



The Devolution Dilemma

Discussion Paper prepared by:

Anthony Cowley, PHD Candidate

Cowley.anthony@gmail.com

+ 61 418188 536

Associate Professor Pascal Tremblay

Pascal.tremblay@cdu.edu.au

+ 61 8 8946 7256

For the Australia and New Zealand School of Government (ANZSOG) ahead of the First Nations Public Administration Conference in Brisbane - March 2023.

February 2023

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Executive Summary

Governments and public servants need to enact the requirement to change the way public servants work with Aboriginal and Torres Strait Islander people and communities under the Closing the Gap (National Agreement 2020), Clause 18. However, as with any significant change agenda, there are a number of real and perceived risks and barriers to 'working differently'.

In exploring solutions for all Australian governments and public services to overcome these challenges there are distinct roles for First Nations/ Indigenous public servants and roles for significant intermediaries involved in service delivery, and in particular First Nations corporations. Underpinning all actions is a clear imperative to incorporate First Nations voices into government policies and servicing.

The literature review (Part 1 - p.8) establishes for all stakeholders, an acknowledgment that limited guidance exists for bureaucrats on how to handle broad reforms such as self-determination and devolution. This is in large part because so many topics, government perspectives, community views and public opinions intersect and confound solutions.

There are a number of barriers that confront public servants when they seek to partner and share decision making with Aboriginal and Torres Strait Islander Peoples and their organisations. Some challenges highlight structural issues which require profound changes in the ways bureaucracies engage with community. Other barriers reflect the day-to-day experiences of public servants attempting to address the devolution agenda, and the efforts, initiatives and experiments they have engaged with – something that they are themselves in a better position to inform.

Interviews conducted with current and former senior public servants and managers of First Nations service organisations identified six specific challenges (Part 2 - p.49) including: the accountability of systems, organisations and leaders; partnerships and the capacity of entities to partner; power and decision making; Identifying and engaging with the right partners; cultural change of organisations; and data availability and quality.

Potential solutions are explored with examples of different approaches that have been put in place by various levels of government to increase participatory approaches to policy and service delivery promoting engagements based in localisation, co-design and co-production.

Essentially while many of these challenges may not be easy to address, valuable changes can happen when good people commit to making a difference in an informed way.

Context

In 2005 the Aboriginal and Torres Strait Islander Social Justice Commissioner, Professor Tom Calma AO, in his [Social Justice Report 2005](#), urged Australian governments to commit to achieving equality for Aboriginal and Torres Strait Islander people in health and life expectancy, within 25 years.¹

In November 2008, the Council of Australian Governments (COAG) approved the [National Indigenous Reform Agreement](#) which set out six Closing the Gap targets:

These targets were:

- close the gap in life expectancy within a generation (by 2031)
- halve the gap in mortality rates for Indigenous children under 5 by 2018
- ensure access to early childhood education for all Indigenous four year olds by 2013
- halve the gap in reading, writing and numeracy achievements for Indigenous students by 2018
- halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020
- halve the gap in employment outcomes between Indigenous and other Australians by 2018.

These targets guided policy development to close the gap in Indigenous disadvantage across Australian Government departments, and for State and Territory governments including the National Indigenous Reform Agreement (NIRA) and the National Partnership agreements, which committed governments to invest resources to reduce inequities in these areas.

In December 2018 COAG committed to ensuring that the finalisation of targets and implementation of the Closing the Gap framework occurs through a genuine, formal partnership between the Commonwealth, state and territory governments and Indigenous Australians through their representatives. A formal Partnership Agreement on Closing the Gap, signed in March 2019 by COAG and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (Coalition of Peaks), recognised that the contributions of First Nations Organisations and peoples are integral and necessary at all stages of policy and implementation. The Partnership Agreement *“embodies the belief of all its signatories that shared decision making with Aboriginal and Torres Strait Islander community-controlled representatives in the design, implementation and monitoring of the Closing the Gap framework is essential to achieve their shared goal to close the gap in life outcomes between Indigenous and non-Indigenous Australians.”*

On 3 July 2020, the First Ministers of all Australian governments and the Coalition of Peaks endorsed the refreshed National Agreement on Closing the Gap. Implementation Plans have been developed by each party to the National Agreement. Ostensibly developed in partnership with representatives of First Nations organisations, they set out how policies and programs are aligned to the National Agreement and what actions will be taken to give effect to the priority reforms and achieve the socio-economic targets.

The Priority Reforms of the refreshed 2020 National Agreement on Closing the Gap are:

- Priority Reform One - Formal partnerships and shared decision-making
- Priority Reform Two – Building the Community-controlled Sector
- Priority Reform Three – Transforming Government Organisations
- Priority Reform Four - Shared Access to Data and Information at a Regional Level

¹ <https://www.closingthegap.gov.au/resources/history>

This research paper was commissioned by the Australia and New Zealand School of Government to explore what barriers and opportunities will most impact Australian Governments as they seek to fulfill their commitments to the refreshed National Agreement on Closing the Gap 2000 – as identified and articulated in both the academic literature and by managers of First nations organisations and senior current and former public servants involved in designing policies and initiatives aiming to contribute to the Indigenous devolution agenda, defined in the literature review section.

Introduction - Rationale

While in recent years the ‘policy winds’ have favoured the concepts of service localisation, co-design and co-production, there are a number of barriers that confront public servants when they seek to partner and share decision making with Aboriginal and Torres Strait Islander Peoples and their organisations. This includes the need to operate within public service structures involving ministerial accountability, audits, procurement and grant rules and regulations – safeguards that govern the expenditure of and accountability for public funds. The results of these type of ‘safeguards’ often mean that public servants are incentivised or trained to become risk averse and deliver programs that comply within a formal structured rules-based system. This does not usually favour program delivery that is localised or devolved for communities to control.

While governments have long attempted to address the barriers to effective collaboration with Aboriginal and Torres Strait Islander Peoples, including initiatives such as the COAG place-based trials in seven regions in 2002-2007, and the Remote Service Delivery initiative in 29 locations 2009-2014, there is little evidence to show that they have led to the system changes needed in Indigenous servicing to Close the Gap in Indigenous life outcomes. The deployment of both soft and hard gate policies and approaches warrant further exploration. For example, some procurement policy and grant policies have provided a structure to preference First Nations organisations as providers of services as a potential approach. Where changes have been implemented and are working, or have previously worked, they should be identified, captured and considered for expansion to other jurisdictions and contexts.

This paper considers the barriers and solutions that may be relevant for further exploration and consideration for public servants working in this policy space. As expected, some of these barriers are structural and point at necessary and profound changes in the ways bureaucracies engage with the variety of communities, which the academic literature has been examining, researching and emphasising for considerable time. Other barriers have to do with the day-to-day experiences of public servants attempting to address the devolution agenda, and the efforts, initiatives and experiments they have engaged with – something that they themselves are in a better position to inform.

Purpose

- The purpose of this research paper is to assist governments and their employees to understand some of the real vs perceived risks and barriers to enacting the requirement to change the way public servants work with Aboriginal and Torres Strait Islander people and communities under the Closing the Gap (National Agreement 2020), Clause 18.
- To highlight how some other sectoral and agency specific policies emphasise the imperative to incorporate First Nations voices into government policies and servicing.

- To help all stakeholders acknowledge that limited guidance exists for bureaucrats on how to handle broad reforms such as self-determination and devolution, in large part because so many topics, government perspectives, community views and public opinions intersect.

Approach

The paper is unusual in its efforts to embrace relatively dissimilar perspectives on the devolution agenda, and combine the knowledge extracted from those different sources.

- A focused thematic literature review connecting important threads identifying structural and other barriers as well as implementation challenges associated with the First Nations devolution agenda, attempting to assemble a coherent picture of the conditions for progress.
- Interviews with current and former senior public servants and managers of First Nations service organisations around their perceptions of challenges and solutions to the devolution dilemma.

The **literature review** takes a systemic look and explores the barriers and challenges stemming from a number of distinct but converging academic literatures and ideas that underpin policy developments in Australia. The discussion is organised along the following key topics:

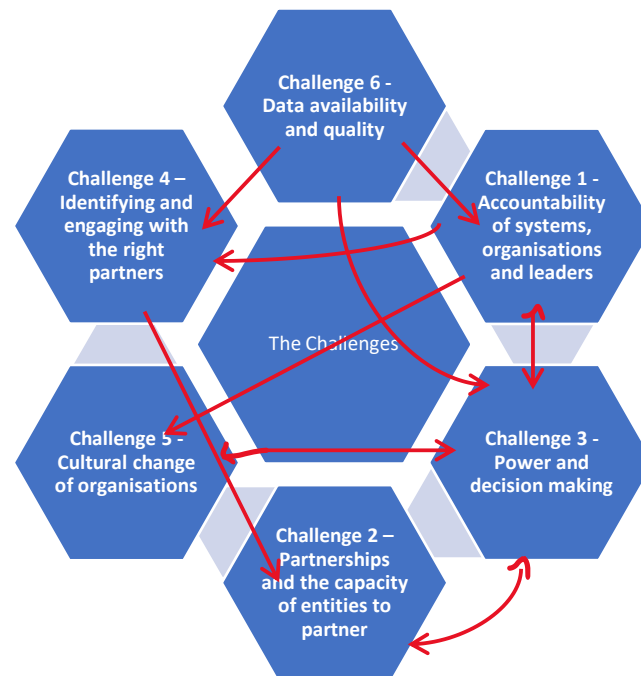
- The political economy of First Nations self-determination
- Governance perspectives on self-determination and implications for devolution
- Co-design: Its potential, some interpretations and articulated limitations regarding its capacity to drive devolution
- The parallel literature on bureaucratic decentralisation related to service provision
- The recent case of the Northern Territory Local Decision Making policy.

The **interviews section** consists of an overview discussion of yarns with 14 senior managers of some of Australia's most prominent community-controlled organisations and current and former Senior Executives of Australian Government agencies with responsibility for significant Indigenous social and wellbeing services. Drawing on their extensive experience is critical to inform the identification of barriers as well as creative solutions that can be, and in some instances have been, deployed to ensure the actions and efforts of public servants are best serving First Nations communities, supporting those communities to achieve the best outcomes possible for continued development and prosperity.

The discussion proceeded around theme categories² from which specific issues could be emphasised by the interviewees, a sense of priority extracted (depending on the relative prevalence they attached to those themes within and across the interviews), as well as the nature of connections between them. Figure 1 below describes the selected themes and some prevalent interrelatedness arising from conversations with interviewees.

² Selected by the Steering Committee coordinating this paper.

Figure 1 - Interrelated themes representing the major challenges that governments will face in fulfilling their commitments to the National Agreement on Closing the Gap. - As identified by 14 senior managers of prominent First Nations and community-controlled organisations, as well as senior executives of government agencies with responsibility for Indigenous social and wellbeing services. Eleven of the fourteen survey respondents were Indigenous with an approximately balanced representation of women and men.



The **Synthesis section** reconciles the main elements of the literature review with themes emerging from the interviews with executive officers. This reconciliation gives an overview of what is known and what is understood to be the biggest challenges public servants face and how we can pragmatically plan for the known hurdles in meeting our commitments to the National Closing the Gap Agreement.

Part 1: Literature Review

This brief review aims to summarise a few influential academic interpretations of the challenges and barriers to devolution with regard to progressing the National Agreement on Closing the Gap (2020). These contributions largely preceded the latter but were selected for their consistency in the identification of many fundamental issues that prompted key scholarly and policy principles nowadays used to describe the notion of Indigenous self-determination in Australia and anticipated developments. Yet, these key papers have been selected not for being the first to develop those ideas, but rather for the dependable guidance they provide while refining the formulation of formerly elusive ideas, connecting prior existing concepts, assisting the formulation of emerging themes (explored sequentially in the sections below) while advocating an adequate terminology which has become accepted within the Australian context.

A preliminary examination of analogous and antecedent international narratives related to First Nations self-determination has for instance shown that the academic literature developed in the last two or three decades has encompassed key topics and ideas necessary for the current short review. The few authors referred to in the review below were unequivocally familiar with, and inspired by, prior North American and New Zealand research which they explicitly refer to. Hence, for brevity and clarity, the review focuses on those significant contributions which had a recognised influence in Australian academic discourse, public opinions and policy developments. They serve as a crude guide into the recent evolution of ideas relevant to this paper and have paved the way to current public discourses and policy developments.

The political economy of First Nations self-determination: general perspective on structural and implementation challenges

This review focuses on academic interpretations of multi-faceted challenges and diverse barriers associated with the design and implementation of policy reforms needed to facilitate Indigenous self-determination. It does not intend to review the long and tortuous political road that has led there (although history is undoubtedly relevant in understanding the challenges) but aims in this section to extract and report on a few key principles. It is expedient to focus on a very small number of authors who accessibly consolidated research on those questions in the last two or three decades and whose work remains pertinent. The review cites profusely the work of Smith (2002, 2008) as a starting point espousing the basic model, she developed by combining ideas arising from key influential sources prior to 2002. That work incorporated research and developments pertaining to Native American Indian Tribes reported within U.S. Harvard project cases (see Cornell and collaborators 2000) as well as parallel thinking and evidence from Canada (e.g. Hylton 1999) – adding those to congruent findings arising from assorted reports from Royal Commissions (1991, 1996) and from House of Representatives Standing Committees related to Aboriginal Affairs (1990, 2000, 2004). This integration work has resulted in descriptions of issues and terminology since generally adopted as well as an analysis of likely implementation challenges that have retained their pertinence for both academic research and policy development.

Although there is undoubtedly a large body of alternative academic contributions that have examined various aspects of First Nations politics and socio-economic advancement, and contributed to the contemporary sense of the ineluctable political necessity of greater self-determination surrounding First Nations (in Australia and elsewhere), it is clear that their articulation

preceded the nowadays wide-ranging acceptance of the need to incorporate Indigenous rights within political affairs generally (importantly prior to the recent discussions about the need for a 'voice' around constitutional matters or the formulation of a National Agreement). While the latter developments constitute the present-day backdrop for this paper, it is not intended to re-examine the events that led to their instigations as well as ongoing debates about their merits. This is why this brief review focuses instead on a few selected writings that reflect well the issues. The selected authors have themselves examined the practical institutional transformations, design process modifications, implementation barriers and anticipated political challenges likely to impact on the achievement of self-determination ideals.

This first section of the review simply shows how the key topics of devolution, administrative decentralisation, governance and co-design are closely inter-connected to contemporary understanding of the basis for self-determination, despite having arisen from different disciplinary interests or intellectual traditions.

Inspired by similar research including case studies and ongoing developments originating from Native American Indian Tribes, Smith (2002) undertook a valuable synthesis of several prior and converging government reports and inquiries, and summarised previous academic discussions on topics surrounding First Nations devolution. This work paved the way for current policies and broadly resonates with ongoing conceptual developments surrounding First Nations devolution, even if the gap between intent and implementation remains considerable. She suggested a suitably broad and adaptable definition of 'self-determination' which focused on decentralised decision-making and identified plausible necessary conditions for productive implementation:

Self-determination [was] defined to mean Indigenous people having control over the ultimate decisions about a wide range of matters including political status, and economic, social and cultural development, and having the resources and capacity to control the future of their own communities within the legal structure common to all Australians. (Smith, 2002, p.vi)

It must be noted that the 'range of matters' considered is in theory not pre-established, is negotiable and should reflect jointly endorsed views about a logical sequence of priorities for devolutions (actions, decisions and control), where progress in one domain should inform the next and influence existing capacity. But the priorities at any point in time, the means and the strategic avenues chosen to address them are context-, situation-, and community-specific. Typically, when 'designing' a pathway towards self-determination, the upstream authorities (government levels) relinquishing overriding control that have been 'in the way' of local or First Nations decisions must make room for incremental changes. This entails anticipating how to deal with diverse aspirations arising from below (many sub-national levels must be considered, and will generally be led by First Nations parties). While governments must be ready to facilitate accord-seeking and practical solutions that will necessarily emerge from historical and ongoing value-related frictions, as well as address resources and wellbeing conflicts between groups (for which they will remain watchful and ultimately accountable for in the foreseeable future), it is unclear when full transfer of accountability will be achievable. The challenge of determining how to best design and implement that type of reform dilemma has never been fully resolved by research academics or practitioners, but some Australian implementations and attempts will be briefly discussed.

There are many structural difficulties that cannot be determined by logic or research yet play a critical role for implementation. For instance, a preliminary question carrying fundamental implications for any such reform has to do with the pace of implementation, as they create differing expectations for governments, bureaucracies, communities, influential stakeholder groups (pro- and

anti- devolution) and the general population about success, failure, feasibility and overall political wisdom of the reform. In practice terms, the implementation quandary resides with the need to weigh speed against preparation and embed sufficient flexibility to coordinate and assist dissimilar regional or local populations characterised by different levels of readiness. Both upstream and downstream political authorities, whether mainstream government or First Nations, will stumble upon a notional trade-off between speed and breadth. They will both encounter conflicting desires to a) address the widest possible variety of perceived gaps or failures affecting given communities or regions at once (arising because those gaps are generally intrinsically inter-connected and some stakeholders will want to take advantage of the devolution impetus to address as many as possible) and b) address pragmatically a few manageable aspirations and focus on a restricted number of domains at one time (to make best use of limited or slow resource transfers and increasing local learning capacity. The latter fits well the bureaucratic impulse of assembling and aligning success stories by focusing on low hanging fruits and addressing implementation bottlenecks sequentially within a pre-established government planning framework. Such key implementation contradictions are experienced in almost all decentralisation efforts. The only way forward is to tackle them through negotiations which might lead to excessively slow progress, backtracking and shared frustrations. It is clear that there are serious limitations to governments' linear planning processes, and that the challenges to devolution can never, as they emerge, be considered as fully resolved since communities themselves learn and evolve.

If the pragmatic necessity of conceptualising self-determination as a political process capable of addressing 'gaps' in indicators identified by various governments has long been conjectured by thinkers on the subject, it has also led to difficult questions, both conceptual and practical, regarding what a comprehensive devolution process might entail. In particular, it always raised the conjectural question of 'who should lead' any resolution of emerging challenges without undermining the essence of genuine devolution – and how to manage easily misrepresented perceptions around relative power.

Even when attempting to focus on the practical achievability of devolution (for instance its ideal policy scale and scope, the ideal distribution and sequence of decisions and its processual feasibility), this has raised highly conceptual questions for political economists that remain relevant today and can only be answered by observing and learning from ongoing practice. In that sense, many of those questions appear unlikely to generate universal answers due to structural place-based differences, which local experimentation and time can inform, as Smith (2002) anticipated when she asked:

- what constitutes the most effective and relevant Indigenous boundaries and units for devolution? which anticipated the now commonly asked "who constitutes the 'self' in self-determination?"
- Is there already or is it possible to identify a 'geography of devolution' in the form of regionally dispersed, layered community governances which "combine both community and regional elements which could form the basis to design and implement a workable framework for jurisdictional devolution in Australia"?
- How can the possible tension between the core principle of self-determination (the right of Indigenous people to make choices among a spectrum of social, political and economic possibilities) and the necessity to operate within the ambit of the Australian legal system be managed?

A key political premise well-understood today underpinning such questioning is the pronouncement that “such a process of devolution would have to involve Indigenous Australians at the level of policy design as well as service delivery” (Smith 2002, p.1). Hence, references to ‘implementation’ in the current review reflect researchers’ intentional focus on the policy design process and less on operational execution matters – although public servants necessarily emphasize the latter (as appears in the interviews in subsequent sections – so the current paper can attempt to uncover how they can better interconnect).

The policy design dimension clearly redirects the dynamic challenge of undertaking effective policy devolution towards ensuring processual participation, representation, consistency and decision-making legitimacy during that phase. It brings forth such inter-related questions as: How to bring the appropriate parties to the table, give voice, legitimise, resource, address capacity deficits and develop suitable political narratives that can support and strengthen existing community governance structures and uphold optimal transparent government processes – rather than attempting to develop pre-specified policy recipes or rebranding from above and label them ‘reform’. Many of these questions anticipated by political economists have become customary elements of discussions surrounding present self-determination agendas, implementation challenges and ongoing questioning of how to progress devolution.

Although not intended to be a major focus of this review, it is important to at least mention the particularly convoluted structural issue of how to manage the ‘geography of devolution’ as labelled by Smith (above) in the context of Indigenous self-determination and which affects deeply the pragmatic interpretation of all main topics discussed further below. It refers to the selection of units towards which decentralisation is hoped to be engineered and which can neither be simply pre-determined nor taken for granted when two different realms and logic interact.³ The first has to do with identity politics which entails ascertaining which communities (or community levels or groupings) can be distinguished as legitimate⁴, meaningful to those seeking self-determination and/or holding sufficiently homogenous preferences or possessing the required capabilities to bargain, to deliberate and to articulate shared positions.⁵ The second type of rationality results from existing bureaucratic arrangements which are influenced by considerations of efficiency (administrative delivery scales), related practicalities (spatial distribution and infrastructure) and historically established political or administrative arrangements.

³ This is an example of where strict decentralisation and devolution might differ. That issue is probably less overwhelming in the context of purely administrative decentralisation where the State can make pragmatic top-down decisions to restructure the bureaucracy and transfer unilaterally decision-making across administratively selected sub-levels. But it is fundamental when identity and aspirational unity are considered, hence community-as-units and political landscapes are uneven along a wide number of dimensions.

⁴ Fortunately, the United Nations Declaration on the Rights of Indigenous Peoples, to which Australia is a signatory, has made it clear that Indigenous Peoples determine their own membership - not governments. Obviously, disputes will occur but where they do, dispute resolution should be attempted not simply withdrawing and using as excuse that First Nations parties cannot agree over their representation.

(https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf)

⁵ These assessments would be intricate and significantly different across more urban or mainstream Indigenous identities and those associated with customarily-held land and where tribal authorities play greater roles, involve multiple overlapping decision mechanisms across domains, and must consider historically-forced displacements, etc. These issues are here candidly acknowledged as necessarily playing a role to inform any place-specific devolution design process and implementation scale. Mechanisms aiming to consider those critically different contexts have been incorporated in specific cases described in some policy implementation approaches (see part E below) that remain fundamentally difficult to generalise.

The structural challenge of attempting to redesign and connect local and self-determined decision-making communities with prevailing administrative hierarchies and to synchronise the relationships between them is therefore the background objective of the key reform. As a statement of intentions or an umbrella policy originating from the Federal Government involving Australian states and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, the recent National Agreement on Closing the Gap (2020) implicitly endorses the need to consider and pursue many levels of implementation despite its unavoidable top-down design undertone. Hence it sets as an initial priority reform (number one) the need for ‘formal partnerships and decision-making’ and juxtaposes (as number two) the desire to ‘building the Community-controlled sector’, which must be done from the bottom-up. In that sense, the narrative encapsulates a general intent to allow co-design initiatives to snowball into a variety of place-specific institutional devolution experiments adapted to the local and/or regional realities – but is reluctant to specify how this should be done; as it is a matter for bargaining between parties and vertical levels. Although the Priority Reforms narrative specifies actions to be taken within the remit of governments, the nature and manner of potential administrative changes, the scope of fundamental resourcing determinations and the course of political alterations will emerge from negotiated agreements.

Akin to preceding literature and scholars who have explored the concept of self-determination, Smith (2002) anticipated the emergence of a fundamental tension (and possible conflict) between conventional conceptions of jurisdictional⁶ devolution as implying a premeditated and orderly ‘top-down’ process and the contrasting position that ‘workable and relevant forms of devolution can only be developed by first examining the nature of needs at the local level, as well as local preferences and circumstances, which are deemed to critically affect design and implementation’ (Smith 2002:3), let alone the fact that Indigenous groups will remain aware of how these aspects interact with their long-term political aspirations. Although this apparent dichotomy might appear to some as an insurmountable discrepancy around the devolution process, it must be conceded that steady devolution in fact requires that both decision-making parties concurrently engage in good faith, endorse the need to ‘self-transform’ and demonstrate a willingness to meet somewhere in-between in many instances, but not necessarily. Generally, parties must be ready to absorb inevitable political uncertainty) when negotiating the design process. It is indeed what the National Agreement endorsed by the Coalition of Aboriginal and Torres Strait Islander Peak Organisations appears to seek by setting a framework providing impetus to develop local approaches.

Concerns over intrinsic capacity inequalities were also recognised in the academic literature which warned against the likelihood of unbalanced power that could plausibly lead to prejudiced, deceptive or insincere policy transformations. This would eventually lead to unfair outcomes unless the transfer of responsibilities incorporated downstream transfers of capabilities and power, in particular through support for governance and capacity especially around communities that had little prior involvement in dealing with complex decision-making, as well as negotiation, resourcing and services delivery responsibilities. These aspects are further discussed in the sections on ‘governance’ and ‘co-design’ below.

