



AIATSIS

AUSTRALIAN INSTITUTE OF ABORIGINAL
AND TORRES STRAIT ISLANDER STUDIES

An office for advocacy and accountability in Aboriginal affairs in Western Australia

Government of Western Australia

Dr Lisa Strelein and Cedric Hassing



About AIATSIS

AIATSIS is one of Australia's publicly funded research agencies and has legislative responsibility, *inter alia*, to provide leadership in Aboriginal and Torres Strait Islander research and provide advice to government on Aboriginal and Torres Strait Islander culture and heritage; and provide grants for innovative research. We also translate research to inform best practice in Indigenous policy.

AIATSIS is committed to ensuring Indigenous peoples' knowledge, culture and governance is understood, respected, valued and empowered by laws and policies that concern them. As a national Institute, AIATSIS works at the intersection of Indigenous and non-Indigenous knowledges, playing an important role in the mediation of those knowledges and supporting their expression and protection via our research and collections work.¹ AIATSIS also has legislative responsibility to provide advice on Indigenous culture and heritage.²

AIATSIS undertakes research on issues that impact upon Aboriginal and Torres Strait Islander peoples and their lives. We work with researchers, policymakers, cultural and collecting institutions, the corporate sector and Indigenous organisations to support cultural resurgence in practical and meaningful ways. AIATSIS has conducted many successful research and recording projects in communities, and our research is informed by community governance and is underpinned by the principles of our Guidelines for Ethical research with Indigenous Peoples (GERAIS).

Renegotiating the relationship between Aboriginal peoples and the State of Western Australia

A strong and transparent accountability framework is fundamental to keep discretionary decision makers focussed on securing the best outcomes for Aboriginal people. AIATSIS submits that this will be better facilitated through a dedicated entity with statutory powers and independence from the government of the day.

Accountability for outcomes in Aboriginal Affairs requires the accurate definition of policy settings; appropriate service delivery; efficient public expenditure; and genuine engagement with the communities affected by those policy settings. AIATSIS submits that political and bureaucratic commitment over the long term is required to address the historic and cyclical causes of disadvantage for Aboriginal political communities.

From the point of first contact with Europeans in Western Australia, until the 1970s, government policies failed to protect Aboriginal people and often brought them harm.³ The so called legislative 'protection' afforded by Protection statutes was by its very nature paternalistic and did not grant legally enforceable rights.⁴

¹ Tran, T. and Barcham, C. '(Re) defining Indigenous Intangible Cultural Heritage' AIATSIS Research Discussion Paper No. 37, AIATSIS Research Publications, Canberra 2018, p.4

² The 2012 AIATSIS Guidelines for Ethical Research with Indigenous Peoples (GERAIS) are available at: <https://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies>. GERAIS will be revised and renewed following consultation with major stakeholders in 2018.

³ Jebb, Mary Anne *Blood Sweat and Welfare* (University of Western Australia Press, Crawley, Western Australia 2002) pp297-298

⁴ See Lee J in *Coe v Gordon* [1983] 1 NSW 419 at 423

It is important to remember the discriminatory history and physical and cultural violence occasioned by colonisation and the events that took place afterwards occasioning pain, harm and consequentially intergenerational trauma for Aboriginal peoples. It is now well known that during the period 1930 to 1960 Australia wide, governments adopted assimilation policies for Aboriginal peoples. These policies were designed for the ultimate biological assimilation into white Australia.⁵ Or as Professor Irene Watson has correctly described it: 'A time when crimes of genocide were made lawful by the Aborigines Acts.'⁶

As Commissioner Eliot Johnson put it in 1991 examining the death in custody of John Peter Pat at Roebourne police station in the West Kimberley region of Western Australia that ultimately triggered the¹ Royal Commission into Aboriginal Deaths in Custody:

Every turn in the policy of government and the practice of non-Aboriginal community was postulated on the inferiority of the Aboriginal people; the original expropriation of their land was based on an idea that the land was not occupied and the people uncivilised; the protection policy was based on their view that Aboriginal people could not achieve a place in the non-Aboriginal society and that they must be protected against themselves while the race died out; the assimilationist policy assumed that their culture and way of life is without value and that we confer favour on them by assimilating them into our ways; even to the point of taking their children and removing them from their family. Every step of the way is based upon an assumption of superiority and every new step is a further entrenchment of that assumption.⁷

Eddie Cubillo provides some personal reflections of his parents during this era:

My parents have described the inferior treatment faced by Aboriginal people in those times. They had to sit apart from non-Aboriginal people in cinemas, there were separate wards in hospitals, hotels refused admission or drinks, and schools were able to refuse enrolment to Aboriginal children.⁸

Since the 1970s, Aboriginal communities have endured a long history of policy failures.⁹ AIATSIS submits that the involvement of Aboriginal and Torres Strait Islander peoples in decisions that affect them is one reason that warrants a significant investment in ensuring engagement and leadership. This engagement is necessary for the successful design of policy and programs.¹⁰ It is also important when defining the indicators of success or any

⁵ Gordon, Sue 'The effect of early Australian laws on Aboriginal people' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p125

⁶ Watson, Irene 'From a Hard Place: Negotiating a Softer Terrain' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p120. See also Watson, Irene, key note address to the National Indigenous Legal Conference: Aboriginal Peoples: our laws have always been here! University of Western Australia, 26 September 2018.

⁷ Royal Commission into Aboriginal Deaths in Custody, *Report of the inquiry into the death of John Peter Pat* (AGPS, 1991) 36-37: reproduced in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) Some commentators have described the formation of the Australian colony as an attempted genocide of Indigenous Peoples: See Tatz, Colin *Genocide in Australia* (AIATSIS Research Publications, Canberra, 1999 available at: https://aiatsis.gov.au/sites/default/files/products/discussion_paper/tatzc-dp08-genocide-in-australia.pdf

⁸ Cubillo, Eddie 'Engagement to support Indigenous Self-Determination' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p243

⁹ Altman, Jon submission *Closing the Gap Refresh* available at:

https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/jon_altman.pdf

¹⁰ Cox, Eva 'Evidence Free policy making?: the case of income management' *The Journal of Indigenous Policy* (2011), Issue 12, p 87

targets that measure achievement, that these goals and measures of evaluation be designed with the Aboriginal communities and individuals affected themselves.¹¹

The arrival of Europeans and the historical documentation of colonisation is but a pin prick in the history of Indigenous political communities' presence on their traditional lands and waters.¹² For Indigenous people from the nineteenth century through until the 1970s, government reserves, missions, forcible child removal/assimilation, urbanisation, and even severed multi-generational association with place, has not disturbed their deep association with Country and people.¹³

Whilst Indigenous peoples have been managing their traditional lands and waters in accordance with Indigenous law for tens of thousands of years, Indigenous law is not sufficiently accommodated or recognised within Indigenous policy. This is despite the recognition of native title twenty six years ago and the creation of statutory Aboriginal Land Rights frameworks in State and Territory jurisdictions since the 1970s.¹⁴ Acknowledging the totality and benefits of the Indigenous estate¹⁵ and the right of Indigenous people to manage this estate and enjoy a level of autonomy and authority in the governance of their territories, will be one of the most significant policy challenges for this next era.¹⁶ The recognition of Indigenous peoples' self-determination and nationhood is ultimately a matter of justice.¹⁷

