consultations, in making its own recommendations to the Minister on the preferred design for the Aboriginal Representative Body in early 2018.

In December 2017, Jill Gallagher AO was appointed Victorian Treaty Advancement Commissioner. Her primary role as Commissioner will be to establish the Aboriginal Representative Body in close consultation with Aboriginal communities across Victoria, working with the Aboriginal Treaty Working Group.

To continue the treaty process, the Victorian government will introduce legislation into Parliament in early 2018 that will embed the government's commitment to advancing the treaty process with Aboriginal Victorians. This legislation has been developed with the Working Group. Working Group Co-Chair Mick Harding presented to Cabinet on 7 August 2017, providing an update on the work towards treaty. This is the first time an Aboriginal Victorian has presented to Cabinet in Victoria.

The Victorian Government is committed to self-determination as the guiding principle in Aboriginal affairs. The Government is working closely with the Aboriginal community to ensure Aboriginal voices and experiences guide decision-making and policy development. At the second annual

Ministerial Forum on Aboriginal Affairs in September 2017, Aboriginal community leaders and Victorian Government Ministers came together to discuss the next steps to advance the Aboriginal self-determination agenda. Announced at the Forum was the establishment of an Aboriginal Executive Council comprising membership from executive-level officers of 11 peak Victorian Aboriginal organisations. The Aboriginal Executive Council will work in partnership with the Victorian Aboriginal community and with government to determine reform priorities and strategic directions to advance Aboriginal self-determination.

The Victorian Aboriginal Economic Board (the Board) is co-chaired by a Yorta Yorta woman, Karen Milward, who is also the chair of Kinaway: the Victorian Aboriginal Chamber of Commerce, and the Chief Executive of the Victorian Chamber of Industry and Commerce, Mark Stone AM. The Board supports and promotes economic independence for Aboriginal Victorians and focuses on three key priorities to: encourage more businesses to procure Aboriginal goods and services; encourage Aboriginal entrepreneurs and enterprises; and increase place-based economic opportunities. The Board recently hosted a series of Aboriginal procurement events to identify barriers to procurement and develop practical solutions to support the growth of the Aboriginal business sector. This culminated in a function on 11 October 2017, jointly hosted with the Premier's Jobs and Investment Panel and attended by the Premier of Victoria and Minister for Aboriginal Affairs.

The Board supports the delivery of Tharamba Bugheen: Victorian Aboriginal Business Strategy 2017-2021. This recently

released Strategy improves accessibility of business support, increases visibility and networks of Aboriginal businesses and supports skills development for Aboriginal entrepreneurs. Government has set itself a one percent target for procurement from Aboriginal businesses.

Local Aboriginal Networks (LANs) have been critical in supporting community empowerment and engagement to support implementation of the Five Year Plan. The LANs are supported by 13 community brokers employed by Aboriginal Victoria.

A new category of Aboriginal heritage is now provided statutory protection under the Aboriginal Heritage Act 2006. For the first time in Australia, the use of Aboriginal intangible heritage registered on the Victorian Aboriginal Heritage Register will be controlled by relevant Traditional Owners. Aboriginal intangible heritage includes stories, artistic techniques and ecological knowledge. A registration program was initiated during 2016-17. There are now eleven Registered Aboriginal Parties (RAPs) exercising statutory decision-making functions across Victoria. RAPs now also may employ Aboriginal Heritage Officers with new statutory powers to enforce compliance with the Act.





Northern Territory (NT)

The demographic profile of Aboriginal people in the NT differs markedly from the eastern seaboard jurisdictions in a range of areas. In particular, the NT has a young demographic (median age 23), thus engagement and identification of employment opportunities for youth is critical. Traditional languages are also spoken more widely in the NT and government initiatives such as the Aboriginal interpreter service are critical to effective communication and service delivery in many communities.

A year into the new government substantial machinery of government changes have reduced 23 agencies to 15 in four clusters. The new government structure also provides an Aboriginal voice at a very high level, with an Aboriginal Affairs Subcommittee of Cabinet with nine Indigenous advisers.