⁶ The term ‘jurisdiction’ is interpreted by Smith in accordance with its common-sense meaning as ‘the right, power, or authority to administer the law by hearing and determining controversies’; ‘the extent or range of judicial or other authority’; and the ‘territory over which authority is exercised’. She claims that ‘jurisdictional authority may be exercised over public institutions, territory, expenditure and revenue-raising capacities, and functional and policy areas such as law-making, taxation, health, housing, municipal services, education, economic development, social security and so on. Under Australian federalism, jurisdictions are multi-layered, with different kinds of power and authority differently distributed across levels; sometimes divided, sometimes overlapping and concurrent’ Smith (2002:3).

Some researchers and political economists have expressed cynicism and doubts about both the ability and willingness of existing governments and bureaucracies to genuinely reassign decision mechanisms and power to devolved units for a number of disparate reasons that this paper considers indirectly and which surface sometimes in the interviews analysed below. Given the wide array of positions found within this literature review on the feasibility, barriers to and solutions for pursuing the gradual implementation of devolution steps to guide ongoing Indigenous political self-determination, it is sensible to limit the discussion by highlighting only a few key challenges. Although not necessarily universal, they constitute plausible reform barriers which have been described in the literature as particularly pertinent to First Nations devolution and regularly evidenced in specific case studies:

- **Internal bureaucratic resistance to change is likely and must be prepared for:**

This is the most recognised such barrier as many analysts have claimed that there are political, organisational and social theoretical limits arising when broad devolution agendas attempt to implement series of incremental decentralisation steps. These occur primarily because governments inevitably become increasingly reluctant to “transfer power and disrupt the existing bureaucratic balance of power among the units of government” for managerial reasons (Smith 2002:5). Several authors attribute this to a gradual fear of losing coordination oversight, bureaucratic risk-aversion and inertia, as well as the existence of a variety of notional political control thresholds (organisational apprehension of losing power, influence and/or authority) which are not necessarily ideological in nature but reflect the nature of government administrations and bureaucracies. References are routinely made to the structural and legal barriers preventing the mechanistic approach of government agencies, their ‘silo-ed’ determination of targets, outputs, and outcomes, their reluctance to tackle complex challenges which require collaboration which they cannot control and are not likely to impact on (or cannot demonstrate easily) in the short-term. The fact that formal authority resides within the formal delegation structures and is very difficult to delegate to a third party (increasingly so when considering transferring real decision powers externally to an alternative specific division or chain of decisions, to another agency or to an entity outside the government) means that profound structural and legal obstacles prevent agencies with mandated services delivery targets and responsibilities to simply pass those on in the current system.⁷

- **Resistance from local stakeholders, including sub-national Aboriginal groups, regional private enterprises, communities or regional authorities could occur and should be prepared for:**

Progression towards a broadly accepted key aspiration through incremental steps might also be threatened by various forms of local resistance and political unrest that could be triggered by perceptions (real or not) that some regions are disadvantaged in the process, that capabilities are

⁷ Although the review did not undertake an in-depth examination of progress in Canada, early steps towards the recognition of the existence of ‘distinct, rights-bearing communities’ underpinned by treaties and a system allowing for resolving perceived infringements to these ‘rights [which] must by law meet a high threshold of justification which includes Indigenous perspectives and satisfies the Crown’s fiduciary obligations’ has been put in place. Importantly this extends to the view that reconciliation and self-government ‘require a renewed fiscal relationship, developed in collaboration with Indigenous nations, that promotes a mutually supportive climate for economic partnership and resource development’. (In Principles - Respecting the Government of Canada’s Relationship With Indigenous Peoples; <https://justice.gc.ca/eng/csj-sjc/principles-principes.html>).

insufficiently or unevenly boosted, that progress is too slow, inconsistent and unbalanced between sub-national regions possibly due to both bureaucratic and community inertia. These voices might criticise the process, could be amplified by unavoidable future political cycle disruptions and might reflect specific local leaders being anxious that they might lose their relevance or authority, while remaining supportive of the aspirations behind the reforms.⁸

- **Doubts about the fundamental aspiration of governments to undertake comprehensive devolution will surface and need to be addressed as they arise**

The fact that various political contentions will materialise within the public, and among political commentators or intellectuals constitutes a political reality that must be anticipated and addressed to prevent escalating opposition. The depictions of resistance above referred to bureaucratic and downstream elites resistance, yet it must be recognised that. political manoeuvring enflamed by a variety of Ideological agendas will also arise from government leaders seeking to demark themselves from preceding and possibly unpopular views. Although government manipulation is difficult to evidence or generalise, it is clear that perceptions that politicians and governments at the highest levels 'don't mean what they say' are common. In the case of self-determination, the view that they might not fully aspire to genuinely implement self-determination and relinquish power or control over funding on ideological or self-interest grounds is commonly suggested within the literature and constitutes a possibly harmful (to the reform) perceptual barrier. It is not the aim of the current review to examine the conceptual basis for those assertions nor the strength of the evidence, but it is important to acknowledge the precarious nature of trust capital surrounding such institutional

⁸ This type of claim found in the literature refers to vested interests of local elites which apply to any decentralisation reform affecting negatively parties that were somewhat advantaged prior to the planned changes. A major OECD (2019) report (discussed further below) posits that a key universal benefit expected from decentralisation is that it might curb rent-seeking and corruption (p.117) while it observes that particularly poor regions might suffer in the process due to local elites taking advantage of change or resisting it (p.122). Critically, it cites the works of Devas and Delay (2006) and Crook (2003) in their discussion (pp. 123-4) of political challenges due to local elite takeovers and corruption that might compromise decentralisation benefits and incite predatory behaviour (they note this can occur at both the national and local levels). They present a table of various negative effects or political challenges which include 'local and central elite takeover', low political participation, non-solidarity between regions that can create dissatisfaction with the reform and lead to accusations of favouritism. They state that ultimately this creates risks of slow development "if decentralisation results in increased numbers of veto players in important decisions" (OECD, p.128). The latter suggests continuing resistance by local elites that might impede generic reform progress, especially if individuals retain influential positions.

In the context of First Nations specifically, such considerations might also apply if elites with financial interests are likely to lose out, although limited specific evidence has been documented. The case of Manitoba's child welfare services devolution discussed by Macdonald and Levasseur (2014) (further discussed just below) makes strong claims of a deceptive devolution restructure which had politically been "legitimized publicly by endorsements from some of the most high-profile Indigenous organizations" (p.108) in that province and which "perpetuated by the very same processes credited with transcending such antiquated, colonial perspectives, and with the high-profile support of certain Indigenous organizations" (p.111). The notion that the leadership of some First Nations organisations had expressed shifting opinions (privately and publicly) at various stages of the Northern Territory's local decision-making reform was also anecdotally mentioned by (anonymous) interviewees (Tremblay & al. 2021; pp. 21-2). It was stated that there were a number of organisations (from the private sector, NGOs and Aboriginal corporations) whose business might be affected by new regional employment and procurement policies. These had been openly concerned that past opportunities might be discontinued and were hesitant to support reworked arrangements. The report noted that such local organisations could be worried about losing their influence or seeing their legitimacy contested by emerging or reshaped First Nations governance mechanisms, leading them to passively resist reform.

reforms. It is indeed possible that governments might simply follow agendas that appear popular without having a good understanding of their consequences and of the robustness of the assumptions they make regarding implementation steps.

A compelling example of what can happen arises from an appraisal of a Canadian devolution program surrounding Manitoba child welfare services for Aboriginal communities (Macdonald and Levasseur 2014).⁹ These researchers contrasted the initial devolution agenda, the narratives that ensued with actual outcomes to claim that despite widespread use of terms such as collaboration, autonomy, accountability and devolution as well as copious displays of self-determination discourse and intentions, this specific policy framework had not resulted in genuine decisions and power shifts or beneficial outcomes. The authors assess that intentions to reshape and shift responsibility for child welfare services towards communities had in that instance generated a superficial institutional reconfiguration which was inequitable. Importantly, it had not adopted proper accountability principles nor attempted to balance resourcing flexibility so as to match the transfer of duties and obligations which had resulted in detrimental outcomes overall.

They claim that the altered agency (which had been reconfigured under the guise of devolution) avoided developing 'new authorities' sitting with Aboriginal organisations or communities and had instead established an additional "middle-man layer" sitting between agencies and government that absorbed some of the much needed resources without contributing towards downstream empowerment. They claim that this "new system continues to leave Indigenous peoples dependent on the amount of funds the province sees fit to provide but with the increased responsibility of deciding how these set funds will be allocated" (Macdonald and Levasseur 2014:109). The main message of this case study of unbalanced makeovers "rather than enhancing accountability between peers, this form of devolution further entrenches old vertical accountability relationships through which Indigenous stakeholders continue to answer to the state without legitimate channels through which to hold state actors equally accountable" (Macdonald and Levasseur 2014:112). From their account, given that [a] the mounting evidence of poor outcomes was discernible within the bureaucracy, and communities, intermediaries and stakeholders, and that [b] the discrepancy between the government rhetoric, the negotiated redistribution of administrative responsibilities and the resourcing quantum (which ought to have become obvious to the majority of participants in that system), it is possible to infer that some degree of active resistance to workable devolution was occurring. It is also tempting to speculate that some vested interests might have been content with letting downstream service providers (and their communities or regions) fail, rather than assist them to learn and restore a fair balance between resourcing and responsibilities required to achieve genuine improvements.

- **The politics of government funding create perverse incentives and/or directly limit Indigenous communities' ability to plan for a different future**

Of the many challenges and external forces at work that might disrupt the policy journey towards self-determination, dependency of Indigenous communities on erratic government funding regimes (and their inconsistent administrative arrangements) have long been argued to be particularly

⁹ The review has not undertaken an updated examination of whether the critique by these authors has subsequently been disputed and corrected, or if the policy has progressed and addressed the criticisms, but simply uses this convincing example to show how policy narratives can easily deviate from intended or actual implementation aspirations in ways that suggest intentional political and/or bureaucratic resistance.

problematic and remain relevant to all devolution domains and scales¹⁰ (those issues also dominating the decentralisation literature discussed below). Smith (2002) summarized prior Australian findings:

The current position is that government funding and administrative arrangements impose major restrictions on the capacity for self-determination of Indigenous communities and their organisations (Australia Institute 2000; Commonwealth Grants Commission (CGC) 2001; Smith 2002b). Funds are:

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

This occurs in a context where a high degree of overlapping government jurisdiction over Indigenous program and service delivery exists alongside an entrenched resistance within governments and their departments to coordinate those functions. (Smith 2002:6).

While the above issues are well-known and could be construed as 'structural', the fact that addressing them has long been identified as critical pre-conditions and never really been fixed suggests that they persist as critical and untouchable drivers for governments processes and bureaucratic agencies that either [a] aim to deliberately retain control over resources as essential levers of influence, [b] consider them overwhelmingly tricky to transform and/or [c] associate with indispensable compliance conditions they are likely to retain responsibility for. This unavoidably raises questions about whether governments 'trust' downstream stakeholders to operate in ways they deem necessary to address those accountability concerns. With respect to funding patterns affecting erratically and inconsistently Indigenous communities raised by Smith, it is possible that habitual political cycles incite governments to make efforts to be perceived as active. They might attempt to demonstrate their relevance by updating policies that often re-identify well-known issues as if new and propose well-worn or re-labelled solutions which entail new grants initiatives under new policy frames). The cyclical nature of offering discrete grants with changing terms and program conditions to Indigenous communities, groups, businesses which affect considerably everyday community lives and activity patterns can be partly attributed to such political and policy cycles rather than efforts to improve program consistency and effectiveness or genuine efforts to achieve long-term political and socio-economic outcomes. The implications of this dilemma are somewhat circular since devolution of funding, priority-setting and responsibility is both the outcome sought and the way forward. Devolution reform that could lead to greater authority and control over resources is both the coveted result, and also constitutes the policy environment pre-condition necessary to advance devolution.¹¹

¹⁰ A potent example lies with responsibilities over the funding of municipal services which have been a major issue affecting negatively Aboriginal and Torres Strait Islander Community Councils. Historical and protracted debates over responsibilities which mainly originated from political disagreements between specific government levels and jurisdictions affected deeply communities across Australia with respect to access to services, ability to generate wealth themselves and discourse around viability of First Nations organisations and communities.

¹¹ As was suggested in the Manitoba children welfare services example above where devolution was highly supported in the rhetoric but not in real resourcing terms ((Macdonald and Levasseur 2014); one example among many.

- **Resourcing challenges will prevail among practical implementation barriers. They will stem in part from a) the significant yet often under-budgeted costs of the transition process itself (including support to address capacity-building and connected needs in more remote regions); and b) the more obscure implications of shifting services delivery responsibilities without matching self-funding powers**

Although closely related in practice, it is useful to differentiate the notional wicked impact of funding inconsistencies across agencies and governments on Australian Indigenous communities that might incite some resistance or scepticism from the challenges of properly and carefully engineering new funding arrangements within the reform effort. After examining early evidence applicable to cases associated with American tribal and Australian federated State systems, Smith (2002) draws a number of generic requirements linked to funding she considers need to be addressed even before devolution design over responsibilities can take place. These shortcomings appear to have constituted consistent barriers and remain to this day valid matters capable of impeding successful self-determination efforts. She suggests the following steps to overcome structural barriers to change:

- To undertake deliberate attempts to clarify and overhaul the Indigenous funding structural mechanisms and sources across the nation as they create major inconsistencies (in terms of conditions, timing and targets) as intersecting jurisdictions and contending government agencies concurrently chase the engagement of overlapping familial, organisational, community and regional entities. Not only do these funding sources remain poorly coordinated and sometimes disruptive of each other, but they also have regularly displayed transparency and accountability shortages and can lead to 'silos of factional power'.
- With respect to specific service delivery devolution initiatives, it is critical to anticipate frequent economy of scale issues (often faced by more remote communities or regions featuring low client population numbers), especially when established infrastructure and other resources are inadequate to enable independent operations. It is sometimes possible to address some of those challenges through the formation of consortia providing services and sharing program operating costs and staff.
- Complementary to the above, support for institutional capacity-building must be anticipated, planned, and funded to foster targeted types of human capital. This needs to be complemented by measures to address historical shortages around facilities and administrative infrastructure. These need to be complemented by the development of local regulatory codes, support to reform local organisational constitutions, the strengthening of financial and accounting systems as well as complementary auditing and record-keeping capacities. Similar support might apply to information resources and infrastructure, which are for instance essential when welfare information systems are devolved. Central authorities and agencies will reluctantly part with funding streams and infrastructure assets. This is why it is necessary to contrast the small amounts, tortuous processes and provisional nature of community or local-level funding (which differ across specific services provision domains) with the substantial and more direct funding (and infrastructure support) received recurrently by State and Territories government agencies when the latter are tasked with supplying similar services.
- The need to overhaul funding arrangements and other forms of resources is what is ultimately most emphasized in Smith (2002) as a universal challenge when she concludes:

Devolution is not only about the transfer of power; it is also about the transfer of resources. Jurisdictional devolution will require access to, and authority over a range of financial, social, cultural and natural resources—in other words, more than just money. A fiscal framework will need to underwrite the process, which identifies:

- *the equitable division and allocation of block financial transfers to the local level;*
 - *the division of expenditure responsibilities and accountability; and*
 - *agreed areas of financial authority. (Smith 2002:28)*
-
- **Cultural tensions will permeate negotiations over the division of ‘decision powers’ during the devolution implementation period – reflecting distinct decision-making approaches featured in Indigenous forms of governance in contrast to orthodox bureaucratic logic**

Although not necessarily acknowledged by all, this is closely connected to the definition of, and rationale for, self-determination suggested by Smith (2002) above. As a transition process, the feasibility of incremental redesign of decision authorities, of funding, of allocation of responsibilities and the like remains disputed on political, ideological and cultural grounds, its conceptual logic remains unclear, and its ability to deliver satisfactory outcomes remains unverified, especially in remote and non-mainstream socio-economic regions. Natcher and Davis (2007) examining international experiences and focusing on the Canadian case note that “*While the language of devolution and local control permeates local–state interactions, the new institutions that have been created via the land claims process have little resemblance to indigenous forms of governance and management*” which leads them, when examining the case of Yukon First Nations, to “*draw attention to the difficulties of applying indigenous cultural ideals into a management process that is derived from nonindigenous values and principles*” (Natcher and Davis 2007:272).

They further observe that this unavoidable tension can play in the hands of those who oppose devolution on various grounds, in particular those arguing that skills shortages in Aboriginal communities prevent the effective local management of resources (Natcher and Davis 2007:273). Also these affect First Nations’ residents perspectives by confirming their suspicions of prejudice. It also appears verified by the tendency commonly observed in Aboriginal organisations in North Australia to appoint non-First Nations managers to take up management roles within community organisations. Aboriginal leaders often surround themselves with individuals who can operate within the bureaucratic mode of coordination which involves dealing with deadlines, planning objectives, compliance and resource management as well as program administration (again in remote contexts). Although governance design (discussed further below) is indispensable to build bridges connecting culturally disparate ‘ways of deciding’ that reflect distinct worldviews within co-existing political process, the specific administrative procedures required for services delivery will as a rule retain an essentially ‘bureaucratic nature’ that will be difficult to reconcile with First Nations ways of doing things and their fundamental communal identities.¹²

¹² This type of argument from Natcher and Davis (2007) is broadly consistent with Smith (2002) to the extent that it refers to First Nations remote community governance and does not imply that Aborigines cannot function perfectly well within the bureaucracy – as should be made obvious in the next section.

Overview of the Political Economy

In bringing this section to a close, it must be conceded that the range of views surrounding the political economy of Aboriginal, Indigenous or First Nations self-determination is overwhelming, and include a majority of opinions, advocacy positions and descriptive statements of intentions which are seldom based on evidence. Well-articulated positions incorporating both clear analytical premises and focused on institutional implementation with concerns about political feasibility are sporadic. Opinions surrounding feasible and/or desirable implementation are wide-ranging in their premises or scale and are convoluted. This review does not attempt to discuss those in a balanced manner (if at all possible), nor critically examine them (out of scope). It simply extracts elements that appear to fit the category of 'generic barriers' to devolution that include relatively well-specified premises and are coherently assembled. Furthermore, some of the significant sources we used because of their relative intelligibility are starting to date and their content might not reflect more recent understandings of what devolution in the interests of Australian First Nations means in 2023, or of what we nowadays understand the tangible and imagined benefits of self-determination might be. We also must recognise that the views of significant authors, commentators and researchers have themselves continued to evolve and simply select some useful elements as building blocks for our brief discussion.

From Smith's (2008) position regarding the overwhelming cruciality of 'unconditional cultural autonomy' as a condition for self-determination (and ensuing governance incompatibility between mainstream-bureaucratic and self-determined by First Nations), to Grogan's (2018:549) persuasion that "improving economic outcomes for Aboriginal people cannot happen in isolation from the broader NSW economy (and in turn that building prosperity for the Aboriginal community will contribute to the growth of the NSW economy)" or to Rowse's (2021) expressed suspicions (based on his analysis of the events and their timing) that the recent National Agreement was developed broadly as a diversion to avoid dealing with the politics of constitutional recognition which is somewhat supported by the observation that there is limited convergence in the literature, government circles and media over the way forward. Hence, it is difficult for a very brief review focused on identifying barriers or challenges and incorporating interviews of senior bureaucrats about their views on possible steps in the policy transformation journey to identify intermediate targets or even policy end points, something that they are best placed to inform in the context of real bureaucratic worldviews.

What the academic literature strongly maintains is that beyond the preliminary reform development phases, the key progression steps are themselves by necessity context- or place- specific (cannot be pre-programmed by upstream policymakers), must be driven and conceptualised through joint upstream-downstream open negotiations (co-design is a loose label sometimes reflecting that aspiration) and transition into change-effecting mechanisms. In other words, they need to become more than governance structures connecting various parties, but effective platforms achieving the transfer of means, resources, and responsibilities to First Nations authorised representatives in ways that the latter sanction.

While many well-disseminated and abstract incremental models have adopted principles of human-centred design and formulated simple steps where 'influence' from the bottom is expected to

grow¹³. A difficulty with these linear progressions is that they ignore or sidestep the problem of the 'geography of governance' mentioned earlier, either assuming that the functional scale and scope of abstract communities is sufficiently established (and this might be the case in some mainstream regions) or that 'governments' will resolve these issues as a matter of design, which is in contradiction with the principles of self-determination mentioned above.

It is useful to note that even influential First Nations local, regional and national representatives did not expect the recent turn of events when they disclosed (see Dreise & al. 2021:5) that, like the rest of the Nation, 'Indigenous peaks' were taken by surprise by the developments surrounding the refreshed Closing the Gap approach, in particular its intended partnership and negotiated agreement and its sharper intended focus on the devolution intent and process rather than long-standing targets¹⁴. This raises important questions about implementation priorities and explains the sudden pressure to deliver on devolution objectives prior to expecting evidence on complex socio-economic outcomes after a long period of top-down policies that did not succeed in that sense. It reorients the policy focus on the need to demonstrate legitimacy of representation 'from below', that is ways that have been ascertained by those who want to be deciding. And ultimately, it needs to consider how recognition and empowerment will extend beyond the Coalition of Peaks' interface with governments into the real 'local'. The demonstration of achievements for these refreshed policy intentions might be partially informed in the sections below examining the role of governance as well as the implementation of 'co-design' (a somewhat ubiquitous term and rarely fully appreciated idea). These hopefully will provide some indications about the process requirements that will need to be embedded in a framework capable of supporting alternative and place-based decision-making pathways.

¹³ One of the best known is the IAP2 Public Participation Spectrum which has influenced the OCHRE initiative from the NSW government, and similarly endorsed subsequently by the Legislative Assembly of the NT when adapted as a tool to envision devolution in the NT (Local Decision Making – Influence Model, - Tabled Documents, 19 June 2017, <https://parliament.nt.gov.au/__data/assets/pdf_file/0008/432926/TP-2-1-Local-Decision-Making-Influence-Model.pdf>.).

¹⁴ Dreise et al. (2015) refer to Pat Turner's speech at the Garma festival (2019) where she mentioned the Coalition of Peaks' request to not seek a new Closing the Gap framework and instead "enter into a genuine partnership with us". She stated that "To our great surprise, the Prime Minister did ultimately agree to meet us and he agreed to our proposition that COAG and the Peaks, on behalf of Aboriginal and Torres Strait Islander peoples, enter into a formal partnership for the next phase of Closing the Gap". She also commented indirectly on the difficult assignment to transition from bureaucratic planning based on targets towards partnered implementation when she claims also at Garma "I don't discount the need for targets, but we need to get a much greater focus on what we know will work to make much more progress against them. If we had a much greater focus on how to achieve the targets, I think the story of Closing the Gap would be a positive one instead of a tale of woe!".

In that same speech, Turner also provided the elements of the changing vision: "Instead of targets, we have put to the government representatives on the Joint Council that the new Agreement should be underpinned by 3 reform priorities that we think will accelerate the achievement of much better life outcomes for our peoples. Those 3 reform priorities are:

- Supporting the full involvement of Aboriginal and Torres Strait Islander peoples in shared decision making at the national, state and regional level; particularly embedding regional ownership, responsibility and expertise to close the gap.
- Building the formal Aboriginal and Torres Strait Islander community controlled services sector in priority areas to deliver closing the gap services and programs; and
- Undertaking systemic and structural reform to mainstream institutions delivering services to Indigenous peoples to provide much better services to our people."

Governance perspectives on self-determination and implications for devolution

This section extracts selected contributions from a relatively influential body of work related to Indigenous governance in Australia likely to have informed the devolution agenda in Australia (Bauman and Smith 2014, Bauman, Smith and Keller 2014, Bauman et al. 2015, Hunt et al. 2008, Wighton and Smith 2018). The focus of academic researchers taking a political economy perspective is clearly more oriented towards community Governance which incorporates multiple aspects ranging from Indigenous Community Government (Community Councils), local Indigenous organisations and institutions, and traditional/cultural decision-making authority systems. This can be contrasted to the focus of federal, state and territory governments (and their public sectors) directed principally towards corporate governance, on which there is a different literature, but which rarely incorporated First Nation's dimensions.

Academic researchers on the other hand take a longer-term political perspective and generally identify issues and needs in ways consistent with the views expressed in the section above by concentrating on the effectiveness of devolution efforts in changing the balance of decision power. As interpretations of what 'governance' entails can be loose, an adequately flexible definition of governance is useful:

The complex mechanisms, processes, relationships, structures and institutions through which power and authority are assigned and exercised in a group, so that decisions can be made, activities carried out, and the group's collective goals achieved in the 'right way'. (Wighton and Smith 2018:10)

These authors endorse their earlier research observations and findings expressed in the ICGP report (2006) that:

The complexity of Indigenous governance is difficult to contain within a simple definition. While 'culture' is often used to describe how Indigenous governance is 'different', in fact all modes of governance are culturally informed. Furthermore, it is important to avoid 'ossifying' the cultural practices and institutions that inform governance arrangements, and to acknowledge the many diverse Indigenous 'cultures of governance' across Australia (ICGP Report 2006:40).

