Challenges of Implementation and Major Policy Change: Indigenous Affairs in Australia

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Author Bios

Mark Moran has a unique background of technical and social science research with a degree in civil engineering and a PhD in geography and planning. He has worked in Indigenous and international development contexts, including Aboriginal Australia, PNG, Timor Leste, and Lesotho. He has broad range of research and practical experience in development, including governance, public finance management, participatory development, community planning, social housing, water, and sanitation. He is also an experienced project manager, with experience conducting institutional analysis and stakeholder management in complex and politicised contexts. He is the author of two books, *Serious Whitefella Stuff: When Solutions Became the Problem in Indigenous Affairs*, and *Too Close to Ignore: Australia's Borderland with PNG and Indonesia*.

Geoff Richardson is a descendant of the Meriam people of Murray Island (Mer) in the Torres Strait and the Kuku Yalanji/Djabugay peoples of Cairns and lower Cape York Peninsula, North Queensland. He has spent 40 years in the Australian Public Service, all in the Aboriginal and Torres Strait Islander Affairs portfolio, including 22 years in Senior Executive Services positions. Geoff has worked extensively across a broad range of program and policy areas, including broadcasting, land acquisitions, housing and infrastructure, and economic and community development. He has been responsible for cross department advice on Aboriginal and Torres Strait Islander community engagement, cultural protocols, cultural appreciation and awareness, and engagement with the community development sector. He was awarded a Public Service Medal in 2019, in recognition of his service to Aboriginal and Torres Strait Islander peoples.

Michael Woolcock is Lead Social Scientist in the World Bank's Development Research Group, where he has worked since 1998. For seventeen of these years, he has also been an Adjunct Lecturer in Public Policy at Harvard University's Kennedy School of Government. His research focuses on strategies for enhancing state capability for implementation, on transformations in local social institutions during the development process, and on using mixed methods to assess the effectiveness of "complex" interventions. In addition to more than a hundred journal articles and book chapters, he is the author, co-author or co-editor of fourteen books, including *Building State Capability: Evidence, Analysis, Action* (with Matt Andrews and Lant Pritchett; Oxford University Press 2017). An Australian national, he has a PhD in comparative-historical sociology from Brown University.

Executive Summary

The Canadian Human Rights Tribunal (CHRT) in 2016 found the Canadian Federal Government to be negligent in discriminating against First Nations children and families on reserve, through decades of flawed and inequitable child welfare services. It called for the Federal Government to jointly develop a new child and family services system and to identify a process of remedy. Parties involved in the CHRT proceedings announced their agreement in 2022, which included billions of dollars in compensation for past harms and a commitment to long term reform. Since 2018, the Institute for Fiscal Studies and Democracy (IFSD) has collaborated with the Assembly of First Nations (AFN), First Nations Child and Family Caring Society, and First Nations Child and Family Service (FNCFS) agencies and service providers to define a funding approach and implementation plan to support this reform. As part of this effort, IFSD has sought to identify key lessons from Australia's efforts to acknowledge, respond to, and assess its own responses to complex policy issues within Indigenous affairs.

The paper has three principal themes: challenges and opportunities with implementation; the resistance of existing policies to substantive reform; and the capacity and leadership on the ground to create and sustain change. The intended audience in Canada is First Nations and First Nations leadership, First Nation Child and Family Service Agencies, policymakers, politicians, and advocacy organisations.

The research set out to answer the following six research questions:

1. What can be learned from Australian attempts at policy change in Aboriginal communities?
2. What can we learn from Australian attempts at implementation of new policy in Aboriginal communities?
3. What is the role of capacity building in implementation?
4. What are success factors for a successful implementation? What are some challenges?
5. How has progress in implementation been tracked?
6. Are there models or practices Canada should consider as long-term reform in child and family services is being negotiated?

The authors seek to provide responses to these questions by drawing on nine short case examples, each of which touches on a different aspect of how policy problems are encountered, experienced, and apprehended – often very differently – by Aboriginal and Torres Strait Islander communities and the Australia government.

Due in part to a lack of treaties, legislated jurisdiction, fiduciary duty, and constitutional recognition, Indigenous governance in Australia has largely arisen from organic movements driven by the political guile of leaders, and coalitions that have formed between Indigenous organisations. Indigenous Affairs is highly politicized, constantly in flux, characterised by its patchiness, with different arrangements according to different sectors and jurisdictions. Media and public opinion are powerful drivers. Australian politicians at their most extreme have used Indigenous disadvantage to legitimate universal reforms not otherwise palatable to the broader public, thereby effectively broadening the clients of the Indigenous Affairs policy to include non-Indigenous Australians. While there is broad consensus on what the desired outcomes should be, there is much disarray in how to achieve them.

Tightly targeted programs and contracts aggregate at remote communities, and efforts to coordinate across programs and governments have largely proven unsuccessful. The funding modality of choice remains the ubiquitous 'program', with inflexible reporting of 'KPIs' (Key Performance Indicators), short term funding cycles, and little if any allowance for core running costs for self-organisation or capacity building. Programs present in remote sites as highly reductionist solutions to what are often highly complex problems. A marked mismatch has subsequently emerged between policy and practice.

New Public Management (NPM) inspired contracting and competitive tendering has led to high transactions costs of accountability and reporting mechanisms, and the hard wiring of distrust between funders and providers. The impact on local community-controlled Indigenous organisations has been marked, especially in the Northern Territory, as they struggled to compete in tendering processes, leading to an influx in NGOs and private

contractors. Political accountability of leaders to their constituents has been weakened in favour of an administrative accountability 'upwards' to higher authorities

Many of the problems faced in Aboriginal and Torres Strait Islander are known in social science as 'wicked' problems due to their resistance to resolution. Because of their complex interdependencies, efforts to solve one aspect of the problems often only reveal others. Intractable social problems – such as family and gender violence, alcohol and other drug abuse, youth suicide, child neglect, parolee reoffending, and foetal alcohol spectrum disorder – do not respond to simplistic programmatic solutions. With complex problems, implementation pathways cannot be predicted. Fixating on contracting New Public Management style 'end-of-investment' outcomes puts the "cart before the horse" and perversely abrogates government of its responsibility to achieve those outcomes. Aboriginal and Torres Strait Islander people, while acknowledging that their challenges may be complex, contend that it's the so-called solutions that are the 'wicked' part.

