BACKGROUND PAPER

by

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for the

Indigenous Governance Development Forum: Mapping Current and Future Research and Resource Needs

An initiative of

The Australian Institute of Aboriginal and Torres Strait Islander Studies

and

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Forum hosts

The Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) www.aiatsis.gov.au: In 2014 AIATSIS is celebrating 50 years of leadership and excellence in Indigenous research. First established under its own legislation in 1964, AIATSIS is governed by a majority Aboriginal and Torres Strait Islander Council chaired by Professor Mick Dodson. It is Australia's national institution for research and collecting/curating archival materials of importance to Aboriginal and Torres Strait Islander peoples. AIATSIS research is grounded in relationships, practical action based partnerships, and workshop and ethnographic methodologies involving local, regional and national Indigenous and other polities. Over the last 20 years, AIATSIS has supported a range of governance research and initiatives and developed a number of practical tools. It provided the evidence based rationale for establishing the Australian Indigenous Leadership Centre (AILC) in 2001, housing the AILC in its initial years, and established governance as a distinct key research priority in 2001 with the first dedicated Indigenous governance fellowship. AIATSIS has placed an emphasis on the governance of agreement-making and native title corporations, Indigenous decision-making and dispute management processes, institutional arrangements for service delivery in Indigenous communities, policy design, natural resource and other environmental governance, and human rights and legal and constitutional engagement between Indigenous peoples and governments. As part of a broader review of AIATSIS research priorities including its governance and public policy research program, AIATSIS has joined with the Australian Indigenous Governance Institute, to map the gaps in Indigenous governance research and practical resources to provide the basis for AIATSIS governance research in the future.

The Australian Indigenous Governance Institute (AIGI) www.aigi.com.au: Established in 2012, AIGI aims to be a national centre of governance excellence, connecting Indigenous Australians to world-class governance practice, informing effective policy, providing accessible research, disseminating stories that celebrate outstanding success and solutions, and delivering professional development opportunities to meet the self-determined governance needs of Indigenous peoples. Its majority Indigenous Board is chaired by Jason Glanville, also CEO of the National Centre for Indigenous Excellence. The need for the AIGI was identified in research conducted in the Indigenous Community Governance (ICG) Project between 2001-2008 by Reconciliation Australia and the Centre for Aboriginal Policy Research (CAEPR) at the Australian National University, in partnership with 12 communities in remote, rural and urban locations. The ICG Project identified the urgent need for high-quality governance information and relevant practical tools and training, and recommended the establishment of an Indigenous-specific governance institute. Subsequent stakeholder consultation indicated strong support for the establishment of the AIGI. The AIGI manages the Indigenous Governance Toolkit (the Toolkit), participates in the Indigenous Governance Awards hosted by Reconciliation Australia, is developing a curriculum of workshops and professional development opportunities based on the Toolkit, collaborates on research and is committed to reinvigorating the national discourse about Indigenous governance, highlighting success, innovation and excellence.

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1. The Forum

Over the last ten years in Australia, the issue of 'governance' has become the subject of vigorous discussion in Aboriginal and Torres Strait Islander communities and organisations, as well as within governments and the private sector. The 'Indigenous Governance Development Forum: Mapping Current and Future Research and Resources' (the Forum) which is being convened on 29 and 30 July 2014 by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) and the Australian Indigenous Governance Institute (AIGI) is a contribution to that conversation.

The Forum provides a rare opportunity to bring together governance researchers, capacity-development trainers and educators, government policy makers and private sector agencies, and Aboriginal and Torres Strait Islander peoples who are actively engaged in exercising and building governance in their communities, organisations and nations.

The Forum will be an opportunity to:

- share updates about current governance research being carried out across the country;
- identify the practical tools that are being created to support Aboriginal and Torres Strait Islander governance initiatives;
- pool our collective knowledge to identify current gaps, needs and future priorities; and
- network and coordinate ideas and work with others.

An important aim is to encourage a more collaborative, collective-impact approach[1] to governance research and to the production of practical tools and resources.

2. The background paper

This background paper has been prepared by Diane Smith and Toni Bauman with assistance from Robynne Quiggin.[2] It aims to provide some context for participants at the Forum in thinking about Indigenous governance research, development and related practical resources. It draws on a wide range of relevant research and reports by a number of authors and organisations so as to cover key themes, perspectives and issues for discussion. Because participants in the Forum have a diversity of professional backgrounds and are engaged in a range of governance work, the paper is written for a varied audience rather than in an academic format specifically for other researchers. It aims to paint a broad canvas, rather than addressing in detail the range of views around specific issues.

To inform discussions at the Forum, this background paper considers the current state of research and practical resources, commencing with an overview of some relevant governance concepts, followed by a consideration of the conditions that have shaped the turn towards governance within Indigenous Australia. The paper then examines the concept of research itself and associated practice, and provides a summary of the coverage and foci of Australian research into governance. Issues to do with 'making the research count' by translating evidence into practical tools, capacity and resources for Indigenous governance development are canvassed. An initial scan is presented

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[1] J Kania & M Kramer, 'Collective Impact (SSIR)', *Stanford Social Innovation Review*, 2011, [Online], http://www.ssireview.org/articles/entry/collective_impact, accessed, 17 July 2014.

[2] Diane Smith, Toni Bauman and Robynne Quiggin will also be facilitating the Forum. Toni Bauman is the Governance and Public Policy Fellow at AIATSIS; Robynne Quiggin is the CEO of AIGI; and Diane Smith is a Board Member of AIGI and consultant to AIATSIS for the Forum.

of the gaps in both research and resources. In conclusion, a set of questions is posed which can be taken further by participants during Forum discussions.

In attending the Forum, participants were asked to complete a survey on current governance development research and resources, and to identify gaps, policy issues and future priorities. The results of that survey will be incorporated into the design of the program and into a report which will be written to reflect discussions at the Forum.