The focus on the relationship between 'Indigenous people' and government is also endorsed as key to discussions about the role of governance in the context of self-determination, although the notion of 'government' should not be interpreted too narrowly (for instance purely in terms of bureaucratic decision styles or administrative systems) when posited as representative of other interests and ways of deciding available through other social and economic institutional arrangements:

While settler Australian and Indigenous priorities are not always inconsistent, they often pose challenges to the operation of place-based and culturally-informed systems of governance (HORSCAA 2004:133). As such, Indigenous governance is not just concerned with Indigenous peoples' values, norms, laws and traditions; it also has to deal with what has been termed by the ICG Project as the 'governance of government' (Hunt et al 2008; ICG 2006).

To abridge considerably related literatures, 'governance' appears centrally in research on self-determination because:

- Governance is interpreted loosely as the essential contemporary and distinct cultural, institutional and political arrangements that define how decisions are to be made by given groups; and drive self-determination as these differ across key stakeholder groups.
- Perceptions from all stakeholders regarding the legitimacy and effectiveness of a variety of modes of governance seem to play a central role in individual assessments of whether devolution is legitimate (should be encouraged, facilitated or resisted) – and in that sense devolution can be reinterpreted as the process of local decision makers challenging mainstream structures and geographies.
- Acknowledging contextual or place distinctiveness implies that experimentation, inter-connected learning and place-specificity need to constitute intrinsic dimensions within the process of devolution; hence the focus on place-specific implementations led in principle by those self-determining.
- In accordance with challenges discussed in the previous sections, resistance from the 'State' (the Commonwealth and all States and Territories governments and their bureaucracies) to surrender control over some or any decision mechanisms is expected and must be anticipated. This can occur in a number of multi-faceted ways from passive bureaucratic inertia or resistance and will reach into more transparent decision-making and policy conflicts. Authors reviewed identify deliberate and subversive communication exercises (such as disparaging past attempts at bringing about autonomy) as well as overt obstruction and under-resourcing (such as past Shared Responsibility Agreements being often singled out as cost-inefficient, immersed in excessive red tape and disproportionately driven and while improperly funded by existing mainstream bureaucracies) as instances of wilful resistance. Assessing the veracity of these matters is particularly complicated because government narratives simultaneously support greater autonomy, decentralisation and shared responsibility while emphasising the need for improved governance as a prerequisite to their own views of accountability.

It is convenient (yet probably simplistic) to establish a remote-mainstream dichotomy since efforts to produce 'self-determined' (or at least collaborative) governance face particularly acute challenges in remote regions¹⁵. Given that the renewed agreement on Closing the Gap must remain cognisant that gaps are particularly severe and evident in Northern Australia (as the inception of "the Intervention" historically clearly targeted the Northern Territory for a number of complex geo-political reasons), the authors originally reviewed analytical positions applicable to barriers to self-determined governance in that intricate development context, rather than from a Federal Government perspective where much political narratives and impetus nowadays derive since the

¹⁵ Northern Australia residents often depict a rough North-South distinction to convey similar ideas, but it is incorrect for our purposes to the extent that many similarly remote and disadvantaged regions can be found in central Australia, and in other parts of southern States, and that there is no regular gradient based on that simple geography.

focus has shifted towards partnership between governments and peak Aboriginal organisations. That literature usefully reiterates that:

- In remote Australia (in regions in particular), the ‘ever-presence’ of ineffectual governments and bureaucratic processes overshadow most aspects of social lives and economic decisions (underlined by Westbury and Dillon 2007 and highlighted in Hunt & al. 2008; while expounded as an advocacy narrative about the Central Australian predicament by Walker & al. 2012). In contrast to mainstream Australian society, the quasi-absence (or excessively fragmented character) of alternative institutional arrangements capable of supporting social, political and economic coordination has had severe implications for the ability to learn autonomously by remote regions, communities and individuals. For instance, the marked shortage of functional market-type institutions in the bush and remote regions in general has ultimately created an exceptional level of socio-economic dependency on governments and its extended bureaucratic arms.

[R]emote Australia is a ‘failed state’ (Westbury and Dillon 2006). But this is not a classic failed state in the sense used in international development. The state certainly has failed to provide services, but it creates enormous complexity at the same time, due to the difficult legal, regulatory and policy environment that it has constructed. The state is both absent and ever-present; and the context it creates is not conducive to Indigenous capacity to resolve the challenges Indigenous communities face (Hunt & al 2008:42)

- The unequal power relationships at play can be quite profound in remote regions. For instance, what Smith (2008:89) refers to as ‘coercive implementation’ while examining decisions and turnarounds surrounding the development and amalgamations of councils in Western Arnhem Land’s state-wide regionalisation process resulted simultaneously from the ineffectiveness of government decisions and political choices (arguably undesirable in remote regions) and its eventual unwillingness to carry out genuine collaborative governance. What is distinct in Northern Australia is again the acute absence of additional institutional arrangements and forms of governance impacting on political, social and economic lives that would alleviate that dependency and offer alternate mechanisms to find and reach new coordination balance and stability.¹⁶ In mainstream Australia, such alternative institutional channels exist to mitigate relationships, create stronger checks and balance to address government inconsistencies or ineptitude and weaken recurring disputes these create. In the North, much of everyday life public affairs take the shape of “the government” versus “remote regions or communities” dialogue of the deaf, concealing socio-economic and political structural deficiencies; rather than necessarily always reflecting a conflict of authority between ‘mainstream Australian culture’ (whatever that may be) and First Nations identity (or governance culture).
- That state of affairs is confirmed by the ease with which governments, through their numerous bureaucratic arms, can revert their own top-down decisions with limited accountability across their numerous funding channels; which allows them to exercise relative supremacy over large parts of the remote socio-economic landscape (although the dualism of Federal and Northern Territory Government bureaucratic interactions creates

¹⁶ Again, a dichotomy is always simplistic and institutional inadequacies and the overwhelming control of the State occur in many remote regions outside the North.

some ways of expressing defiance and ensuing disagreements). In practice, political or budgetary threats to any reform agenda arise from the ease with which new 'pre-cooked' proposals can be imposed without sufficient justification from above (akin to policy reversals but not admittedly so). Eventually, these can proceed to dismiss prior governance choices on grounds of expediency. When examining how past work and efforts to rework local government arrangements formulated as shires in northern regions which had involved lengthy investments in collaborative discussions by First Nation and local bureaucrats which were abruptly terminated on vague political grounds, Smith (2008:90) notes: "*Decision-making power about the management, staffing, financial status and business plans of the new shire was abruptly reclaimed by government bureaucrats*" in a way which amounted to very limited resistance in the northern context.

- As noted by many, limited scale economies is another topic particularly knotty in remote regions. It often implies a clash between the ideals of mainstream services delivery logic (where bureaucratic governance requiring that staff and infrastructure be funded adequately collides with the size and viable scope of existing councils) against the culturally-determined logic of First Nations governance and the political negotiations these entail. Smith (2008:102) suggests in her case study that merged-overlapping coordination mechanisms, with place-specific workable solutions to deal with the two 'cultures of governance' involved in day-to-day decision-making processes could be developed but are likely to be regarded as inefficient if entailing more information exchanges than system that simply ignore place-specificity. As a way to manage difficult transitions in decision-making and governance logic, she refers to 'cognitive compartmentalisation' (Spiro and Jehng 1991; Strauss and Quinn 1997) as an available conceptual mechanism that could be incorporated in negotiations and operations to bridge gaps in social and political rules somewhat enables '*the Bininj worldview of the continuity and inalienability of their laws to be maintained, at the same time as allowing condoned institutional innovation to occur*'. This could be a transitory solution inserting flexibility to maintain both systems functioning to some degree in theory. But these would most likely end up being overpowered by government and local politics, logical overload and poor accountability in remote regions. The relatively recent local decision making approach in the NT attempts to confront some of the forces that would threaten ongoing the development of experimental collaboration is discussed below.

Complementary governance-related topics applicable to both remote and mainstream Australia are of particular interest for this review paper as they can inform significant drivers and highlight barriers likely to impact devolution progress. Despite the complexation of those less theoretical topics and the fact that the literature considered is not necessarily conclusive, they deserve further reflection. It is not possible to do justice to existing research on those governance-related dimensions in the current review, but it is possible to highlight their significance as underused institutional mechanisms (or relatively untapped human capital resources) capable of playing greater role in addressing devolution challenges in specific contexts. Apart from a few significant exceptions noted below, the following institutional aspects have been only superficially examined in the context of their potential governance participation and the conditions under which they could constitute effective institutional enablers.

The roles of First Nations/ Indigenous public servants

The matter of whether, and how, public servants could play a greater 'representation role'¹⁷ or 'cultural role' and contribute more or differently by participating in a carefully considered First Nations governance web is important, could lead to dissimilar and contested positions, and appears insufficiently raised as an opportunity or a threat to devolution progress. Rightly or wrongly, there is a sense in much of the grey literature that many First Nations people (more commonly from mainstream regional and urban environments) consider governments as employers of choice because they might have personal aspirations to influence policies with greater legitimacy than non-Indigenous individuals, or because they feel they have skills and contacts particularly valuable (for their own career advancement while useful to their employers), and because they might surreptitiously hope to address First Nation under-representation in the bureaucracy – whether this is an explicit government policy in itself or not.

Yet this might constitute a simplistic representation as Ganter (2020 p.319) notes when she refers to 'reluctant representatives' as featuring significantly among Aboriginal and Torres Strait Islander public servants that appeared in her research. During interviews, many expressed that they were unsure of their authority to represent or act as delegates of Aboriginal and Torres Strait Islander views or position on many matters, were not necessarily 'comfortable speaking out for their communities' (or for First Nations at large, a broad array of views and circumstances by any measure), and felt they were without a clear mandate to do so. Her research revealed that same type of unease across the board, although the choices made by Aboriginal and Torres Strait Islander individuals to explicitly pursue a bureaucratic professional progression varied widely. Some simply joined the bureaucratic ranks and tried to blend in, others left the public service due to what they considered unfair or demeaning 'representational' expectations, while others attempted to 'bring their Indigeneity to bear on Indigenous policies and programs' when it was deemed sensible to do so and were given a mandate. But Ganter asks: *"If identity is important, how can Aboriginal and Torres Strait Islander public servants be accountable to their communities and to government at the same time?"* While she presents this as a paradox and observes that many appeared (in interviews) to feel they were merely token and cared substantially about how their communities would judge them, no explicit definition of the unit of representation they were concerned with could be reasonably extricated from their responses (family, tribe, community, language group, region, etc. – as per the geography of devolutions) or which types of decisions or instances of governance design with which they felt particularly uncomfortable.

These observations lead to the fitting, but difficult to verify, contention that First Nations public servants might be generally undervalued as a form of human capital, that they might be less accepted as professionals on similar grounds (within the bureaucracy or with external stakeholders), and that ultimately their potential authority as Aboriginal and Torres Strait Islander voices or legitimate representatives might be undermined in the eyes of other public servants as well as other members of First Nation communities (outside the bureaucracy) because of the choice the former made of joining the bureaucracy or the fact that power imbalances stemming from their employment relationships limit their sovereignty as representatives and expose them to potential coercion. Despite those drawbacks, a significant number of First Nation public servants seek to address this competing accountability by acting as interlocutors between government and

¹⁷ Many find this terminology inappropriate or antiquated because implying that Indigenous public services should offer 'services' to the public sector over and above their 'day job', while they in fact do not have the authority, while in their public service roles, to represent community views. This is discussed further below.

community - influencing policy and delivery while also assisting First Nations people and communities to access programs and services without sufficient recognition.

It is helpful to appreciate that this also highlights that some of the key 'cultural tensions' threatening devolution implementation stem not necessarily from an opposition between First Nations and mainstream Australian civil society, but often from the nature and necessary limitation of bureaucratic decision-making and alternative-pluralist modes of coordination and decisions. The recognition that the bureaucratic-administrative sphere operates along rigid rules and conventions not reflecting the broad array of mainstream social and economic institutions gives some credence to the view that co-design, however clichéd as a term and challenging as a process it might be thought of, remains a necessity, as long as it is not simplistically interpreted as implying a choice between bureaucratic versus 'First Nations' decision modes.

It further suggests that 'government' ought perhaps not to be conceived as 'the place' (socially, physically, governance-wise) where self-determination needs to be shaped and occur. In that sense, ways to curb its role as the powerful enabler of 'everything in North Australia (and sometimes in government) could curb its own vested governance interests and ambitions and bring it back to play a more impartial agency role. This would support Aboriginal and Torres Strait Islander individuals who aspire to "work within" so as to improve economic outcomes for Aboriginal people (as argued by Grogan 2018) to do so without feeling that they have to choose between the interests of the bureaucracy and their concerns with not betraying their communities, however they might define them. In either case, they might suffer from the contradictions or need to work harder to provide meaningful input into policy and program development and delivery, without necessarily being rewarded or appreciated for doing so.

The roles of other significant intermediaries involved in services delivery in particular First Nations corporations

The relationship between 'Indigenous organisations' of all types and the pathway towards self-determination has not been comprehensively discussed in the recent literature, for a number of reasons it is possible to speculate about. It is important to at least note that many of those organisations are very influential in a number of ways and can sometimes actively support or impede devolution. Some observations are warranted about their purpose as this could inform future or novel ways of incorporating them in the self-determination agenda:

- Many Indigenous organisations' roles can be construed as general institutional devices created to bridge governance gaps. From their origins in the Whitlam era, they constituted means of building First Nations governance and advocacy as well as organisational capacity, not simply delivery mechanisms. These have in the past particularly been used where (or when) community aspirations diverged from local bureaucratic capabilities. In that sense, they appear as localised self-determination engines (allowing a local Indigenous voice) or as intermediaries extending the government reach while seemingly locally controlled.
- In many instances, the purpose is to negotiate local or regional partnerships allowing to establish Indigenous enterprises in ways that allow them to run business activities and access various government funding pools while being subjected to compliance and accountability processes. In remote areas, this is almost essential and often extends government governance attempting to address the shortage of regional economic activities

demonstrably attributable to the quasi-absence of non-government institutions. Ongoing dependency on government implies that funding for those organisations allows them to access greater pools of resources (usually provided and facilitated by public channels) which reinforces their dependence on government institutions and associated channels.

- Yet, as they conduct business or entrepreneurial activities, Indigenous corporations and similar organisations must comply with statutory obligations and implement the mainstream decision logics and operations (guiding all such organisations), including leading to some degree of transparency and public accountability. For a number of reasons that can be attributed either to their distinct governance and decision-making contexts and cultural approaches, or the fact that they often mix regional development agendas with commercial objectives (requiring distinct oversight of local authority) or because of the ease with which some have been allowed to capture government funding (when governments want to inject downstream) and flexibly reallocate those funds according to political wind, significant unease has arisen around their overall impact. What is clear is that the coordination of Indigenous organisations, their legal and compliance oversight and apparent deficit in management effectiveness (as they are often believed to be excessively time- and funding-consuming – but this can be contested) have resulted in their reputations being mixed.
- The relation between small organisational size and the so-called ‘proliferation’ of place-based Indigenous organisations can lead to further questioning their effectiveness and their purpose (e.g., Bauman & al. 2015). In fact the current pool of such organisations includes many that are dormant; that are too small for purpose and with little or no income and in particular no commercial income streams. They might be ‘maintained’ even if inactive as assurances to access future government funding opportunities arise – but this appears to defeat the purpose of supporting independent (from government and bureaucracy) economic arms. Other organisations appear commercially worthwhile (albeit often indirectly dependent on public funding) but are likely to perform their generic business functions and compliance tasks very much like mainstream businesses while not necessarily contributing to the formation of self-determined decision-making capital.

These fragmented observations should not deter from the need to closely consider relevant remodelled functions that these organisations could play in the design of the broader devolution agenda. Yet, some Indigenous corporations have indeed over time built human capabilities that current devolution strategies should at least attempt to take advantage of, as long as they have been convincingly shown to contribute towards required local capabilities and actively support the downstream shift of resources, power and responsibilities to local authorities.¹⁸ Any consideration of how to support a changing policy landscape in that domain would need to focus centrally on the challenges of locally implementing co-design. The terms of their incorporation would need to be carefully considered, risks assessed and the linkages between organisational, community and regional funding closely examined to ensure that reforms do not create perceptions of government attempting to divest in remote and regional funding or gain further

¹⁸ Anecdotal evidence from the Northern Territory Local Decision Making case study (see section E) suggests that many organisations, locally based or advocacy-based generally endorse devolution agendas on principle, but that individuals within them might undermine policy reforms if they are threatened (those individuals or their organisations) by far-reaching changes in the policy landscape.

control that would instigate a backlash against the overall policy direction.

Co-design challenges and likely barriers

Most Australian literature using the term ‘co-design’ is relatively recent and perhaps relatively less mature or rigorous, in particular when it appears to reiterate basic principles around customary respect (or consultation) necessarily significant when attempting to foster collaboration between, or seeking engagement with, dissimilar communities. A portion of that literature is descriptive and includes common place recipes akin to ‘statements of intentions’ that seldom guarantee that words will be followed by credible actions.

Yet the previous sections have shown that the broad aspiration of harmonising decisions and jointly acceding to a new division of rights and responsibilities is clearly central to the Indigenous devolution agenda – and that to reflect genuine self-determination dispositions and aspirations, the negotiated collaborative efforts must occur early in the devolution design process and persist. Hence, the term ‘co-design’ has gained recent prominence as a concept in government and academic affairs because of the need for greater scrutiny into the mechanics, distribution and evolution of decision-making capabilities in the context of negotiations between parties holding significantly unequal bargaining power and aiming to address entrenched inequalities. The major risk identified by almost all commentators is associated with the sentiment that co-design conceptions might end up becoming symbolic and uphold the legitimacy of existing power relations (Thomassin et al. 2020, Hunt and Bauman 2022), thereby assist the assembly of a ‘placebo policy’ (McConnell 2015):

The existence of continuing significant power imbalances between governments and Indigenous interests takes on a new significance in an era of greater government reliance on collaborative partnerships, shared decision-making and co-design. The ‘pivot to co-design’ will impact the likelihood that the new architecture for closing the gap delivers positive results. In particular, while there is near universal agreement decision-making and co-design are worth pursuing in the next phase of Closing the Gap, whether governments can ensure that the sharing of decision-making power is equitable when they clearly have a potential conflict of interest is of major concern. Similarly, whether Indigenous groups can ensure that their comparatively weak negotiating leverage vis-à-vis governments do not negate the benefits of the shared decision-making process are questions that require explicit consideration. (Dillon 2021a:5)

The brief summary of barriers and challenges below relies on a body of work that is relatively mature in its conceptualisation and relates directly to the postulates of self-determination and devolution described in the earlier sections of the review (Dillon & Westbury 2007; Davis 2016; Davis 2018; Westbury and Dillon 2019; Dillon 2021a and Dillon 2021b; Hunt and Bauman 2022). These works build on Purdy’s (2012) analysis framework detailing arenas of power (formal authority, resources, discursive legitimacy) against process elements involved in the design of collaboration (participants, process design, content). When Westbury and Dillon (2019) identify rival analyses and interpretations of the reasons for policy malfunction in the context of Australian Indigenous self-determination agendas, they show that even theory-building researchers and experts themselves disagree on the reasons for ongoing policy and institutional malfunctions, making it unlikely that governments and bureaucrats can gain a clear view of the challenges or specific issues to address in which they are embedded. These authors claim that ‘each of these perspectives are partial and

inadequate given their implicit focus on an identifiable and conceptually distinct Indigenous policy domain' and that 'there is no consensus regarding the notion of policy success and policy failure; in particular, each analytic interpretation deals with a different notion of both' (Westbury and MC Dillon 2019:42). Seeking to identify (and document for future attempts to undertake similar policy reforms) those elements in the context of co-design might constitute a useful project for all stakeholders:

...there is a need for a comprehensive strategy by Indigenous interests aimed at identifying key institutional barriers to Indigenous inclusion, and key institutional locations of Indigenous exclusion, and implementing sustained long-term policy and political campaigns to have those institutions adjusted, reformed or abolished (Westbury and MC Dillon 2019:82).

After providing a useful review of the literature on co-design, Dillon (2021) explicitly questions whether the increasing and widespread focus on the ubiquitous concept of 'co-design' was deliberate (on the part of government or policymakers), whether it was merely a shift in terminology or signalled a marginal intention (to the extent that government commitments towards greater collaboration usually are constrained to intentions and to the implementation of existing programs and services); or is ultimately part of a wider ongoing shift within public administration in liberal democracies applicable to all major Indigenous policy initiatives.

It is worth noting that the Coalition of Peaks choose not to use the term 'co-design' and their preference has been towards the terminology of shared decision-making partnerships. Limitations around narrow uses of the term co-design mean that it must often be complemented by 'co-decide' and 'co-produce' to signal that it is more than working together to jointly design a policy or program but there must be agreement by the First Nations parties before it can be adopted.¹⁹

In his review, Dillon notes importantly that the existence of a notional link between co-design values and policy effectiveness does not appear in the literature. This suggests that the use of the term is thereby risky and potentially suspicious in the context of policy reform where systematic assessment of progress remains problematic. Building on the contributions of many authors examining conditions for co-design to achieve 'collaborative outcomes' (even if ill-defined), Dillon eventually warns against the near ubiquitous optimism surrounding co-design contrasting with the small amount of evidence that the relative distribution of decisions and power might be changing and given progress made around identifying some potential negative consequences found in that literature.

This leads to a framing of the hazards associated with excessive faith in the co-design concept in the context of Indigenous policy domain, based on seven generic risk categories originating from Steen et al. (2018) which are reproduced below (Dillon 2021:11):

- *The deliberate rejection of responsibility. '[Co-design can be] a cover for minimising governments' responsibilities and accountability in a context of scarcity of financial resources in the public sector' (Steen et al., 2018, p. 285).*

¹⁹ The term 'co-governance' has also become common in the New Zealand-Maori self-determination literature to reflect the intention of shared decisions, consensus, continued discussions and agreements over scope of approach and of discussions (see references in the Interviews section).

- *Failing accountability. Co-design may blur or remove clarity over responsibilities for outcomes.*
- *Rising transaction costs. ‘A wider objection against collaborative governance is that it comes with high transaction costs, including process costs related to information asymmetries between actors, information seeking and sharing; ... implementation costs ... and costs associated with participant behaviour’ (Steen et al., 2018, p. 286). Refer also to MacArthur (2016, pp. 631–632) who points to the challenges of poor design and limited local capacity in the establishment of models of greater community engagement. These are real and can be seen as investments, as they constitute the rationale for resourcing capacity-building.*
- *Loss of democracy. According to Bovaird (2007, p. 856) ‘the redistribution of power among stakeholders that comes along with co-production “calls into question the balance of representative democracy, participative democracy, and professional expertise”’ (Steen et al., 2018, p. 286). On the other hand, the authors note that traditional forms of public sector activity are usually not assessed against such high abstract democratic ideals.*
- *Reinforced inequalities. ‘...unequal power positions – in terms of formal position, knowledge, expertise, resources or ability to set the rules of the co-production game – will pose barriers for partnership and affect the collaboration. It may indeed allow stronger parties to exercise power over or increase the dependency of weaker parties’. Singleton (2007, p. 18) notes that formalising institutions of community management (a likely outcome of policy co-design processes) may harden existing inequalities or may create new ones.*
- *Implicit demands. Vulnerable community members may be pressured to participate in co-design in order to access services.*
- *Co-destruction of public value. If co-design processes do not meet expectations, trust in public policy and service delivery may fall rather than rise. Moreover, there are risks such as ‘the potential misuse or manipulation of user input by government officials for their own ends, for example by manufacturing support for their own policy agenda’ (Steen et al., 2018, pp. 289–290). Refer also to MacArthur (2016, p. 638) who identifies the possibility of merely symbolic as opposed to substantive commitment by policymakers to the co-design process.*

Although each of those risk category is plausible, reflects elements of discussions found in the previous sections, and can be backed by straightforward examples, they often refer to the early design phases and operate at a level above what bureaucrats and policy designers with implementation responsibilities might typically be involved with. In particular, decision-makers within the bureaucracy might not feel they are in a position to plan or prepare for such a range of contextual impact possibilities, nor call for more reform in connected areas (e.g. funding arrangements for Indigenous communities or corporations). This is particularly likely to be case if they perceive that they would need to raise concerns that are uncomfortable to consider and articulate – especially if trust is at a low level between the bureaucracies and relevant communities, and if future commitments to the broad reform is uncertain. Yet, a useful approach for policy reform intending to learn and build on past mistakes would be to adopt those categories, expand and adapt them to establish sophisticated policy-risk management plans describing which credible potential

issues and ways of handling them could be foreseen and constitute a basis for building collaborative foresight.