As Eva Cox has stated:

There is limited official attention paid to procedural issues such as how politicians and bureaucrats implement the programs. Despite repeated feedback from community 'consultations' that there are problems with both the processes of designing the policies and programs and their delivery, there are few signs that these are seriously addressed. This is despite increasing evidence from a range of sources of what does work and what does not, and raises the serious question of why those in control do not incorporate processes that are shown to work.¹⁸

AIATSIS supports the creation of a statutory office that has legislative powers and independence from the government of the day to ensure that policies designed for Aboriginal

¹¹ See Gunstone, A. *Reconciliation, reparations and rights: Indigenous Australians and the stolen generations* and Eruiti, A. *Reparations for Indigenous Peoples in Canada, Australia and New Zealand in Handbook of Indigenous Peoples' Rights* (Editors Short, Damien and Lennox) (Corinne, Routledge, London, 2016)

¹² Woolagoodja, Donny 'Dambemangaddee Country, Culture and People: Our Country is where our ancestors come from' in Blundell, V., Doohan, K., Vachon, D., Allbrook, M., Jebb, Mary Anne and Bornman, J. *Barddabardda Wodjenangorddee: We're Telling all of you: The Creation, History and People of Dambemangaddee Country*: compiled and written in collaboration with Dambemangaddee People: published by Dambimangari Aboriginal Corporation, Derby, WA, 2017) p30

¹³ McGrath, Anne 'Deep Histories in Time, or Crossing the Great Divide?' in *Long History Deep Time, Deepening Histories of Place* (Editors Jebb, Mary Anne and McGrath, Anne, ANU Press, Canberra 2015) p22

¹⁴ *Power Culture and Economy* (editors Martin, David and Altman, Jon) CAEPR Research Monograph No 30, 2009) available at: <http://press-files.anu.edu.au/downloads/press/p78881/pdf/book.pdf?referer=366> pp20-30

¹⁵ 'The Indigenous estate has been formed through five key mechanisms: (1) Creation of Aboriginal reserves in the protectionist era (2) Land rights legislation passed since the 1960s (3) Other land legislation which allows for transfers or leasing to Indigenous groups (4) land acquisition programs since the late 1960s and (5) Native title processes'. See 'The Environmental Significance of the Indigenous Estate: Natural Resource Management as Economic Development in Remote Australia'. (CAEPR Discussion Paper No.286/2007) p5

¹⁶ Ritchie, C 2017, 'Reflections on Mabo', paper delivered at the Sydney Mechanic's School of the Arts, Sydney, 26 June 2017.

¹⁷ Neate, Graeme 'Land Rights, Native title and the 'limits' of Recognition: Getting the balance right?' (2009) 11 *Flinders Journal of Law Reform* 1; Strelein, L. *Compromised Jurisprudence* (Aboriginal Studies Press, Canberra 2009) pp149-150

¹⁸ Cox, Eva 'What works and what doesn't work in Indigenous service development –an annotated compilation of evidence' (2014) *Journal of Indigenous Policy-Issue* 16, p4. See also-Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> Chapter 3, Fred Chaney 'The indigenous Policy Experience 1960-2012'.

peoples are structured effectively to secure the best outcomes for the communities affected by targeted policies. If Indigenous communities are to effectively manage the Indigenous estate, they must have control over their lands and waters in accordance with the principle of Aboriginal self-determination. This form of self-determination means resourcing communities efficiently to implement structures that support local level governance and self-management particularly in regional and remote communities.¹⁹

[T]here must be a return to a vision that is based upon self-determination as Indigenous peoples see it. It cannot be dictated from the top down. It needs to be facilitated and nurtured from the community. Political leaders need to be responsive to those claims and ensure that they become part of the political strategy.²⁰

AIATSIS submits that an independent office for advocacy and accountability that examines and monitors the effectiveness of Indigenous policy in Western Australia will help to monitor, assess and hopefully address some of these deficiencies as well as promote the better design of Indigenous policies in partnership with Indigenous people from the outset.

For over 26 years AIATSIS has provided advice to all stakeholders in native title law and Indigenous Culture and Heritage. AIATSIS takes a leading role in the implementation of effective and ethically based practice in Indigenous studies and research through its Guidelines for Ethical Research in Indigenous Studies (GERAIS)²¹. The new AIATSIS Indigenous Research Exchange established in 2018 will provide additional capacity to coordinate and provide sound policy advice, ethical best practice in research methodologies and evaluation of policies that are effective.

Upholding the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

Given that there is a relationship between Indigenous and non-Indigenous people in Australia, the next step is to explore the political, legal and ethical grounding of the relationship.²² AIATSIS submits that an independent office for accountability and advocacy for Aboriginal Affairs in Western Australia would achieve a greater coordination between the Aboriginal Community controlled service sector and non-indigenous mainstream non-government service providers and would also reduce intrusion and confusion for Aboriginal communities. Place-based and flexible approaches to funding that accommodate regional variations to address local priorities and needs in different communities is required. Providing local program managers with the flexibility to respond to local issues as they arise is needed to avoid duplication. Holistic and flexible approaches to service delivery empower Aboriginal people and assist in addressing all aspects of a person's life and well-being. Greater transparency and regular feedback to Aboriginal communities is needed about the

¹⁹ Dodson, M and Smith, D.E. *Governance for sustainable development: Strategic Issues and principles for Indigenous Australian Communities*. (CAEPR Discussion Paper No.250/2003, Canberra)p11

²⁰ Behrendt, Larissa 'Power from the People' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p198

²¹ Available at: <https://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies>

²² Nicoll, Fiona 'Are you calling me racist? Teaching critical whiteness theory in indigenous sovereignty.' In *Taking Up the Challenge: Critical Race and Whiteness Studies in a Post colonising nation*(Crawford House publishing, Adelaide 2007) (Editor Rigg, Damien) p30. See also Tony McAvooy SC 'Sovereign People, Self-Governance and Treaties', paper delivered to the National Indigenous Conference, University of Western Australia, Perth 26 September 2018.

quality of services, performance of programs and the implementation of state and federal agreements.²³

AIATSIS submits that one of the key points of value within the 2017 *Working Together: One Public Sector Delivering For Western Australia Report* was that it identified the need to consider regional place-based solutions:

Along with co-design, place-based models allow for a tailored approach that puts communities' needs at the centre of service design. Place-based policies and programs are framed around the needs of the area in which they are to be applied, rather than the needs of the majority of the State, and can take into account differences in demographics, geography, environment and economy in the regions. Implementation models range from pooled funding based on location to formal coordination and engagement mechanisms. Some models of place-based approaches favour providing community level control over the funding and design of local services. Other models take a regional governance approach.²⁴

This emphasis on focussing on localised and regionalised solutions re-enforces the strong recommendations and findings of the Government of Western Australia Indigenous Implementation Board in 2014.²⁵

The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007.²⁶ The declaration highlights the individual and collective rights of indigenous peoples: including rights to self-determination, governance and development. It also 'emphasises the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations'. It 'prohibits discrimination against indigenous peoples', and 'promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development' (UN 2007).²⁷

Although the Declaration may not have the status of a legally binding international treaty, most of the principles of the Declaration are customary international laws and hence binding upon all countries including Australia.²⁸

²³ Cox, Eva *What works and what doesn't work in Indigenous service development –an annotated compilation of evidence*, The (2014) Journal of Indigenous Policy-Issue 16, p10

²⁴ Working Together: One Public Sector Delivering For Western Australia: Service Priority Review Final Report to the Western Australian Government, October, 2017, p39

²⁵ See the 2014 Recommendations of Western Australian Government Indigenous Implementation Board –chaired by Lieutenant General Sanderson, the former Governor General of Western Australia.