Priorities in this area include: local decision making; treaty - whether one or more; economic development on Aboriginal land; justice reform; and community input to delivery of services.

In relation to land and sea rights, a key focus is completion of 32 outstanding land claims under the Commonwealth land rights legislation that operates in the NT.

In terms of local decision making in Northern Territory Government service delivery, it is recognised that communities are operating at different levels, leading to a focus on leadership and capability development with funding of \$1m this financial year. The First Circles Engagement Program is working with 16 emerging leaders from remote communities.

On the government side there is a recognition of the need for the public service to be working differently, with a cultural mind shift and improved coordination. The development of the Remote Information Coordination System (RICS) and the Remote Engagement Coordination Strategy (RECS) aim to improve coordination so that there are not five agencies in one community at the same time. Coordination has been the focus of a recent workshop to develop government readiness. The government also recognises the need to support non-government organisations' capacity to deliver, with five year funding agreements.



Tasmania (Tas)

The Hodgman Liberal Government is committed to re-setting the relationship with Tasmanian Aboriginal people. In resetting the relationship, the government works towards promoting and protecting Tasmanian Aboriginals' deep and continuous historical connection to the land and sea of Tasmania.

Key objectives of the reset are related to access to programs and services; recognition; joint management and land return to support connection to country

and culture; and reducing the disparity in outcomes, including in education, health and employment.

The five key priority areas that relate to the objectives are: Aboriginal eligibility; education curriculum; Constitutional recognition; land management and return; and Close the Gap.

Progress in these priority areas includes:

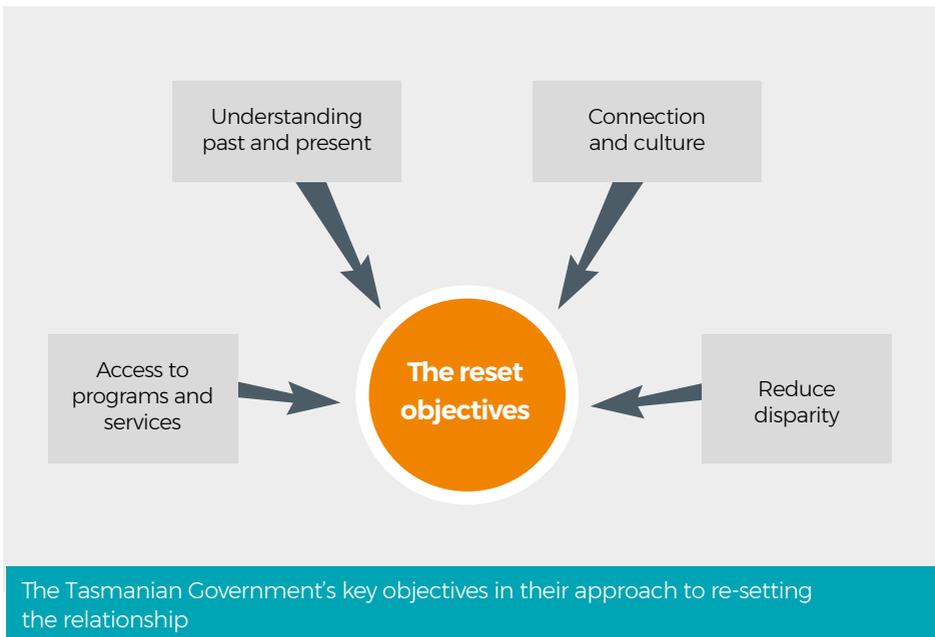
1. A new approach to Aboriginal eligibility
2. The introduction of Tasmanian Aboriginal history and culture into the school curriculum
3. Introduced of the *Constitution Amendment (Constitutional Recognition of Aboriginal People) Act 2016* into Parliament.