A recent study (Cowley 2023) discusses factors identified by senior federal public servants that constitute a list of co-design ‘facilitating’ factors which include; a staff profile with existing relationships with Indigenous communities; the presence of prominent community advocacy bodies; government staff trained in partnership maintenance and building; a known value of community participation, the agency’s propensity to authorise co-design at a decision makers discretion, and a shared understanding of community need with stakeholders.

Cowley proposes that the most prominently referred to theme that increases likelihood of public servants undertaking co-design activity with First Nations communities is for ‘senior executives of the agency to believe that licence is *granted by*, or co-design is a *perceived priority of* the Australian Government, Minister or Agency. “If public servants really believe that the Government and Minister want to see co-design enacted, it will be done ... but when that belief is obscured by concern over reactions to the time and resources involved in co-designing, then other priorities will prevail”.

Government decentralisation literature

Literature on devolution and decentralisation are closely intertwined despite featuring distinct authors, as confirmed by the many disparate and inconsistent definitions that have been proposed to split them. Given the relevance of decentralisation research to that of devolution, it is preferable to ignore terminological differences and advocate that the most practical distinction between them is contextual and a matter of perspective. It is increasingly endorsed that the term ‘devolution’ is more appropriate when undertaking an analysis focused on power concerned with self-determination, while ‘decentralisation’ on the other hand is about government matters such as ways to modify the delegation of responsibility and discretion within accountable political and bureaucratic hierarchies.²⁰ But as Smith (2002:5) notes, ‘there are limits to which it is possible to sustain an analytical distinction’, because it is almost inevitable in the context of unequal power bases, that devolution will be instigated by ‘a series of consciously targeted decentralisation steps that progressively transfer delegation and authority’. That early assessment obviously fitted her early interest in the implementation of self-determination around remote regions where government-led decisions and bureaucratic processes are pervasive. By logical obligation, devolution in remote communities entails as an initial step some government-facilitated decentralisation.

This section initially extracts findings from a significant international report (OECD 2019) that features evidence from multiple countries that have been evaluated and assessed while recognising that decentralisation takes place in highly diverse and specific socio-economic and political contexts, and has been instigated to address, very different challenges as it...*argues that the question should not be whether decentralisation is good or bad in itself, but that decentralisation outcomes – in*

²⁰ This is broadly the case for the use of those terms in the academic literature but is more precise in the OECD (2019) interpretation where “Devolution is a subcategory of the decentralisation concept. It is a stronger form of decentralisation as it consists of the transfer of powers from the central government to lower-level autonomous governments, which are legally constituted as separate levels of government”. While the implications are different for different categories of subnational jurisdictions including ‘regions’, devolution considers required legal shifts to create autonomous entities while decentralisation is a weak form sometimes akin to delegation of decisions about services within existing government control.

terms of democracy, efficiency, accountability, regional and local development – depend greatly on the way decentralisation is designed and implemented (OECD 2019, p.3).

The key feature of this lengthy report is that rather than being constructed around theoretical assertions and focused on political positions, it undertakes itself a comprehensive and rigorous integration of evidence about the purpose, implementation and impacts of administrative and political decentralisation from numerous countries (without a specific focus on Indigenous cases). It claims that as a policy reform, decentralisation has been among the most important approach of the past 50 years (OECD 2019, p.11). One of the reasons identified in the report, which is particularly relevant to devolution efforts seeking to address disadvantage, is the ongoing wish to make decentralisation a vehicle for regional development in the context of perceived inequalities regarding winners and losers in the context of rapidly changing circumstances where those distance from the 'centre' often display unequal abilities to adapt:

[It] is particularly crucial in the current context of a “geography of discontent” characterised by growing divides between places that feel left behind by globalisation and technological change and those that may benefit from the opportunities offered by megatrends. Dysfunctional decentralisation systems are part of the story behind the crisis that some democracies are facing: It is thus critical to find ways to make decentralisation systems work more effectively (OECD 2019, p.11).

Beyond this presentation of universal discontent of the socio-economic periphery, they usefully summarize the importance of the global phenomenon and emphasize key structural dimensions that must be grasped:

Decentralisation refers to the transfer of powers and responsibilities from the central government level to elected authorities at the subnational level (regional governments, municipalities, etc.) and that have some degree of autonomy. Decentralisation covers three distinct but interrelated dimensions: political, administrative and fiscal. There has been a path towards decentralisation in a majority of OECD countries over the past decades. In two thirds of OECD countries, decentralisation processes have resulted in an increase of economic importance of subnational government, measured both as a spending share of GDP and share of total public spending between 1995 and 2016 (OECD 2019, p.11).

Although distinct from the devolution problem in terms of context and intent, the OECD report also struggles with the geographical-administrative interface (discussed in the political economy section under the label 'geography of devolution') for reasons to do with scale and fragmentation of public policies when it states:

Determining optimal subnational unit size is a context-specific task; it varies not only by region or country but by policy area, as well. National governments have an important role in establishing legal, regulatory arrangements and incentives to foster co-operation across jurisdictions, in particular within functional regions (OECD 2019, p.21).

Ultimately, the report usefully depicts some key trends and challenges that resonate strongly with debates and questions raised in the section on the political economy of devolution above. It acknowledges that the main difficulties in effecting sustainable and successful transfer of power and responsibilities are linked to 1) the limited local capabilities of the subnational units (regions, local towns or communities) that arise especially if implementation occurs rapidly, 2) frequently observed inadequate fiscal capacity if the decentralisation process leads to a regional imbalance between the

magnitude of the responsibilities gained and their ability to extract economic benefits, and 3) the lack of clarity about 'who does what', frequently fuelled by vested interests and resistance from staff associated with upper echelons threatened by the policy development. The report states:

Central/federal governments are responsible for the framework conditions that will determine how decentralised systems operate.

1. *A lack of sufficient administrative, technical or strategic capacities is one of the bigger challenges in the field of decentralisation. Building capacities takes time and needs a long-term commitment from central and subnational governments.*
2. *The fiscal dimension is very often decentralisation's missing link. Unfunded or underfunded mandates – where subnational governments have the responsibility to provide services or manage policies without the requisite resources – are common.*
3. *Overlapping assignments between levels of government is another important challenge in decentralised systems. A lack of clarity in the assignment of responsibilities makes service provision and policy making more costly; it may also contribute to a democratic deficit (OECD 2019, p.12).*

The three dimensions are presented as critical challenges and warranting equal attention and analytical depth. The report reiterates (OECD 2019: 19-21) that these aspects must obligatorily be addressed and omissions in either of them can easily derail the entire decentralisation reform and lead to policy reversal. It develops those three themes by identifying priority barriers and necessary conditions for effectiveness:

- *Building capacities, including "learning-by-doing", should be a priority.*
- *The fiscal dimension is very often the weak or even missing link of decentralisation [...] One of the most frequent challenges, particularly in developing countries or countries at an early stage of decentralisation, but also in developed countries, is the misalignment between responsibilities allocated to subnational governments and the resources available to them. Unfunded or under-funded mandates – where subnational governments are responsible for providing services or managing policies but without the requisite resources – are common.*
- *A high reliance on central government transfers may also reduce subnational government incentives for responsible fiscal behaviour. Subnational governments need own-source revenues because this contributes to accountability and efficiency of local public service provision. While a general rule for the optimal degree of tax autonomy is difficult to define, local authorities should rely on their own revenues for financing their services at the margin.*
- *Another important challenge of decentralisation is formed by overlapping assignments between levels of government. Lack of clarity in the assignment of responsibilities makes service provision and policymaking costlier; it also contributes to a democratic deficit by creating confusion among citizens regarding which agency or level of government is responsible. Unbalanced decentralisation, where the various policy areas are decentralised in different ways, can also weaken regional development policies.*

The variety in the state of affairs in OECD countries around decentralisation implementation issues is summarized below as a list of stylized facts from which it is possible to learn about common responses (discussed in much greater details in the report).

- Decentralisation reforms are and have been implemented for a wide variety of political, historical, and economic reasons that vary greatly across countries, and might easily be interpreted differently by stakeholders and government participants playing distinct roles (see the NT local decision-making case below).
- The financing systems for subnational governments vary significantly. Countries can be grouped into four families based on both their degree of subnational spending and their tax level characteristics, which cut across federal versus unitary distinctions. The degree of tax revenue is not necessarily an indication of tax autonomy, as some taxes are also shared with the central government. Tax autonomy depends on many factors, including the ability to set or modify tax rates and bases. The same is true for the degree of spending power, as often spending covers delegated functions which are highly constrained by central government regulations and fiscal discipline rules.
- Paths to decentralisation vary considerably across countries, from “big bang” approaches to incremental approaches or “waves” of reform. Decentralisation should be viewed in a more comprehensive way, including interactions between public entities and private stakeholders, in particular citizens, businesses and non-governmental organisations. It is problematic in remote societies and economies excessively dependent on public entities.
- Increased asymmetric decentralisation is increasingly common (i.e., the fact that governments at the same subnational government level can have different political, administrative or fiscal powers). This is also an important feature of the NT local decision-making case which reflects the need to acknowledge different levels of readiness, dissimilar aspirations and decision capital across sub-regions, especially in federations. Observed experience indicates that once adopted, asymmetric arrangements are kept on a long-term basis.

The role of central governments has evolved. Decentralisation implies a renewed role for central governments. Being more strategic, this role is focused on setting the conditions for proper co-ordination and alignment of policy objectives, monitoring the performance of regions and ensuring balanced development of all parts of the national territory, through active regional development policies. Given that most responsibilities are shared, decentralisation policies are about managing mutual dependence to achieve common objectives. Decentralisation reforms involve a shift from a direct role in service delivery to one of enabling, advising, and assisting, ensuring consistency and facilitating the work of subnational governments. This requires building new capacity at the central government level so it can cope with these new functions, which cover a large area of sectors. The impact of decentralisation on the central government is often underestimated. Failing to take the full measure of this issue may be detrimental to the reforms, slowing down or modifying the reform process.

In the end, the OECD report cautiously attempts to formulate guidelines for implementing decentralisation reflecting the focus on government processes. These assume that the ultimate

purpose is to induce regional and local development; possibly by promoting local democracy and citizen engagement, producing efficient public service delivery and reduced corruption. These aim to constitute a list of simple but key actions, many structural in nature, allowing to avoid critical execution pitfalls likely to be encountered by regions or localities (referred to below as subnational governments) attempting to play a greater role in the administration of services concerning them, while disconnecting from each other and from the centre.

- Guideline 1: Clarify the responsibilities assigned to different government levels.
The way responsibilities are shared should be explicit, mutually understood and clear for all actors. Equally important is clarity in the different functions that are assigned within policy areas – financing, regulating, implementing or monitoring. Since multi-level governance systems are constantly evolving, a periodic review of jurisdictional assignments should be made to ensure flexibility in the system.

Clear assignment is critical for accountability, monitoring and effectiveness of investment and service delivery policies. The more a responsibility area is shared across different government levels, the greater clarity is needed to reduce duplication and overlaps.

Clarity does not mean that shared responsibilities should be avoided, as this is by definition impossible. It means that the way responsibilities are shared should be explicit, mutually understood and clear for all actors, including citizens

- Guideline 2: Ensure that all responsibilities are sufficiently funded.
Access to finance should be consistent with functional responsibilities. Division of financing responsibilities should ensure that there are no unfunded or underfunded assignments or mandates.
- Guideline 3: Strengthen subnational fiscal autonomy to enhance accountability.
Subnational governments should have a certain degree of autonomy in the design and delivery of their public service responsibilities within the limits set by normative regulations, such as minimum service standards.

Subnational governments need own-source revenues beyond grants and shared tax revenues – and they need to develop other sources of revenue to have a balanced basket of revenues.

- Guideline 4: Support subnational capacity building.
Central government should assess capacity challenges in the different regions on a regular basis. Policies to strengthen capacities should be adapted to the various needs of territories. Governments should seek to reinforce the capacities of public officials and institutions in a systemic approach, rather than adopting a narrow focus on technical assistance.

Staff training in the basics of local public financial management should be established. Open, competitive hiring and merit-based promotion should be ensured. Meanwhile, special public agencies accessible to multiple jurisdictions should be encouraged in areas of needed expertise (e.g., regional development agencies, PPP units).

- Guideline 5: Build adequate co-ordination mechanisms across levels of government.

Since most responsibilities are shared, it is crucial to establish governance mechanisms to manage joint responsibilities. Creating a culture of co-operation and regular communication is essential for effective multilevel governance and successful long-term reform.

Contemporary tools for vertical co-ordination include for example dialogue platforms, fiscal councils, standing commissions and intergovernmental consultation boards, and contractual arrangements. Yet, it is important to avoid excessive numbers of co-ordination mechanisms with no clear role in the decision-making process as tends to happen when the focus is on policy narratives rather than effectiveness.

- **Guideline 6: Support cross-jurisdictional co-operation.**
Horizontal co-ordination can be carried out using specific matching grants, and by promoting inter-municipal and interregional co-operation. Metropolitan governance should be promoted as well to avoid perceptions of unfairness and backlash. The legal system at the national level should allow such tools.

Rural-urban partnerships should be promoted as a form of cross-jurisdiction collaboration to enhance inclusive growth by bringing multiple benefits, such as expanding the benefits of agglomeration economies, to overcome co-ordination failures and strengthen capacity.

- **Guideline 7: Strengthen innovative and experimental governance, and promote citizens' engagement.**
Citizens should be empowered through access to information. Ensure that elected local councils have the ownership and control of citizen participation and engagement initiatives. Participatory budgeting has the potential to strengthen inclusive governance. The principle of recognition of distinctive aspirations across regions, their diverse levels of readiness and specific chronicles of governance implementations will shape the type of preparation needed to engage in early co-redesign efforts. This will translate in some regions expressing the desire to lead reform early on while other local authorities might be reluctant to disturb the status quo.
- **Guideline 8: Allow and make the most of asymmetric decentralisation arrangements.**
Asymmetric decentralisation should be supported by effective vertical and horizontal co-ordination mechanisms and needs to go hand in hand with an effective equalisation system. An asymmetric decentralisation approach should be based on dialogue, transparency and agreements between all main stakeholders, and be part of a broader strategy of territorial development.

The way asymmetric responsibilities are allocated should be explicit, mutually understood and clear for all actors. To the greatest extent possible, participation in an asymmetric arrangement should remain voluntary.

- **Guideline 9: Consistently improve transparency, enhance data collection, and strengthen performance monitoring.**
National governments should develop performance-monitoring systems to monitor decentralisation and regional development policies: they need to remain simple with a reasonable number of requirements/indicators.

Higher level governments need to monitor subnational performance in critical service areas based upon a minimum set of standardised indicators and provide timely feedback, as well as benchmark inter-local performance in service delivery.

Subnational governments need to be subject to higher-level regulations and fiscal rules to ensure fiscal discipline and fiscal sustainability.

- Guideline 10: Strengthen national regional development policies and equalisation systems and reduce territorial disparities.

The equalisation programme must not be looked at in isolation from the broader fiscal system, especially conditional transfers. Equalisation arrangements need to be carefully designed to promote the tax and development efforts of subnational governments. Fiscal equalisation policies need in particular to be accompanied by pro-active regional development policies to offset the potential negative incentives of such systems.

Overview of selected local decision-making frameworks that have influenced approaches to devolution in Australia

The literature review does not aim at overviewing in detail, investigating the structure, accessing up-to-date documentation, evaluation or reporting on the status or success of frameworks that have been proposed and made public in the Australian context, as well as a recent New Zealand example of co-governance. Yet, both the academics referenced in this section, as well as the interviewees in the next, have referred to some frameworks that this review is compelled to at least acknowledge. Given the fragmented and somewhat outdated nature of public documentation about those frameworks (except perhaps the NT case), this section simply replicates descriptive materials found on websites, the validity and currency of which cannot be verified by the authors of this paper.

New South Wales Local Decision Making

The NSW Local Decision Making (LDM) is an initiative of *OCHRE*, the NSW Government's community focused plan for Aboriginal affairs. In March 2015 the NSW Premier, issued the Premier's Memorandum M2015-01-Local Decision Making which sets out the aim of LDM and outlines the roles and responsibilities of NSW Government agencies in supporting it.²¹

The NSW LDM attempts to use localised and flexible place-based approaches to government service delivery in NSW Aboriginal communities. LDM intends to ensure Local Aboriginal communities are given an increasing voice in service delivery. Through LDM, community partners and regional alliances are intended to be progressively delegated decision making powers and budgetary control over government services if conditional capacity is proven and other agreed conditions met.

The stated roles and responsibilities of NSW agencies in supporting LDM are:

²¹ As at February 2023 the NSW Aboriginal Affairs department website 'Aboriginal Affairs NSW - About Local Decision Making' shows that although Memorandum M2015-01 is active, LDM is currently undergoing a policy review and some areas [policy functions] may no longer reflect the current practice.

- The NSW Government and participating LDM regional alliances will establish formal and binding agreements, known as Accords.
- Aboriginal Affairs will coordinate the overall implementation of LDM. This includes reporting annually on the implementation of LDM to the Secretaries Board and committing to publicly release a formal evaluation of LDM in 2016.
- The Regional Coordination branch of the NSW Department of Premier and Cabinet will manage the participation of agencies in LDM and coordinate service re-design where appropriate.
- NSW Treasury will develop funding models which can be implemented in LDM areas and allow a re-direction of NSW Government resources if required. All funding models should be consistent with individual Accord priorities.
- NSW agencies identified in an LDM Accord will negotiate openly and in good faith, with the objective of achieving positive outcomes.
- Independent facilitators will be engaged to assist in the Accord negotiation process.
- NSW agency engagement with LDM regional alliances is to be conducted by senior officers with sufficient delegation and authority. Agencies will work respectfully, constructively and cooperatively with LDM regional alliances.
- NSW agencies will adhere to the principles of LDM and ensure staff are educated to respond to the needs of Aboriginal communities in a culturally sensitive and appropriate manner.
- LDM regional alliances will be made aware of NSW Government services currently being delivered to their local Aboriginal community. To ensure this occurs, NSW agencies will participate in service mapping processes to identify all relevant Aboriginal-specific and mainstream service funding programs in LDM regions.
- NSW agency representatives will provide information in a timely manner and consistent with service mapping processes.
- Government and LDM regional alliances will share service provision and indicator data to support the implementation, monitoring and evaluation of LDM and negotiation of Accords.

The Implementation framework below shows the steps that aspiring First Nations businesses, community partners or regional alliances can take with the NSW Government to enter into agreements (Accords) committing both parties to jointly address agreed priorities, including timeframes, responsibilities and measures of success.²²

Through LDM, the NSW Government and regional Aboriginal governance bodies (Aboriginal regional alliances) enter into agreements (Accords) committing parties to jointly address agreed priorities, including timeframes, responsibilities and measures of success.

²² LDM-Policy and Operational Framework July -2017.pdf (nsw.gov.au)

The NSW Aboriginal affairs website provides details of seven signed 'Accords':

- Murdi Paaki Regional Assembly Accord - 2015
- Murdi Paaki Accord - 2015
- Riverina Murray Regional Alliance Local Decision Making Ngunggiyalali (Accord) - 2020
- NSW Coalition of Aboriginal Regional Alliances Accord - 2019
- Murdi Paaki Social Housing Agreement - 2018
- Three Rivers Local Decision Making Accord – 2018 and the
- Illawarra Wingecarribee Accord - 2018

An evaluation of the negotiation process for the Murdi Paaki Accord was conducted in in 2015.

Overall, participants in the evaluation felt that the Accord negotiation was positive and aimed to enhance shared decision making and did lead to some positive relationships including between MPRA and NSW Government representatives, and between NSW Government representatives from different departments and agencies. Conversely some government agency representatives were reported to be disengaged in the process. Other strengths included strong Murdi Parki Regional Authority (MPRA) leadership, appropriate size of negotiating Panel, presence of an independent facilitator to help set agreed negotiation rules and a professional and impartial lead Government negotiator.

The main opportunities for improvement identified in the evaluation were:

- To better prepare government representatives to be present at negotiations. Authors of the evaluation suggested under-preparedness resulted from the LDM having not been 'sold well' internally across the NSW Government.
- To increase the seniority or authority of NSW Government representatives present at negotiations.
- To increase focus on strategic and wholistic agreements as aspired to in LDM framework documents and OCRE aims. The authors of the evaluation also noted that several NSW Government representatives felt restricted in their capacity to develop innovative solutions and do things differently due to a lack of funding.
It was proposed that Departments and agencies should consider how they can pool funds and re-design services with the Aboriginal regional decision making bodies so problems can be approached in new ways.
- It was also proposed that a perceived lack of understanding of negotiation processes and high expectations placed on volunteer regional alliance representatives could be addressed through negotiation training and access to independent advice during the negotiations.
- To be clearer on the roles including capacities and intentions of facilitators and lead negotiators in forums.

A 'premiers memorandum' eg M2015-01 establishing LDM in in NSW gov is not a law but carries significant influence over and above soft policies and guidelines.

The Federal system has a similar quasi-legal mechanism for Prime Ministers to give standardized instructions to Agencies called ‘Prime Ministers directives’ provided for under the *Public Service ACT 1999*. Most recently including the [Prime Ministers direction for COVID responses](#).

Legislating clear expectations of public servants – as solutions to the challenge of sharing power and decision making – (see page 59). Many interviewees in part two of this study proposed a gold standard for encouraging behavioural change in Government offices to effect power sharing is through legislating frameworks that divert power from mainstream Government organisations to First Nations peoples and organisations

Some lessons were learnt from the Murdi Parki evaluation that align closely with challenges identified by interview participants –these are:

- Increase focus on strategic and wholistic agreements as aspired to in LDM framework documents and OCRE aims -

This aligns with **Challenge 1 - Accountability of systems, organisations and leaders** see page 50 “An initial step proposed by interviewees in creating improved accountability can be to broaden our lens and define accountability in terms of delivery of sustained improvements that lead to lasting impact. This broader frame for accountability could be measured against the intended impact of investments as outlined in Parliamentary Budget Statements or partnership Agreements rather than the simplistic delivery of sectoral programs and services (eg health or education in isolation). “

- Better prepare government negotiators and increase seniority and delegation levels of NSW negotiators–

This aligns with **Challenge 2 – Partnerships and the capacity of entities to partner** (see page 54) “A perceived short-tenure of government staff in Indigenous-service specific roles (and therefore the loss of government knowledge of First Nations stakeholders and service providers) while frequently identified as frustrating, presents a particular challenge for Indigenous community organisations. Smaller partner stakeholders have limited capacity to engage and continue to reengage when government staff rotate or roles move to new agencies, requiring re-education of new government staff, introductions and a new learning process before work can continue.”

- There is a lack of understanding of negotiation processes and high expectations placed on volunteer regional alliance representatives

This aligns with **Challenge 3 - Power and decision making** (see page 56) “Interviewees discussed a need for First Nations community partners to be appropriately resourced in order to be equal contributors in decision making bodies. The effort required to gain authority to contribute on behalf of Indigenous communities can be underestimated in terms of time and cost.”

Empowered Communities

The Australian Government provided \$31 million over six years to 30 June 2022 to fund 'backbone organisations' in the eight Empowered Communities. Future government funding arrangements for Empowered Communities has not been announced as at February 2023 and continued support arrangements for local decision-making bodies beyond 2023 are dependent on the outcomes of the referendum on a Voice to Parliament and philanthropic and corporate Jarwan partners.

The eight active Empowered Communities described on the NIAA website are:

- Cape York, Queensland
- Central Coast, New South Wales
- East Kimberley, Western Australia
- Goulburn-Murray, Victoria
- Inner Sydney, New South Wales
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Lands, Central Australia
- North-east Arnhem Land, Northern Territory
- West Kimberley, Western Australia.

This development program supports capability for Indigenous leaders as they work with their communities in these regions and partner organisations to identify and progress local priorities.

While the nature and intent of these place-based development programs is for government-community group partnerships to individually address self-identified social needs, some guiding aspirations of the Empowered Communities program shape the activities of the partnerships. These include:

- Investment must be directed through clear policy frameworks and should support Indigenous-led development approaches.
- Accountability of service and goods providers is directed to Indigenous people wherever possible.
- Funding should be funnelled towards driving development rather than promoting dependence.
- Multi-year funding agreements should preference organisations that are committed to Indigenous empowerment.
- Transparency of all public finance spent on Indigenous Australians at a place-based level should be a commitment of all partners.
- Pooled funding approaches will be adopted to break down structural inflexibilities caused by having funds tied to specific programs and agencies.
- Transition away from service provision dominated by large NGOs to local services should be supported by all parties.

Preliminary observations stemming from the Northern Territory Local Decision Making (NTLDM) approach

Tremblay et al. (2021) have undertaken a rudimentary appraisal of key bureaucrats own judgment surrounding progress and challenges associated with the Northern Territory Local Decision Making policy (LDM) framework which entailed:

1. Conducting a preliminary literature review to what 'rationale' are usually hypothesized to drive the decentralisation of government services.
2. Interviewing a small number of high-level executives occupying different positions in the bureaucracy (within assorted central agencies or regions) and playing distinctives roles in the NT's LDM implementation to seek their views on the relevance of the various types of motivations (or drivers) behind the policy.
3. Analysing the resulting narratives to extract cross-driver themes, barriers and observations about challenges to address for the next phases of the implementation.