As demonstrated through the case studies, successful initiatives in Australia tend to have four things in common:

1. a strong alignment with Aboriginal and Torres Strait Islander culture, with community-controlled organisations who specialise in delivering culturally safe and specific services to their constituents.
2. recognised representational authority with clear jurisdictional boundaries or a well-defined service delivery catchment area, especially if this authority is legislated.
3. ability to adapt and innovate in finding solutions to complex problems.
4. stability in leadership, key personal and funding.

As a developed nation, the local, state/territory, and federal governments in Australian can mobilise a wide range of institutions with powerful effect and speed, as occurred over only several weeks with the Northern Territory Emergency Response, at the direction from the highest level of the Australian Government. It is much slower to respond to practical bottom-up innovation. When it has responded, policy has formed a stepped fashion over several decades, as a positive trajectory becomes evident in capability development, which then diffuses to other locations. As local organisations then build network and coalitions, these start to politically advocate for wider uptake and reform. Governments can be slow to react to these movements, taking a reactive rather than proactive stance, which is surprising given their demonstrated comparative effectiveness in achieving success

A proactive approach would be to authorise an enabling environment for these alternative practices to flourish and then drive policy reform. This requires close attention to two key aspects of public administration: performance data and funding modalities.

How public sector agencies collect performance data is critical. NPM inspired evidence-based policy is driven by evaluative data from many programs, but this can perversely work to stifle strengths-based approaches and local innovation. Accountability benchmarks are attuned to auditors and funders, other than to the people and problems that the programs were designed to serve. Aboriginal organisations are best placed to define what their wellbeing and development means, which is often culturally distinct. As representative bodies, they can include indicators for transparency, accountability and responsiveness to their constituents. They can determine what is the actionable data they need to drive innovation in implementation. This could lead to a new generation of Indigenous outcome indicators, for them to control performance measurement, in better governing their organisations, and in innovating new local approaches to their problems.

How public sector agencies fund Indigenous organisations, also seriously influences the capabilities of Indigenous people to govern themselves. Performance-based grants to Indigenous organisations is a viable alternative to administering a multiplicity of programs, as Indigenous organisations are a sensible coordinating node to serve local jurisdictions; crucially, they have local knowledge and the most 'skin in the game' to achieve outcomes. Performance management frameworks can then be built around either the totality of the organisation itself (block funding) or restricted to key functions (core funding). Stability of ongoing funding is key to performance, preferably with a minimum three-to-five-year time frame.

1. Introduction

1.1   Purpose, Background and Method

In January 2016, the Canadian Human Rights Tribunal (CHRT) found the Federal Government to be negligent in discriminating against First Nations children and families on reserve, through decades of flawed and inequitable child welfare services. It called for the Federal Government to jointly develop a new child and family services system and to identify a process of remedy. By January 2022, the parties involved in the CHRT proceedings announced their agreement, which included billions of dollars in compensation for past harms and a commitment to long term reform.[1]

Since 2018, the Institute for Fiscal Studies and Democracy (IFSD) has collaborated with the Assembly of First Nations (AFN), First Nations Child and Family Caring Society, and First Nations Child and Family Service (FNCFS) agencies and service providers to define a funding approach and implementation plan to support this reform. During Phase 1, IFSD costed the FNCFS system, identifying gaps and cost-drivers.[2] It then developed a well-being focused and needs-based funding approach during Phase 2, including baseline indicators to track progress (the Measuring to Thrive framework).[3] In Phase 3, it is working with willing FNCFS agencies to implement and refine the Phase 2 approach, to convert it into community-based strategies operations and budgets, and to build confidence among stakeholders. The approach seeks for funding to be differentiated and flexible according to need, using delivery models developed by First Nations, with performance linked to First Nations visions of well-being and culture, and reporting and accountability structures that are relevant to and controlled by First Nations.

The purpose of the paper is to review Australia's experiences in Aboriginal and Torres Strait Islander communities, in order that these may usefully inform Canada's First Nations long-term reform of its child and family services. The paper has three principal themes: **challenges and opportunities with implementation; the resistance of existing policies to substantive reform; and the capacity and leadership on the ground to create and sustain change**. The intended audience in Canada is First Nations and First Nations leadership, First Nation Child and Family Service Agencies, policymakers, politicians, and advocacy organisations.

The research set out to answer the following six research questions:

1.   What can be learned from Australian attempts at policy change in Aboriginal communities?
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The paper begins with an introduction for the Canadian reader on the Australian context. It then presents an institutional analysis of nine case studies of policy reforms, through a review of academic, policy and evaluation literature. Based on the experience of the authors, the case studies were chosen to illustrate key characteristics of the last three decades of policy reforms in Indigenous Affairs in Australia. The paper concludes by drawing out key lessons from these reforms for consideration in future implementation – with a focus on governance capability, funding modalities, performance measurement and community control – for possible abstraction to Canada (and back to Australia).

1.2   Indigenous Affairs in Australia

The Indigenous population of Australia is concentrated along the eastern and southern coastlines, but with significant populations in rural and remote areas (Figure 1). It is difficult to draw statistical comparisons between Indigenous people in Australia and Canada, largely because of the difference in how the two countries define their First Nation populations. In Australia, an inclusive approach is taken based on self-identification, descent, and

recognition by a community. In Canada, the approach is more complex, where Aboriginal identity is defined according to whether First Nations (North American Indian), Metis or Inuk (Inuit) are Registered (under the Indian Act) or Treaty (member of band who signed a treaty with the Crown), or whether they have membership of a First Nation or Indian Band. In the Canadian Census, Indigenous people are distinguished as Registered Indian, Metis, Non-Status Indian, Inuit, or other Aboriginal, but different government department adopt different definitions.[4] Polices and data tend to focus on groups with treaty rights, and information on other groups are fragmented.[5]