3.   Introduction to the issues

There is a growing body of insightful governance research to inform Indigenous governance development initiatives and evidence-based understandings. The Aboriginal and Torres Strait Islander Social Justice Commissioner has also identified a rights based approach to effective governance.[3] However, the ability to gather information about how governance initiatives are working on the ground has some challenges. Much of the research has been conducted as one-off case studies of particular communities, groups or organisations at a single location and point in time and thus does not lend itself to rigorous comparative analysis. Secondly, the research has often adopted a single disciplinary perspective and methodological framework (e.g., from an anthropological, demographic, historical, political or policy point of view), has been focused on a single industry sector (such as health, native title, resource management, business enterprises, and housing), or on a particular aspect of governance (such as leadership, decision making within government and Aboriginal and Torres Strait Islander organisations, governing roles and responsibilities, dispute resolution, and organisational effectiveness).

Such research findings are often rich in thick description and insight into cultural particularities, but the focus on specific areas and disciplines has limited the capacity to provide comparative insights and hence their broader applications. Additionally, much of the scholarly research analyses are to be found primarily in academic books and journals with limited circulation amongst the wider public. All too often, these diverse research endeavours have been carried out in isolation from each other. As a consequence, potentially significant evidence and insights may remain inaccessible, with little knowledge exchange occurring beyond the immediate research partners or commissioning agencies.

At the same time, many of us have been working independently to design, support and implement Aboriginal and Torres Strait Islander governance initiatives, and this work often has a research component. In many of these applied settings, there comes a need for resource tools that enable Indigenous governance-building efforts including tools that address the capacity of government staff. The lack of an effective communication network means that many Indigenous groups, the public sector and private practitioners, are unaware of such tools and that there is unnecessary duplication.

Research into governance is also increasingly being commissioned directly by Indigenous groups, communities and organisations themselves to pursue their own priorities.[4] Such research may be part of internal Indigenous strategies seeking to maximise self-determination, and is often kept

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[3] Australian Human Rights Commission, *Social Justice Report 2012*, Australian Human Rights Commission, Sydney, 2012, https://www.humanrights.gov.au/publications/social-justice-report-2012, accessed, 21 July 2014

[4] For example, to support nation building and decision-making, land rights and native title initiatives, resource and agreement negotiations, land management, intra-Indigenous negotiations, and community development projects.

'under the radar' and 'in-house', with the consequence that it remains similarly limited with restricted circulation.[5]

Governments and the private sector have also funded research into different aspects of governance in order to create an evidence base for policy, to inform inquiries and evaluations, to support their own or Indigenous agreement-making, decision making and dispute-management processes, and as part of implementing major program and service-delivery initiatives. Again, such research is rarely publicly available.

A positive trend over the last decade has been the conduct of comparative and longer-term research projects in partnership with Indigenous people. A number of these projects have deliberately encompassed multi-disciplinary expertise, and developed practical applications that have included the widespread dissemination of research evidence and analyses.

There has also been an associated growth in the use of multimedia technology and websites by researchers, organisations and agencies to collate common-access research data and practical resources about Indigenous Australian governance. Some of the larger projects with extensive web-based governance information containing practical resources, research data and tools include the examples given below:

- The Indigenous Community Governance (ICG) Project (2001-2008) which carried out long-term comparative research on modes of governance in different types of Indigenous groups, communities, regions and organisations, as well as investigating the wider governance environment and the 'governance of government: http://caepr.anu.edu.au/governance/index.php.
- The AIATSIS website provides details of several relevant projects including the Indigenous Facilitation and Mediation Project (2003-2006),[6] the Registered Native Title Bodies Corporate (PBC) Project,[7] the Successful Strategies in Indigenous Organisations Project,[8] and the Knowledge Management Data Base in the Native Title Research Unit: http://www.aiatsis.gov.au/ntru/agreements.html
- The Federal Court of Australia in its Indigenous Dispute Resolution and Conflict Management Project carried out a number of comparative case studies in partnership with AIATSIS. The Project identified a number of practical lessons to be drawn from the case studies:

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[5] We are aware that at least some Aboriginal and Torres Strait Islander organisations are attempting to rectify this with web publications, though the general point of lack of accessibility remains.

[6] See also T Bauman, 'Final Report of the Indigenous Facilitation & Mediation Project July 2003/04 – June 2006: research findings, recommendations and implementation', Native Title Research Unit, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 1997, http://www.aiatsis.gov.au/_files/ntru/IfampReport.pdf, accessed, 21 July 2014..

[7] Native Title Research Unit, 'Native Title Corporations: Prescribed Bodies Corporate (PBCs), Native Title Registered Bodies Corporate (RNTBCs)', http://www.nativetitle.org.au/index.html, accessed, 17 July 2014. See also T Bauman, L M Strelein, and J K Weir, *Living with native title: the experiences of registered native title corporations,* AIATSIS Research Publications Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2013.

[8] J Finlayson, *Maps to Success: Successful Strategies in Indigenous Organisations: a Handbook,* Australian Collaboration and Australian Institute of Aboriginal and Torres Strait Islanders, Canberra, 2007.

http://www.ag.gov.au/LegalSystem/AlternateDisputeResolution/Documents/NADRAC%20Publications/solid-work-you-mob-are-doing.pdf.[9]

- The electronic Indigenous Governance Toolkit currently co-hosted by Reconciliation Australia and AIGI which provides detailed governance research information, practical tools and case studies that have been derived the ICG Project and ongoing analyses of the Indigenous Governance Awards: http://www.reconciliation.org.au/governance/

The survey completed by participants and others reveals a number of other governance projects including research components producing tools and resources for governance development which will be discussed at the Forum.

4.   Governance: the concepts

While the search for a clearly articulated concept of 'governance' has only recently begun in Australia, the term has been in common use for several decades in the world of international aid and banking, global politics, and the developing world. In such contexts it has become synonymous with western democratic, neo-liberal ideas of what is supposed to constitute 'good' governance, usually concerning compliance with regulations, financial accountability issues, and technical standards of measurement.