4. The potential for joint land management arrangements with the Aboriginal community in Tasmania.
5. *The Aboriginal Relics Amendment Bill 2016* has being tabled in the Tasmanian Parliament.
6. Several actions fall under the Close the Gap umbrella, including: setting a whole of State Service employment target of three percent by 2020; continued support for the development of the *wukalina* cultural walk in north-east Tasmania; and an Aboriginal Family Safety initiative to support Aboriginal women and children at risk of, or experiencing family violence, involving Aboriginal family safety workers in three Child and Family Centres.

In 2015, eight Aboriginal community organisations formed an alliance called

the Tasmanian Regional Aboriginal Communities Alliance (TRACA), with the aim to provide direct involvement in government decision making processes affecting its member organisations and the regions they represent. In addition to these community based organisations, there are several Aboriginal advisory groups across government providing assistance on specific issues.

The Tasmanian Government recently committed funding towards the establishment of a new organisation, the Reconciliation Council of Tasmania. The Council's work will focus on the development of Reconciliation Action Plans; Indigenous tourism; employment and training; and the provision of advice, support and assistance on Indigenous and related matters to government, enterprise and community projects.





South Australia (SA)

The SA Government is committed to strengthening Aboriginal leadership and governance, and building the capacity of Aboriginal leaders to be involved in government decision-making. It also has a dual focus on Aboriginal economic participation, and acknowledges that Reconciliation and recognition must underpin all activity within this important portfolio.

In December 2016, the SA Government announced it would commence Treaty negotiations with Aboriginal South Australians, a commitment that would

redefine the way government and Aboriginal leaders do business together, and take SA on the next step of its Reconciliation journey.

An independent Treaty Commissioner was appointed. Following a process of consultation, the Treaty Commissioner provided the SA Government with his report, Talking Treaty, which set out a proposed Treaty-making process. The report acknowledged the diversity of Aboriginal groups across the state, and the varying capacities and capabilities of groups to enter the Treaty-process. It also set out the importance of ensuring all groups have an opportunity to form a new relationship with government, while building the capacity of all Aboriginal communities to move towards Treaty.

Based on this advice and building on success of the SA Aboriginal



Creating a new relationship between government and Aboriginal South Australians

Regional Authority (ARA) Policy, the SA Government has implemented a tiered approach to relationship-building, ranging from a process of Aboriginal Nation Building, to priority setting under the ARA model, to Treaty negotiations. The tiered approach creates a clear pathway for Treaty while ensuring no Aboriginal group is left behind.

Recognition Tiers

- Aboriginal Nation Building Workshops

Aboriginal Nation Building draws on Australian and international best practice to provide groups with a better understanding of the principles of Nation Building, and supports Aboriginal leaders and communities to build robust self-governing and sustainable institutions. Participation in Aboriginal Nation Building workshops is offered to groups seeking to establish a new relationship with government that would benefit from support to build foundational governance and capacity.

- Aboriginal Regional Authority

The ARA model supports Aboriginal groups to build robust organisational governance with strong economic potential. ARAs have an opportunity to define priority areas in which they would like to work with government, and to build their capacity through the joint delivery of activities with agencies. ARAs also receive funding to support their organisational development, and access Leader to Leader meetings with the Minister for Aboriginal Affairs and Reconciliation.

- Treaty

Treaty negotiations enable Aboriginal groups to make agreements with government to enhance self-

determination and self-sustainability. Treaty also strengthens the role of Aboriginal leaders in government decision-making, and increases opportunities for social and economic development. Treaty groups also have access Leader to Leader meetings with relevant Ministers.

Expression of Interest

During August 2017, the SA Government opened an Expression of Interest for Aboriginal groups seeking to work with government under the Tiered approach. Expressions of Interest were received from 11 Aboriginal groups and were considered by an independent Aboriginal Treaty Advisory Committee.

Expressions of Interest were of a high calibre, demonstrating a keen interest and commitment to building a better relationship between government and Aboriginal people.