Figure 1: Indigenous Population by Remoteness
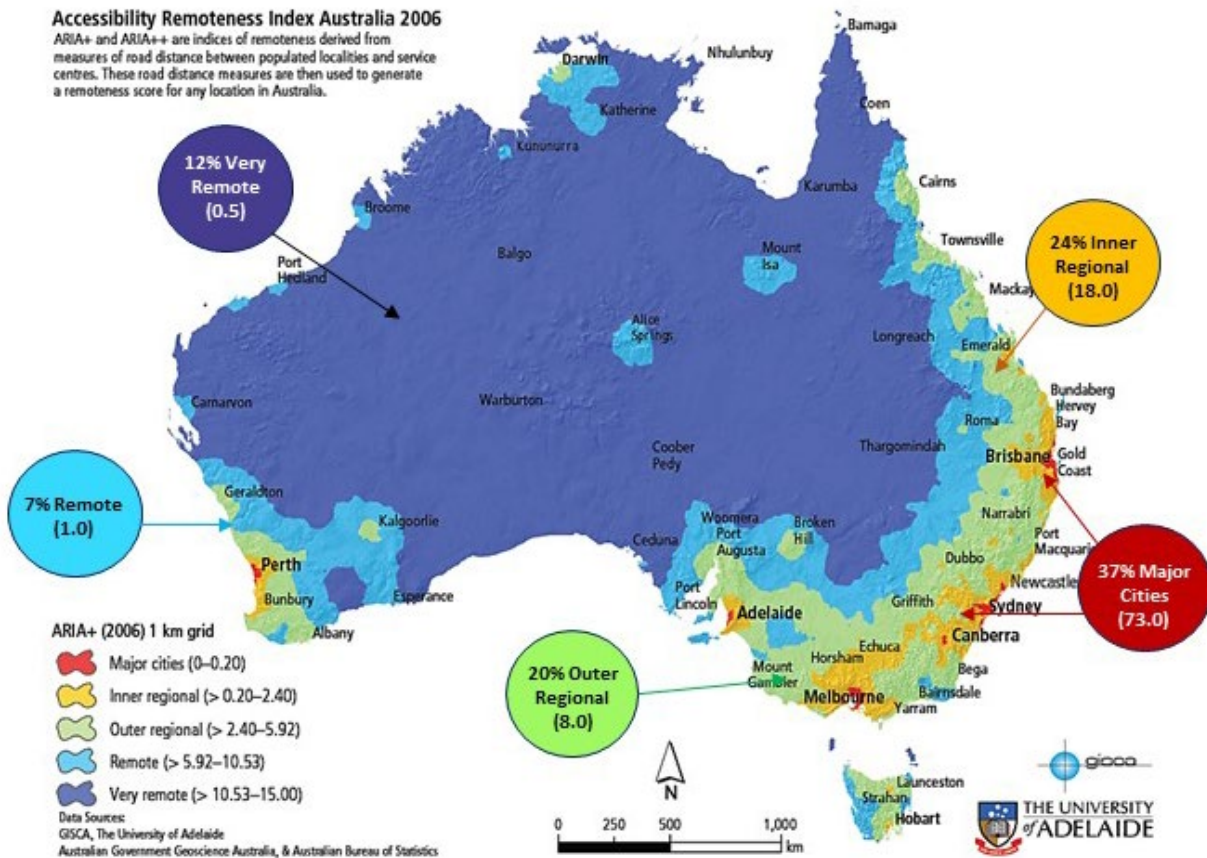
First Nation peoples in Canada and Australia share many similarities. Both are survivors of English settler colonisation under member countries of The Commonwealth. In both countries, the trauma of colonisation was compounded by a government policy of removing children. In 2021-22, Indigenous peoples made up about 5.0% of the Canadian population,[6] compared to 3.2% for Indigenous people in Australia.[7] Both groups suffer vast disparities in life outcomes compared to the mainstream. In Canada, 32% of those in prison are Indigenous,[8] which is the same proportion in Australia.[9] Australia is markedly worse though with juvenile detainees: using a single day snapshot methodology, 56% of all children in detention in Australia were Aboriginal,[10] compared with 33% in Canada.[11] The statistic of probably the greatest concern for Aboriginal communities is the proportion of their children in out-of-home (or foster) care, which is very high in both countries, at 42% in Australia,[12] and even higher at 54% in Canada.[13]

While the two countries are at opposite extremes climatically, they do share similarly degrees of remoteness. Where roads in northern Australia can be seasonally blocked during the wet, some areas in northern Canada are only accessible during winter on ice roads. A large proportion of the population living in these remote areas are

Indigenous people, who live in community settlements in areas of high cultural and environmental significance, but often with limited employment and economic opportunities, and where infrastructure and services can be lacking.[14] The following Figure 2 and Figure 3 show the location of these community settlements in both countries.