In Australia, the concept of governance has become a fixture of the political, policy and organisational landscape within Indigenous affairs.[10] The term has rapidly been translated, in divergent ways, by Aboriginal and Torres Strait Islander peoples who have incorporated it into their political, local and organisational agendas, by governments into their policy making, service-delivery and funding frameworks, and by the private-sector into their negotiations and agreement making with Aboriginal and Torres Strait Islander peoples.

However, there remains considerable uncertainty as to the meaning of the term and its forms; especially in intercultural contexts. Critically, Indigenous governance today is not just about Indigenous peoples, laws, values, norms and traditions. It is also about the governance of governments and the ways in which that impacts upon, and intersects with, Indigenous modes of governance. This is often referred to as an intercultural arena – a contact zone – where issues of relative power and hence the potential for misunderstandings and conflict are heightened.

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[9] T Bauman & J Pope, *Solid work you mob are doing: case studies in Indigenous dispute resolution and conflict management in Australia*, National Alternative Dispute Resolution Advisory Council, Melbourne, 2009.

[10] Whilst there is a great deal of high-quality and influential governance research on topics such as Indigenous politics, land ownership, group social organisation and membership, decision making, conflict resolution, leadership and authority, religious life and law, land and sea management, gender knowledge, organisational development, service delivery, government policy, local government and so on, this research was not generally carried out under the banner of the term 'governance' until about 13 years ago. In 2001 the ICG Project (2001-2008) utilised the concept of 'governance' in Australian Indigenous research as a valuable organising perspective or framework for its fieldwork and analyses, along with other concepts such as the 'governance environment' and the 'governance of government'. This conceptual framework enabled a cohesive approach to researching community-level and regional governance and was specifically designed with a comparative and longitudinal methodology. (See D E Smith, *Researching Australian Indigenous Governance: A Methodological and Conceptual Framework*, CAEPR Working Paper no. 29, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2005 for a detailed discussion of the project methodology). Also in 2001, AIATSIS approved its first dedicated Indigenous governance fellowship.

Survey respondents have defined governance in a range of insightful ways which will be discussed at the Forum and in the final report. For the purposes of this backgrounder, we define Indigenous governance as:

> *…the evolving processes, relationships, institutions and structures by which a group of people, community or society organise themselves collectively to achieve the things that matter to them…In other words, governance is as much about people, power, and relationships as it is about formal structures, management and corporate technicalities. Indeed, the relational aspects of governance are often critical factors in effective performance.*[11]

Governance thus operates in both formal and informal settings and in a range of contexts both within and across Indigenous groups, and in their interactions with governments and the private sector. Governments and their departments also have governance, as do non-government organisations (NGOs), businesses, banks, mining companies, footy teams, voluntary groups and church agencies. Governance is fundamentally about relative power, control, and choice. It's about frameworks for making decisions—how decisions are made including who makes the important decisions and 'call the shots', and how such people are held to account.

For Indigenous peoples, this means having processes, institutions and structures in place that translate into sustained, organised action and that enable them to:

- determine who is and isn't a member of their group or organisation (who is the 'self' in their self-governance);
- decide who has power and over what;
- ensure such power is exercised properly;
- make and enforce decisions;
- hold their decision-makers accountable;
- mediate conflict and complaints; and
- negotiate with others.[12]

Governance is a cultural construct where the principles and standards of what constitutes 'good', 'good enough', 'strong', 'legitimate', 'ineffective', 'corrupt' or 'bad' governance are informed by culturally-based values, traditions and ideologies; and vary significantly between different societies. There is no end-point goal of 'perfect' governance that will eventually be achieved in the future. Rather, governance is adaptive according to context and circumstances. This means it may swing between effectiveness and dysfunction. It is to be found as much in people's daily self-determined practices, processes and relationships, as it is in visible structures and formal institutions.

The concept of governance is also associated and often equated with several others; for example, 'management', 'incorporation', 'administration', 'compliance', 'service delivery' and 'leadership'. But governance cannot be reduced to these terms and related processes. Under such a reductionist approach within Indigenous affairs, governance tends to be seen as a matter of Indigenous people being assigned all responsibility, but no power. In contrast, many Indigenous people conceive of

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[11] J Hunt, D E Smith, S Garling, & W Sander (eds), *Contested Governance*, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra, 2008.

[12] This definition follows the ICG Research Project (see papers in Hunt et al, 2008, above n 11, and D E Smith, 'Common Roots, Common Futures: Different Paths to self-determination: An international conversation,' 20-22 February 2012, report on governance workshop, The University of Arizona, Tucson, USA, 2012.

governance as involving self-determination, processes of Indigenous choice, and having substantive power over decisions about concerns that shape their daily lives.

Governance, then, is an inclusive concept — a unifying framework — that covers a wide range of components consisting both of formal mechanisms and structures, as well as how things are done — from law-making and enforcement, jurisdictional functions, leadership and representation, to members' participation and voice, decision making, dispute resolution, institutional frameworks and constitutions, rights and relationships with others including governments and private sector players in the governance environment, and the organisation of sustained development.

Governance is not the same as 'government', although governance is an aspect of how any government operates, and includes Indigenous strategies to establish their own forms of governmental jurisdiction and ways of interacting with governments and the private sector. For many Indigenous peoples in Australia and internationally, the term also encompasses 'self-government' and 'self-determination'.

Self-government means having jurisdictional control and a mandate. That is, having the constitutional or judicial right to choose the kinds of power, and authority a group wishes to have: for example, to administer laws by hearing and determining controversies and by exercising chosen powers over the members of a group, its land and resources. Governance is about having the processes, structures and institutional capacity in place to be able to exercise that jurisdiction through sound decision-making, representation and internal accountability.

Self-determination refers to genuine decision-making power and responsibility for what happens on Indigenous peoples' lands, in their affairs, in their governing systems, and in their development strategies. It does not refer simply to self-administration or self-management of programs or processes controlled by outside authorities. Mera Penehera et al. describe it as 'having meaningful control over one's own life and cultural well-being'.[13] As decision-making power and responsibility moves from external authorities into the hands of Indigenous peoples, self-determination grows.