Announced as the Barunga Agreement in the form of a joint Land Councils and Northern Territory Government Statement, the framework needed to launch the upcoming NT-LDM initially took the form of an MoU acknowledging the range of Aboriginal interests in the Territory, and that all Aboriginal people should have the opportunity to be fully engaged in the NT society and economy; and that non-Aboriginal people need to be brought along in this process. In its developing form, the LDM supports a range of objectives initially mainly linked to government services delivery and involves deliberately a large amount of flexibility (from both community and government perspectives). The policy logic is described (IAP2 2019) as:

Local Decision Making (LDM) is providing a pathway for Aboriginal people and organisations to take control of the delivery of government services and programs in their communities in the Northern Territory of Australia. The Community Control Continuum, based on the IAP2 Public Participation Spectrum, is an important tool in the LDM framework, helping Aboriginal people identify the extent to which they wish to be involved in the governance of their community. The spectrum ranges from inform to empower allowing leaders to decide for themselves how things are done in their community and their level of participation moving forward, ultimately leading to greater self-determination. ...

The Northern Territory Government has an ambitious reform agenda to transform the relationship it has with Aboriginal Territorians in order to support self-determination. Underpinning this strategy is Local Decision Making (LDM), a 10-year community driven process under which government is ceding decision making back to Aboriginal communities. LDM is a Whole of Government policy endorsed by Cabinet in August 2018 envisaging Aboriginal Territorians determining their own future through the transition of services and programs from government to community control. The basic premise of LDM is local decisions are the best decisions, acknowledging there is no one homogenous Aboriginal Northern Territory and those in community understand the issues and challenges of their community better than those in the urban capital Aboriginal, Darwin. The LDM process is guided by five principles, namely self-determination, place based, flexible, co design and community control. (IAP2 2019)

The Northern Territory intent reflects a combined concern with decentralisation (improving government effectiveness in a range of domains discussed below) and devolution (assisting regions to play a greater role and potentially self-determine – although that term is not often directly utilised). The Northern Territory policy implementation was always considered to be a long-term project and was insufficiently progressed at the time of the research interviews to lead to a formal evaluation, and this was not the intent of that research.

Recognising the vagueness found in both the academic and grey literatures and also replicated in government narratives about the motivation and objectives inherent in the Northern Territory LDM reform, a typology was developed to examine more closely which plausible outcomes were suggested (and could serve as the basis for an eventual evaluation) by the literature. Northern Territory Government interviewees were also asked to reflect about signs of early progress on each 'motive'. They were:

Motive #1: Efficiency rationale

Efficiency or cost-effectiveness rationale dominate the academic literature applied to specific services, as arguments are mounted to explain why and when services fail particularly often in remote regions, and why the geographical, political and administrative distance between providers, designers and recipients plays a central role.

Motive #2: Equity rationale

Political arguments around regional, and in particular remote, inequities are common and refer sometimes to being forgotten and the lack of a political voice centrally, to the lack of understanding of real remote needs (who needs it and what they need), and the inability of central agencies to match services with investments in capabilities. While reducing the distance (social, spatial, cultural and cognitive) between services providers and recipients appears to constitute a natural response, it is relatively equivocal around how 'fairness' is likely to be improved, impartiality is to be maintained and how cost-effectiveness can be gauged.

Motive #3: Regional workforce and development

Local and regional political administrations endlessly raise those arguments as a rationale to transfer responsibilities downstream; which occupy a significant place in the grey literature and appear in numerous government-led inquiry submissions. These range between credible claims about how the decentralisation of capabilities would contribute to regional wellbeing at one end, and less credible and populist arguments (in the NT remote context) based on multiplier effects narratives which do not take into account capabilities limitations, restricted place attractiveness (for the sake of retaining the workforce valuing wellbeing amenities and infrastructure) and the ability to attract and retain a range of skills.

Motive #4: Revitalisation of social contract with regions

These arguments dominate government narratives, including at the time of elections, around how the latter intend to create frameworks improving regional stakeholders' 'voices' and ability to inform and participate (here specifically around government services provision and design) but also to change the balance between always being at the receiving end of initiatives and funding opportunities, towards being deliberately involved in framing those opportunities.

Motive #5: Innovation stimulus and targeted disruption

The aspirations found in various literatures and expressed in the diagram above emanate generally from contemporary narratives associated with innovative regional economies which seldom easily fit the reality of the most remote and government-reliant communities where leadership, governance capabilities and skills are in short-supply, and generally difficult to retain locally. Yet, the need for localised solutions to services provision bottlenecks, independently from centrally-located government agencies and their internal backyard politics is often claimed to constitute major barriers to local initiatives and experimentation.

Across the NT bureaucrats approached in that study, some patterns were identified that are useful to the current review:

- Most respondents, whether they played roles in the decentralisation reform or belonged to key services agencies affected by it (and potentially negatively affected by the reform), understood and could relate to all motives (although it is noted that they were close participants and professionally vested in supporting the overall policy, its narrative and familiar with an informal register of examples and stories about what ‘improvements’ and/or ‘challenges/issues’ were emerging. NT Government interviewees in general express similar sentiments with respect to each category of motive:
 1. Better service delivery was of particular concern and interest to public servants with direct responsibilities in the key agencies (education, health, policy and welfare); and they referred to place-based initiatives that pre-existed the LDM, and suggested that the latter had facilitated implementation and enhanced their legitimacy in the eyes of their colleagues.
 2. Greater equity and fairness around service delivery between or within regions was mentioned in the context of the prohibitive costs of delivering services in remote areas (‘the bush’) which affect negatively certain categories of residents – suggesting that regions should themselves prioritise and makes those difficult choices.
 3. Regional development and employment opportunities were particularly at the forefront of NTG interviewees playing specific regional coordination roles and acting as champions to accelerate initiatives perceived to be obstructed by the central NT bureaucracy. Yet, they admitted their efforts were hindered by structural policy changes originating from the Commonwealth (e.g. the changing character of and conditions for CDEP/CDP or like programs). They also strongly raised the need to rethink funding support linked to remote capability-building and training. Furthermore, the difficulties associated with ‘housing’ in and around remote communities are overwhelming across the NT, and while the purpose of the policy is to break down silos, it is often perceived that the housing portfolio can hijack and prevent progress on almost all other policy fronts.
 4. The need for a better social contract with the regions was endorsed by all, although most mentioned the possible gap between political intentions and discourse from the bureaucratic reality, accountability targets, compliance frameworks and agency

timelines.

5. Most interviewees seeking to provide examples of institutional innovations and improvements referred to the process and to consultation type arguments as well as overcoming central bureaucratic difficulties (silos, procurement, government culture and mistrust of downstream stakeholders, limiting accountability practices), the 'design' of specific place-based initiatives having been led by only a few 'go-ahead' regions or communities (speculative reasons about why some regions appear more motivated and dynamic than others are discussed in the report).
- The key issues discussed in the section on decentralisation of addressing role delineation, capability-building and adequate financial reform were all raised as the greatest challenges to the overall reform, but bureaucrats did not provide concrete or detailed accounts how they were learning and taking those into accounts, nor of what could be done differently.
 - Scale issues (the interface between geographical and administrative functionality) permeated the discussion of challenges. Some interviewees noted that there is an ongoing notional discrepancy between the ideal scale and domain of decision (within a specific service priority such as health, education or housing and infrastructure developments) and the self-selected spatial boundaries informed by existing governance domains. For instance, specific corporations or administrative groupings (with pre-established cultural realms, economic responsibilities and formal processes might or might not juxtapose (in terms of ideal size, political fit and operational scales) well with the needs of the policy. While this type of roadblock constitutes a long-recognised issue, it seems to play a critical role in the government's framing of policy effectiveness – and the necessity of devolution to disrupt old processes should be anticipated. For instance, it affects the ability of regions, localities or communities (the choice of either of these scales of governance being itself a symbolic of the issue) to progress and benefit from the policy.
 - The typical and longstanding references to 'government silos', the need to change the government culture, excessive regional disparities around readiness and leadership, excessive coordination costs relative to the size of the NT and regional economies, the fact that some regions had difficulties to articulate (or agree on) aspirations (in terms of the domains endorsed by the NT to participate in). It was recognised that some regions appear near-stagnant with respect to implementation progress and that might reflect the desire not to take on more responsibilities (lack of readiness or lack of trust in the process), or political tensions preventing even discussions about it.
 - The risk of policy reversal was dismissed by many of the NTG interviewees because of bipartisan endorsement had been sought, and improvements in building the trust capital arising from the policy reform were expected to be visible to all and unlikely to attract major turnarounds. It is not clear how strong these arguments are.

The early implementation lessons derived from the NT experience (detailed in the Tremblay & al. 2021 report) were numerous and timely, and the following aspects mentioned by NTG interviewees are noteworthy and applicable to this review:

- Efforts to ensure adequate ‘representation’ of all types of regional or community residents in the negotiation process (along legitimate who-where-when-how dimensions) are overwhelmingly complex for regions where historical occupation, traditional or modern authority are contested, and those matters were raised spontaneously by many interviewees as constituting important concerns that can cause significant delays for implementation in specific locations. They claim that it is incumbent on the LDM implementation to ensure that leadership and representation (of a community, locality or region) reflect adequately the range of interests, socio-cultural groupings or clans and the diversity of opinions residing in that community. Typically, influential individuals residing in those regions might wear many hats, have established cultural or political allegiances, and hold more opaque economic interests (lawfully shielded by various laws and land rights practices) which raises accountability questions (in a mainstream sense). It is also likely that their leadership could become contested in the future, and that the LDM agenda, if excessively dependent on those peoples’ views, be seen in the future as biased because of uneven representation, past generations of leaders and become challenged. The task of ensuring an equitable balance in the LDM leadership process itself from the outset is a significant responsibility that will affect the ability to achieve future buy in.
- The need for central government to internally restructure its interactions between central and regional roles and adjust its processes has played a significant role in and around the implementation of the policy. Regional Coordination Committees reporting, and Regional Action Plans have become elevated activities within key participating agencies. This has resulted in direct reporting to Cabinet, participation in and attendance to obligatory attendance to meetings located in the regions themselves, and increased staffing to deal with regional matters or roadblocks in general. In all, the autonomy of regions has increased at least within the government bureaucratic structures to address cross-agency region-specific issues without necessitating cumbersome vertical approvals on all matters. Interviewees wanted to convey their view that the LDM is one component of the broader regionalisation framework occurring.
- For a majority of regions, early investments in leadership development programs were judged necessary as a critical form of human capital. In some communities, this occasioned considerable funding directed towards workshops facilitation to unpack required decisions structures at the local level complemented by robust conversations about governance and representation led by independent consultants. These generally entail supporting those regions to initially work at arm’s length from NT bureaucrats.
- Following from the point above, agency executives also support the engagement processes described, but equally emphasize the need for planning sufficient domain-specific technical, HR and services delivery expertise, arguing that experts should be involved early in such discussions to ensure regional ambitions are realistic, incorporate awareness of compliance constraints, of technology, assets management responsibilities, and capacity limitations both at the broad NTG and local population levels.
- The notion of undertaking incremental reforms in manageable domains judged relatively uncomplicated was supported by all interviewees. Agency executives noted that the central

agency bureaucracies (for instance the health forum overseeing remote service developments) must deal with limited capacity, time and other resources and could not themselves handled concurrently excessively complex transitions. Given the asymmetric approach adopted, it means that it would not be manageable to restructure too many regions simultaneously for one-single domain (that would stress a given agency) and that the number of domains (health, education, children and family services, etc) had to be limited to agencies with established engagement practices, even considering the reasonably slow pace of the LDM implementation across the board.

- Other agency executives such as Education emphasized the value of inciting communities or regions to learn from the progress of other regions and to visit sites to contemplate what can be achieved from locations where community-led or independent school models have been adopted as preferred innovations. It was noted that insufficient efforts had been made to promote learning by showing what some regions or communities had been able to achieve, but that this could be interpreted by those slower regions as efforts by government to influence their choices, and that bureaucrats had been quite discerning to not be seen to push reluctant regions.
- As a response to the concerns about undue pressure by government and the limited ambition to participate in LDM displayed by many NT regions, it has been suggested that mechanisms that could assist communities or regions at the early stage of envisioning their priorities and choose between alternative scenarios is to offer a range of models and examples relatively early featuring 'options' describing both typical end points and pathways that might fit their situations. Such models are particularly useful if they embed trade-offs between options, describe the likely speed of change (for instance around realistic employment targets), as well as what scope for local innovations (and effort or responsibilities required) there might be in each of the various models. But interviewees generally agreed that it is essential to retain the 'opt in' approach and unsuitable to attempt forcing devolution for communities resisting it.

Part 2: Interviews with First Nations organisations executives and senior government officers about the challenges governments face in meeting their commitments under the National Agreement on Closing the Gap

To provide leadership, direction and oversight to this paper, a Steering Committee (majority Indigenous) was established comprising two ANZSOG senior staff, two Charles Darwin University project staff and a CEO of a First Nations consultancy business. The Committee developed a set of questions to focus on potential solutions to the challenges governments face in fulfilling their commitments to Closing the Gap (questions at Attachment A). The Committee used purposeful selection to identify a number of diverse and well-informed survey participants.

Between 3-21 November 2022, interviews were conducted with senior managers of prominent First Nations and community-controlled organisations, as well as senior executives of government agencies with responsibility for Indigenous social and wellbeing services. Eleven of the fourteen survey respondents were Indigenous with an approximately balanced representation of women and men. Participant list is included at Attachment D

Across the interviews, themes emerged about the challenges faced by all Australian governments in implementing commitments under the National Agreement on Closing the Gap, and how these challenges might be avoided or managed. In many cases practical approaches were proposed, or examples of policies and practices that can help address these challenges were provided.

The issues raised have been categorised into themes and are listed below in priority order of the relative prevalence of the theme identified across the interviews:

Challenge 1 - Accountability of systems, organisations and leaders

Challenge 2 - Partnerships and the capacity of entities to partner

Challenge 3 - Power and decision making

Challenge 4 - Identifying and engaging with the right partners

Challenge 5 - Cultural change of organisations

Challenge 6 - Data availability and quality

The six themes represent the most 'front of mind' issues that survey participants feel are likely to represent the biggest hurdles for governments in achieving their National agreement on Closing the Gap commitments.

This paper has organised suggested solutions, issues for further consideration and where applicable has provided links to previous policies and examples of systemic management under each challenge area. Some suggested solutions or proposed policies may be applicable to multiple challenges but have only been listed against the challenge they have the potential to address as raised by the interviewee.

Challenge 1 - Accountability of systems, organisations and leaders

Interviewees identified accountability challenges in relation to:

- a) systems – public service organisational processes and policies that provide a foundation to encourage accountable practices
- b) organisations – the culture of public service departments that drives and defines accountability and the perseverance of a lack of accountability at the department or government level
- c) public service leaders – individuals who professionally invest in their own performance and hold themselves and their performance to account.

Across these three realms the concept of accountability was identified as having the potential to be a force for good, eg. Accountability is a necessary ingredient to change corporate culture. It was however pointed out that when mechanisms to facilitate accountability are unbalanced, overly burdensome red-tape is a common unintended outcome which can hinder efficient service delivery.

When accountability was expressed as a positive force, it was considered as an element that could be a driver of continuous improvement, self-reflection, and peer-review. When accountability was discussed as a barrier it was because the accountability measures were not reflective of objectives or performance reporting focused on project outputs over real impact.

‘Accountability’ and ‘transparency’ were linked themes and are both included under this section. Many of the solutions to the problems of accountability below speak to improvements in transparency. An initial step proposed by interviewees in creating improved accountability can be to broaden our lens and define accountability in terms of delivery of sustained improvements that lead to lasting impact. This broader frame for accountability could be measured against the intended impact of investments as outlined in Parliamentary Budget Statements or Partnership Agreements rather than the simplistic delivery of sectoral programs and services (eg health or education in isolation).

Narrower frames of accountability (program or grant specific) were discussed among interviewees as common practice in public services that can have detrimental effects of focusing public servants on short term outcomes and risk avoidance at the expense of potentially positive impacts of investments.


“The question is what are we accountable for? Delivering siloed programs and services or accountability for making a positive impact (sustained improvement in the life outcomes of Indigenous Australians). Delivering a siloed program and meeting KPIs does not necessarily equate to making any real impact over the long term.”

Geoff Richardson, Executive, First Nations Development Services

In some instances, the undertaking of specific transparency improving actions and public reporting of performance at the individual, team or organisational levels may be used a proxy for performance and therefore considered an accountability mechanism for governments and senior public servants. Conversely, the assumption that improved transparency of actions directly translates into

accountability is a potentially fraught assumption if there are no repercussions when targets are not met, or recommendations not heeded.

Interviewees discussing this theme agreed that where there are clear benefits to community, consideration should be given to reporting being legislated in order to drive accountability. Effecting change of practice in public services could be driven via stronger and more consistent approaches to program evaluations undertaken in partnership with First Nations representation. This would allow for greater comparisons between performing programs and departments seeking to scale-up or replicate successes.



“Now all [Australian Government] leaders are being held responsible in a very transparent way, and that makes this huge difference, along with the organisations that have the 17 targets, all secretaries are being held accountable for what they're doing in the priority reforms and a maturity model is being built to make sure that the systemic change that we're looking for actually occur across all parts of the system.”

Letitia Hope, Deputy Secretary, National Indigenous Australians Agency

Potential solutions to addressing issues of accountability

Options to strengthen systemic accountability in undertaking Closing the Gap actions included:

- The Federal Government Department of Industry, Science, Energy and Resources employ the [‘Aboriginal and Torres Strait Islander Engagement and Participation Plan’](#) (EPPs). These plans are required to be submitted as part of grant applications for the Manufacturing Collaboration Stream (MCS) of the Modern Manufacturing Initiative (MMI). The plans are considered during grant application assessments and encourage providers of major infrastructure projects to work with community representative bodies to increase workplace participation of Aboriginal and Torres Strait Islander peoples. EPPs with more ambitious First Nations representation or collaboration are more likely to win contracts.

Requiring an EPP is an example of a systemic change that has been made to drive accountability of actions that will be taken. The Department is seeking to drive ‘business to be done differently’, more inclusively, with upstream consideration of impact, and the opportunities for First Nations communities to benefit being identified. Introducing a mandated step in an existing process is a tool the public service is able to deploy to disrupt ‘business as usual’ approaches and ensure inertia does not hinder Closing the Gap opportunities from being realised. Public reporting against the mandated First Nations supply chain target including contracted First Nations employment increase transparency in the system and potentially market confidence in a new inclusive way of working.

- The [Indigenous Procurement Policy](#) (IPP) was launched by the Federal Government with the aim of providing First Nations peoples with improved opportunity to participate in the

economy. The Policy features public reporting at agency level and internal reporting at the team level for performance contributing to:

- Achievement of annual targets for the volume and value of contracts awarded to Indigenous enterprises by each Commonwealth Portfolio.
- Adherence to the [Mandatory Set Aside \(MSA\)](#) which requires that Indigenous businesses be given an opportunity to demonstrate value for money before a general approach to market. The MSA applies to procurements to be delivered in remote Australia and for all other procurements wholly delivered in Australia valued between \$80,000-\$200,000 (GST inclusive).
- Achievement of the Indigenous employment and business participation targets which apply to contracts wholly delivered in Australia valued at \$7.5 million or more in 19 industries, known as [Mandatory Minimum Indigenous Participation Requirements \(MMR\)](#).
- Complimentary to some policy changes that have mandated increased transparency, there are a number of awards that recognise performance and can be considered as positive incentives for policy compliance and performance. Supply Nation delivers the [Supplier Diversity Awards](#) *"to recognise companies, government agencies and individuals who are contributing to create a prosperous, vibrant and sustainable Indigenous business sector."*
- Some NSW Government agencies have independently applied senior management performance targets for achieving numbers of new partnerships developed with Indigenous or community-controlled organisations.

Individual accountability by public servants can be difficult to deliver with some potential interventions raising ethical questions. Like any organisation, public services have the structures, policies and systems that support an employer/employee relationships and can apply various incentives or levers to encourage or dissuade individual actions being taken. While in this instance targets may be identified and communicated to leaders as an individual responsibility. Officers must track, achieve, and report on data that could deliver on transparency concerns, however unless actions are linked to financial (bonuses/promotions) or reputational windfalls (raising ethical questions), it may not be a solution that can be hardwired to all individual leaders being held individually accountable.

- Proposal for regular senate estimate-style open forums to ensure efforts to achieve commitments are substantiated (info-graphic proposed by First Nations community member ACT at Attachment B). It was proposed in interview that community representatives be given a recurrent and formal forum to question public servants about actions taken to close the gap.
- There are a number of mechanisms available to governments through various parliamentary systems that can help to deliver accountability. For example in 2021 the [House of Representatives Standing Committee on Indigenous Affairs](#) resumed hearings with evidence from First Nations people to understand the *opportunities for economic development and employment for Indigenous Australians as well as the barriers*.

The tangible outcome of such an activity in this instance is the example of addressing risks such as 'black cladding' (where a company management structure satisfies the procurement policy criteria,

but where majority benefits flow to non-Indigenous owners/managers). The parliamentary system approach to addressing this lack of transparency, and accountability is via a Committee Recommendation of increased series of random independent entity audits of companies. Interviewees suggested that tightening of eligibility requirements around profit share equity or comparative hours of business input could help to assure an active role is played by Indigenous partners in business (rather than passive roles).


- The New Zealand Government have legislated provisions for strengthening a partnership between Māori under Te Tiriti o Waitangi/the Treaty of Waitangi and the Crown under the [Public service Act 2020](#) and related [fact sheets for public servants](#). The act includes a requirement that the government exercises individual and collective responsibility for a culturally competent public service that delivers with and for Māori and is committed to supporting Māori leadership and decision-making roles in the Public Service. Explicit responsibilities are assigned to:
 - Public service leaders for developing and maintaining the capability of the Public Service to engage with Māori and to understand Māori perspectives.
 - The Public Service Commissioner, when developing and implementing the newly required leadership strategy, to recognise the aims, aspirations and employment requirements of Māori, and the need for greater involvement of Māori in the Public Service.
 - The new Act also carries over the current requirements on public service employers to operate an employment policy that recognises the aims, aspirations and employment requirements of Māori, and the need for greater involvement of Māori in the public service. The Commissioner and chief executives are accountable to their Minister for upholding their responsibilities to support the Crown's relationships with Māori.

Challenge 2 – Partnerships and the capacity of entities to partner

Interviewees identified ‘creating and maintaining partnerships’ as an issue due to:

- a) agency capacity being hindered by churn of roles and loss of critical staff and expertise from dedicated roles
- b) disproportionate challenges for many First Nations enterprises (in comparison to market dominant service providers) in terms of corporate history loss, poor relationships and the comparative size and organisational capabilities.

This challenge was prevalently raised by interview participants with experience in senior roles of First Nations organisations and peak bodies. A perceived short-tenure of government staff in Indigenous-service specific roles (and therefore the loss of government knowledge of First Nations stakeholders and service providers) while frequently identified as frustrating, presents a particular challenge for Indigenous community organisations. Smaller partner stakeholders have limited capacity to engage and continue to reengage when government staff rotate or roles move to new agencies, requiring re-education of new government staff, introductions and a new learning process before work can continue.



“There was a champion in Queensland they... started a plan to hand all of the legal funding back to the Aboriginal legal services. So what we've been trying to work out is when? Because when that person goes, the goodwill potentially goes with them. So how do you legislate or change into policy all of those things so that there's longevity in them, not just when a champion happens to be there at the time.”

Casey Millward, Head of Policy and Secretariat, Coalition of Peaks.

Potential solutions to partnership issues and ways to improve government/ First Nations organisation partnering capabilities

Options to improve likelihood and effectiveness of government/community partnerships in undertaking Closing the Gap actions included:

- Greater use of existing [identified positions and affirmative measures](#) to recruit people with Indigenous knowledge and expertise at the same time as making sure recruitment processes are culturally appropriate and advertised in targeted media.
- The Victorian Government has implemented an Aboriginal Business Strategy [Tharamba Gugheen](#) – which aims to empower and upskill the First Nations businesses sector through targeting supports for start-up and small to medium businesses. The Strategy aims to help First Nations businesses to grow (including assisting with training and introductions /access

to international markets) focussing on Victorian First Nations entrepreneurs, through tailored business training.

Addressing capability gaps in the First Nations businesses while they are growing is expected to grow both market strength for these businesses and confidence by government to form ongoing business partnerships with First Nations suppliers and service providers.