Figure 2: Discrete Indigenous Communities in Australia[15]
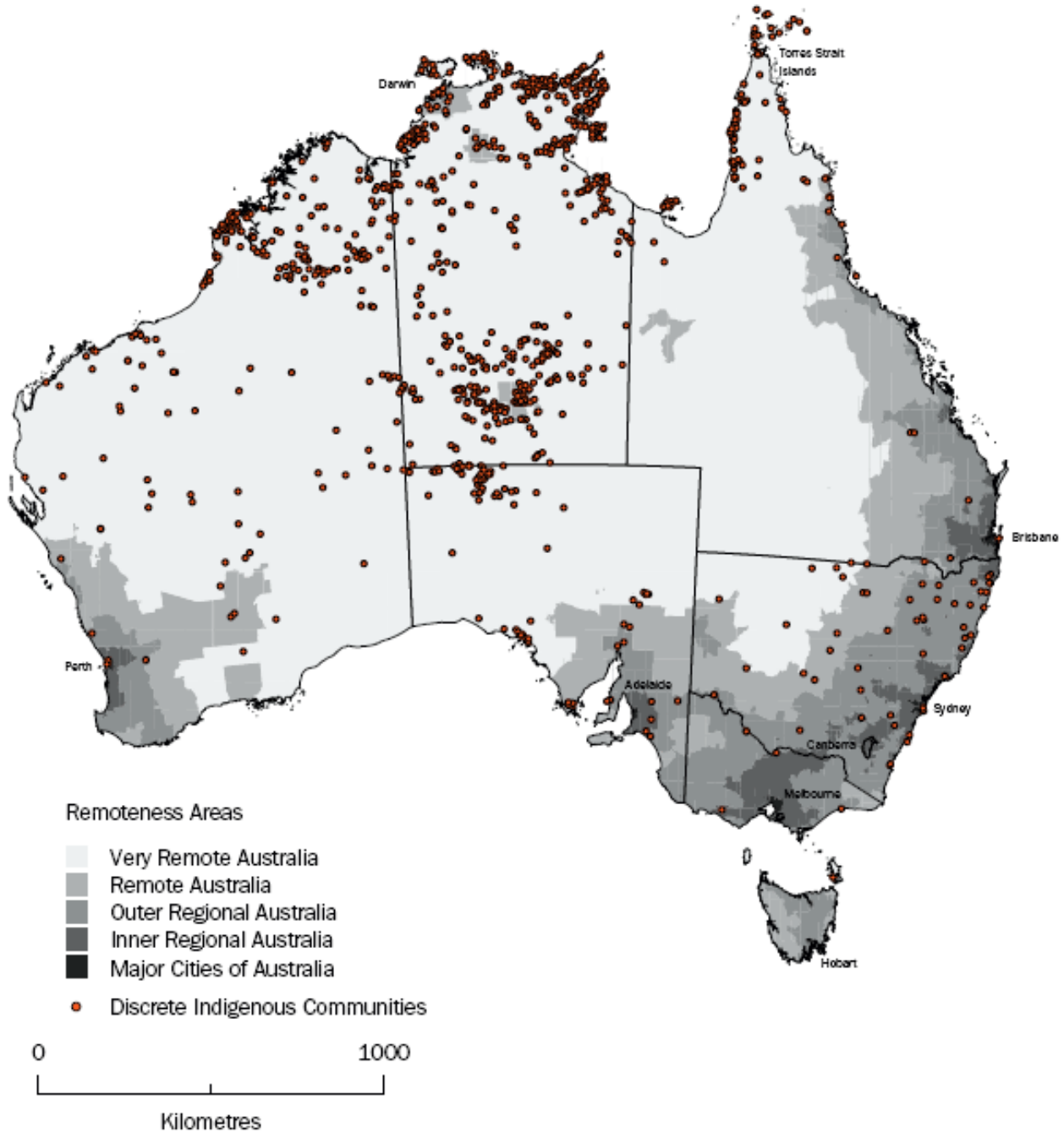
Figure 3: Discrete Communities in Canada[16]
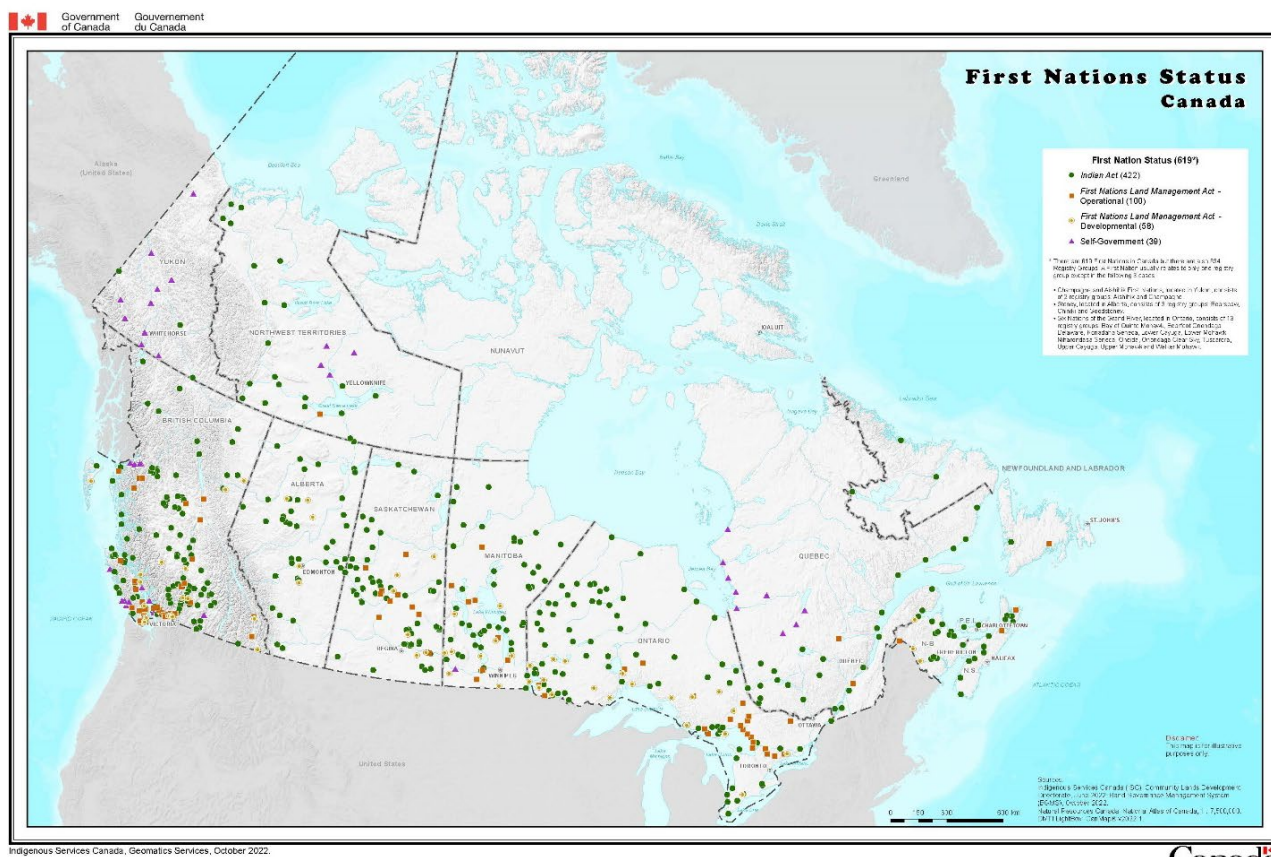
There are also important differences. The biggest difference has been the nature and extent of the legal response. In marked contrast to Australia, the rights of Canada's Indigenous people are enshrined in the constitution. Australia is one of the few nations that has not signed Treaties with its First Nations people, setting it apart from Canada, New Zealand and the United States. There are, however, many other types of agreements in place, including native title determinations which cover a defined territory.

2 Case Study Analysis

2.1 Politicisation of Interventions

The policy landscape of Indigenous Affairs is a highly contested space, characterised by its patchiness, with different arrangements according to different sectors and jurisdictions, and considerable flux and political turmoil. In other areas of public administration, the Australian Government devolves service delivery functions to state/territory and local governments, but its modus operandi in Indigenous affairs is much more hands-on, using powers it gained after changes to the constitution from the 1967 Referendum. While there is broad consensus across Indigenous Affairs on *what* the desired outcomes should be, there is much disarray in *how* to achieve them in implementation.