Development is distinguished from 'governance' in that it refers to the ability of Indigenous nations to sustain their society and to provide their citizens with the opportunity to live productive, satisfying lives. According to Lea and Wolfe, development is 'change or transformation that makes life better in ways that people want'.[14] From this viewpoint, development can take a variety of forms, from growth in traditional subsistence activities to increased participation in market economies, from Indigenous entrepreneurship to joint ventures with non-Indigenous corporations.

Sustainable development is, as Mick Dodson characterised it, 'a direction more than a place'; it is about 'innovation and opportunity' and involves value judgments and informed choice about the preferred direction and speed of change.[15] The World Commission on Environment and Development's Brutland Report proposed that development is sustainable when it 'meets the

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[13] M Pehehira, F Kram, & K Pipi, 'Kaupapa Maori governance: Literature review & key informant interviews,' report by Katoa LTD for Te Puawai Tapu, Wellington, 2003, p. 6, https://docs.google.com/viewer?a=v&pid=sites&srcid=ZGVmYXVsdGRvbWFpbnxrYXRvYWx0ZHxneDozYzE0MzAzODcyNzg5NDI5, accessed, 21 July 2014.

[14] D A M Lea & J S Wolfe, *Community development planning and Aboriginal community control*, North Australia Research Unit, Australian National University, Casuarina, N.T, 1993, pp. 1-2.

[15] M Dodson, 'Opening remarks: Common Roots: Common Futures: Indigenous Pathways to Self-determination,' presented at the Common Roots: Common Futures: Indigenous Pathways to Self-determination. An international conversation, 20-22 February 2012, University of Arizona, Tucson, USA, 2012, pp. 3-4.

needs of the present without compromising the ability of future generations to meet their own needs'.[16]

Development and governance are thus inter-linked. **Governance development** means the processes by which people, organisations and groups as a whole, develop their abilities to do the collective and individual job of governing. That includes performing governing functions, designing institutions, structures and processes, solving problems and disputes, setting and achieving objectives, and understanding and dealing with their own development needs in a broader context and sustainable way. The United Nations Development Program (UNDP) has argued that the capacity for governance is at the heart of sustainable human development and a prerequisite for effective responses to poverty, livelihood, environmental and gender concerns.[17]

Yet there are many factors undermining sustainable development in Indigenous communities and regions, and often the implication is that Indigenous Australians have control over all these problems, and should be trying to fix them all. Potentially more useful approaches focus on success rather than failure — with groups and organisations identifying the key local ingredients and priorities for successful development that lasts.

One of the greatest challenges in doing this is to integrate development opportunities with Indigenous social concerns and cultural priorities into effective governance systems. In particular, the exercise of 'informed consent' continues to be a central feature of negotiations and decisions about development, especially in the context of land rights and native title in Australia. The concepts of 'informed consent' and 'integrated development' are both fundamentally concerned with issues of control, capacity, and power — that is, with governance.

For many Indigenous peoples, the internal 'test' of legitimacy and sustainability both of development and governance involves coming up with answers to a set of difficult questions, many of which call for future-thinking (and perhaps research); for example:

- What lessons can we draw from the past?
- What kind of nation or community are we trying to build, not only for ourselves but for future generations of our people?
- What kinds of governance arrangements and innovations might be acceptable and consented to now, and acceptable to our people in the future?
- What role should Indigenous culture, with its collective and individual dimensions, play in governance and development initiatives, and how might that change over time?
- Who should benefit from development, and how can governance arrangements contribute to ensuring that the benefits of current projects still be available for future generations?
- How can self-determination be maximised over the long run and enhance the ability of future generations of our people both to maintain the strengths of the past and to determine for themselves the shape of their own lives?
- What kind of relationships do we want to have with influential external stakeholders?

Whichever way Aboriginal and Torres Strait Islander peoples answer these questions, it is clear they are paying increasing attention to governance, and to the link between institutions of

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[16] World Commission on Environment and Development and Australia, *Our common future (Brutland Report)*, Oxford University Press, Melbourne, 1987, p. 43.
[17] United Nations Development Program, *Capacity Development: A UNDP Primer*, United Nations Development Program, New York, 2009.

governance on the one hand, and development outcomes on the other. It is also clear that Aboriginal and Torres Strait Islander peoples consistently and strongly press for the central role of culture in their governing institutions and decision-making.

Some non-Indigenous academics and politicians have characterised 'culture' as being unnecessary or an obstacle in the contemporary world of Indigenous governance and economic development, suggesting that cultural politics and processes should be quarantined outside of representative organisations and community governance solutions. In contrast, many Aboriginal and Torres Strait Islander people across the country are working to find a place for the recognition of their cultural practices in their governance strategies, and to harness the strength and resilience of cultural roots in ways that are credible and workable today.

At the same time, the intercultural authorising environments in which groups, communities and particularly organisations have to operate today are realities. For Aboriginal and Torres Strait Islander peoples, the challenge lies in how to achieve a balance in their governance arrangements between interrelated cultural, social and economic priorities and the other forces of 'western' governance acting upon them. The important thing in making decisions about such issues is that it all takes time — time to talk, consult, and get feedback from people; time to experiment and learn from mistakes, and time to change and adapt as all societies do.