²⁶ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: <http://www.refworld.org/docid/471355a82.html> [accessed 22 August 2018]

²⁷ Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> See chapter 4- Malezer, Les (co-chair National Congress of Australia's First People) 'Challenges in Evaluating Indigenous Policy' p69

²⁸ Davis, Megan 'Putting Meat on the bones of the United Nations Declaration on the Rights of Indigenous Peoples' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p270

Article 18 is about representation and decision making: indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 is about governments consulting and cooperating with indigenous peoples in good faith: States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions [that is, the indigenous peoples' representative institutions], in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20 is about recognition of indigenous people's own institutions:

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21 addresses disadvantage and special measures:

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, *inter alia*, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of the economic and social conditions. Particular attention shall be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.

Article 23: relates to the importance of indigenous self-management and control over programs and services: indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, Indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programs affecting them and, as far as possible, to administer such programs through their own institutions.

In looking at those articles (and some may be more important than others in particular circumstances), they basically come back to the fundamental principles that:

- Indigenous peoples have the right to determine their needs and the best way of addressing their needs
- Indigenous peoples have the right to exercise prior informed consent on any programs that may affect them

- Indigenous peoples have the right to good faith relationships with government.²⁹

AIATSIS submits that it is imperative that Aboriginal and Torres Strait Islander groups are at the forefront of positive engagement to appropriately navigate the complexity of Indigenous policy including inconsistencies and conflicts that have been generated by poor historical policy design.³⁰ The design of the engagement process requires detail on how to sufficiently garner the views of Indigenous people to ensure that policy writers make considered, informed decisions.

Effecting structural policy change for better services and service delivery for Aboriginal people

Improving the quality, coordination and transparency of service provision means that long-term approaches are required to properly address many of the complex issues facing Aboriginal communities. Short-term funding and the discontinuation of successful Aboriginal programs results in the loss of local capacity, knowledge and experience. Program design should be evidence based and supported by comprehensive data for effective planning and evaluation. This means that there must be a greater collaboration and coordination of services across the whole of government. Different levels of government need to work together to avoid duplication and this requires transparent and open dialogue with Aboriginal communities.

Strategies to improve the quality, coordination and transparency of service provision include:

- Funding agreements to include a requirement for services to engage with community, report on how many Aboriginal people access their services and develop access improvement targets;
- Local service delivery plans developed by local Aboriginal community governance bodies and government with measurable targets, including expenditure and outcomes; public reporting on all programs, including the organisations responsible for the service delivery and the ratio of funding for Aboriginal and mainstream organisations;
- Publicly available and transparent audits of service delivery; and
- Co-locating services where possible or holding multi-agency days to inform the community about key services available.³¹

For Indigenous peoples to move from cultural protection and survival, to cultural thriving and resurgence will require a transformative policy framework. The progressive framework required is one that empowers Aboriginal individuals and communities to make both unconscious and deliberate choices, to secure their aspirations through Indigenous ways of being in the world.³² It is clear that the concepts of collaboration, partnership and culture

²⁹ Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> See chapter 4- Malezer, Les (co-chair National Congress of Australia's First People) 'Challenges in Evaluating Indigenous Policy' pp73-74

³⁰ T Tran & Stacey, C 2016 'Wearing two hats: The conflicting governance roles of native title corporations and community/shire councils in remote Aboriginal and Torres Strait Islander communities', *Land, Rights, Laws: Issues of Native Title*, vol. 6, no. 4 AIATSIS Research Publications, Canberra 2016.

³¹ Ibid. p16

³² Strelein, L. Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p5 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

provide a critical link to achieving collective and individual self-esteem, resilience and ultimately prosperity for Aboriginal communities and individuals.³³

Ensuring Indigenous engagement and agency in designing policy and programs requires strengthening support for self-determination; respect for Indigenous governance and decision making structures; and a genuine commitment to Indigenous priority setting and outcomes evaluation.³⁴ The changes that are needed are not party-political but seriously practical and backed by experts across the political spectrum within an independent office of review such as the one proposed for Western Australia.³⁵

Evaluating existing systems and structures that worsen situations and or provide poor outcomes

Conventional evaluation methodologies used by government fail to comprehensively understand the full range of factors that contribute to the successful delivery of services to Aboriginal and Torres Strait Islander clients. Consequently, there is a failure to understand how programs for Aboriginal and Torres Strait Islander communities can be delivered and evaluated in a framework of self-determination.³⁶

As Les Malezer has said:

I fear that the Aboriginal and Torres Strait Islander peoples are completely left out of the process. We can see that there is a process inside government, but the proper engagement of Indigenous communities is being totally overlooked or conveniently avoided. It is not just a case of finding new programs and finding another experimental way of addressing a problem. It is actually admitting to ourselves that we have severe problems here if communities are not fully involved in their own development.³⁷

A change in relationship needs to occur between Government and Indigenous peoples in practical ways that facilitates the utilisation and assertion of Aboriginal and Torres Strait Islander peoples' strengths and capabilities.

The right to self-determination is recognized under international law. Although the right is clearly recognized in Article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, there is much debate about the application of the content of self-determination as it applies to Indigenous people.³⁸

³³ T Alfred 2015, 'Cultural strength: restoring the place of indigenous knowledge in practice and policy, *Australian Aboriginal Studies Journal*, no. 1, pp. 3-11; T Bauman, D Smith, R Quiggin C Keller & L Drieberg 2015, *Building Aboriginal and Torres Strait Islander Governance: Report of a Survey and Forum to Map Current and Future Research and Practical Resource Needs*, Australian Institute of Aboriginal and Torres Strait Islander Studies and Australian Indigenous Governance Institute.

³⁴ L Rigney 2006, 'Indigenous Australian Views on Knowledge Production and Indigenist Research' in M Goduka, and J Kunnie (Eds), *Indigenous Peoples' Wisdom and Power: Affirming Our Knowledge*, Ashgate Publishing 2006, p. 39.