- Recognising and incentivising retention of effective and long serving public servants and other changemakers in Indigenous servicing areas. Providing career value to subject expertise.

Under the potential solutions for addressing partnership capabilities, incentivising individuals to drive change can be one of the more difficult, and ethically concerning, measures to deploy. In this instance the desired outcome is to increase the length of tenure of officers in their positions as this increases organisational knowledge, and is beneficial to stakeholder relationships central to partnering.

Predictability of responsibilities and personnel via improved public service stability was an interview theme associated with facilitating better community participation. As noted by one interviewee with experience across government and non-government organisations; *“Having consistency and clarity of government structures from the top levels of the Commonwealth Government through, as great an extent as possible, to the states and territories really helps ...to build confidence in our commitment to support solid partnerships to bring about action and change.”*

Adam Fennessy, *Dean and Chief Executive Officer*, Australia and New Zealand School Of Government.

There are Human Resource policies that have been employed in various Australian Government organisations to encourage tenure either through and ‘carrot or stick’ approaches however any actions an employer takes towards employees must be done equitably. Examples of incentivising tenure may be via rewards (promotions, opportunities for learning and development, training, awards and recognition), or deterring internal moves by mandating required lengths of time to be served in roles. An unintended consequence of deploying a mandated ‘time in role’ is that an employee may leave the organisation entirely.

- [Barring Djinang](#) is an Aboriginal employment strategy for the Victorian public sector- aiming (with targets) not only to increase First Nations staff in senior positions in the public sector but to increase First nations participation in the Aboriginal community controlled and private sectors.

The employment targets of Barring Djinang, encompassing the Aboriginal community-controlled sector is a community minded approach by the Victorian Government, agreed through a co-design process. Including First Nations partner organisations employment in targets reduces the potential for drain on the community-controlled sector from government ‘poaching’ talent and also committing the government to focus on supporting the sector in order to meet its own targets.

- Interviewees suggested that government requests of First Nations organisations (performance and financial reporting) could benefit from considering the range of requests and capacity of stakeholders. Timelines for input should be considerably agreed with

organisations with particular respect paid to social and cultural information that may not be fully understood to be time consuming to obtain and pass on with authority.

Challenge 3 - Power and decision making

Interviewees identified the perceived inability of governments to routinely share power due to circumstantial/environmental conditions including:

- a) mistrust of the private/community sector and unconscious bias
- b) probity requirements
- c) a 'cult of managerialism' within government
- d) fear of letting-go of authority
- e) power imbalances
- f) capability gaps in community-controlled sector.

The challenge of power sharing and decision making was discussed by many interview participants from government and private sector backgrounds. It was frequently discussed in terms of governments having difficulty in changing their managerial and reporting systems to accommodate shared accountability and risk sharing. Worst case examples of this include governments resorting to punitive 'crack-downs' (for example increasing juvenile crime punishments) rather than addressing root causes – for example seeking community assistance to identify and address drivers of behaviours including family unit /community breakdown and lack of employment options.

Interviewees did not identify any examples of incentives set by agencies for an individual officer to absorb risk where decisions were not sitting at an institutional level, which does not increase the likelihood of officers taking up new modes of operating. For example, if a contract manager hands over financial decision making to persons outside of a department and a decision is made (not by the contract manager), is the contract manager still ultimately responsible for the decision? If so, to what degree? *"Even if you, as a public servant wanted to hand over decision making power, there are financial delegations and rules surrounding those delegations that are vested in that position you sit in, so there are structural impediments that stop you from giving that power away."*

Geoff Richardson, Executive, First Nations Development Services

The question of when power sharing should be sought was also discussed – whether it is a fruitful exercise only for the design and implementation of services specifically or significantly for First Nations recipients, or whether there is value in First Nations community input to broader 'mainstream' policy. This is a pertinent distinction particularly when it is appreciated that the vast majority of First Nations social servicing is delivered through mainstream services.

“One of the main challenges for the ... public sector,... is our deep commitment to managerialism as a mode of operation. Managerialism is all about delivery, control, authority and accountability and accounting, right, so it's a mode of operation.”

Craig Ritchie, CEO, AIATSIS

Potential solutions to encouraging governments to share power and decision-making responsibilities with First Nations organisations

- Improving coordination with peak bodies and First Nations organisations was considered an effective and flexible solution to the issues Governments face in sharing power by most interviewees. In 2020 the Australian Government Department of Education engaged The Secretariat of National Aboriginal and Islander Child Care (SNAICC) to co-chair the Department's [‘Connected Beginnings’](#) Advisory Group. SNAICC has assisted in guiding the upskilling of First Nations organisations and other community investments through Connected Beginnings and facilitated the hand-over of grant responsibilities from large non-Indigenous education service organisations to First Nations organisations.

Interviewees felt that a central requirement for power-sharing to occur is for trust to exist – between communities and governments and vice-versa. As a first step in establishing trust, parties must have the opportunity to get to know each other.

In-house project opportunities (which support secondments from government into community-controlled organisations, or from community organisations into government) have the potential for additional benefits beyond the specific project undertaking, cultivating professional relationships and fostering two-way organisational learning. An effective way to understand another organisation (beyond being an employee) is to deliver a project embedded within teams. In this example the ‘co-chair’ approach means an opportunity to work side-by-side and experience the culture of each organisation. This approach needs to remain cognisant of the size of organisations to support these type of arrangements and cannot be undermining the strength of an organisation by co-opting community representatives beyond what is of benefit to that organisation.

From the perspective of government, interviewees suggested a potential method to overcome power sharing hesitancy caused by unconscious bias and mistrust of First Nations organisations could be to implement secondments of senior public servants into community-controlled organisations. [Jawuan](#) is an example of a skill-sharing secondment program used by over 700 Commonwealth APS staff as of 2021. The program involves officers moving to regional areas for up to 12 weeks to work within First Nations organisations on projects contributing to the Closing the Gap agenda. In return APS staff gain cultural awareness and develop new individual skills and appreciation of the reality of working in and for First Nations communities. There is further scope for government departments to move beyond considering these type of activities as only contributing to individual cultural capabilities or capacity building, but as a systemic opportunity for

institutional learning to build trust, which is an important first step to being able to consider genuine opportunities for power-sharing.

Interviewees discussed a need for First Nations community partners to be appropriately resourced in order to be equal contributors in decision making bodies. The effort required to gain authority to contribute on behalf of Indigenous communities can be underestimated in terms of time and cost. *“What we see happening is [First Nations] organisations doing the hard yards to form relationships amongst their own mob – putting aside differences so a single best voice can be passed on and this is not recognised or funded in any way [by Government partners].”*

Geoff Richardson, Executive, First Nations Development Services

- The Northern Territory Government has appointed [Australian Medical Services Alliance Northern Territory](#) (AMSANT) to help with a policy reform agenda that is transitioning control of regional primary health care clinics from NT government to Aboriginal Community controlled bodies. AMSANT also contributes to workforce and health policy development at the Territory and national levels, and promote quality evidence-based research, as prioritised by First Nations people.
- The NSW Government launched the [NSW local land services Aboriginal-Engagement-Strategy](#) in 2020 that sets agency targets for engagement and ongoing employment of First Nations people and representative bodies in powerful decision making roles over land use.

Increased First Nations representation in government decision-making roles is broadly recognised across all states and territory governments as a positive step towards improving government confidence in power sharing and in forming successful partnerships with community organisations. It should be pointed out that power related distinctions are acknowledged between, *including* First Nations participants in decision making bodies, *and actually listening to them*, and between *listening* to First Nations voices *and actually acting on that advice*.

Creating a safe culture of risk taking (and therefore applying a higher tolerance for failure) within government organisations was a sub-theme discussed by some interviewees and included under this ‘power sharing’ theme. A quote highlighting this was *“In its basic form, if governments feel like they are giving money to a First Nations organisation and not controlling the risks or gaining the kudos, it’s just something governments are not good at doing. Governments need to get better at doing this.”*

Adam Fennessy, *Dean and Chief Executive Officer*, Australia and New Zealand School of Government.

- Establish frameworks for thresholds for decision making. It was proposed by interviewees that new internal policy frameworks could provide guidance and assurance to officers of their professional safety in handing over specific project related powers to First Nations and community-controlled bodies. Such frameworks might be guided by categorising organisations by size and reputation as well as level of financial commitment and potential

community impact of decision-making roles to be absorbed by First Nations organisations.

Many interviewees proposed a gold standard for encouraging behavioural change in Government offices to effect power sharing is through legislating frameworks that divert power from mainstream Government organisations to First Nations peoples and organisations – An example of this is occurring in Victoria is through justice reform. The [Koorie Court](#) is an alternative justice path for Victorian First Nations people who have admitted responsibility for criminal offences. The primary goal of the Koorie Court is to make sentencing options that are culturally appropriate to Koories and reduce the rate of re-offending. If First Nations people elect to have their case heard in a Koorie Court then hearings are arranged to include testimony and advice from elders, community representatives and relevant family members where appropriate in proceedings. While yarning about the case informs a ruling, currently the process still reverts to a magistrate to determine the final ruling on outcomes or sentencing. While a more compassionate and culturally informed hearing may result in a better outcome, the next step towards real power-sharing would involve joint decision on sentences, not only an advisory role for First Nations voices in the process. It is difficult to assess the benefits of power-sharing efforts that are reflected in legislative changes, as the letter of the law does not provide for the spirit of the law, reflecting genuinely how it is interpreted or applied. Much of this (as reflected in interviews) relies on the history of interactions and engagement between community and levels of government, the trust that has been built up or eroded, and individual relationships that can underpin or undermine efforts.

In Queensland in 2023 new legislation has been introduced into the Public Sector Act described as reframing the way in which the State engages with Aboriginal and/or Torres Strait Islander people. While this may provide a foundation for power-sharing to occur, it will depend on how commitments such as 2e below (working in partnership with Aboriginal peoples) are enacted. *Note: the language of the legislation below has not been drafted in an inclusive way – the authorship of the text infers it has been written from the perspective of non-Indigenous government employees who will be now required to work differently with they/them essentially ‘othering’ First Nations people.*

- The Queensland Government recently passed amendments to [the Public Sector Act 2022](#), Commencing 1 March 2023 new responsibilities of government employees detailed in Part 3 ‘Reframing of State’s relationship with Aboriginal peoples and Torres Strait Islander peoples’ are:
 - (1) Reframing entities (the public sector) , as providers of public services to the people of Queensland, have a unique role in supporting the State government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples.
 - (2) Reframing entities fulfil the role by—
 - (a) recognising and honouring Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland; and
 - (b) engaging in truth-telling about the shared history of all Australians; and
 - (c) recognising the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination; and
 - (d) promoting cultural safety and cultural capability at all levels of the public sector; and

- (e) working in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them; and
 - (f) ensuring the workforce and leadership of the entities are reflective of the community they serve, having regard to chapter 2 and chapter 3, part 3; and
 - (g) promoting a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples; and
 - (h) supporting the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.
- (3) The chief executive of a reframing entity is responsible for ensuring the entity fulfils the role.
- Applying approaches taken in International development, domestically – e.g. [Pacific Women Lead program](#). This gender equality initiative was developed under a co-design process with the Pacific region and has been established with a Governance Board (majority Pacific Women). Critically the Board holds decision making authority on key aspects of the program (leadership and strategic directions) and has discretion to direct funding investments over Australian Government donor funds to prioritise their own research/projects/grants. In this example the Government has moved away from a more traditional way of doing business (and comfort zone) to undertaking donor activities overseen by ‘Advisory Boards or Steering Committees’ with limited authority over funding decisions.

Co-governance models were raised by interviewees as potential models proving to be popular and successful decision making structures in New Zealand.

NZ has examples of very successful decision making arrangements with a long standing records of positive outcomes that could easily be transferred to Australian systems. Half of ten board members of the NZ decision making body, the Waikato River Authority are iwi appointees, selected by Māori from the five iwi that border the river. The other half are Crown appointees and one co-chair is appointed from each of these groups.

The Waikato River Authority and most other NZ co-governance models described by Newsroom make decisions by consensus requiring all participants reaching mutual agreements. There is no over ruling vote and no majority rule provision, deliberations continue until all parties reach acceptable decisions.

"The defining thing that made this work is that we all had a common purpose – the health and wellbeing of the river. It wasn't about whether you belong to the National Party or the Labour Party, or ACT, or the council; the supreme and paramount issue was what was best for the river." [Newsroom](#) ²³

²³ [Co-governance – It's Nothing Like You Think | Newsroom](#)

Challenge 4 – Identifying and engaging with the right partners

Interviewees identified that effective engagement and 'getting the right advice' is hindered by lack of

- a) government knowledge of First Nations organisations and existing regional governance arrangements
- b) confidence in the authority and legitimacy of advice and data from community stakeholders
- c) cross agency/government or jurisdiction coordination.

This challenge was most frequently raised by interview participants with great experience working within governments. Discussions within this theme often dwelt on the perceived risks of dealing with first nations stakeholders due to higher perceived risk profiles of smaller organisations or organisations that were established to serve specific and specialised services. This specialisation is not necessary relevant to other regions and scalability may not be easily achieved, the resultant risks inherent of such entities can appear comparatively high despite these entities potentially higher overall value due to their hard earned trust profile within communities, immediate experience with community issues and lived knowledge of previous government initiatives and investments in community.



"They [governments] actually have to believe in Aboriginal people and Aboriginal governance and Aboriginal structures around how we do business. We need to recognise that for Aboriginal organisations we have a range of different organisations, we have organisations that were started by family groups. Some of those organisations serve the whole community, but in some cases they don't, and it's not because they won't, but it's that family connection, etc. It is also critical that government understand our cultural governance structures – who is well known, is not necessarily who has cultural authority."

Jacqueline McGowan-Jones, Commissioner for Children and Young People, WA

Potential solutions to ensure governments engage with the right stakeholders

- Tripartite tests can be used for assurance of Indigeneity of partner organisations (if not already registered with the Office of the Registrar of Indigenous Corporations (ORIC) (<http://www.oric.gov.au/>) or assurance sought through local representative bodies eg Lands Councils or Indigenous Chambers of Commerce.
- Interviewees suggested that audits of community-controlled organisations by community members or [Lands Councils](#) could be requested to assure legitimacy intermittently or prior to contracting.

Acknowledging that Governments do not have full knowledge of First Nations small to medium enterprises or workforces and requiring large grant applicants and business to plan and declare how they will engage First Nations enterprises and workforces to be eligible for government funding can be a useful tool. The Social Procurement Framework and Indigenous Employment and Supplier Use Framework (below) are frameworks that help to raise the expectations of government officers as well as large stakeholders of the role that Australian industries can play in engaging First nations resources for closing the gap. It facilitates contributions to Closing the Gap through proxy empowerment, by applying funding conditions and targets for successful tenderers and preferencing businesses with ambitious social agendas and professional First Nations networks.

- The Victorian [Social Procurement Framework](#) (SPF) is a policy requiring all Victorian Government departments and agencies procuring goods, services and construction to evaluate tenders not solely on price, but encompassing of commitments to deliver social and sustainable outcomes that benefit the Victorian community including a specific focus on First Nations opportunities. It aims to increase opportunities for first nations people by encouraging; purchasing from Victorian Aboriginal businesses and employment of Victorian Aboriginal people by suppliers to the Victorian Government. Higher value contracts require higher degrees of compliance with First Nations employment or subcontracting targets.
- [The Indigenous Employment and Supplier Use Infrastructure Framework](#) (IESIF) was launched in 2019 by the Australian Government Department of Infrastructure, Transport Regional Development and the Arts to increase opportunities for Indigenous job-seekers and businesses' participation in the delivery of Australian Government-funded land transport infrastructure projects. - Under the Framework, funding recipients are required to develop an Indigenous Participation Plan (IPP) for all road and rail construction projects receiving \$7.5 million or more of Australian Government funding, projects funded under the Roads of Strategic Importance Northern Australia, and where there is high potential to support Indigenous outcomes.

Challenge 5 - Cultural change of organisations

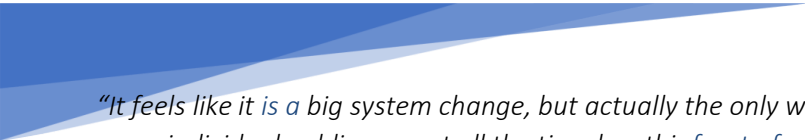
Interviewees identified that significant cultural change is required to imbed National Agreement on Closing the Gap actions across government organisations. Discussions under this theme included

- a) commentary of 'group mindset change' required to own and drive actions,
- b) a shift from transactional servicing to community development models particularly in mainstream organisations,
- c) overcoming racism through better understanding of culture and history, and
- d) transforming business to balance culturally-responsive servicing with Ministerial responsiveness.

This challenge was suggested by the majority of interviewees from government and non-government backgrounds to be fundamental to changing the way public servants work, yet only rarely is it clearly acknowledged as a challenge or well-addressed within government organisations.

There is a need to overcome deep-set beliefs in organisational values and the types of behaviours this drives e.g. notably risk aversion and a preference for fast transactional results that are valued and rewarded by managers. Addressing these types of challenges are not easy, require a long-term vision and commitment and an ability for an organisation to work across a range of realms simultaneously to achieve any type of lasting organisational cultural change.

Interviewees suggested that addressing this challenge needs to be a coordinated activity supported by better practice guides (with staff incentivized to implement different ways of working) and with assurances for staff undertaking new recipient-focused policy development that the work is valued and is not perceived as virtue signalling.

A decorative graphic consisting of several overlapping blue triangles of different shades, creating a modern, abstract shape.

*"It feels like it is a big system change, but actually the only way the system change, is if every individual public servant all the time has this **front of mind, guiding** their way of thinking. So when they're looking at their grant opportunity guidelines, how do they embed this into their grant opportunity guidelines? - when they're looking at how they do customer **centered approaches**, or how they embed it into digital transformation or frontline service **delivery**?"*

Letitia Hope, Deputy CEO for Policy and Programs, National Indigenous Australians Agency

Potential solutions to effect cultural change within government organisations

There is much we can learn from international and domestic approaches to sustainable community development, particularly with regard to the systems, structures, programs and services used to support community agency and the work of people 'on the ground'. This is not simply about replicating but rather tailoring best practice to the Aboriginal and Torres Strait Islander context, with Aboriginal and Torres Strait Islander Peoples driving the process.

- The Paris Declaration on Aid effectiveness ([Attachment C](#)) was endorsed in 2005 by more than 100 countries and international development agencies and was designed to improve aid effectiveness encouraging the harmonization of international aid programs. Interviewees commented on the shift in public service culture and mindset that could occur in domestic social servicing if we applied the Paris Declaration principles to the domestic setting. The mindset change that this could drive would see governments moving away from old approaches of '*doing to*' community, to '*working with*' and '*led by*' the First Nations people. In the same way in which international development practitioners cannot undertake projects without asking permission and negotiating agreements from partner governments, this approach could see a similar 'permission' based framing prior to working with Aboriginal and Torres Strait Islander communities.

The Paris Declaration detailed the five following (and potentially transferable to First Nations development) principles:

- Ownership - partner countries exercise effective leadership over their development policies and strategies and co-ordinate development actions
- Alignment - donors base their overall support on partner countries' national development strategies, institutions and procedures
- Harmonisation - donors' actions are more transparent, collectively effective and harmonised with each other
- Managing for results - managing resources and improving decision-making with a focus on results and
- Mutual accountability - donors and partners are accountable to each other for development results.

Interviewees suggested that legislative and broad (mainstream inclusive) underpinning of MOUs/ agreements is preferable whenever possible – e.g. [The agreement between the First Nations Heritage protection Alliance and the Environment Minister, Hon Tanya Plibersek](#). Which commits both parties to an ongoing partnership and joint decision making, including participation in discussions related to the potential for new program funding for cultural heritage. “This partnership will guide the reform process – to ensure that Indigenous voices are present at every stage, in every room, and in every decision we make.” Minister Tanya Plibersek.²⁴ Some Australian Government

²⁴ National Native Title Council website: https://nntc.com.au/media_releases/historic-day-in-the-fight-to-protect-first-nations-cultural-heritage/ accessed 24/1/2023. See also First Nations Heritage Protection Alliance media release.


agencies have requested all staff to undertake the [Core](#) cultural competency online training course. Core was developed by the Australian Institute of Aboriginal and Torres Strait Islander Studies in partnership with the Department of the Prime Minister and Cabinet and the Department of Social Services. It has ten interactive modules and was designed to encourage people to understand their own cultural perspectives as the basis for effective interactions with people of (other) diverse backgrounds.

Challenge 6 - Data availability and quality

This identified Challenge theme from interviews almost mirrors some central elements of Priority Reform four of the National Agreement on Closing the Gap: Shared Access to Data and Information at a Regional Level.

It was reported as critical that consideration is given to data sharing in two overarching ways – one, to improve the information government *receives* through structured community input to need analyses, evaluations and performance monitoring which can be enhanced through community-sourced qualitative and quantitative data, and two, in reverse, improve the data that is *provided* to communities and community-controlled organisations. Interviewees expressed this challenge in terms of its implications with for systems and culture change required to achieve commitments. In order to improve data sharing considerations should range from systems and logistics (how is data captured, stored, program compatibility, interjurisdictional standardisation and privacy considerations), to cultural (what is being asked, how, where and by whom – critically for what purpose – is this type of information established for community members). As under other areas there are ethical considerations about who is asking for the information and who is benefiting from the information.

One particular challenge for governments is the default settings in many standard funding agreements and contracts which divests ownership of material and information produced under the arrangement to the Commonwealth (or government entity). It is beneficial to consider issues pertaining to intellectual property and ownership (particularly where cultural knowledge is being shared or is contributing to partnerships) and engage legal areas of departments to challenge standing clauses in standard agreement templates.

A blue decorative graphic consisting of several overlapping triangles of varying shades, pointing towards the right.

"There should be data sharing as a part of any sort of agreement. Universities do it through their ethics [processes]. They sign up to reciprocity, [if you are] taking data from a community, you give it back in in a user-friendly way. That's just a must."

Representative, SNAICC.

Potential solutions to the challenge of improving data sharing with First Nations communities

- Standardise the practice of including First Nations perspectives in evaluations and performance monitoring (ensuring culture, and protocols are respected, and ethical and legislative considerations have been met e.g. transparency, accountability and privacy).
- Open conversations across departments about data sovereignty and reciprocity (e.g. conferences giving public servants access to ministers and international colleagues). Ensure governments have capacity to understand and apply ethical-data collection principles.
- [Yoorrook Justice Commission](#) is conducting an enquiry into past and ongoing injustices experienced by Traditional Owners and First Nations peoples in Victoria in all areas of life since colonisation. It is the first inquiry to apply First Nations Data Sovereignty principles to the work program. Data sovereignty is defined as *“the right of Indigenous peoples to govern the collection, ownership and application of data about Indigenous communities, peoples, lands, and resources.”*²⁵

The principles applied by the Yoorrook commission include:

- Exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure
 - Data that is contextual and disaggregated (available and accessible at individual, community and First Nations levels)
 - Data that is relevant and empowers sustainable self-determination and effective self-governance
 - Data structures that are accountable to Indigenous Peoples and First Nations
 - Data that is protective and respects First Peoples’ individual and collective interests.
- Familiarise all public servants with the National Health and Medical Research Council [Ethical conduct in research with Aboriginal and Torres Strait Islander Peoples and communities: Guidelines for researchers and stakeholders](#) which provides a set of principles to ensure research is safe, respectful, responsible, high quality and of benefit to Aboriginal and Torres Strait Islander people and communities. Areas of organisations dealing in a more detailed way with First nations data should understand the [AIATSIS Code of Ethics for Aboriginal and Torres Strait Islander Research](#) for responsible First-Nations data use principles.
 - Public servants give consideration to and incorporate fairly the implications of reduced life expectancy of First Nations peoples into relevant policy until the life expectancy parity is achieved.

²⁵ Associate Prof Gawaian Bodkin-Andrews, Prof Maggie Walter, Dr Vanessa Lee, Prof Tahu Kukutai, Dr Ray Lovett, Delivering Indigenous Data Sovereignty, July 2019, AIATSIS- web page <https://aiatsis.gov.au/publication/116530>.

Part 3: Synthesis - contrasting the findings from the academic research review and those from the interviews

Over a span of more than 15 years, multiple Prime Ministers and various agency specific policy documents have directed senior public servants to partner and collaborate with First Nations on a wide range of agendas with the view of contributing to 'Closing the Gap'. Although political and policy narratives have repeated this call to action periodically it has been done with limited clarity as is apparent in the ongoing difficulties public servants reportedly face when attempting to obtain the recognition and regulatory authority necessary to co-design policies and instigate devolution of decision-making over servicing to First Nations organisations.