The three groups that demonstrated they met the criteria to the greatest extent have since been invited to enter Treaty negotiations, the first of which commenced with the Ngarrindjeri Nation on 22 September 2017. The other groups will be supported to move towards Treaty via the other tiers.



Australian Capital Territory (ACT)

Currently, a partnership between the ACT Government, the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) and the public service exists premised on agreement to achieve equitable

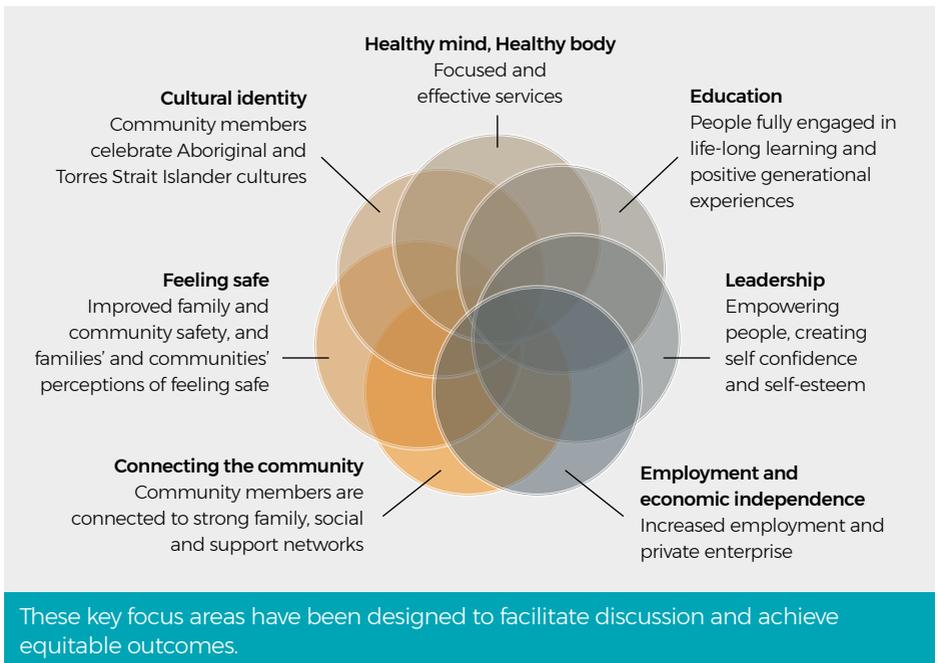
outcomes. The Government consulted with community through the elected body to identify seven key focus areas; Cultural Identity, Healthy Mind, Healthy Body, Connecting the Community, Leadership, Education, Employment and Economic Independence, and Feeling Safe. Further community consultations were carried out before the Office of Aboriginal and Torres Strait Islander Affairs finalised the proposals and developed budget proposals.

ATSIEB is a democratically elected body which has four year terms, with members remunerated on a part-time basis. ACT public servants can be on it, and four of the seven current members are public servants. At the recent election in July 2017, 25 candidates stood for the seven positions. While only 432 votes were cast from an estimated 6,000 Aboriginal and

Torres Strait Islander people in the ACT, only three were informal.

The United Ngunnawal Elders Council (UNEC) advises the ACT Government on cultural heritage. This body is drawn from Ngunnawal people in the Canberra region, Cowra, Tumut and Yass.

The Aboriginal and Torres Strait Islander population in the ACT is very transient with many residents' traditional lands falling outside the boundaries of the ACT. Being surrounded by NSW, cross border partnerships have been developed and issues such as proof of residency for grants are important. The ACT Government also works closely with the community in Jervis Bay, who generally access NSW government services, however Wreck Bay School is included in the ACT education system.





Australian Government
Department of the Prime Minister and Cabinet

Commonwealth

This year marks 50 years since the 1967 referendum and the start of a relationship between the Commonwealth Government and Aboriginal people. The Aboriginal and Torres Strait Islander Commission (ATSIC) is seen as the high water mark in terms of relationships between governments and Aboriginal and Torres Strait Islander people.