³⁵ Cox, Eva *What works and what doesn't work in Indigenous service development –an annotated compilation of evidence*, The (2014) Journal of Indigenous Policy-Issue 16, p8

³⁶ Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> See chapter 4- Malezer, Les (co-chair National Congress of Australia's First People) 'Challenges in Evaluating Indigenous Policy'p69

³⁷ Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> See chapter 4- Malezer, Les (co-chair National Congress of Australia's First People) 'Challenges in Evaluating Indigenous Policy'p79, available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/06-better-indigenous-policies-chapter4.pdf>

³⁸ Behrendt, Larissa 'Self-Determination and Indigenous Policy: The Rights Framework and Practical Outcomes' (2002) Journal of Indigenous Policy, Issue 1: 43, p45

To support the growth of a well contextualised evidence base, it is important that the Office for Accountability in Aboriginal Affairs includes a clear framework to critically assess the policy settings that inhibit or empower community's capacity for success and prosperity. A real strengths-based approach, emanating from Indigenous priorities and cultural values, necessitates a change in Australian society and governments to transform how Indigenous peoples experience their relationship with Australian society. Governments must cease imposing values and policies on Aboriginal and Torres Strait Islander peoples and instead allow them to define the values and policies which are a priority to them.³⁹

The AIATSIS Indigenous Research Exchange, established in 2018 will coordinate and provide efficient Indigenous policy advice that is in accordance with Aboriginal epistemologies and ontologies. Ensuring that Aboriginal political communities design the framework for their own futures and successes in accordance with their own world-views will promote a shared knowledge base that is in the national interest and promotes the wellbeing of those communities.⁴⁰

Promoting better coordination across agencies and departments and the interaction of Commonwealth Indigenous policy targets

A prerequisite for refreshing the policy thinking must be an acknowledgement of the failure of the last decade and the deepened impoverishment in remote Indigenous Australia⁴¹. A practical and empirically-informed framework is urgently needed based on negotiated principles.⁴² 'The contrast between progressivist public rhetoric about empowerment and self-determination and the raw evidence of a disastrous failure in major aspects of Australian Aboriginal Affairs policy since the 1970s is frightening'.⁴³ AIATSIS submits that an independent office to assess the performance of government in Western Australia with respect to the success or failure of Indigenous policy is timely and needed.

Addressing the underlying causes of disadvantage in Aboriginal communities (the social determinants) requires a high degree of cross-portfolio purpose and collaboration as these factors are both mutually supporting and interdependent. The lack of progress against targets raises questions about whether there has been sufficient cross-portfolio commitment to Closing the Gap. The imperative of portfolio-based ministerial responsibility, accountability and budget rules may present not only a complex coordination task but serves to work against agendas that require cross-cutting, whole of government approaches and commitment.⁴⁴

From an economic policy perspective, it is now well established that Indigenous people are among the most economically marginalised and impoverished citizens of Australia. Almost eleven years ago, Dr Ken Henry, then Secretary to the Treasury, examined the complex social and economic policy framework that was required to improve the wellbeing of

³⁹ Strelein, L. Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p14 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

⁴⁰ Watson, Irene: Key note address to the National Indigenous Legal Conference: Aboriginal Peoples: our laws have always been here! University of Western Australia, Perth, delivered 26 September 2018.

⁴¹ Altman, Jon submission *Closing the Gap Refresh* available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/ion_altman.pdf p7

⁴² Ibid.

⁴³ Sutton, P. *The politics of suffering: Indigenous policy in Australia since the 1970s*, Anthropological Forum, Volume 11, No2, 2001, p4

⁴⁴ A Ten year review: the Closing the Gap strategy and Recommendations for Reset, Human Rights and Equal Opportunity Commission Report 2018, available at: https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf p20

Indigenous people in the context of the Treasury's overall mission to 'improve the wellbeing of all Australians'.⁴⁵ Dr Henry concluded that those engaged in Indigenous policy development must consider the development of human capital, and high levels of education and physical and mental health as being the hallmarks of strong human capital with research having shown that education can help transform social and economic opportunities.

The COAG Closing the Gap Strategy was developed by Australian governments following their signing of the Close the Gap Statement of Intent from March 2008 onwards. The Close the Gap Statement of Intent is, first, a compact between Australian governments and Aboriginal and Torres Strait Islander peoples. Second, it embodies a human right to a health-based blueprint for achieving health equality referred to hereon as the 'close the gap approach'.

In 2018, the Human Rights and Equal Opportunity Commission's evaluation of the Closing the Gap policy found significant shortfalls in gains from this policy exercise.

Ten-years after its commencement, it is time to critically reflect on why Australian governments have not yet succeeded in closing the health gap to date, and why they will not succeed by 2030 if the current course continues. In fact, a December 2017 Australian Institute of Health and Welfare report found the mortality and life expectancy gaps are actually widening due to accelerating non-Indigenous population gains in these areas.⁴⁶

The HREOC 2018 review's major findings were:

1. The Close the Gap Statement of Intent (and close the gap approach) has to date only been partially and incoherently implemented via the Closing the Gap Strategy:

An effective health equality plan was not in place until the release of the National Aboriginal and Torres Strait Islander Health Plan Implementation Plan in 2015 – which has never been funded. The complementary National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017-2023 needs an implementation plan and funding as appropriate. There is still yet to be a national plan to address housing and health infrastructure, and social determinants were not connected to health planning until recently and still lack sufficient resources.

The Closing the Gap Strategy focus on child and maternal health and addressing chronic disease and risk factors – such as smoking through the Tackling Indigenous Smoking Program – are welcomed and should be sustained. However, there was no complementary systematic focus on building primary health service capacity according to need, particularly through the Aboriginal Community Controlled Health Services and truly shifting Aboriginal and Torres Strait Islander health to a preventive footing rather than responding 'after the event' to health crisis.

⁴⁵ Ken Henry, Secretary to the Treasury (2007a), 'Addressing Extreme Disadvantage Through Investment in Capability Development', Australian Institute of Health and Welfare Conference: 'Australia's Welfare 2007', 6 December 2007 pp. 15-16: <http://www.treasury.gov.au/documents/1327/RTF/Health_and_Welfare_Conference.rtf>. Cited in L Strelain & T Tran, AIATSIS Submission to the inquiry into Carbon Credits (Carbon Farming Initiative) Bill 2011, April 2011 at https://aiatsis.gov.au/sites/default/files/products/submission/2011-submission-carbon-credits_0.pdf.

⁴⁶ A Ten year review: the Closing the Gap strategy and Recommendations for Reset, Human Rights and Equal Opportunity Commission Report 2018, available at: https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf: p4

2. The Closing the Gap Strategy – a 25-year program – was effectively abandoned after five-years and so cannot be said to have been anything but partially implemented in itself. This is because the ‘architecture’ to support the Closing the Gap Strategy (national approach, national leadership, funding agreements) had unravelled by 2014-2015.
3. A refreshed Closing the Gap Strategy requires a reset which re-builds the requisite ‘architecture’ of a national approach, national leadership and outcome-orientated funding agreements). National priorities like addressing Aboriginal and Torres Strait Islander health inequality have not gone away, are getting worse, and more than ever require a national response. Without a recommitment to such ‘architecture’, the nation is now in a situation where the closing the gap targets will measure nothing but the collective failure of Australian governments to work together and to stay the course.⁴⁷

AIATSIS submits that examining the interrelationship of Commonwealth Indigenous policy and targets and aligning them with more efficient and successful policy outcomes within States and Territories is also required. A well-structured and designed Office for Advocacy and Accountability in Aboriginal affairs in Western Australia will assist in contributing towards better aligned state and national Indigenous policy outcomes, so as to avoid duplication and provide more effective, well designed policies that improve the lives of Indigenous peoples and their communities.