The Australian State has mobilised considerable public resources to address Indigenous disadvantage. On four occasions from 2008-09 to 2015-2016, the Productivity Commission estimated the national level of expenditure on Aboriginal and Torres Strait Islander people by the Australian, State and Territory governments. This was found to be consistently double that of non-Indigenous Australians, due to a combination of greater need and the higher costs, including remoteness. The Commission declined to comment, however, on the effectiveness of this expenditure due to an inability to "link expenditure to individuals, and then determine the causality of that expenditure on outcomes".**[17]**

The Department of Finance, as custodian of Australian Government procurement systems, more boldly concluded in its 2010 "Strategic Review of Indigenous Expenditure" that this investment had yielded "dismally poor results".[18] The Review attributed this to three problems: underperforming programs; poor coordination across the state and federal governments; and lack of engagement of First Nation peoples into design and delivery. While problems of coordination and performance of programs remain, progress has occurred with the engagement of First Nations People, with co-design through the Coalition of the Peaks (see Box 4), which led to the 2020 National Agreement for Closing the Gap.

As a developed nation, the local, state/territory, and federal governments in Australian can mobilise a wide range of institutions with powerful effect and speed. This is clearly evident in the Northern Territory Emergency response in 2007 (see Box 1).

Box 1: The Northern Territory Emergency Response

The Northern Territory Emergency Response (NTER, a.k.a. 'The Intervention') is a set of policies introduced in 2007 in response to media reports of public allegations of widespread sexual abuse and neglect of children within Indigenous communities in the Northern Territory. The trigger was the release of an inquiry into child sexual abuse by the Northern Territory Government, called the *Little Children are Sacred* report.[19] In the run-up to a federal election, the Australian Government moved swiftly without consultation to intervene in the lives of 73 prescribed remote communities, declaring a national emergency. For a short time at the start, it deployed the Australian Defence Force to provide logistical support and surveillance. Township leases were compulsorily acquired, and the land permit system administered by Aboriginal Land Councils was revoked. Medical teams were flown in for compulsory health checks of children. Roadside signs were posted on the outskirts of communities, declaring bans on alcohol and pornography. Police presence was increased, and customary law was no longer considered when sentencing of criminal court cases.

The Australian Government exercised unprecedented control by introducing the new *Northern Territory Emergency Response Act 2007*, amending two other Acts, passing two appropriation bills, and most controversially, suspending the *Racial Discrimination Act 1975*.[20] It rushed these five pieces of legislation through in a period of only six weeks. Public servants working in Indigenous Affairs interviewed at the time described the NTER as an extreme example of media-driven policy making.[21]

The NTER proved highly controversial, with Aboriginal leaders both supporting and condemning it.[22] Many of the criticisms related to the lack of consultation, widespread discrimination, breaches of human rights, lack of

evidence, and how few of the recommendations of the *Little Children are Sacred Report* were actually implemented.[23] Academic economist Boyd Hunter questioned the rationale and military framing of the response, and why the Intervention was limited to the Northern Territory (NT), as the then substantiated cases of child abuse and neglect among Indigenous children was lower in the NT compared to other jurisdictions.[24]

A Departmental Evaluation in 2017 found positive support among most families affected, with benefits from health checks and improved services including more police and teachers, but with no improvement in school attendance and resentment over the punitive way that the NTER was implemented. The number of activities implemented simultaneously meant it was not possible to attribute outcomes to specific activities.[25] Whatever its affects, there is broad consensus the NTER was a watershed moment in Indigenous Affair policy, the end of an era of self-determination policy, what Sanders has described as a shift from 'choice/autonomy' to 'guardianship'.[26] It also demonstrated the extraordinary and enduring powers and capability of the Australian Government to intervene in the lives of Aboriginal and Torres Strait Islander people.

Respected political scientist, Will Sanders, has described Indigenous affairs as the "moral cause célèbre of Australian nationhood". National politicians are alert to the political gain of championing efforts to tackle Indigenous disadvantage. In the lead-up to his election as Prime Minister, Tony Abbott pledged to be a "prime minister for Indigenous affairs", volunteering to work as a teacher in a remote community and then committing to live one week a year in such communities if elected, which he largely lived up to.[27]

The media and public opinion can be potent drivers of Indigenous Affairs policy, which was pronounced in the years following the NTER from 2007. Research by the University of Canberra, funded by Australian Research Council, found "that once an issue became the subject of sharp media focus in times of intense political contest, political leaders would shift policy".[28] Policymakers closely monitored media outlets, anticipating media coverage on their policy areas, practising media messaging, and adapting policy decisions to account for the positive or negative news stories to come. The research revealed a bureaucracy that was strongly reactive to the daily media cycle, "capable of responding with alarming speed to new media imperatives".[29] Thus has Patrick Sullivan argued that the clients of Indigenous Affairs policy include non-Indigenous Australians.[30] Thus can it be tempting for politicians to instrumentalise Indigenous disadvantage to legitimise universal reforms that might not otherwise be palatable to the broader public (see Box 2).

Box 2: Rise and Fall of Income Management

'Income management' is policy directive wherein a proportion of a welfare payment is restricted in the ways that it can be spent, rather than being paid directly in cash. The Australian Government first introduced income management to what it designated as 73 Prescribed (Indigenous) Communities as a part of the highly politicised Northern Territory Emergency Response (see Box 1). Through an electronic BasicsCard, the purchase of tobacco, pornography, alcohol, gambling services and home-brew kits was prohibited. Although only one of 37 constituent measures of the NTER, income management had the greatest impact on individuals and was the most controversial and widely publicised.[31]

A 2012-2014 review found widely varying perceptions of the success of income management, with some families describing the benefits to household food supply and reduced harassment, but with others lamenting its restrictions and frustrations. Benefits were higher for those who had voluntarily opted in, but three-quarters of those interviewed reported a "strong sense of having been treated unfairly and being disempowered". Significantly, the review could find no evidence that income management had resulted in "widespread behaviour change, either with respect to building an ability to effectively manage money or in building 'socially responsible behaviour', beyond the direct impact of limiting the amount that can be spent on some items".[32]

Despite being initially targeted solely to remote Indigenous communities, in 2010 the BasicsCard was extended to non-Indigenous welfare recipients in the Northern Territory. Then, in 2012, the Australian Government began rolling out trials to five depressed regional centres across Australia, including major urban centres – Bankstown, Shepparton, Logan, Playford and Rockhampton – none of which had majority Indigenous populations.