Since ATSIC, the nature of relationships the Commonwealth has with Aboriginal people can be defined as of three kinds: formal legislative relationships, strategic relationships and transactional relationships.

Formal relationships defined by legislation include with native title holding corporations and the Torres Strait Regional Authority (TSRA), which is a unique remnant of the ATSIC era.

Since the ATSIC era strategic relationships have been limited to a handful including Empowered Communities, Murdi Paaki, National Congress, and the Redfern Alliance. States and Territories stepped into the regional governance void after the abolition of ATSIC, with Regional Authorities, Local Decision Making and Treaty discussions.

Transactional type relationships are often purchaser/provider relationships where the Aboriginal organisation is funded for specified activities or outputs. These relationships mean the organisation may be most focussed on efficiency in meeting KPIs and compliance.

There can be all three types of relationship with a single entity. This can lead to

tensions around things like contract KPIs and compliance and delivery models, which all need to be worked through.

Delivery models determine the relationship. Key elements need to come together, with criteria applying to both sides of the relationship. On the community side, these include that the community shows good leadership, local decision making, governance, capacity and capability, cultural authority, community engagement and participation in priority setting. On the Government side, criteria for successful relationships include being prepared to be influenced on priorities by a community or regional body, recognising local authority, shared authority, accountability and risk with Indigenous partners, as well as information sharing and transparency with communities on what is being funded into the region as a basis for planning. Post ATSIC there has been a period of very little transparency of funding, but since the Indigenous Advancement Strategy (IAS) was established, PM&C has been publishing more comprehensive funding information.

PM&C is shifting away from transactional bases of engagement to more collaborative and strong place-based relationships, predicated on recognition of strengths and sharing power and decision-making. The common goal of government and Aboriginal and Torres Strait Islander people is improving outcomes. As the Commonwealth moves from transactional towards collaborative relationships in the future, elements that are needed include co-design, shared accountability and data. Trust is fundamental. Community and government both need to understand each other's needs.

Commonwealth Engagement Model

Representatives from Indigenous Affairs with the Department Prime Minister and Cabinet also presented on the Commonwealth government's place based community engagement model.

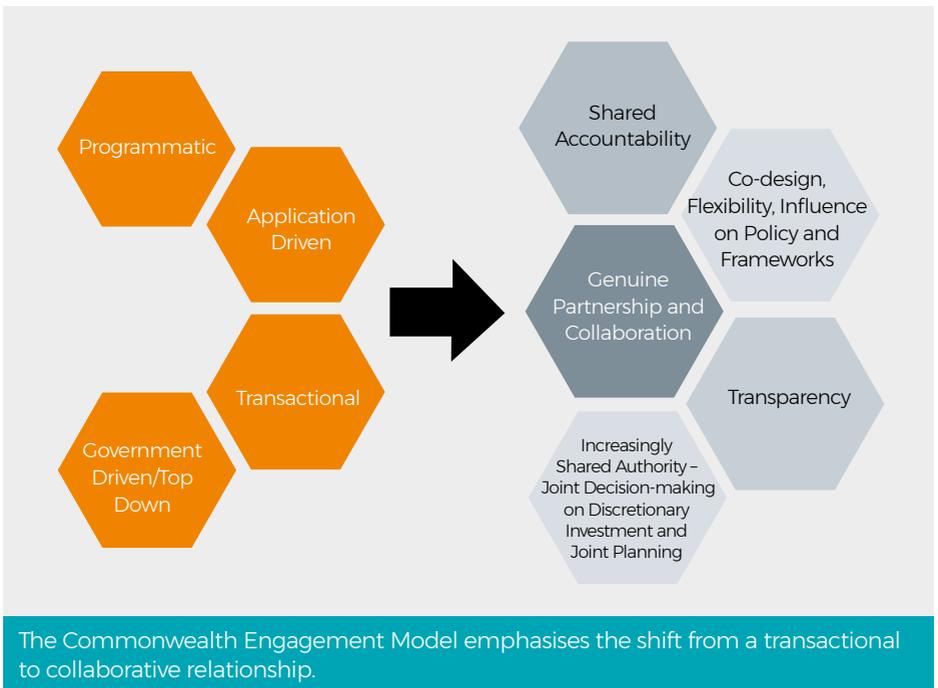
The model focuses on the shift in the relationship from transactional to collaborative and emphasises that the nature of the engagement depends on a community's circumstances and readiness as well as the following five aspects:

1. Leadership
2. Capacity and capability
3. Community engagement and participation in community agenda setting

4. Governance

5. Clear cultural authority

For communities with low levels of readiness, the Commonwealth might engage with a view to achieve community stability and meet essential needs, whereas at the other extreme where a community displays established leadership and strength in all these areas the Commonwealth would be prepared to be influenced and recognise that local authority, with a move towards a collaborative relationship. Discussion of this framework noted that communities can move in both directions along this continuum, and even statutory agencies can become dysfunctional. Some communities will need government to help with things beyond their control - a service response - at a particular time.



Communities Affected by Various Factors	Low to Moderate Levels of Community Readiness	High Levels of Community Readiness
<p>Community Elements</p> <ul style="list-style-type: none"> • Lack of cohesive community and/or stable leadership • Social dysfunction (often caused by across the board disadvantage) • Not an opt-in arrangement 	<p>Community Elements</p> <ul style="list-style-type: none"> • Varied levels of leadership, governance and capability • Requires various levels of targeted capacity/capability building 	<p>Community Elements</p> <ul style="list-style-type: none"> • Established leadership and governance arrangements • Ready to articulate community needs and priorities to government • Seek to engage and collaborate with Government
<p>Government Elements</p> <ul style="list-style-type: none"> • Government's objective is to restore stability and meet essential needs in line with Government policy • Government leads community-wide service response 	<p>Government Elements</p> <ul style="list-style-type: none"> • Government provides targeted capacity and capability building at the individual/leadership and organisational level • Government focussed on facilitating and improving service 	<p>Government Elements</p> <ul style="list-style-type: none"> • Government prepared to be influenced, for example on priorities for the region/community • Government recognises local authority
<p>Relationship with Government</p>		
<p>Service Response</p>	<p>Traditional Transactional (Application Driven)</p>	<p>Transactional (moving towards Collaborative)</p>

Formally Established Models of Partnership

Statutory-based Authority

Community Elements

- Established leadership and governance arrangements
- Indigenous ownership and responsibility for locally designed solutions
- Indigenous leaders determine community needs and priorities
- Shared authority, accountability and risk with government (including joint decision making)

Community Elements

- Statutory-based leadership, governance, funding, accountability and authority
- Driving engagement with Government
- The Authority articulates community needs and priorities
- Flexibility to steer service delivery and drive implementation to respond to needs and priority

Government Elements

- Shared authority, accountability and risk with Indigenous partners
- Transparency as basis for planning e.g. access to data and funding info
- Enabling role

Government Elements

- Limited role, as set out in legislation
- Note: Transactional and collaborative relationship with Government outside of legislative arrangements

Genuine Partnership and Collaboration

Statutory-Based Regional Authority

Closing Remarks

In addition to key principles for effective relationships and agreement making, the Forum emphasised that the work underway to reset the relationship and negotiate agreements is just as important as the destination.

Adherence to agreement making principles

Governments need to adhere to agreement making principles around inclusion, representation, capacity building, all the while recognising the complex layers of government and community. In order to develop trusting relationships and develop robust agreements it is extremely important for governments to work respectfully in developing agreements with Indigenous people, working with leaders that communities recognise and authorise through their own processes, to engage with governments on their behalf. Agreement making needs to be responsive to the pace of negotiations that Indigenous communities need in order to gain legitimacy and authorisation for decisions. Governments should also adequately resource Indigenous community processes towards agreement making and ensure that community leaders are cognisant of government frameworks and processes. Governments need to work carefully to ensure shared understanding of agreements reached, and then honour agreements to sustain trust.