In AIATSIS’s 2018 submission to the Closing the Gap Refresh Public Discussion Paper, AIATSIS supports the adoption of a strengths-based approach to the refresh of the COAG Closing the Gap framework. The key areas of importance for the refresh are: defining ‘prosperity’ based on Aboriginal and Torres Strait Islander notions of ‘wealth’ and freedom; and adopting broad and sophisticated definitions of culture and co-designing targets, measures and analysis with Aboriginal and Torres Strait Islander peoples. Further, creating structural changes which are well balanced with community priorities, will address blockages, inequalities and inconsistencies in legislation and policy, and thereby ensure engagement with the Refresh process so that it occurs in a considered and meaningful way.⁴⁸

Ethical evidence based policy research and evaluation

AIATSIS has responsibility to translate best practice ethical research with Indigenous peoples into best practice policy outcomes for Indigenous peoples. Evidence underpins policy yet the evidence that has driven policy making to date has been focused on the disparity between ‘Aboriginal and Torres Strait Islander peoples relative to the Australian population.’⁴⁹ Once research and evidence is gathered, it is necessary to translate this knowledge into policy design. This is best done by groups who straddle two bodies of knowledge, for example expert advisory groups or policy review committees; and communities of practice can also be formed to ensure best practice knowledge translation.⁵⁰

⁴⁷ *A Ten year review: the Closing the Gap strategy and Recommendations for Reset*, Australian Human Rights and Equal Opportunity Commission Report 2018, available at:

https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf: pp5-6

⁴⁸ Strelein, L, Tran, T and Barcham, C. AIATSIS Submission to the Closing the Gap Refresh Public Discussion Paper (2018) available at: <https://aiatsis.gov.au/publications/products/aiatsis-submission-closing-gap-refresh-public-discussion-paper>

⁴⁹ Webster 2002, ‘Some Features of Evidence-based Policymaking for Aboriginal and Torres Strait Islander Peoples’, *Journal of Indigenous Policy*, no. 1, p.107.

⁵⁰ Daniell, K. 2014, ‘The role of National Culture in Shaping Public Policy: A Review of the Literature’, *Crawford School of Public Policy* available at:

AIATSIS submits that an Office for Advocacy and Accountability in Aboriginal affairs will ensure ethical research practices based upon the principles of self-determination. This will also support the effective evaluation and assessment of Indigenous policy in Western Australia with Indigenous communities.

In 2018 the AIATSIS Indigenous Research Exchange was established to enhance AIATSIS's capacity to coordinate and provide effective Indigenous policy advice in accordance with the AIATSIS Guidelines for ethically based research in Indigenous studies (GERAIS)⁵¹.

For 26 years, the AIATSIS Native Title Research Unit (NTRU) has provided advice to stakeholders on native title law and since 2006 the NTRU has focussed on the research and the structure and operation of Prescribed Bodies Corporate (PBCs) also known as native title corporations. AIATSIS has noted that PBCs need to be appropriately equipped and supported via policy and legal advice and effective evaluation methodologies, to meet the increasing demands of managing the legal responsibilities associated with their native title land and waters.⁵² Moreover, some governments have been slow to change and adapt legislation, policies and programs to recognise the change in legal and governance arrangements in the management of land and waters or to harness the opportunity that native title recognition presents the Australian society and economy. This requires continuing and ongoing policy advice and evaluation of the strategic management of the Indigenous Estate to enhance our shared knowledge base and bring wellbeing to Aboriginal political communities.

AIATSIS undertakes research that focusses on PBC governance, capacity and influence in negotiations and continues to document and identify the qualitative and quantitative factors underpinning effective policy across the Indigenous sector. For over 20 years AIATSIS has also undertaken research and provided advice on effective and culturally appropriate and legitimate Indigenous facilitation and mediation techniques that promote good governance and strategic management policies that benefit the Indigenous Estate.⁵³

Ensuring effective and culturally appropriate engagement with Aboriginal people

The current deficit paradigm in Australian policy making has resulted in 'unilateral interventions into the political, social and economic lives of Indigenous communities' that not only ignore cultural context but may undermine the cultural capability that could lead to change.⁵⁴ Any effective policy program needs to work beyond these conceptual limitations.⁵⁵

https://coombsforum.crawford.anu.edu.au/sites/default/files/publication/coombs_forum_crawford_anu_edu_au/2014-08/daniell_2014_the_role_of_national_culture_in_shaping_public_policy_final.pdf

⁵¹ AIATSIS *Guidelines for Ethical Research in Indigenous Studies*: available at: <https://aiatsis.gov.au/research/ethical-research/guidelines-ethical-research-australian-indigenous-studies>

⁵² *Living with native title: The experiences of registered native title corporations* (eds L M Strelein Jessica K Weir and T Bauman, AIATSIS Research Publications, Canberra 2013)

⁵³ 'The Indigenous estate has been formed through five key mechanisms: (1) Creation of Aboriginal reserves in the protectionist era (2) Land rights legislation passed since the 1960s (3) Other land legislation which allows for transfers or leasing to Indigenous groups (4) land acquisition programs since the late 1960s and (5) Native title processes' Altman, J.C; Buchanan G.J; Larsen, L. (CAEPR Discussion Paper No.286/2007) p5. AIATSIS Indigenous Mediation and Facilitation Report

⁵⁴ Strelein, L; Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p4 https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf citing J Hunt, D Smith, S Garling & W Sanders (eds) 2008, 'Contested Governance: Culture, power and institutions in Indigenous Australia', *CAEPR Research Monograph*, ANU, no. 29, p. 4. See Bauman, T. AIATSIS Indigenous Facilitation and Mediation Report (2006) at: https://aiatsis.gov.au/sites/default/files/products/report_research_outputs/bauman-2006-ifamp-teport.pdf

⁵⁵ Cox, Eva *What works and what doesn't work in Indigenous service development –an annotated compilation of evidence*, The (2014) *Journal of Indigenous Policy*-Issue 16, p9

The failure of policy has been compounded by the failure to understand cultural dynamics and the imposition of processes or institutions into Indigenous communities without thought as to how cultural conflicts might then emerge. Crafting processes and institutional responses that marry cultural practices with structures in a way that is appropriate to the community should provide a basis for more effective structures. Just as we have seen the imposition of western models of dispute resolution into Indigenous contexts without thought to the cultural dynamics of the parties, so too we see the imposition of bureaucratic structures onto communities without thought of the cultural disconnection or conflicts that may arise. Innovative approaches to institutions and processes seem to be missing from an area where cultural conflict has left such devastating legacies.⁵⁶

Culture must be understood in its broadest form, as the knowledge, laws, philosophies, expressions, art and creativity, and connections to people and places that are transmitted from generation to generation while adapting to change; culture is the interactions that define a society and provide them with a sense of continuity and identity.⁵⁷

The involvement of Aboriginal and Torres Strait Islander peoples is necessary for the successful design of policy and programs and also in order to define the indicators of success and in setting targets for measuring achievement. It is imperative that Aboriginal and Torres Strait Islander groups are at the forefront of engagement to appropriately navigate the stated objectives of Indigenous self-determination including addressing inconsistencies and conflicts that have been generated in the past by poor historical design of policy and constantly changing policy frameworks. The design of the engagement process requires detail on how to sufficiently garner the views of Indigenous people to ensure that policy writers make considered decisions.⁵⁸ The creation of an Office for Accountability and Advocacy in Aboriginal Affairs in Western Australia will require extensive and careful consultation with Western Australian Aboriginal communities in terms of its structure, design, functions and forms of appointment for officers.