5.   Indigenous governance design principles

Indigenous governance is not an unchanging relic of pre-colonial times, but has to reflect contemporary conditions and provide solutions to issues in meaningful ways as David Ross's comments at the Tennant Creek Governance Summit suggest:

> *Aboriginal Governance is about working together to build structures and processes that reflect your culture, your priorities, your world view, and your solutions to problems. Governance is not just a matter of effective service delivery, or organisational compliance, or management. It is about the self-determining ability and authority of clans, nations and communities to govern: to decide what you want for your future, to implement your own initiatives, and take responsibility for your decisions and actions.*
>
> *You can decide now to work together to be strong and united, to increase your governing skills and capabilities to exercise your rights, and to adequately prepare your young people for the weighty responsibility that comes with any quest for greater control and power.*
>
> *Governance is about what you can do for yourselves, how you make decisions and take responsibility for them, how you get things done properly, so you can determine your own future.*[18]

In formulating their contemporary governance arrangements, Aboriginal and Torres Strait Islander peoples have to address the fact that these arrangements have been significantly affected by colonisation, which has had a fragmenting and alienating impact on property and resource rights, disrupted group structures, and imposed western legal and political modes of governmentality. One consequence of those impacts has been to create conflict and dispute within some groups about internal group membership and land ownership.

Yet, despite such challenges, many Indigenous modes of governance continue to be influenced by widely shared cultural values and norms that can be informed by ancient jurisdictions of Aboriginal

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[18] D Ross, 'Keynote Address', presented at the Strong Aboriginal Governance Summit, 18-19 April 2013, Aboriginal Peak Organisations of the Northern Territory, Tennant Creek, 2013.

polities and institutions.[19] Comparative field research carried out over 5 years by the ICG Project identified a set of commonly held, deep systemic principles that continue to underlie Indigenous ways of thinking and practices of governance across Australia. In other words, there is a cultural logic — a shared 'design language' — that continues to inform contemporary Indigenous solutions. Across the country, groups are bringing that design language to bear in order to create customised governance arrangements that suit their diverse local conditions and needs. This shared design logic has been described as 'relational nodal networks'.[20] Based on thick pathways of connectedness between nodes (such as people, places, and things – past, present and future), relational networks give rise to dispersed local and regional polities, with heartlands of shared identities having cultural geographies.

The sophistication of this systemic logic is that it enables small local networks to opportunistically scale-up to form larger aggregations, and to scale down and retreat to a core membership and geographic heartland as needed. It also enables individuals to jump linkages in order to activate or renunciate others. It gives rise to a spatially and socially dispersed circuitry of networked governance that employs complex mechanisms to distribute authority, influence, decision-making, roles and responsibilities, and mutual accountabilities across interconnected social layers, in order to ensure that decisions are made by those most impacted by them. This has been referred to in the literature and at the United Nations as the principle of 'subsidiarity'.[21]

Today, a wide variety of Indigenous governance arrangements are influenced by this cultural design logic, at the same time as needing to also operate within a wider 'governance environment' of government, private sector and other stakeholders. This can mean that government institutional boundaries may not allow for Indigenous solutions that are based upon relational networks and subsidiarity, with the result that group membership of corporations and recognition of collective land ownership rights become fragmented by government jurisdictions. Indigenous peoples may have to exclude relevant parts of their relational networks from an agreement or organisational membership, in the interests of keeping governance, decision making and resource distribution manageable, which sometimes leads to conflict.

Today we see Indigenous governance being exercised in a wide variety of contexts across rural, remote and urban locations. These include sectors involving issues such as health, housing, education and training, culture, regulatory and legal issues, community justice, social and emotional well-being, economic development and commercial activity, land ownership and management, heritage and site protection and the environment. There are also a number of arenas

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[19] Marcia Langton refers to the 'ancient jurisdictions' of Aboriginal polities, arguing that if, as the common law now holds, 'native title survives, then Aboriginal jurisdictions, that is the juridical and social spaces in which such laws are practiced, must also survive'. M Langton, 'Ancient Jurisdictions, Aboriginal Polities and Sovereignty', presented at the Indigenous Governance Conference, 3-5 April 2002, Reconciliation Australia, Canberra, 2002, p. 1.

[20] For a detailed analysis of Indigenous relational nodal networks and their role in governance solutions, see D E Smith, 'Cultures of Governance and the Governance of Culture: Indigenous Australians and the State', PhD Thesis, Australian National University, Canberra, 2011.

[21] The principle of subsidiarity, in the context of networked systems, aims to provide the various component parts of the network with more effective control over their own spheres of action and responsibility. As a governance principle, subsidiarity advocates that issues should be handled by the most competent and appropriate level or layer of authority available. This means that no higher centralised scale or political unit should undertake tasks that can be performed more effectively at a dispersed or local level. Conversely, centralised or larger aggregated forms of governance should undertake initiatives which are beyond the capacity of individuals or smaller groups acting independently.

within such fields of Indigenous governance which may require different decision-making processes in order to be seen as being legitimate. [22]

6.   The turn towards governance

A number of factors have brought about what we refer to as 'the turn towards governance' in Indigenous issues in Australia. Over the last decade, the Australian Government appears to have retreated from its earlier commitments to self-determination as a policy platform (Dodson & Pritchard 1998) and there are major differences in the nature and extent of the restoration of rights and the recognition of native title in Australia when compared to Aotearoa (New Zealand), Canada and the United States of America. In Australia, Aboriginal and Torres Strait Islander peoples have been hard pressed to secure any jurisdictional rights or legally enshrined right to self-determination; and those rights that have been secured remain vulnerable to policy and political interventions.[23] But what Indigenous peoples in all four countries do share is their persistent goal of increasing their self-governing capacity and the realisation of their rights in practice.

A critical factor in the recent 'turn' towards governance involves a change in Indigenous conversations themselves; both in Australia and in the other international jurisdictions mentioned above, where a transition is occurring from the 'rights battle' to the 'governance and development challenge'. This can be understood as a movement beyond the outwardly focussed political agenda of rights and recognition of authority and ownership, to one of translating such rights into internal outcomes for people on the ground. In that agenda, having practically effective, legitimate governance has come to the fore:

> It's important for Aboriginal people to propose their own governance priorities and share ideas about what works. But it's also time to do the practical governance work that is needed to turn rights into outcomes. Governments will come and go, but Aboriginal people will still be here.[24]

In achieving outcomes, however, Indigenous peoples in Australia face a number of major development challenges. Some arise from the impoverished socio-economic conditions of many Aboriginal and Torres Strait Islander communities and lands. For example, research indicates that Indigenous peoples continue to have high rates of poverty, unemployment, early mortality, and reliance on welfare transfers, alongside lower levels of income and education relative to other citizens of Australia.