Focus on shared outcomes

Focus needs to be directed to processes and outcomes rather than outputs, and government needs to value and recognise community-identified successes. Clarity around the desired outcomes of agreements is particularly important, and during agreement negotiations some clear and agreed indicators for achievement of these outcomes should be identified. Agreed outcomes should reflect Indigenous priorities that governments endorse and support. Process indicators are also important and accountabilities for achieving outcomes need to be shared. Mutual accountabilities should be identified and partners must recognise that they hold each other to account for the processes and tasks necessary for achieving agreed outcomes.

Consistent and clear communication

Improved and consistent communication is essential not only with the wider public, but also within government as well as across jurisdictions. Such communication needs to explain why new types of relationships between governments and Indigenous people are necessary

in order to generate political and public support for this direction. It also needs to be clear about roles, responsibilities and accountabilities within government as well as within the partnership between governments and Indigenous communities. This clarity and consistency of communication from governments with partner communities also depends on clear policy and program frameworks which are understood and reflected in decision-making at all levels. Indigenous communities need clear, consistent messages from government about its policies, programs and intentions, as well as progress in negotiating and delivering on agreements.

Community defined governance

Given the complexity and diversity of Aboriginal communities, governance structures need to be community driven. The imposition of governance forms onto communities will not work. Governance processes are as important as the structures, and both need to reflect the complexities and specificities of each geographic context. Governance histories may have shaped structures and relationships, and these may need to change or be developed further for contemporary purposes. This process needs to be driven by Aboriginal people themselves. Government's role is to provide resourcing for the necessary facilitation and support to enable this to occur through community development processes.

Shifting government practice

It was agreed that governments need to change and evolve with communities and commit to real partnership. This implies partnership at many levels, from the development of high level policy frameworks and principles, to the relationships at the regional or community level. Leader to leader relationships require governments to work responsively, which requires strong communication and clear coordination across government at senior levels to enable whole of government support for community-led priorities. It may also require some delegation of decision-making about program priorities and resourcing to regional levels. Working across government and in partnership with communities or regions requires a range of 'soft' skills in communication and collaboration, which need to be valued and rewarded within government.

Acknowledgements

Welcome to Country

The Welcome to Country was delivered by Uncle Allen Madden from the Metro Local Aboriginal Land Council who welcomed the Interstate Forum participants to Gadigal country.

Facilitator

Marcia Ella-Duncan was engaged to facilitate discussions on the day. Marcia is a descendant of the Yuin people of the NSW south coast and has had 30 years' experience in Aboriginal affairs within numerous portfolios including criminal justice, family and child wellbeing, land management, housing and community development. Marcia has held senior positions in ATSIC and participated in various high level review committees.

Closing Remarks

Andy Cowan, Deputy Chief Executive with the Northern Territory Government closed the Forum. He acknowledged the similarities in each jurisdictions approach to place-based Aboriginal decision making and recognised the benefit of maintaining an open dialogue between jurisdictions in an effort to progress and strengthen outcomes.

For further information visit:

Centre for Aboriginal Economic Policy Research

caepr.cass.anu.edu.au

New South Wales

www.aboriginalaffairs.nsw.gov.au

Victoria

www.vic.gov.au/aboriginalvictoria

Northern Territory

dcm.nt.gov.au/supporting-government/office-of-aboriginal-affairs

Tasmania

www.dpac.tas.gov.au/divisions/csr/oa

South Australia

statedevelopment.sa.gov.au/aboriginal-affairs/aboriginal-affairs-and-reconciliation

Australian Capital Territory

www.act.gov.au/browse/topics-community-and-family/office_of_aboriginal_and_torres_strait_islander_affairs

Commonwealth

www.pmc.gov.au/indigenous-affairs

We would like to acknowledge the traditional owners and elders past, present and future, of the Gadigal nation on whose land the Forum was held.





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