As Jacqui Katona has put it:

‘[S]ystems of committees, action groups and other bodies designed by non-Aboriginal industry and governments to replace traditional political systems have nearly always failed due to exhaustion and or disinterest resulting from cultural inappropriateness.’⁵⁹

Trauma Informed Practice⁶⁰

⁵⁶ Behrendt, Larissa ‘Self-Determination and Indigenous Policy: The Rights Framework and Practical Outcomes’ (2002) Journal of Indigenous Policy, Issue 1: 43, pp54-55

⁵⁷ Strelein, L., Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p6 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

⁵⁷ https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf Citing UNESCO Convention on the Safeguarding of Intangible Cultural Heritage 2003: Convention for the Safeguarding of the Intangible Cultural Heritage. Paris, 17. October 2003. Entry into force: 20 April 2006. See also C Ritchie, ‘Bringing Culture Back? Cultural Resilience, Activism, and the “Courage to be”’, presented at International Indigenous Librarians Forum, NSW State Library, Sydney, 22 February 2017.

⁵⁸ Strelein, L., Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p14 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

⁵⁸ https://www.humanrights.gov.au/sites/default/files/document/publication/CTG%202018_FINAL-WEB.pdf

⁵⁹ Katona, Jacqui ‘Cultural Protection in Frontier Australia’ in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p84

⁶⁰ Dudgeon, P., Walker, R., Scrine, C., Shepherd, C., Calma, T., Ring, I. ‘Effective strategies to strengthen the mental health and wellbeing of Aboriginal and Torres Strait Islander people (Issues paper no. 12 produced for the Closing the Gap Clearinghouse,

AIATSIS further submits that the impact of intergenerational trauma on Aboriginal political communities means that trauma informed practice should be a mandatory requirement for all those engaged or working within the area of legal and policy reform for Indigenous peoples: particularly in an independent office such as the one proposed.⁶¹ Short term and *ad hoc* proposals that attempt to address the complex problems facing many Indigenous communities who are living with the effects of intergenerational trauma is harmful.⁶² Likewise, the way that government manages its business within the framework of trauma informed practice in communities is important.⁶³

As Castellano and Archibald have stated: political agency and economic vitality in Aboriginal communities are necessary complements to interventions that support healing from historic trauma.⁶⁴ Governments can support better local planning processes and governance, ensure that services are effective and accessible, and enable government staff to work more effectively at a regional level.⁶⁵ In addition, a greater awareness of the impact of trauma and colonisation by policy decision makers will improve the outcomes for Aboriginal political communities and this is part of trauma informed and culturally competent practice that should be mandatory requirements for people working with Aboriginal communities.⁶⁶

Making more effective use of data and evaluation

Any assessment framework lacking qualitative measures will be incomplete. The inclusion of indicators in addition to metrics and statistical outcomes will assist in revealing the impacts of, and changes made, by an activity or policy.⁶⁷ Qualitative targets and indicators may not be easily quantifiable like the previous numerical targets were. However, this does not make the targets any less legitimate and in fact qualitative and participatory approaches can be

Australian Institute of Health and Welfare, 2014) available at: <https://www.aihw.gov.au/getmedia/6d50a4d2-d4da-4c53-8aeb-9ec22b856dc5/ctqc-ip12-4nov2014.pdf.aspx?inline=true>

⁶¹ In 2018 The Australian Institute of Health and Welfare produced a report titled: *Aboriginal and Torres Strait Islander Stolen Generations and descendants: Numbers, demographic characteristics and selected outcomes*: available at <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf.aspx?inline=true>

Background: The Human Rights and Equal Opportunity Commission's *Bringing them home* (BTH) report (HREOC 1997) documented stories of individuals and families affected by the systematic policy of Australian governments to remove Aboriginal and Torres Strait Islander children from their families. The report also described the extent of harm created for, and the burden suffered by, both those individuals who were removed, and their families and descendants. To coincide with the 20th anniversary of the BTH report, The Healing Foundation commissioned a study to review the principles and recommendations of the BTH report and to examine progress made on those recommendations in the contemporary policy landscape. This report, *Bringing them home 20 years on: an action plan for healing* (The Healing Foundation 2017), outlined actions to meet the continuing and emerging needs and rights of the Stolen Generations—noting the paucity of evidence on their current needs. The Australian Government then funded The Healing Foundation to undertake a demographic analysis and needs assessment that aimed to identify the size, characteristics and needs of the Stolen Generations, using both quantitative and qualitative data sources (as part of a broader Action Plan for Healing project). The Australian Institute of Health and Welfare (AIHW) prepared this quantitative analysis for The Healing Foundation as part of the Action Plan for Healing project.

⁶² Castellano, M. & Archibald, L. *Healing Historic Trauma: A Report From the Aboriginal Healing Foundation*(2007) *Aboriginal Policy and Research Consortium International (APRCi) Paper 111* available at: <http://ir.lib.uwo.ca/aprci/111>

⁶³ Halloran, M. *Cultural Maintenance and Trauma in Indigenous Australia*, (2004) Murdoch University Electronic Journal of Law, volume 11, number 4

⁶⁴ Castellano, M. & Archibald, L. *Healing Historic Trauma: A Report From the Aboriginal Healing Foundation*(2007) *Aboriginal Policy and Research Consortium International (APRCi) Paper 111* available at: http://ir.lib.uwo.ca/aprci/111_p190

⁶⁵ Power Culture and Economy (editors Martin, David and Altman, Jon) CAEPR Research Monograph No 30, 2009) available at: <http://press-files.anu.edu.au/downloads/press/p78881/pdf/book.pdf?referer=366>

⁶⁶ Kirmayer, L.J, Gone, J.P, Moses, J. *Rethinking Historical Trauma Journal of Transcultural Psychiatry* 2014, Volume 51(3) 299 Cox, Eva *What works and what doesn't work in Indigenous service development –an annotated compilation of evidence* The (2014) *Journal of Indigenous Policy*-Issue 16, p68

⁶⁷ Canadian Academy of Health Sciences, 'Report of the Panel on the Return on Investments in Health Research January 2009', Making an Impact: A Preferred Framework and Indicators to Measure Returns on Investment in Health Research, 2009, 80.

more appropriate to understand impact and change. These indicators should be chosen and defined by the people who are affected by the relevant policy.⁶⁸

Across much of the continent there is a growing discrepancy between the best-intentioned of statistical output frameworks and the actual needs of Indigenous land-holding groups for an ethnographically informed demography suited to their needs for managing the Indigenous estate and its associated constituencies. While a demography of Indigenous ‘population’ may be well suited to the provision of citizen rights, what it does not provide for are Indigenous interests in inherent and proprietary rights manifest in the many forms of native title settlement and agreement that form the major structural element of public life in contemporary Indigenous society. These structures provide the means by which Indigenous peoples express collective identities and seek to negotiate for their needs and aspirations, including fundamental issues of recognition, inclusion and economic opportunity⁶⁹ and yet we have no data mechanisms to inform or evaluate them.⁷⁰ For twenty years AIATSIS has provided national and international guidance in the ethical practice of research concerning Indigenous Peoples. Increasingly formal ethics review is sought by researchers undertaking evaluation of research and policies with respect to Indigenous Peoples.