The demographic trends of the Aboriginal and Torres Strait Islander population also have profound implications for both development and governance. Of great significance is the fact that across Australia, Aboriginal and Torres Strait Islander populations are getting younger. Contrary to the population decline and ageing that constitutes the 'regional problem' for many parts of agricultural Australia, these populations are growing more rapidly than other Australians, so that younger families are forming faster. Another demographic fact which has implications for governance is the high concentration of Indigenous populations in urban locations, such as Western Sydney. At the same time, and in contrast to expectations, over the past 30 years, remote Aboriginal towns have grown in size and there has been an increased dispersal of Aboriginal population to outstations on

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[22] D Martin, T Bauman & J Neale, *Challenges for Australian Native Title Anthropology: Practice Beyond the Proof of Connection*, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra, 2011.

[23] See for example the annual reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner, see the Australian Human Rights Commission, 'Social Justice Reports Index'," website, https://www.humanrights.gov.au/publications/social-justice-reports-index, accessed, 21 July 2014.

[24] Ross, 2013, above n 18.

Aboriginal lands. That is, there is considerable continuity of non-urban residence despite rising urbanisation.[25]

This complex demographic profile provides a challenge for discussions about governance, future need, aspirations, and development capacities. It implies that levels of socio-economic disadvantage may remain high without sustainable development that transcends generations. It also creates a benchmark against which the impact of any developmental decisions and future actions associated with them may be measured. A major governance challenge for Indigenous Australians will be how to accommodate development growth and a burgeoning youthful profile. The urbanisation of populations creates further complexity in that there is a need to consider governance for those living in urban locations in terms of their connections across and between cities and other urban areas, as well as to the communities and locations of the origins of their families.

Other development challenges that have implications for governance are, paradoxically, the products of success. Increasing numbers of Indigenous groups across the country are securing land and native title rights, extending the bases of their authority, negotiating resource development and regional partnership agreements, and establishing enterprises. As a consequence, they face the challenge of managing land and natural resource endowments and the daunting task of trying to generate effective internal forms of self-governance to promote sustained social and economic development.

Patrick Dodson captured this dilemma when he noted that: 'The challenge for traditional owners, like the Yawuru, is how do we, as a people, leverage our native title rights so as to promote our own resilience and reliable prosperity in the modern word?'.[26] This is a different governance task from that involved in securing rights in name only. As Neil Sterritt points out, the challenge in all this for Indigenous peoples 'is not only to gain more control over their own affairs, but to find ways to make that control meaningful'.[27]

A second source of the turn toward governance in Australia is the need for funding and other resources. Indigenous groups with ambitious nation-building and sustainable community-development agendas are being faced with reduced government program and grant support. They need to attract capital, to move from welfare dependence to economic activity, to build relationships with other economic players and to deal with other jurisdictions. They also often need to persuade their own members to remain in their communities, to invest time, energy, and ideas there, to regenerate social structures and languages, and to expand or revive subsistence activities. All of this requires Aboriginal and Torres Strait Islander peoples to reconsider their own governance structures and capabilities. The result is that governance has joined socio-economic development near the top of some groups' lists of concerns and thrown up a number of challenges for them.

As Indigenous groups and their organisations continue to replace outsiders' agendas with their own self-determined priorities, they are often confronted with the reality not only of external funding limits but of the divergence between their priorities and those of funders. In addition, many groups have recognised the difficulty and incongruity of governing in the name of self-determination while

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[25] J Taylor, *Social Indicators for Aboriginal Governance: Insights from the Thamarrurr Region, Northern Territory*, CAEPR Monograph no. 24, ANU E Press, Canberra, 2004.

[26] Smith, 2012, above n 12, p. 13.

[27] N Sterritt, *First Nations Governance Handbook: A Resource Guide for Effective Councils*, prepared for the Minister of Indian and Northern Affairs, Ottawa, Ontario, 2001, p. 9.

remaining substantially dependent for operating funds on decisions made by external governments that may be serving other interests.

Growing numbers of Indigenous Australians are recognising the need to generate revenues and resources of their own and to ensure that these are well-managed. While some groups and organisations are more involved in this than others, it has led to massive and diverse trialling of governance and development initiatives across the country. In the process, people have discovered the significance of governance as a critical factor in promoting cultural resilience and delivering development outcomes.

A third factor in the turn to governance since the 1970s has been the explosion of new intercultural institutions of governance, often because of government policy or legislative requirements for legally incorporated bodies to receive funding, services or infrastructure, or to hold forms of land title. Some of these incorporated organisations have been formed not only as a result of external pressure but also under Indigenous initiative at local, regional and national levels. Today there are over 5,000 such formally incorporated organisations in Australia[28] under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth) (*CATSI Act*), the mainstream *Corporations Act 2001* (Cth) and a range of state and territory legislation. These operate alongside a multitude of informal consultative mechanisms such as committees, working groups, reference groups and taskforces in communities (many of which have been created by governments to pursue a service delivery agenda). The proliferation of organisational activity has bought issues of effectiveness, legitimacy, accountability and decision-making authority to the fore; along with contestation over how related standards should be defined and assessed. It has also resulted in a heavy governance workload for Aboriginal and Torres Strait Islander community members, many of whom work on a voluntary basis.[29]

Another factor in the turn toward governance in Australia has been research itself. In the USA, research generated over the last twenty-five years by the Harvard Project on American Indian Economic Development and its partner organisation, the Native Nations Institute at the University of Arizona,[30] has shown that the form and quality of Indigenous governance (assuming substantial and meaningful Indigenous jurisdiction), is a powerful predictor of success in economic and community development. Research in Canada and Aotearoa (New Zealand) suggests similar conclusions. Australia research has also identified the particular conditions and importance of practically effective and internally legitimate governance in realising similar outcomes. Today, a

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[28] See Reconciliation Australia, '1.3 Governance in Aboriginal and Torres Strait Islander organisations. Reconciliation Australia Governance Toolkit', http://www.reconciliation.org.au/governance/toolkit/1-3-governance-in-indigenous-organisations, accessed 21 July 2014.