The Australian Government then engaged Andrew 'Twiggy' Forrest in 2014 – a mining magnate and Chairman of Fortescue Metals – to tackle how to achieve 'parity' between Indigenous and non-Indigenous people. Although the Review explicitly focused on Indigenous disadvantage, Andrew Forrest was uninhibited in recommending a cashless smartcard to all 'vulnerable' Australians, including unemployed persons, carers, single parents and people with a disability, only exempting veterans and those on the aged pension.[33] Alert to the implications for the rest of Australia, the move was immediately opposed by the mainstream Australian Council of Social Service, calling instead for "decent welfare reform".[34] Whether inadvertent or intentional, the tragic circumstances of Indigenous disadvantage was being used to push for a mainstream reform that might not otherwise been palatable to the Australian public.

The Government then moved to a Cashless Debit Card, starting with another 12-month trial in 2016 to two locations where only about a quarter of participants (26-28%) were Indigenous: Wyndham/Kununurra in the East Kimberly of Western Australia, and Ceduna in South Australia. A 2017 evaluation of the trial found positive impact,[35] so it was expanded to four additional remote regions across Australia: the Goldfields of Western Australia, Cape York and Bundaberg/Hervey Bay in Queensland, and the entirety of the Northern Territory. A Department of Social Security (DSS) website lists 12 different evaluations on income management it sponsored from 2010-2020.[36] A definitive 2018 audit by the Australian National Audit Office (ANAO) concluded that its flagship 2016 trial had not been properly assessed by DSS, including a cost-benefit analysis, and that the subsequent 2017 evaluation had not assessed the available data.[37] Also in 2017, a study by the Menzies School of Health Research and the University of Sydney found that income management introduced under the NTER had a negative impact on children, with reduced school attendance and lower birth weights of infants.[38] Opposition to the scheme mounted, and the incoming Labour Government in 2022 moved to "abolish the failed cashless debit card program", introducing a voluntary transition off the scheme.[39]

2.2   Programmatic Saturation and Disarray

Tightly targeted programs and contracts aggregate at remote communities, and efforts to coordinate across programs and governments have largely proven unsuccessful. In 2014, the Western Australian Department of the Premier and Cabinet released its 'location-based expenditure review' into two communities in the Pilbara: Roebourne and Jigalong. Roebourne, a country town of 1400 people with a majority Indigenous population received an incredible 206 services, program and projects. On a per capita basis, the concentration was even higher for the discrete Aboriginal community of Jigalong, with 90 interventions serving a population of only 360.[40] Attempts to resolve this aggregation of programs, through 'whole of government' coordination and shared measurement systems have struggled to deal with the workload involved (see Box 3).

Box 3: National Partnership Agreement for Remote Service Delivery

From 2007 to 2013, a series of National Partnership Agreements (NPA) set out to coordinate the combined Australian and State/Territory governments around the 'closing the gap' targets. Prominent among these efforts was a place-based approach under the 2009 NPA on Remote Service Delivery (RSD) to 29 Remote Aboriginal and Torres Strait Islander communities across Australia. Additional staff were deployed in Regional Operation Centres (ROCs) and Local Implementation Plans (LIPs) were prepared to coordinate government service delivery against community set priorities. The LIPs were intended to be a binding agreement between the communities and all three tiers of government: federal, state/territory, and local government.

A Coordinator General for Remote Indigenous Services (CGRIS) was appointed to oversee the NPA RSD, but he became increasing vocal in his criticism of the initiative, concluding that "agencies continued to work within their own program structures, employing (in many cases) the same top-down service delivery methodologies that the National Partnership set out to improve". Even where commitments were made to do things differently, there remained a need to navigate complex approval processes for funding to flow, and to demonstrate consistency with program guidelines that had been developed outside the RSD framework. In one of his final reports, the Coordinator General concluded the RSD sites ended up being "subject to more, rather than less, red tape – as each new service brought with it more reporting requirements". In the remote community of Groote Eylandt, over 100

separate programs and reporting requirements were identified in a community with a population of just over 1000 people.[41] The lead agency went to extraordinary lengths, developing the automated tools 'LIPtracker' and then 'Issuetracker' to streamline reporting, but stakeholders still found the level of reporting too burdensome.[42]

The Final Evaluation compiled by a team of researchers concluded that the pressure to implement the action items and achieve tangible changes (e.g., infrastructure, coordination mechanisms) compromised less concrete items like community engagement, leadership and capacity building. While the LIPs tried to identify community priorities, the task of mapping all the programs across all the different levels of government and departments, and then tracking their action items, exhausted the effort. Across all 29 trial sites, there were more than 4000 action items to be processed.[43] In one community alone, the remote Aboriginal community of Doomadgee, its LIP set out 172 action items. The effort to undertake accelerated, targeted, whole-of-government coordination of government services overwhelmed the effort to engage and partner with the community. Most stakeholders consulted considered that responsiveness to community needs would have improved with greater devolution of decision making to local levels.

The funding modality of choice in Indigenous Affairs remains the ubiquitous 'program', with inflexible reporting of 'KPIs' (Key Performance Indicators), short term funding cycles, and little if any allowance for core running costs for self-organisation or capacity building. Whether expressed or implicit, each program has a 'theory of change' which generalises needs and aggregate outcomes to national 'Closing the Gap' outcomes (see Box 4). Programs present in remote sites as highly reductionist solutions to what are often highly complex problems; they combine into complex hybrids, the effects of which are unknown. In Aurukun, one study found 39 programs working with an estimated 60-100 disengaged youth, yet the competing programs had different theories of how to achieve behavioural change. Given the small number of target recipients, one 'disengaged youth' was likely to be 'treated' by multiple programs. As concluded by the authors, "when multiple programs simultaneously incentivise, enable, coerce and role model the same individual, it is unclear whether their effects add or subtract." While different clients might well respond better to different programs, little coordination occurred between providers.[44]

2.3   The Community Controlled Sector, Coalition Building and Partnerships

Upon its introduction in the 1990s, New Public Management (NPM) inspired contracting and competitive tendering has led to further fragmentation, high transactions costs of accountability and reporting mechanisms, and the hard wiring of distrust between funders and providers, and between competing providers. The impact on local community-controlled Indigenous organisations has been marked, especially in the Northern Territory, as they struggled to compete in tendering processes, leading to an influx in NGOs and private contractors.[45] Political accountability of leaders to their constituents was weakened in favour of an administrative accountability 'upwards' to higher authorities.[46]