It is clear from the limited scope of this paper that what currently preoccupies public servants in the roles they must fulfill, and the elusive assignments that have been passed on to them through political and policy narratives, is that they must implement inclusivity from within their government and bureaucratic systems. This will include implementing sets of cultural and procedural changes that will potentially shift decision making power away from their primary stakeholders (Ministers) and themselves and in the process losing control over some risks. This is no mean ask of a bureaucracy acutely attuned and versed in risk mitigation. It is certainly an ask that you could understand if some public servants felt individually exposed by, unless the ask is accompanied by training and facilitative toolkits as well as assurances that officers undertaking the risks of devolving decision making powers will be recognised for, and shielded from occasional negative results. This paper provides a rudimentary categorisation of challenge-themes that appear helpful to understand where public servants are at in their consideration of a new way of working with First Nations organisations, and explores possible connections between:

- what academic research and literature has articulated around the nature of the challenges, their abstract rationale and limited evidence about where and how progress could occur, and
- what a number of senior managers who have been active in First Nations government servicing believe are the main barriers and possible solutions to address the 'devolution problem'.

It is clear from our short examination of the framing of those issues or challenges (to implementing devolution) by the two groups that there are many complementary aspects regarding the nature and priorities of the reform necessary and ways to approach its implementation, as well as significant dissimilarities of perspectives, priorities and focus. As a summary, this section highlights resemblances and differences trusting such a synthesis might assist collaboration between different types of influential actors that aim to advance that critical agenda and shape its itinerary.

Differences in subject matter and methodological perspectives

There are many ways of thinking about 'the devolution problem'. Given the different perspectives of academic researchers and high-level bureaucrats, significant disparities appear in the two parts of the paper, those differences being related to the concerns of each group, their scope, timeframes of reference, range of barriers of interest, and pragmatic top-of-mind challenges as well as the

potential solutions. These are striking and largely understandable. In conceptualising how to address major social issues arising when attempting to implement devolution reform, the former group articulate challenges and propose responses that envision the possible redesign of an ideal political system where everything is broadly ‘on the table’, and where any institutional configuration, administrative rules, processes or perceived bureaucratic shortcomings can be notionally attended to and reshaped. Academic research incorporates a fair amount of social and political realism and are prone to focusing on the likely behavioural responses of a variety of stakeholder groups to proposed changes in policies or institutional frameworks, while overlooking or paying much less attention to the decision-making rules and limitations arising from public servants own restrictions and bureaucratic agency planning and compliance conventions and statutes.

In contrast, high-level bureaucrats often frame comparable challenges and seek solutions to those by attempting to work within the reality of those systems, which can involve resetting priorities, changing corporate culture and re-allocating resources within the boundaries of the operational frameworks where they can exercise some discretion. Yet they are well aware of, and also frequently refer to, the desirability of redrawing some of those bureaucratic boundaries or planning frameworks, and to the need to collaborate with other agencies or external stakeholders key to the specific agendas they coordinate. For instance, they see value in exploring the potential benefits that would arise from revising hierarchical lines of authority, especially for the sake of addressing specific decision bottlenecks or proposing new creative institutional approaches when dealing with apparently intractable policy challenges. In contrast to the academic perspective, they dwell more on the nature of administrative inflexibility (its sources, its internal and social causes and possible internal corporate solutions). But they also appear to comparatively overestimate the ability of government programs and policies to effectively nudge reticent stakeholder groups, sceptical communities and distrustful citizens in the direction they aim for, and the centrality of their own roles in shaping or paving the way to a more inclusive future.

Contrasting barriers and solutions

It is apparent that some of the differences highlighted below can be attributed to the nature of the knowledge base that both cohorts access (academic or government research reports *versus* professional experience) and the way the information is gathered in the two parts of the paper (condensed-selective literature review *versus* structured interviews). Yet, it is beneficial to undertake some basic comparisons by extracting meaningful similarities and identifying differences in interpretation around the nature of the key aspects of ‘the devolution problem’ across both groups and the types of solutions that they propose. The discussion proceeds below by revisiting the challenge categories utilised to structure the interviews and by making general observations about apparent discrepancies between both groups, the latter being extracted, reinterpreted, and contextualised by the authors of this paper.

Challenge 1 - Accountability of systems, organisations and leaders

Literature review	Interviews of government senior managers
<p>The literature emphasizes:</p> <ul style="list-style-type: none"> • The overall First Nations funding and grants landscape as inconsistent, erratic, essentially vertically controlled by government departments retaining financial authority; in need of an overall review because the system negatively interferes with, and undermines, downstream efforts to become financially accountable (at the local or regional scale). • Resourcing and funding imbalance dilemmas, whereby initiatives to transfer service delivery responsibilities are not matched by congruent transferral of means for downstream authorities to self-fund required activities and abide by suitable accountability and transparency principles (to establish what is a fair transfer, transparent costings of services delivery activities are necessary, as well as scale diseconomies issues). The OECD report emphasizes the importance of strengthening subnational fiscal autonomy to enhance accountability. • The existence of many sources of resistance preventing the likelihood of genuine transfer of funding authority, which is key to self-determination – and clarification of both the nature of transferred responsibilities, and attached financial authority, is often mentioned as problematic. • Downstream capabilities linked to accountability, financial management and services administration needs to be budgeted for, prepared and supplied early in the process as the fiscal dimension is often decentralisation's missing link and reliance on central government transfers is often upheld. • Accountable implementation of decentralisation to generate greater downstream autonomy requires a balanced and concurrent transfer of political, administrative and fiscal powers and responsibilities. 	<p>Interviewees referred to:</p> <ul style="list-style-type: none"> • Inadequate accountability and limited leadership within the public service are identified as challenges. • The distinction between <i>transparency</i> defined as a mechanism to help monitor accountability and actual <i>accountability</i> for achievement of goals or intended outcomes. • Risk avoidance and excessive focus on short-term outcomes are visible barriers to respondents. • Solutions in the form of the provision of grant-like, awards and procurement initiatives that combined funding transfers subjected to performance targets might shift incentives and encourage delegation. • Ways forward could include some: systemic reforms including increasing funding flexibility in line with changing needs, whilst pivoting performance monitoring to link to outcomes rather than siloed 'programmatic milestones', or Institutional reforms (formal public forums, hearings, treaty-like recurring accountability platforms etc.) allowing regions, key organisations and community representatives to seek and share greater input of qualitative outcome information and improved quantitative e.g. financial input transparency from public servants.

Challenge 2 – Partnerships and the capacity of entities to partner

Literature review	Interviews of government senior managers
<p>The literature recognises the need to build capacity of regions and communities to take on governance, administrative, and financial responsibilities early in the devolution process, to anticipate new human capital needed downstream and negotiations required:</p> <ul style="list-style-type: none"> • Although local First Nations ways of governing, timeframes and priorities will differ from each other, support in the form of skills, training with independent consultants, and sometimes infrastructure to collaborate and eventually lead partnerships will often be required. • The tendency of upstream/national governments to plan frameworks and dictate timetables and targets will need to be curbed overtly if it undermines the ability to partner along mutually acceptable terms. • Across domains where devolution is deemed pressing to make progress on ‘Closing the Gap’ outcomes, the self-determination agenda must be made explicit (within policy narratives) and recognise that reforms at any point in time only constitute steps towards greater autonomy. • The international literature on decentralisation makes it clear that the need for the upstream bureaucracy to fundamentally transform is as great as (ideally comparable to) the need for downstream (subnational) entities to learn and adopt new roles. • The willingness to pursue devolution by governments must be frequently and explicitly reiterated when issues arise or views differ, and new mechanisms crafted allowing for mature display of political courage in passing on power and responsibilities; and addressing perceptual barriers (not simply narratives that don’t align with the reality on the ground). • Funding devolution should be at the top of the agenda and discussions about its mechanics transparent to the public (to avoid perceptions of political bribery or fraud). • It is important the devolution impetus transitions rapidly to sub-state regions and localities and involve tangible transfers, and does not remain at the major government & peak bodies levels. 	<p>Interviewees identified challenges linked to partnership with both the upstream bureaucracies and First Nations organisations (enterprises, service providers, etc.). Some issues apply to both, and others more specifically to the latter:</p> <ul style="list-style-type: none"> • Churn of critical staff and difficulties in retaining capabilities, corporate history loss and discontinuities. • Terms, assessment criteria of senior roles in bureaucracies and peak bodies often uncertain, with short tenures and discontinuities. <p>Solutions proposed:</p> <ul style="list-style-type: none"> • Programs of affirmative action within government bureaucracies targeting retention in particular. • Dedicated and mandated roles linked to devolution efforts and efforts to support stability in relationships; as well as dedicated human resources strategies. • Realignment of incentives in the system (and indirectly funding) and creative redesign to shift high-level roles towards downstream agencies (lower-level government entities) and organisations (First Nations controlled).

Challenge 3 - Power and decision making

Literature review	Interviews of government senior managers
<p>The notion of unequal power between partnering entities and its implications for shared decision-making around design and operational matters is amply discussed and evidenced in the academic literature and its case studies. Those topics are discussed as matters of principle as well as in practical terms because power is an elusive concept which should not be reduced to authority of decisions, but must encompass administrative, political and financial domains. The literature reviewed emphasized:</p> <ul style="list-style-type: none"> • Indigenous people must be involved (in a decision making sense) at the level of policy design and service delivery for devolution to be meaningful (challenges 4, 5 & 6 below constitute key dimensions to be addressed). • Power imbalances should be acknowledged respectfully and prepared for by investing in policies and programs that help changing the balance of power (funded transfer of political, administrative and financial capabilities). • The speed, steps, priorities surrounding the incremental power rebalancing effort and gradual inclusion in decision-making must be conceptualised, discussed and ideally negotiated early, but cannot follow fully premeditated or planned steps (as is generally encouraged by bureaucracies) as they should remain place- and scale- specific and will entail addressing and resolving local power issues. • Doubts about the willingness of governments to devolve power and decision-making control are often expressed. • Financial and political powers constitute chronically problematic 'missing links' in decentralisation efforts universally and the main cause of enduring power imbalances (OECD 2019). • Governance is a concept nowadays used to refer to culture-specific ways of arriving at decisions based on established division of authority. • Power imbalances and ineffective governance mechanisms are more likely to occur in remote 	<p>Interviewees provided many examples of barriers to sharing power (real decision making power rather than symbolic) which resonate strongly with the literature, and are worth repeating:</p> <ul style="list-style-type: none"> • mistrust of the private/community sector and unconscious bias • probity requirements • a 'cult of managerialism' within government • fear of letting-go of authority • power imbalances • capability gaps in community-controlled sector. <p>Solutions proposed took many forms:</p> <ul style="list-style-type: none"> • realignment of incentives and bureaucratic culture (focus on solving underlying social issues rather than delivery outputs, structural reform of financial delegations as underlying power transfers). • coordination and overseeing role at the top; to audit and question devolution progress overall + overall role in building trust capital at all levels, possibly by undertaking joint projects while retaining organisational autonomy. • programs that take mainstream (not First Nations) public servants to work in/with Indigenous

regions where disadvantage has historically been more pronounced, and where governments and bureaucracies have often been considered particularly ineffectual at supporting local autonomy and at addressing outcome gaps.

- The various NSW LDM implementations suggest that such early governance regional work to improve decision making capacity had been undertaken prior to new frameworks being established which facilitated methodical and steady implementation. In contrast, the NT LDM had to accommodate huge dissimilarities in readiness, and learning about political power and articulating aspirations, which required considerable region-specific investment strategies.
- The concept of ‘co-design’ (formerly participatory design) has surfaced (from its business process origins) into public sector talk due to its political fittingness, its looseness (it usually refers to an intention rather than a methodology) and apparent simplicity. The aspirations it reflects and its implicit recognition of the link between decision-making and power imbalances make it highly relevant to challenge #4, and development in this field are worth following, but so does the analysis of the many dangers it presents for the continuation and legitimacy of the devolution agenda (Dillon 2021a).
- Given the inescapability of power inequalities, the nature of government pervasiveness in political and administrative affairs surrounding First Nations lives, and government (and bureaucratic) reluctance to dissociate control or responsibilities from key political, financial and decision domains, the term could easily become a platitude or an empty vessel; especially if challenges 4 and 5 are improperly attended to.
- There are many risks and potential costs (failing accountability, rising transaction costs, false representation, loss of democracy, increased inequalities, loss of trust in institutions, etc.) associated with co-design, which suggest that co-design cannot arise from administrative recipes nor from conventional planning frameworks.

organisations across the nation where the latter seek such exchanges – not just for individual cultural learning but institutional trust and capacity building.

- finding channels to have First Nations individuals and organisations contribute to mainstream policy (so that root causes of issues found in mainstream institutions can also be addressed).
- mechanisms to support First Nations political and organisational capital-building (among themselves) activities which are resource and time-consuming and underpin new governance structures (below).
- Design of decision-making assurance mechanisms that protect all sides when experimental arrangements are trialled, that protect professional safety, provide guidance, reputations.
- Promotion of success stories and ‘gold standards’, including where power sharing has been institutionalised and legislated (e.g. Queensland Public Service Act).
- Invest in First Nations cultural safety within the mainstream public sector in general, and support pathways to leadership and promote alternative perspectives, including dedicated governance institutions allowing for those to impact on key decisions.

Challenge 4 – Identifying and engaging with the right partners

Literature review	Interviews of government senior managers
<p>Many contributors to the academic research literature on First Nations self-determination take a strong stance on the need for Indigenous Australians to self-select at the grassroots level as entities and groups distinct in their values, aspirations, governance history and decision-making capabilities. Hence, they focus on representation and legitimacy, and on practicable scale (for services delivery, funding and political recognition) of the identified partnering communities (labelled by Smith ‘the geography of devolution’).</p> <p>The challenges most commonly acknowledged:</p> <ul style="list-style-type: none"> • Focusing generally on the legitimacy of First Nations groups (the ‘local’) and means to establish how this can be driven from the ‘bottom-up’, researchers warn against unidirectional government pre-planning and tendencies to dictate the establishment and composition of community groups or regions that they expect to partner with – the abstract view is that the ‘units of devolution’ should be self-determined at the inception of the process of self-determination although it is not clear how (furthermore this might not be possible at the outset for cohorts that have been dislodged from their place of origin and many urban or mainstream individuals); • A simple test of legitimacy for partners (communities or regions) is whether they agree on aspirations, concur on ways to decide, select a leadership structure, and can effectively negotiate with governments. • When scale is inadequate on administrative, infrastructure and/or financial grounds, collaborative arrangements can be devised with like-minded neighbouring communities to overcome such issues. • Asymmetric arrangements are most common and probably constitute the most practical approach when partnering entities are likely to vary in structure, scale, location, decisional intensity, value and aspirations convergence and readiness to take 	<p>Interviewees identified challenges associated with relative inability and hesitation of bureaucrats to seek advice from, and to engage with knowledgeable First Nations organisations or experts. They attributed this to:</p> <ul style="list-style-type: none"> • Bureaucrats lack of knowledge of existing regional and local governance arrangements applicable to specific communities or territories; • Their inability to assess the legitimacy and authority of various First Nations sources; • Their ineffectiveness at connecting and coordinating across agencies or government levels to ascertain suitable sources of expertise, data, advice, etc. • Some tensions between different types of First Nations authority related to cultural authority, professional authority, political authority across various scales of applicability. <p>They propose:</p> <ul style="list-style-type: none"> • Administrative solutions compelling bureaucrats and recipients of large grants to engage with Indigenous organisations (working in regions, with First Nations partners, secondments, etc.) • A variety of processes to coordinate verification of Indigenous business status seen by some as a subordinate challenge. These reflect various institutional

<p>on the devolution challenge. Asymmetric decentralisation occurs when governments at the same subnational government level have different political, administrative or fiscal powers (which parallels the common expression that one size does not fit all).</p> <ul style="list-style-type: none"> • The future roles of First Nations public servants and existing Aboriginal corporations in assisting devolution reform should itself be clarified, given the intent of providing support to grassroots groups and communities. • Given the existence of significant governance gaps (usually correlated with the most remote and disadvantaged locations where outcomes gaps prevail), the issue of engaging with the right partners will progress only if capacity-building and training assistance is funded and strongly encouraged – otherwise it will be different to get “the right people at the table”. 	<p>arrangements already existing across jurisdictions and regions (test-based assurance, registrar, Land Councils, Chambers of Commerce, audits, etc.).</p>
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Challenge 5 - Cultural change of organisations

Literature review	Interviews of government senior managers
<p>The academic literature overall takes a systemic view and points at the need for change along the entire spectrum of upstream and downstream government agencies, organisations and communities where devolution is supposed to be activated. It distinguishes between many causes of inertia and/or active resistance across all levels linked to the public sector mindset:</p> <ul style="list-style-type: none"> • Bureaucratic (aversion of control loss, risk, etc.) • Elite or previously advantaged local stakeholders seeking to retain their positions (political, influence or economic) • Opportunistic politicians or populist governments supporting the devolution narrative but not prepared to lose power and influence stemming from financial control. <p>Social scientists research self-determination sometimes take a purist's perspective on the end point of self-determination, and probably radical view about the pre-determined nature of culture, and devolution itself when referring to First Nations' overwhelming cultural autonomy. As a political position, it is understandable and simplistic. As an administrative position, it is unrealistic. Some aspects of all cultures will always interact and adapt. There is a shortage of research exploring how bureaucratic principles (including various types of legal and compliance requirements) can co-exist with various amalgams of First Nations values, decision-making governance systems and cultural autonomy. Furthermore a majority of First Nations people live, reside and work, in urban and mainstream environments where they as individuals (and identity holders) walk continuously across abstract cultural divides, including working in the public service itself. While they should exercise full autonomy over these choices, it's clear that those situations, life choices and conditions differ considerably from those occurring in remote Australia.</p>	<p>Interviewees looked at the question of organisational mindsets and focused squarely on the need to effect cultural and mindset changes within areas of the public sector in charge of liaising with First Nation authorities to progress Closing the Gap in the first place, and of inciting downstream devolution initiatives into more regional and local spaces. They identified as priorities:</p> <ul style="list-style-type: none"> • the need to shift from transactional servicing to community development models (particularly in mainstream organisations ways of operating). • overcoming racism through better understanding of culture and history. • finding ways of increasing organizational valuing (including through realignment of incentives and rewards) of culturally-responsive initiatives and actions (in contrast to basic transactional results or targets). • approaching those issues requires long-term and coordinated approaches; cross-agency initiatives, "better practices" guides, assurance strategies to overcome risk aversion, formal professional incentives confirming 'value', organisational culture targets, engagement protocols (based on Paris declaration) with mutual accountability principles (embedded in recent joint decision-making agreements). • Programs addressing safe cultural workplaces and pursuit of decentralised services provision.

Challenge 6 - Data availability and quality

Literature review	Interviews of government senior managers
<p>The literature review did not cover this extensive topic, yet it is important to acknowledge that protection, corroboration and protocols concerning the use of data pertaining to First Nations individuals, culture and groups or communities constitute key resources that must be made incorporated in the devolution process, and that there are significant administrative and funding implications to achieving that. It is imperative that groups negotiating terms for autonomy and future priorities access themselves Government-held datasets and find themselves in a position to question it, interrogate it, and ideally own it.</p> <p>There is a relevant literature which has been developing the concept of 'Indigenous data sovereignty' which explores a number of ideal principles and views regarding how to advance that agenda and explicitly connects data issues with self-determination objectives (Kukutai and Taylor 2016).</p>	<p>When thinking about data access and potential use, interviewees reflected on the needs of communities and of the community-controlled sector. The general tone of the comments was to describe the 2-way needs of both upstream government echelons and downstream communities. They also described the traditional challenges in very general terms:</p> <ul style="list-style-type: none"> • privacy, confidentiality and IP • ethical use, reciprocity and benefits • default ownership of data to governments as part of funding agreements • the special status of cultural knowledge <p>The solutions proposed included:</p> <ul style="list-style-type: none"> • standardise the practice of embedding First Nations perspectives in all evaluations and monitoring • consider cross-government protocols around data sovereignty (learn from Yoorook commission groundwork) • Ensure public servants have better understanding of research ethical conduct, in particular principles derived from codes of ethics developed specifically First Nations data use and sharing.

Differences around the notions of transparency and accountability

Without delving too deep into the reasons for such differences, it is clear that the academic literatures (about First Nations devolution, about international trends in government decentralisation, etc.) emphasize the mismatch between [a] administrative-responsibilities, [b] financial-resourcing and [c] political-support-commitment when reforms occur; largely agreeing that such discrepancies constitute the main sources of unsuccessful implementations devolution or decentralisation anywhere. They portray these as repeated failures (especially in the international literature) that signal inadequate accountability and transparency – and usually apply to all levels of devolution, from national, to sub-jurisdictional, to regional and to local.

The interviewees in contrast construed accountability and transparency challenges as deficiencies connected with watered-down co-governance and devolution efforts within government agencies (lack of targets, unclear performance indicators or KPI targets, insufficient reporting, inadequate rewards or incentives) and signalling lacking commitment at the implementation level.

These are highly plausible and what both groups seem to convey equally is that the narrative intention is often an essentially political and superficial exercise, which rarely translates into proper implementation steps that can be believed and trusted by the public.

Differences of interpretation around the nature of exclusion

These differences are more subtle, and perhaps less consistent, but the two groups clearly emphasize different aspects. Academic research portrays and documents historical, geographical and socio-economic-political layers of exclusions applicable to a variety of institutional and governance mechanisms, to groups (social – distinct values, aspirations or worldviews) and communities (identity focus) and much of the research has been in places and contexts where differences (and exclusion) has been extreme, for instance remote communities or urban strongly excluded groups. They view devolution as a process aimed at disrupting the historical legacy of multi-layered exclusion which they interpret as the main reason for disadvantages and most 'gaps'.

Public service executives and senior managers of First Nations organisations focus on different barriers that they have experienced within the public sector. Firstly they comment of having felt the impact of latent racism when they interact with their peers and attempt to convey the value of devolving responsibilities to other organisations, enterprises and regional bodies – and the reticence from within the bureaucracy to conceive of different worldviews and modes of decision making. They also highlight structural bureaucratic difficulties applying to government systems that prevent articulating and implementing solutions dedicated to First Nations needs that cut across agencies, services, regional boundaries that perpetuate exclusion practices.

Differences in geospatial focus and development context

While all geographical and social First Nations contexts are highly relevant for the Closing the Gap agenda and should play a role in progressing devolution implementation within that framework, the academic and senior manager groups often focus on highly different situations and emphasize different challenges and barriers. For reasons discussed above (linked to different degrees and types

of exclusion) as well as the interest that specific social scientists attach to communities and cultural identities, the academic literature has emphasized disadvantage concerns surrounding remote environments and regions where the devolution agenda itself confronts different priorities and barriers. It is useful to reiterate that the overwhelming and pervasive control of governments' bureaucratic arms into social and economic affairs, and the limited mix of alternative social and economic institutions found in remote regions (often in the northern part of Australia, but not exclusively there) somewhat creates distinct challenges and forms of dependency. The government omnipresence in those regions calls for specific devolution approaches (as the Northern Territory Local Decision Making preliminary lessons suggest). It is not coincidental that the initial NT Intervention, for good or bad reasons, was focused on the most remote parts of the country.

By the nature of their tasks and the ways the National Agreement has evolved, the senior managers interviewed focused more on the interface between jurisdictional governments and high-level Aboriginal organisations which have played a critical role in activating the process and operate generally closer to the mainstream Australian society and economy (although some of these organisations clearly represent the interest of remote regions). Despite the issues they identify, the range of solutions, readiness of stakeholders to engage and broad set of capabilities available by First Nations representatives are fairly dissimilar and explain the different types ways of approaching the 'devolution problem'.

Attachment A – Interview Questions

Question 1

What do you feel are the main challenges that Governments (including Commonwealth, State and Territory) encounter in fulfilling their commitments under:

[Priority Reform One - Formal partnerships and shared decision-making,](#)

Priority Reform Three – Transforming government organisations and

Priority Reform Four – Shared access to data?

Question 2

How could each of the challenges or risks you have shared be managed or avoided?

Question 3

What are the main challenges that Governments (including Commonwealth, State and Territory) will encounter in fulfilling their commitments under [Priority Reform Two – Building the Community-controlled Sector](#) which includes devolving more service delivery to First Nations organisations

Question 4

How should each of the challenges you have identified be managed or avoided?

Question 5

If you could ensure Governments undertook one action to improve the inclusion of First Nations Peoples in formal partnerships and decision making, what would it be?

Question 6

If you could ensure Governments performed one action including fundamentally transforming their standard practices to build the community-controlled Sector, what would it be?