In examining the evidence base, the context in which data exists cannot be excluded.⁷¹ An important aspect of this context is the circumstances in which evidence is collected.⁷² To take a strengths-based approach necessarily involves the collection of data that is based on Indigenous priorities and allows ‘genuine Indigenous decision making to shape the functionality of Indigenous statistics.’⁷³ It is clear that there is often limited public discussion on how Indigenous-focused programs are, or should be, designed and delivered. The focus is on funding and intentions. Despite the availability of evidence of what has worked, what was working before its funding ceased, as well as current examples of what is still working, the new funding tends to over-ride and overlook experiences and lessons that could be learned.⁷⁴ The repeated failure of government programs to support and promote the development of community initiatives highlights the need to try another approach.⁷⁵

⁶⁸ Strelein, L., Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p9 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

⁶⁹ Tehan, M., Palmer, L., Langton, M., Mazel, O. *Sharing Land and Resources: Modern Agreements and Treaties with Indigenous Peoples in Settler States* (Federation Press, Melbourne 2006)

⁷⁰ Australian Government Productivity Commission Report *Better Indigenous Policies The Role of Evaluation (2013)* available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf> See chapter 4-Taylor, John ‘Data for better indigenous Policy evaluation: achievements, constraints and opportunities’ p133, available at: <https://www.pc.gov.au/research/supporting/better-indigenous-policies/better-indigenous-policies.pdf>

⁷¹ Strelein, L. Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p10 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

⁷² See E Estey, J Smylie & A Macaulay 2009, *Aboriginal knowledge translation: Understanding and respecting the distinct needs of Aboriginal communities in research*, Canadian Institutes of Health Research Institute of Aboriginal Peoples’ Health, Ontario, p. 4; S Larkin 2006, ‘Evidence-based policy making in Aboriginal and Torres Strait Islander Health’, *Aboriginal Australian Studies Journal*, vol. 2, pp 24.

⁷³ T Kukutai & M Walter 2015, ‘Recognition and indigenizing official statistics: Reflections from Aotearoa New Zealand and Australia’, *Statistical Journal of the Association for Official Statistics*, no.31, p. 317.

⁷⁴ Cox, Eva *What works and what doesn’t work in Indigenous service development –an annotated compilation of evidence*, The (2014) *Journal of Indigenous Policy*-Issue 16, p6

⁷⁵ *Ibid.* p50

Strelein, L. Tran, T. and Barcham, C. AIATSIS submission: Closing the Gap Refresh: 2018: p10 available at: https://closingthegaprefresh.pmc.gov.au/sites/default/files/submissions/aiatsis_ctg_refresh_submission_-_final_publish.pdf

Lessons from NSW

In NSW since July 2014, pursuant to Part 3B of the *Ombudsman Act 1974 (NSW)* a Deputy Ombudsman (Aboriginal Programs) was created in the NSW Ombudsman's Office to provide an independent monitoring and assessment of Indigenous policy and its effectiveness or otherwise for Aboriginal people in NSW. As part of the Deputy Ombudsman's monitoring, assessment and evaluations-individual *OCHRE* initiatives have been conducted by the Social Policy Research Centre at the University of New South Wales and the NSW Government's Centre for Education Statistics and Evaluation.⁷⁶ These independent evaluations – as well as other evidence – inform the accountability process.⁷⁷ The NSW Ombudsman's office also has broader oversight of other government agencies and funded services, and can take up individual complaints about unfair treatment, lack of access to a service and other issues.⁷⁸

New South Wales (the jurisdiction with the largest Indigenous population) has developed this policy approach centred on an Aboriginal Economic Prosperity Framework (the Framework). The Framework stems from recommendations made by the NSW Ombudsman under the 'Fostering economic development for Aboriginal people in NSW' Special Report (2016): New South Wales Ombudsman 2016.⁷⁹

On 1 June 2016 at the event marking the tabling of the NSW Ombudsman's special report on fostering economic development for Aboriginal People, the Deputy Ombudsman for Aboriginal Programs in NSW, Danny Lester said in his speech that:

- Research shows clear links between increased economic prosperity and improved social outcomes in other areas, including health, education, child protection and community safety and the broader economy also profits. Yet there have been a multitude of initiatives and programs aiming to improve the economic participation of Aboriginal people offered by government, non-government and private sector. These have the potential to create a collective impact if they are well coordinated, but risk a fragmented approach if this does not occur.
- It is critical that state and federal governments ensure that policy for Aboriginal economic development is integrated with policies for mainstream economic development – built in, not bolted on. This means that Aboriginal economic development must be embedded in the everyday goals and work of the agencies that already have responsibility for economic development, and supported by clear measures of performance.
- There is clearly a pressing need to improve coordination between existing efforts, particularly government initiatives. If the strategies contained in the Aboriginal Economic Prosperity Framework connect in a very practical way with the government's broader focus on growing the economy, then success is far more likely to be realised.

⁷⁶ *OCHRE* (Opportunity, Choice, Healing, Responsibility, Empowerment) is the community-focused plan for Aboriginal Affairs in NSW. See: <https://www.aboriginalaffairs.nsw.gov.au/our-agency/staying-accountable/ochre>

⁷⁷ *Fostering economic development for Aboriginal People in NSW: A Special Report to Parliament, May 2016*, available at: https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0019/34138/Fostering-economic-development-for-Aboriginal-people-in-NSW_May-2016.pdf ;

⁷⁸ See monitoring Aboriginal Programs, NSW Ombudsman Annual Report 2016-2017 available at: https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0007/49498/NSW-Ombudsman-Annual-Report-2016-17.pdf pp40-56 for case studies and methodology for review and evaluation of Aboriginal programs and policies in NSW-see pp44-56.

⁷⁹ 'Fostering Economic Development for Aboriginal People in NSW' A Special Report to Parliament under s. 31 of the *Ombudsman Act 1974 (NSW)*

- There should also be a place-based approach. The economic reform agenda needs to sit alongside strategies for tackling child protection, family violence and other social problems facing many high-need communities.
- Finally, success is unlikely without a strong entity with the necessary skills, expertise and clout to drive the reforms – in close partnership with the business community and Aboriginal leaders. Such a body may be an existing government agency, or a newly dedicated board as in Victoria and Canada.⁸⁰

AIATSIS submits that evidence from jurisdictions like NSW suggests that an office for advocacy and accountability in Aboriginal affairs in Western Australia will help to achieve better coordination and evaluation of the impact of Government policy on Aboriginal communities.