Box 4: Closing the Gap Campaign, then National Agreement

The origins of the Closing the Gap policy can be traced to the Aboriginal and Torres Islander Social Justice Commissioner, Tom Calma's 2005 Social Justice Report, when he urged the Australian Government to commit to equality for Indigenous people in life expectancy within 25 years.[47] Australian domestic and international NGOs responded through two complementary rights-based campaigns: the National Indigenous Health Equity Campaign from 2006 and the Close the Gap campaign from 2007. Changing its name only slightly to Closing the Gap, the strategy was quickly adopted as policy by the Australian Government in 2008 and formalised under the COAG National Indigenous Reform Agreement. The Strategy initially set out six of targets to reduce inequality: life expectancy, infant morality, early childhood education, literacy/numeracy, attainment of year 12 schooling, and employment. Three different publications tracked progress against the targets: The Prime Minister's annual report, the Productivity Commission biennial report, and the COAG Reform Council progress report.[48]

In 2016, COAG began the Closing the Gap Refresh process, developing a discussion paper and inviting submissions. Through 2017-18 it undertook national-wide consultation, convening 18 roundtable meetings involving over 1000 participants.[49] A special gathering of 64 participants was then convened, selected by Australian, state and territory

governments to ensure representation from each jurisdiction. Simultaneously, Aboriginal and Torres Strait Islander national 'Peak' organisations began to mobilise and undertake important background work by sector. A turning point occurred in 2018, when 14 Peak organisations wrote to the Prime Minsters and Premiers of each state/territory under COAG, proposing a formal partnership to address the Refresh. In early 2019, the Coalition of the Peaks was formed with an initial membership of 40 Aboriginal and Torres Strait Islander Organisations, as an organic coalition of national, state/territory peak bodies with service delivery responsibilities and representative boards accountable to their memberships. While not all sectors in all jurisdictions fell under the Peaks, their coverage was sufficient to claim national representativeness. By 2023, its number had increased to 80.[50]

The initiative culminated when the National Agreement to Close the Gap was signed in 2020, between the Coalition of the Peaks and all levels of government, represented by the Prime Minister, eight state/territory Premiers, and the President of the Australian Local Government Association. The number of 'close the gap' targets was expanded to include improvements in tertiary education, housing, land access, and spoken Indigenous languages, and reduced levels of incarceration, youth detention, out of home care, suicide, and violence against women. Each of the signatory jurisdictions have since developed implementation plans,[51] but the challenges are daunting. The 2022 Closing the Gap Report was only able to report on 9 of the expanded 19 targets, but only four of these were on track to be met.[52]

Significantly, the Agreement for the first time set four priority reforms needed in improve implementation in order to 'close the gap': [53]
1) Formal partnerships and shared decision-making (building on the principles used in the Partnership Agreement)
2) Building the community-controlled sector (building on its existing reach and strengths)
3) Transforming government organisations (eliminating racism, building cultural capability, increased accountability to the needs of Indigenous people, support for culture, and improved engagement)
4) Shared access to data and information at a regional level.

The ultimate success of the co-design process can only be measured in its implementation, and ultimately, through progress towards achieving the targets; it is nonetheless a major turning point in policy development in Indigenous Affairs. While it began as a standard consultation, utilising appointed and trusted leaders as interlocuters, the decision to partner with the Coalition of the Peaks and to formalise the arrangement via a COAG agreement was based on a co-design process with a degree of shared decision making, openness and representativeness.[54] The continued focus of Coalition of the Peaks, as embodied in its 2023 Implementation Plan, [55] is to advance the ground it has achieved in partnering with and reforming government agencies, including an "independent mechanism that will support, monitor, and report on the transformation of mainstream agencies and institutions".

A significant development has been the emergence of Peak organisations, where representation through community-controlled organisations aggregates up to state/territory and then national levels, to provide a united voice for an entire sector. One example is SNAICC (Secretariat National Aboriginal and Islander Child Care), with a registered membership of more than 70 Aboriginal and Torres Strait Islander community-controlled children's and families' services across Australia,[56] but with a much broader network and subscriber list of over 800 community groups, mostly Indigenous but also significant number of non-Indigenous community-based service providers and individuals. SNAICC has established a sufficient footprint to claim its place as the national representative voice for Aboriginal and Torres Strait Islander children.[57] This includes a national campaign that it is running and a 2021 flagship publication, called Family Matters, addressing the rising numbers of Aboriginal and Torres Strait Islander Children separated from their parents in out of home care. [58]

2.4   Local Innovation and Diffusion

Centrally driven policy change has a pervasive influence on practice, but it is interesting to consider the opposite dynamic, namely of policies emerging from practical bottom-up innovation, which then diffuses to other locations. Surprisingly, governments can be slow to react to these movements, taking a reactive rather than proactive stance, waiting for initiatives to incrementally organise and thereby build their legitimacy, and then respond to their advocacy.

The foundation of the Kowanyama Land and Natural Resource Management Office (KLNRMO) resides in the traditional culture and elders of the three main language groups that came to live in Kowanyama. Anthropologist Viv Sinnamon started his lifelong work with the Counsel of Elders from the late 1970s, at a time when land rights were not recognised by the Queensland Government, and proponents of land councils were considered radicals.[59] KLNRMO as an organisation was formalised in 1991, largely as a political reaction to over-exploitation of coastal and riverine fisheries, and the threat of mineral exploration. It was inspired by strong links with First Nations leaders from the Pacific Northwest coast of the United States and Canada. Its range of activities grew to include an Aboriginal ranger program, regulation of fisheries and visitor camping, land management (including fire management, feral weed and animal control), a cattle enterprise, mapping using geographic information systems, facilitating traditional land access (caring for country), resourcing of traditional outstations, negotiating land claims, stakeholder negotiation, capacity building and environmental health surveillance.[60]

As KLNRMO was establishing through the late 1980s and early 90s, the Australian and Queensland Government had not yet awoken to the possibility of employing Aboriginal people in land management. Government policy formation and investment was at this time nascent.[61] KLNRMO was initially funded by the local Kowanyama Aboriginal Council with discretionary funds raised from alcohol sales from the local the canteen. The success of KLNRMO and other early adopters slowly diffused to other communities, who cobbled up their own-source income to operate similar land and sea management programs. Although policy change and implementation in Indigenous Affairs can often occur quickly, in this instance its support increased incrementally over a 30-year period, in tandem with a grass roots led movement which became increasingly more organised and effective in its advocacy. A peak body called the North Australian Indigenous Land and Sea Management Alliance Ltd (NAILSMA) began informally through the 2000s, culminating in its formal incorporation in 2012.[62] By 2021, the Australian Government was investing about AUD80 million annually across 143 ranger programs.[63]