Question 7

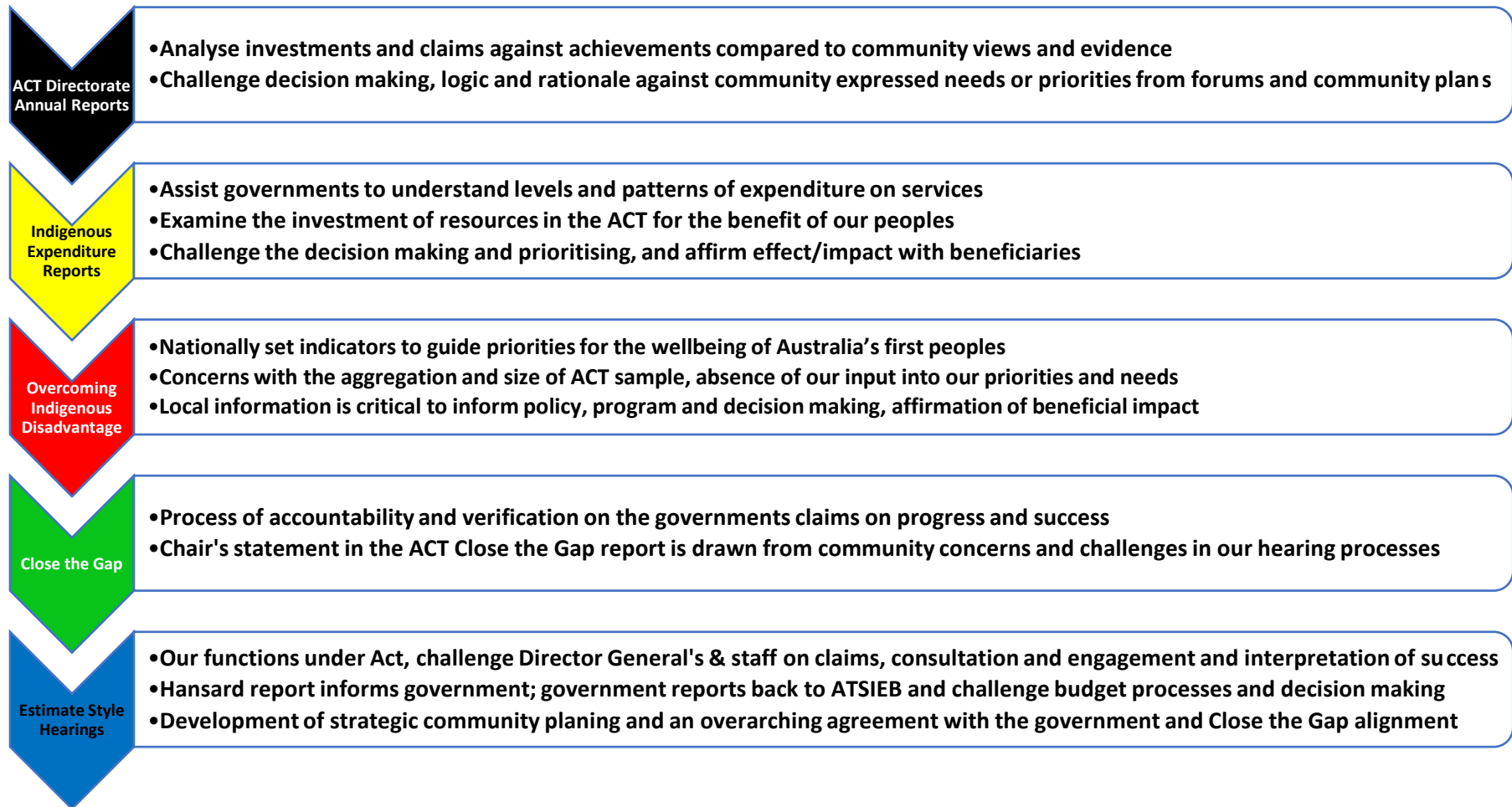
If you could ensure government agencies performed one action to improve their ability to share access to data and information with First Nations communities, what would it be?

Question 8

Are there any recent publications, policies or presentations of relevance to this ANZSOG paper that you would like research team to consider?

Attachment B - Public forum for community led accountability

Aboriginal and Torres Strait Islander Elected Body process for accountability and future planning



Attachment C – The Paris Declaration on Aid Effectiveness



The Paris Declaration takes its name from a meeting that took place in Paris in 2005, where over 100 developed and developing countries agreed to change the way they do business.

More than a statement of general principles, the Paris Declaration lays out a practical, action-orientated roadmap to improve the quality of aid and its impact on development. It puts in place a series of specific measures for implementation and establishes performance indicators that assess progress. It also calls for an international monitoring system to ensure that donors and recipients hold each other accountable – a feature that is unique among international agreements.

The Paris Declaration contains 56 partnership commitments organised around five principles that make aid more effective:

1. OWNERSHIP	Developing countries set their own development strategies, improve their institutions and tackle corruption.
2. ALIGNMENT	Donor countries and organisations bring their support in line with these strategies and use local systems.
3. HARMONISATION	Donor countries and organisations co-ordinate their actions, simplify procedures and share information to avoid duplication.
4. MANAGING FOR RESULTS	Developing countries and donors focus on producing – and measuring – results.
5. MUTUAL ACCOUNTABILITY	Donors and developing countries are accountable for development results.

By implementing these principles, the countries and organisations that endorsed the Paris Declaration are making major breakthroughs in improving aid effectiveness, tackling issues that have hampered development for decades. Developing country governments and civil society are reaping the rewards in the form of better, more aligned and more predictable donor support.

As part of the Paris agenda for aid effectiveness, donors are working to minimise proliferation, harmonise procedures and align aid by using developing country systems. Donors are also co-ordinating their aid programmes and ensuring coherence by reducing the number of countries and sectors in which they operate and avoiding overlapping actions.

Meanwhile, the development landscape is rapidly changing. Significant new sources of funding are emerging (such as China and India's rapidly growing aid programmes) and new types of donors (such as private foundations and local authorities from industrialised countries) are becoming increasingly important. The lessons of the Paris Declaration and its principles can help encourage better ways of working together – to the benefit of all.

Attachment D – Participants in interview research

1. Jacqueline McGowan-Jones

Commissioner for Children and Young People (Western Australia)



Prior to commencing in her current role as Commissioner for Children & Young People (WA), Jacqueline was the CEO of Thirrili, an Aboriginal Community Controlled Organisation delivering critical supports and services to families following a loss to suicide or other fatal traumatic incident.

Jacqueline's experience includes senior executive roles across the public (Commonwealth, Victorian and Western Australian), private and NGO sectors. Jacqueline's experience includes Education, Aboriginal and Torres Strait Islander affairs, Disability, Law & Justice, Child Protection and Health and Human Services.

Her involvement across these portfolios has given her the opportunity to work with children, young people, families and communities across Australia and understand the challenges they face.

She has lived and worked in all Australian jurisdictions (except Tasmania) and has developed very strong relationships across the community, and the non-government and government sectors.

Jacqueline is committed to strengthening the systems that improve the opportunities available to all children and young people. Her experience and heritage (cultural connections to Arrente and Warumungu country in the Northern Territory) has given her a strong focus on the interests and needs of Aboriginal children and young people, as well as those from vulnerable and disadvantaged backgrounds.

She believes that all young people have a right to be heard and she strives to bring a new level of understanding and engagement to issues impacting our children and young people.

2. Anonymous

ACT Indigenous leader and community advocate

3. Geoff Richardson



Geoff Richardson is a descendant of the Meriam people of Murray Island (Mer) in the Torres Strait and the Kuku Yalanji/Djabugay peoples of North Queensland. Prior to his retirement in late 2017, Geoff spent 40 years in the Australian Public Service, all in the Aboriginal and Torres Strait Islander Affairs portfolio - including 22 years at the Senior Executive Services level.

He has worked extensively across a broad range of program and policy areas including broadcasting, land acquisition, housing and infrastructure, and community development.

Geoff has been a leader in cross departmental advice on Aboriginal and Torres Strait Islander community engagement, cultural protocols, cultural appreciation, and community development approaches.

In 2014, Geoff was made an Adjunct Associate Professor (The University of Queensland) and in 2019, he was awarded a Public Service Medal, in recognition of his service to Aboriginal and Torres Strait Islander peoples.

In early 2018, Geoff established First Nations Development Services as a vehicle to continue his work connecting Governments with Aboriginal and Torres Strait Islander communities.

4. Brian Wilson



Brian Wilson is a proud Aboriginal man who grew up in Tamworth on the Kamilaroi Nation, attending Kirinari Aboriginal hostel during his younger high school years. Brian graduated from the University of New England in 1996 with a *Bachelor of Art Economics* and is an experienced Senior Director with substantial experience in both the ACT and NSW Public Services. Brian's career has had a strong emphasis in Aboriginal and Torres Strait Islander Affairs, and Social Housing and Homelessness management and strategic policy development, guiding the capability and capacity building of ACT and NSW Government agencies to deliver programs and services for Aboriginal and Torres Strait Islander peoples in a culturally safe manner.

Brian was a team recipient of the *2019 ACT Public Service Award for Collaboration* in the delivery of the *2019-2028 Aboriginal and Torres Strait Islander Agreement*.

5. Craig Ritchie



Craig Ritchie is an Aboriginal man of the Dhunghutti and Biripi nations and is the Chief Executive Officer at the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS). Craig joined AIATSIS as Deputy CEO in April 2016, and formally appointed CEO in May 2017. Craig has worked in other senior roles within the APS, most recently in the Department of Education and Training 2011-2016 in roles heading Aboriginal and Torres Strait Islander higher education, higher education access and participation for people from low-SES backgrounds, and international student mobility, as well as founding Director, Aboriginal and Torres Strait Islander Health in the ACT Government. Craig has extensive experience in the community sector, including as CEO of the National Aboriginal Community Controlled Health Organisation (NACCHO) – the peak advocacy body for Aboriginal community-controlled health services.

Craig is the only Indigenous Commonwealth Government agency head and a founding member of the APS Indigenous SES Network. He is an Adjunct Professor at the Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney where he also serves on the Vice-Chancellor's Industry Advisory Board. Craig studied History, Classics and Education at the University of Newcastle and has a post-graduate qualification in management and is currently completing his PhD at the Australian National University. His thesis topic is *Culture and Policymaking: Towards Better Aboriginal Policy* and explores the cultural basis of contemporary policymaking and researching the recalibration of policymaking systems on the basis of Aboriginal culture.

6. Adam Fennessy PSM



Adam Fennessy PSM joins the Australia and New Zealand School of Government from the Victorian Government where he is currently the Public Sector Commissioner and brings more than 20 years of public sector experience at state and federal levels including four years as Secretary of the Victorian Department of Environment, Land, Water and Planning and prior to that the Department of Environment and Primary Industries.

Mr Fennessy has also worked in the private sector as a Partner with global advisory firm Ernst & Young and has served on several boards including the Institute of Public Administration Australia (Victoria), Infrastructure Victoria, the Monash University Sustainable Development Institute, the University of Melbourne Sustainable Society Institute and Women & Leadership Australia.

7. Dr. John Paterson

Chief Executive Officer, Australian Medical Services Alliance



Dr Paterson was appointed as the CEO of the Australian Medical Services Alliance in June 2006. John's family is affiliated with the Ngalakan people, located in the Roper River region, South East Arnhem land.

"His goal is to strengthen and enhance our community-controlled health services in the Northern Territory so we can improve both the quality and life expectancy for Aboriginal people," John says. "I'm particularly keen to help improve the mental health of the people in our region, with a holistic approach to primary health care".

He is currently a member of the Coalition of Peaks on the Joint Council for Closing the Gap. He is also the current Chairperson for the Central Australian Academic Health Science Network.

He has represented the Aboriginal and Torres Strait Islander Commission at the United Nations Working Group of Indigenous Populations in Geneva, and at Indigenous economic conferences in Canada.

In April this year, John was awarded an Honorary Doctor of Arts from Charles Darwin University in recognition for his exemplary work over the last decades in various Aboriginal organisations and more recently the Aboriginal community-controlled health sector and advocating for Aboriginal Territorians during COVID-19.

John also possesses a Bachelor of Social Science – Human Service Management, Edith Cowan University, 1992 and is a Life Member of Australian Rural Leadership Foundation, 2006.

8. Anonymous

ACT Community Member

9. Anonymous

Senior Officer, National Indigenous Australians Agency.

10. Anonymous

Representative Officer, Secretariat of National Aboriginal and Islander Child Care (SNAICC)

11. Letitia Hope

Deputy Chief Executive Officer, National Indigenous Australians Agency



Letitia Hope is the Deputy Chief Executive Officer for Policy and Programs at the National Indigenous Australians Agency. A proud Bundjalung (Northern Rivers NSW), Torres Strait Islander and South Pacific Islander woman.

Over the past 30 years, Letitia has had a wide and varied career working across Commonwealth and State governments in both mainstream and specialised social policy development, program management and human service delivery, housing, primary and allied health, aged care and community services including working in Veterans Affairs and Indigenous Affairs. Letitia has held various Senior Executive roles across central and line agencies, service delivery departments, portfolio bodies and cultural institutions.

Letitia holds a deep rooted and demonstrated commitment to delivering the art and science of excellence in public sector leadership and management, serving the government of the day impartially with diligence and forging community-led, co-design and citizen centric approaches.

Letitia is a council member of the APS Deputy Secretary Talent Council, an inaugural member of the Australian Public Service Academy Faculty and a board member of the Institute of Public Administration Australia (ACT).

Letitia holds an Executive Master of Public Administration through ANU and a Graduate Certificate in Public Sector Management through RMIT and is currently completing a Senior Executive Fellows Program at Harvard Kennedy Business School.

12. Caroline Spotswood

Director Aboriginal Partnerships, Office of Aboriginal Affairs
Department of Premier and Cabinet



Caroline is a Pakana woman from Lutruwita, Tasmania and comes from a large Aboriginal family. She is the Director Aboriginal Partnerships, Office of Aboriginal Affairs and is leading the Government's transformation on working with Aboriginal people with two major initiatives – Closing the Gap Priorities and the Pathway to Truth-Telling and Treaty.

Prior to this role, Caroline was Head of Service at Riawunna Centre for Aboriginal Education at the University of Tasmania where she worked with a strong Aboriginal team that delivered on the University's priorities for Aboriginal student success.

Caroline's vision is that Aboriginal people are at the centre, working through co-design, shared decision making and bringing the voice of Aboriginal people to the centre of the Government's decision making.

Caroline's aims include facilitating meaningful engagement with Aboriginal organisations and families to ensure that the Closing the Gap strategies, Pathway to Truth-Telling and Treaty, and other important government reforms are actioned in Lutruwita/Tasmania. In her own words, she will be taking a whole-of-government approach, bringing the State Service and Commonwealth colleagues to work in collaboration to get the job done.

She respects people regardless of their role and honours their contribution. She values being thoughtful, kind, and making sure people feel cared for. Deep listening and understanding the issues is important and knowing the business/role to be effective in contributing to change.

Aboriginal people work harder to prove they can do the job, balance family, meet Community obligations and deliver on the cultural load placed on them by white people. Through experience, great mentorship, and with her feet firmly on Country, she looks forward to new challenges and doesn't let fear hold her back. Caroline lives in Nipaluna (Hobart) with her family.

Caroline holds bachelor's degrees in jurisprudence and social Work.

13. Brendan Moyle

CEO of Darkinjung Local Area Land Council



Brendan is responsible for leading the development of strategic operational policies that supports the delivery of DSS funded services and programs through the Department's national network. Brendan is a member (Aboriginal Economic Development Advisory Committee – NSW Aboriginal Land Council).

His previous experiences include Branch Manager Delivery – Operational Policy, Department of Social Services; General Manager Operations (Aboriginal Hostels Limited); Senior Adviser Indigenous Organisational Capability Department of the Prime Minister and Cabinet. Brendan was responsible for the development of policy frameworks and a national strategy for strengthening the capability of Indigenous organisations. Director Indigenous Leadership and Governance Frameworks (Department of Families, Housing, Community Services and Indigenous Affairs) and Branch Manager Governance (Office of the Registrar of Indigenous Corporations).

14. Casey Millward



Casey Millward is a proud Kalkadoon woman with more than 20 years' experience and leadership in Aboriginal and Torres Strait Islander Affairs. She has broad public sector experience, in policy, program management, service delivery and expertise in Human Resources, as well as experience in the university and Aboriginal Community Controlled Sectors. Casey holds a Master of Philosophy in Public Policy from the University of Cambridge and a Master of Management from ANU.

As Head of the Policy and Secretariat, Casey is responsible for the overarching implementation of the National Agreement on behalf of the Coalition of Peaks.

References

- Aboriginal Affairs. (2017). Local Decision Making: Good Governance Guidelines. NSW Government. <https://www.aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/good-governance-guidelines/Revised-Good-Governance-Guidelines-FINAL-INTERIM.pdf>
- Aboriginal Affairs. (2017). Local Decision Making: Policy and Operational Framework. NSW Government. https://www.aboriginalaffairs.nsw.gov.au/media/website_pages/working-differently/local-decision-making/about-local-decision-making/LDM-POLICY-AND-OPERATIONAL-FRAMEWORK-JULY-2017.pdf
- Bauman, T. & D Smith (2014), Background paper to Indigenous governance development: a forum to map current and future research and resource needs, Australian Institute of Aboriginal and Torres Strait Islander Studies, Canberra.
- Bauman, T., DE Smith & C Keller (2014) AIATSIS and AIGI Indigenous governance survey into gaps in Indigenous governance research and practical tools: draft summary of responses, AIATSIS, Canberra, 2014, p. 30, viewed 5 October 2014.
- Bauman, T., Diane Smith, Robynne Quiggin, Christiane Keller, and Lara Driberg (2015) Building Aboriginal and Torres Strait Islander Governance: Report of a Survey and Forum to Map Current and Future Research and Practical Resource Needs, AIATSIS and the Australian Indigenous Governance Institute.
- Bovaird, T. (2007). Beyond engagement and participation: User and community coproduction of public services, *Public Administration Review*, 67(5), 846–860.
- Cornell, S., Fischer, V., Grant, K., Morehouse, T. and Taylor, J. 2000. 'Native self-governance, political institutions, and economic development in Alaska', Paper presented to the Western Regional Science Association Annual Meetings, 28 February 2000, Kauai Hawaii.
- Cornell, S. and Taylor, J. 2000. Sovereignty, Devolution, and the Future of Tribal-State Relations, Udall Center for Studies in Public Policy, University of Arizona, Tucson and the Harvard Project on American Indian Economic Development, Harvard University, Boston.
- Cowley, A. 2023. How do the drivers of design and co-design for mainstream Federal Government grants affect the welfare of Indigenous Australians, [Unpublished doctoral dissertation]. Charles Darwin University.
- Crook, R. (2003), 'Decentralisation and poverty reduction in Africa: The politics of central–local relations', *Public Administration and Development*, Vol. 23/1, pp. 77–88.
- Davis M (2016). 'Listening but not hearing: process has trumped substance in Indigenous affairs', *The Conversation*, 22 June 2016.
- Davis M (2018b). 'Step by step: the road to a settlement' *The Monthly* July 2018.
- Devas, N. and S. Delay (2006), 'Local democracy and the challenges of decentralising the state: An international perspective', *Local Government Studies*, Vol. 32/5, pp. 677–695, <http://dx.doi.org/10.1080/03003930600896293>.

- Dillon, A. and Westbury, N. 2007. *Beyond Humbug: Transforming Government Engagement with Indigenous Australia*, Seaview Press, West Lakes, SA.
- Dillon, M.C. (2021a). The new policy architecture for Closing the Gap: Innovation and regression (Discussion Paper No. 298/2021), Centre for Aboriginal Economic Policy Research, Australian National University.
- Dillon, M. C. (2021b), Codesign in the Indigenous Policy Domain: Risks and opportunities, Discussion Paper No. 296/2021, Centre for Aboriginal Economic Policy Research, Australian National University.
- Dreise, T., F. Markham, M. Lovell, W. Fogarty, and A. Wighton (2021) First Nations regional and national representation: Aligning local decision making in NSW with Closing the gap and the proposed Indigenous voice, CAEPR Working Paper No. 141/2021, Australian National University.
- House of Representatives Standing Committee on Aboriginal Affairs (HORSCAA) 1990. *Our Future, Our Selves: Aboriginal and Torres Strait Islander Community Control, Management and Resources*, AGPS, Canberra.
- House of Representatives Standing Committee on Family and Community Affairs (HRSCFCA) 2000. *Health is Life: Report on the Inquiry into Indigenous Health*, HRSCFCA, Canberra.
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (HORSCAA) 2004, *Many ways forward: Report of the inquiry into capacity building and service delivery in Indigenous communities*, The Parliament of the Commonwealth of Australia, Canberra.
- Hunt, J. & Bauman, T. (2022), *No More Business as Usual: The Need for Participatory Indigenous Development Policy and Skilled Practice* (Policy Insights Paper No. 06/2022), Centre for Aboriginal Economic Policy Research, Australian National University.
- Hunt, J, Smith, D, Garling, S & Sanders, W (eds) 2008, *Contested Governance: Culture, power and institutions in Indigenous Australia*, ANU E Press, Canberra.
- Indigenous Community Governance Project (ICGP) 2006, *Community governance research update: Understanding, building and sustaining effective governance in rural, remote and urban Indigenous communities*, Centre for Aboriginal Economic Policy Research & Reconciliation Australia, The Australian National University, Canberra.
- International Association for Public Participation (IAP2). (2019). *Aboriginal Community Control: Local Decision Making in Australia's Northern Territory*. <https://www.iap2.org.au/news/aboriginal-community-control-local-decision-making-in-australia-s-northern-territory/>.
- Kukutai, T. and J. Taylor (eds) 2016, *Indigenous Data Sovereignty: Toward An Agenda*, Australian University Press, Canberra.
- MacArthur, J. L. (2016). Challenging public engagement: Participation, deliberation and power in renewable energy policy, *Journal of Environmental Studies and Sciences*, 6, 631–640.

- MacDonald, Fiona and Karine Levasseur (2014) Accountability insights from the devolution of Indigenous child welfare in Manitoba; Canadian Public Administration; Vol 57, No. 1, pp. 97–117.
- McConnell, A. (2015). What is policy failure? A primer to help navigate the maze. Public Policy and Administration, 30(3-4):221–242.
- Natcher, David C. and Susan Davis (2007) Rethinking Devolution: Challenges for Aboriginal Resource Management in the Yukon Territory; Society and Natural Resources, 20:271–279.
- OECD. (2019). *Making Decentralisation Work: A Handbook for Policy-Makers*. OECD Multi-level Governance Studies. OECD Publishing. <https://doi.org/10.1787/g2g9faa7-en>.
- Rowse, Tim (2021) Is the voice already being muted?, Inside Story, 1 February 2021.
- Royal Commission into Aboriginal Deaths in Custody (RCIADIC) 1991. National Report, Vols 2 and 4, AGPS, Canberra.
- Royal Commission on Aboriginal People (RCAP) 1996. Report: Restructuring the Relationship, Vol. 2, Pt. 2, Canada Communication Group Publishing, Ottawa.
- Smith, D.E. (2002) Jurisdictional devolution: Towards an effective model for Indigenous community self-determination. Working paper No. 233; CAEPR, ANU, Canberra.
- Smith, D. (2008) Cultures of governance and the governance of culture: Transforming and containing Indigenous institutions in West Arnhem Land (chapter 4, pp. 75-112) in Janet Hunt, Diane Smith, Stephanie Garling and Will Sanders (Editors) Contested Governance - Culture, power and institutions in Indigenous Australia. Australian National University, Canberra.
- Spiro, R. J. and Jehng, J. 1990. 'Cognitive flexibility and hypertext: Theory and technology for the non-linear and multidimensional traversal of complex subject matter', in D. Nix and R. Spiro (eds), Cognition, Education, and Multimedia, Erlbaum Press, Hillsdale, New Jersey.
- Steen, T., Bransden, T., & Verschuere, B. (2018). The dark side of co-creation and co-production: Seven evils. In T. Bransden, T. Steen, & B. Verschuere (Eds.), Co-production and co-creation: Engaging citizens in public services. Routledge.
- Strauss, C. and Quinn, N. 1997. A Cognitive Theory of Cultural Meaning, Cambridge University Press, Cambridge.
- Thomassin, A., Elmitt, M., Yap, M., & Jordan, K. (2020). *Exploring Economic Prosperity for Aboriginal Peoples in New South Wales: Review of the literature*. Report to Aboriginal Affairs NSW, Centre for Aboriginal Economic Policy Research, ANU.
- Walker BW, Porter DJ, and Marsh I. (2012) Fixing the Hole in Australia's Heartland: How Government needs to work in remote Australia, Desert Knowledge Australia, Alice Springs.
- Westbury N and Dillon MC (2019), Overcoming Indigenous exclusion: very hard, plenty humbug, Policy Insights Paper 1/2019, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.

Wighton, A. and D. Smith (2018) Common roots, common futures: Indigenous pathways to self-determination - Preliminary Report into Indigenous Governance Education and Training in Australia, Australian Indigenous Governance Institute, ANU, Canberra.

Yuliani, E.L. (2004). Decentralization, deconcentration and devolution: what do they mean? Interlaken Workshop on Decentralization, Interlaken, Switzerland.