Policy reform and evaluation must facilitate and provide a vehicle for contemporary Aboriginal and Torres Strait Islander aspirations for self-determination and self-management, and Government must recognise and value Indigenous peoples' knowledges⁸¹ and ways of governing, free from discrimination and regulatory overburden.⁸² The essence of achieving and developing appropriate Aboriginal and Torres Strait Islander policy is more likely to be successful through establishing institutional structures and principles which are robust enough to encompass and engage diversity.⁸³

Cox has identified broadly what works in effective design of Indigenous policy frameworks:

- Community involvement and engagement.
- Adequate resourcing for planned and comprehensive interventions.
- Respect for language and culture.
- Working together through partnerships, networks and shared leadership.
- Development of social capital.
- Recognising underlying social determinants.
- Commitment to doing projects with, not for, Indigenous people.
- Creative collaboration that builds bridges between public agencies and the community and coordination between communities, non-government and government to prevent duplication of effort.
- Understanding that issues are complex and contextual.⁸⁴

What has been shown not to work in Aboriginal Affairs and the design of policy in the past includes:

- One size fits all approaches.
- Lack of collaboration and poor access to services.

⁸⁰ Danny Lester, Deputy Ombudsman (NSW) speech delivered on 1 June 2016 Available at: https://www.omb.nsw.gov.au/_data/assets/pdf_file/0004/34879/Event-to-mark-tabling-of-the-Ombudsmans-special-report-on-fostering-economic-development-for-Aboriginal-people.pdf: p3

⁸¹ Blair, N. (2015). Privileging Australian Indigenous knowledge: Sweet potatoes, spiders, waterlilies and brick walls (United States of America: Common Ground Publishing, 2015).

⁸² Strelein, L. and Hassing C. (2017) *AIATSIS response to Office of the Registrar of Indigenous Corporations (ORIC) Technical Review of the Corporations (Aboriginal and Torres Strait Islander Act) 2006*: https://aiatsis.gov.au/sites/default/files/products/submission/catsi_act_review_171031.pdf p3

⁸³ D F Martin Rethinking the design of Indigenous organisations: the need for strategic engagement (Centre for Aboriginal Economic Policy Research, ANU, 2003 Discussion Paper 248/2003) p9

⁸⁴ Cox, Eva *What works and what doesn't work in Indigenous service development –an annotated compilation of evidence* (2014) The Journal of Indigenous Policy-Issue 16, pp9-11

- External authorities imposing change and reporting requirements.
- Interventions without local Indigenous community control and culturally appropriate adaptation.
- Short-term, one-off funding, piecemeal interventions, provision of services in isolation and failure to develop Indigenous capacity to provide services.⁸⁵

Whilst the proposals above oversimplify complex issues they also hopefully offer a starting point for new approaches that are more inclusive and effective.⁸⁶ An office for advocacy and accountability in Aboriginal affairs in Western Australia will be of valuable assistance in securing best practice in Indigenous policy outcomes providing it is structured and designed in close consultation with Aboriginal communities and organisations in Western Australia as to what functions and powers it will have once created.

Conclusion

AIATSIS submits that an office for advocacy and accountability in Aboriginal affairs in Western Australia to monitor the effectiveness and consistency of service delivery and policy outcomes in Aboriginal communities is essential. An independent office will provide a necessary and objective assessment of accountability of government in Aboriginal Affairs. It will further promote transparency across government and better facilitate the alignment of government services for Aboriginal communities' needs. It will review and evaluate existing systems and structures that worsen situations and provide consequentially poor outcomes for Aboriginal communities. It will also act as the independent entity that has the express function of ensuring ministerial accountability across departments and agencies whose remit is to ensure better outcomes for Aboriginal communities.

A commitment to equality is not much better than a system that actively discriminates unless there is an attempt by government to fund and conduct efforts at a level that will actually achieve equality.⁸⁷

Effecting an overarching structural change in Aboriginal policy for the benefit of Aboriginal communities in Western Australia, who have been historically vulnerable to underperformance from government and constant policy changes, will promote better coordination across agencies and departments. It will also ensure that policy is implemented more effectively and efficiently. As Eddie Cubillo has stated 'liberty is a concept in political philosophy that identifies the condition in which people are able to govern themselves, to behave according to their own free will and take responsibility for their own actions. For the First Nations of Australia, this aspiration requires recognition of our integrity and claims for self-determination.'⁸⁸

It is important that Indigenous policy is negotiated in a meaningful, culturally appropriate manner that employs Indigenous research methodologies, epistemologies and ontologies and empowers Aboriginal people themselves to make more effective use of data and

⁸⁵ Ibid., p11

⁸⁶ Ibid. p10

⁸⁷ Calma, Tom 'From Rhetoric to Reconciliation' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p147

⁸⁸ Cubillo, Eddie 'Engagement to support Indigenous Self-Determination' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p250

evaluation on their own terms. Understanding the intergenerational effects of trauma that have resulted from colonisation and the events that took place thereafter, is essential when working with Aboriginal individuals and communities. The effects of intergenerational trauma have a real and sustained impact on Aboriginal communities and individuals.⁸⁹ The 2018 report of the Royal Commission into the Don Dale Detention Centre in the Northern Territory found: 'systemic and shocking failures. Children and young people have been subjected to regular, repeated and distressing mistreatment and the community has also failed to be protected.'⁹⁰

Mechanisms that ensure accountability and wellbeing to stop abuse, harm and disadvantage within Aboriginal communities remain matters of urgency. To ensure the wellbeing of Aboriginal communities requires further extensive and effective consultation with the political localisms themselves and a process of policy design and evaluation that allows deliberative decision making which results in community endorsed models.⁹¹ Effective policies and laws must be established in consultation with Indigenous peoples as part of a framework that is designed by Aboriginal communities themselves in accordance with international human rights obligations. Effective policy design must promote the interrelatedness of Aboriginal political communities and individuals with their environment and with one another. Ensuring that ethically based and legitimate strategies achieve wellbeing means that government must be held to account.

⁸⁹ See the 2018 The Australian Institute of Health and Welfare report: *Aboriginal and Torres Strait Islander Stolen Generations and descendants: Numbers, demographic characteristics and selected outcomes*: available at: <https://www.aihw.gov.au/getmedia/a6c077c3-e1af-40de-847f-e8a3e3456c44/aihw-ihw-195.pdf.aspx?inline=true>

⁹⁰ Report of the Royal Commission of Inquiry into the Protection and Detention of Children in the Northern Territory (2018) Volume 1, p9. As Professor Larissa Behrendt has put it: 'the days of Government actively truncating and extinguishing Indigenous peoples' rights are far from over'. See-Behrendt, Larissa 'Power from the People' in *Indigenous Australians, Social Justice and Legal Reform* (Editors Hossein, E., Worby, G., Tur, S. (Federation Press, Sydney 2016.) p8

⁹¹ Professor Megan Davis: Keynote address to the National Indigenous Legal Conference: 'Advancing Constitutional Reform' 25 September 2018, University of Western Australia Perth.