[29] Governance mapping carried out by the Central Land Council in a Central Australian community of 650 people (of whom 240 are adults over 24 years of age) documented over 20 locally-based committees, boards, councils, working groups, and reference groups, and 11 regionally-based committees operating in the community. Over 106 Aboriginal adults were doing work of governing on those consultative mechanisms; in other words, approximately 45% of the adult population. Over a single year, this community recorded 282 visits from public and private-sector agencies, with the total number of official 'visitor days' for the year (days stayed in the community) being 1,959. This is a heavy governance workload for such a small community, but of a mostly consultative kind, with little genuine decision-making powers or direct control over resources; R Chapman, 'Yakarra-pardija-pina: Insights from a developmental approach to rebuilding governance in Aboriginal communities', paper produced for the Lajamanu Community and Central Land Council, 2014.

[30] Harvard Project, 'The Harvard Project on American Indian Economic Development', http://hpaied.org/, accessed 21 July 2014.

growing number of projects and initiatives[31] are contributing to a baseline of robust evidence about what works and what doesn't work and why.

While stories of governance disasters and deficit still dominate far too many media and politicians' discussions of Indigenous issues, new stories of resourcefulness, innovation, and success — as determined by Indigenous peoples themselves — are surfacing across the country as evidenced in Reconciliation Australia's Indigenous Governance Awards. Research has played a valuable part in documenting these success stories, and analysing the underlying factors involved so that practical insights can be more widely disseminated.

7.   Research – the concept and practice

In its broadest sense, the word 'research' includes the steps used to gather and analyse data, information and facts to increase the stock of knowledge and understanding of a topic or issue. Approaches to research depend on epistemologies (theories of knowledge),[32] which vary considerably both within and between research disciplines, and accordingly, across societies.

As hosts of the Forum we are sensitive to the history of western epistemologies whereby research is sometimes seen as an adjunct of colonisation, with little knowledge exchange or consideration of local systems of knowledge and has the potential to marginalise Indigenous governance knowledge and related sets of expertise:

> *At the very least, Ngarrindjeri leaders argue, research should not drain scarce Ngarrindjeri resources and support the continuing exclusion of Ngarrindjeri voices and expertise from the researching, policymaking and management spaces.*[33]

Today, many Indigenous groups are negotiating their own research agreements and prioritising the governance issues they want researched. Increasingly, such research is being conducted within a framework of applied action-learning, a form of systematic inquiry[34] involving the practical application of evidence[35] to real-life problems. An action-learning research mode allows for more informed change, and at the same time is informed by that change. It has led to innovative methodologies and collaborative research partnerships, where research is able to make practical contributions to Indigenous governance priorities and initiatives.

One aspect of a decolonising collaborative framework for research asks all partners to work together in an ongoing discussion about local research agenda, about what kinds of data are needed, how that data can best be obtained, about ownership of data, and how application of research findings can add value to local governance initiatives.

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[31] Responses to the forum survey have documented many research and governance development initiatives currently being carried out around Australia, along with valuable information on practical tools and resources. This information will be collated and available for forum participants and also integrated into the final report from the forum.

[32] Wikepedia, 'Epistemology', http://en.wikipedia.org/wiki/Epistemology, accessed 22 July 2014.

[33] S Hemming, R Daryl & S Berg, 'Ngarrindjeri futures: negotiation, governance and environmental management', in S Maddison, M Brigg, & S Cornell (eds), *Unsettling the settler state: creativity and resistance in indigenous settler-state governance*, The Federation Press, Annandale, NSW, 2011, p. 96.

[34] Wikepedia, 'Scientific method', http://en.wikipedia.org/wiki/Scientific_method, accessed 22 July 2014.

[35] Wikepedia, 'Science', http://en.wikipedia.org/wiki/Science, accessed 22 July 2014.

8.   The coverage of governance research

The survey has revealed a small but growing body of Australian research into governance,[36] It covers such diverse topics as:

- Group/nation case studies: often through ethnographic research with different Indigenous groups, nations and 'communities' in urban, rural and remote locations.
- Culturally-based models and structures: examining the Indigenous principles which inform governance solutions at diverse levels of social scale, cultural diversity and geography; emerging intercultural designs and areas of competency; conditions that promote or undermine cultural legitimacy.
- Organisational governance: investigating roles and responsibilities; mechanisms for decision-making, accountability, representation and communication; relationships between governing members, management and staff; institutional forms; legitimacy and effectiveness; and corporate financial governance.
- Mapping community governance: identifying the governing processes, agents and structures (formal and informal, Indigenous, government, private sector, NGOs) within a community, and the cross-cutting relationships, powers, functions, networks and alliances that constitute the community's own governance environment.
- Governance histories: documenting the historical timelines, influential individuals and events (legal, political, cultural, leadership, strategic and policy) that have helped determine current governance arrangements and challenges.
- The wider 'governance environment': identifying the surrounding influential players, factors and relationships (e.g., at regional, state, territory and national levels) which impinge directly on local Indigenous governance.
- The 'governance of government': focusing on the nature, strategies and consequences of government's own modes of governance in Indigenous Affairs, including its changing power, policy, service delivery and funding institutions and goals across different jurisdictional levels.
- Governance evaluations: identifying meaningful criteria and principles for assessing what constitutes effective and legitimate Indigenous governance; self-evaluation and review of specific components of governance and strategic risks; identifying innovative practice and transferrable lessons; the creation of governance-development actions plans.
- Leadership for governance: tracking the governance role of particularly influential individuals; leadership networks; areas of gendered expertise; practices of leadership for governance; the impact of changes in leadership and succession on group viability, and the life cycles and effectiveness of organisations.
- Resource governance: the cultural, human, natural, economic, technological, financial and other resources and assets that Indigenous people need, have access to, or control over; how resources are made available, governed and used, and the effects of that; the extent to which governance arrangements contribute to, or impede, sustainable economic development.
- Demographic profiles for communities and regions: collation of available demographic and socioeconomic indicator data to provide an information baseline for decision-making and further analyses over subsequent years.

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[36] This research sits alongside a larger body of research that has been conducted with and by Indigenous peoples in the USA, Canada and New Zealand, some of which is usefully summarised in the Smith 2012, above n 12.

- Industry sector governance studies: such as health, natural resource management, government policy frameworks and program implementation, mining agreements, native title determinations; 'eGovernance' and telecommunications.
- Decision-making, dispute management and consensus-building: appropriate decision-making processes as one aspect of dealing with disputes and the principles and processes involved; dealing with complaints about governance; culturally-based mechanisms, knowledge and skills; evaluation of a range of facilitative processes in dealing with disputes.
- Capacity development: identifying and delivering the capabilities and intercultural competencies required for building effective resilient and legitimate governance; community asset mapping of existing strengths and capabilities; the form and effect of public and private sector commitments and implementation; developmental and other frameworks for enabling Indigenous control and practical capacity for self-governance.

However, although governance research activities are growing and significant research has taken place, much more is needed across Australia to provide and longitudinal and comparative data in accessible publications to inform the broader governance context. The nature of this research will be discussed at the Forum and in addressing the results of the survey, but it seems reasonable to assume that additional research around any of the following governance related topics would be beneficial:

- achieving sustainable economic development;
- business and enterprise success;
- nation-building including developing governance capacity;
- the governance of governments;
- the financial costs of administering incorporated organisations relative to benefits;
- alternative administrative and governance practices that might better meet Indigenous expectations;
- alternative strength based processes for community facilitation of decision-making and dispute management;
- the implications of changing demographics for governance;
- gender implications;
- the governance of agreements and partnerships;
- the governance of cultural information, particularly local and regionally based archives including facilitating Aboriginal and Torres Strait Islander access;
- sectoral commonalities and differences in governance issues, including natural resource management and environmental governance;
- the role of governance and institutional design in determining the social and emotional wellbeing of Indigenous peoples;
- models of cultural competency and proficiency in complex intercultural environments;
- modes of decision making related to a range of governance arenas;
- the meanings of Indigenous disputes and implications for governance;
- financial governance;
- succession planning;
- the life cycle of organisations;
- eGovernance; and
- the kinds of development practice frameworks and tools which are effective for building Indigenous governance.

9.   Making the research count: collaboration, resources and capability

Designing and strengthening governance is essentially a developmental issue, as is identifying the most useful research for Indigenous communities; both can be about institution building, and people mobilising their own leadership, knowledge, competencies and resources. Such work is incremental and takes time. What matters for securing resilient, effective governance is that the process is the product of informed Indigenous choice and builds practical capacity. Those conditions can be facilitated through the provision of robust research evidence and practically relevant tools.

Fundamental to governance development are human capabilities; that is, the range of things that people can do, or be, in life. This means that a developmental approach to building governance is strength-based and directly linked to the capacities, expertise and experience of people and organisations. Central to this perspective are governing competencies that enable hard-won rights to be translated into real outcomes for people on the ground, and that deliver well-organised action and genuine decision-making control to Indigenous people over issues of importance to their lives and future communities.

Research has identified a great need amongst Indigenous groups and organisations for access to quality governance information, relevant tools, and experienced professional advice to assist them in their governance-development initiatives. Whilst expertise and resources are expanding slowly, the demand far outweighs the supply.

Some of the issues and approaches to capacity-building and training which may require greater attention and resources include:

- the development of approaches that prioritise Aboriginal and Torres Strait Islander priorities and capabilities;
- ensuring trainers have experience and understanding of the governance contexts and challenges facing Indigenous groups and effective inter-cultural communication skills;
- the development of capacity mapping and governance development tools;
- consideration of local conditions in governance training and education;
- flexibility in program criteria, course structures and funding requirements;
- consideration of the diversity of Indigenous learning styles and communication needs;
- place-based 'on the job' training and capacity development;
- training which builds the capacities of government staff and Indigenous peoples in negotiating with each other;
- a focus on programs which avoid reliance on one-off workshops, courses and interventions;
- sustained follow-up support and mentoring;
- locating training and capacity development within longer-term strategic and business planning;
- recognition by governments of the need for coordinated funding and support; and
- the development of enabling government policy frameworks.

Approaches that are mainly technocratic and focus on corporate and external financial accountability tend to abound, but these are coming up short in actually delivering sustained improvement in capacity for effective governance. Current efforts to address these gaps and

weaknesses, some of which have been identified by survey respondents, will be discussed at the Forum.

10. Some focus questions

The AIATSIS-AIGI Forum affords us with the opportunity for a two-day conversation that will focus on governance research and resources, the linkages between them and Indigenous initiatives on the ground and relevant practical and policy issues. The following questions capture the issues we hope to consider through real life examples:

1. What is currently happening in governance research across the country in a diverse range of groups, jurisdictions and locations?
2. Are there options for greater collaboration and collective impact around these issues, and if so, how might they be accomplished?
3. How can research identify and share what is self-determining, innovative and promising in Australian Indigenous governance?
4. What is research contributing by way of practically useful insights, tools and resources that Aboriginal and Torres Strait Islander peoples can apply in different contexts, to rebuild and strengthen their governance arrangements?
5. Are there particular gaps in governance research and practical resources to date that might be considered in the future? Are there specific Indigenous needs and priorities related to these?
6. Is there a future research and communication agenda emerging from the Forum that could yield practical benefits and insights for Indigenous people and those working with them?