The growth of Aboriginal art centres can be similarly traced to innovations that occurred in Central Australia, initially in the remote community of Papunya from 1971. Art Centres are typically managed by an Indigenous board, distributing benefits to local artists, effectively acting as an agent for the production and sale of art works to community members. With a mixture of income from sales and Australian Government funding, the number of Indigenous owned and operated art centres has since increased to more than 110 nationally.[64] Aboriginal Community Controlled Health Organisations (ACCHOs) grew by providing a culturally safe and targeted approach to Indigenous primary health care which addressed underservicing by mainstream health services (Box 8). Similar organic movements have occurred with community justice groups and justice reinvestment in some jurisdictions, including New South Wales (NSW) and Queensland. A common feature of this innovation is a strong element of community control and cultural connection.

2.5   Strengths Based Approaches

Although the 'Closing the Gap' policy framework has enjoyed broad bi-partisan political support for more than a decade, it has been widely criticized as promulgating a deficit discourse. The status of Aboriginal and Torres Strait Islander people falls short of national norms, across almost all the indicators reported in Annual Closing the Gap reports. Drawing on its research into Indigenous Health, the Lowitja Institute defines this deficit discourse as "disempowering patterns of thought, language and practice that represent people in terms of deficiencies and failures … [and] places responsibility for problems with the affected individuals or communities, overlooking the larger socio-economic structures in which they are embedded".[65] Reporting against Closing the Gap targets also overlooks the positive contributions that Aboriginal and Torres Strait Islander people bring to Australian society. Looking instead to another framework, the 17 Sustainable Development Goals (SDGs) sit under a United Nations framework that applies universally to all nations and all peoples. In contrast to its Closing the Gap reports, the Australian Government's 2018 voluntary report on Australia's progress towards the SDGs cites the positive contribution that Aboriginal and Torres Strait Islander groups have made to four of the SDGs: quality education, climate action, 'life below water', and 'life on land'.[66]

Strengths-based (or asset-based) development is a process where strengths are found and built upon, overcoming deficit discourses, tailored to different peoples and holistic understandings of the places/contexts where people live. Each Aboriginal and Torres Strait Islander community has its own unique culture, history of dispossession, gendered leadership, intergenerational trauma, resilience, and strengths, which differs from other communities across the country. A strengths-based approach seeks holistic enabling environments which permit people to work out and lead their own forms of self-determined development. This is particularly important when working with First Nations communities, as it cannot be assumed that they have the same aspirations as the mainstream, or that they are free of structural barriers to pursue their own aspirations for development. The approach also questions external assessments for 'capability building' and argues for the importance of building the cultural capability of outsiders who seek to work in and with First Nation communities.[67] Interestingly, programs designed to follow strengths-based approaches can find themselves at odds with programmatic demands for evidence, as can be seen in the case of Community for Children program (Box 6).

Box 6: Communities for Children (CfC)

Communities for Children (CfC) is a place-based program that funds an NGO (the facilitating partner) to identify and fund children and family services in specific locations. Implemented in a range of urban, regional, and remote towns across Australia, many of the latter having high Indigenous populations. The facilitating partner commits to regular and ongoing community engagement to ensure that activities continue to reflect local needs. CfC focus on improving the development and wellbeing of children from birth to 12 years, and at times children up to age 18 years. Each CfC site has a local CfC Committee which includes local clients, parents and caregivers, businesses, service providers, and Indigenous representatives. A community strategic plan is developed that outlines community strengths, barriers to accessing services, gaps in service delivery, and key data needs. The facilitating partner uses these plans and the local CfC Committee to select services that best meet local needs. An evaluation found that the CfC Committees were largely effective in local decision making.[68]

Department guidelines for the CfC requires facilitating partners to allocate at least 50 per cent of funding to high quality, evidence-based programs assessed by the Australian Institute of Family Studies (AIFS) as having a relatively rigorous evidence base.[69] AIFS has a guidebook of off-the-shelf evidence-based programs that can be selected. Alternatively, facilitating partners can fund other activities, provided they are assessed by AIFS against five criteria: a documented theoretical or research background; a clear theory of change (program logic); activities that match good practice in addressing the needs of the target group; at least one evaluation has been conducted to establish positive benefits, with pre and post-testing of participant outcomes; and qualified staff to run the program.[70] The remaining proportion of funding can then be used on promising or innovative activities that are not supported by a rigorous evaluation or an evidence base.

An evaluation of the CfC program found that only a minority of the facilitating partners adapted approved AIFS evidence-based programs. About a third were unsure or disagreed to meeting the 50 per cent target in the required timeframes. Meeting the requirements of 'evidence' in remote locations proved difficult due to the impact of transient populations, workforce skill shortages, and the need to service communities with specific cultural needs. Facility partners also resisted prioritising evidence-based activities to meet the 50% target over meeting identified community needs.[71]

The *Stronger* Communities for Children (SCfC) program uses a similar model to the CfC program, adapted to Aboriginal and Torres Strait Islander communities (with an Aboriginal-controlled organisation taking on the facilitating partner role). It delivered in ten sites in the Northern Territory, involving 12 remote Aboriginal communities. In each site, a community board was established to draw on cultural knowledge and community strengths to identify the best services that are best able to meet the needs of children and their families. There is no central, publicly available repository for the community plans, and without easy public access to the plans it is very difficult for communities to know how their needs are being assessed or incorporated into funding decisions.

Similar to the CfC, an evaluation of SCfC found a tension between strengths-based and evidence-based approaches. The evaluation also noted that, in general, there is a lack of evidence available to determine whether or not an activity will work in remote Aboriginal communities. Fortunately, the SCfC program gave local boards the flexibility to innovate and design activities that instead responded to and built on community strengths.

As the evaluators of the CfC found, when evidence-based policy becomes dominated by evaluative data taken from many competing programs, it can perversely work to stifle strengths-based approaches and local innovation. To survive, all programs must maintain indicators and narratives of their success to meet public finance accountability benchmarks. Accountability benchmarks, in turn, are attuned to auditors and funders, other than to the people that the programs were designed to serve.[72] Their claims to evidence are also questionable. The number of programs per capita in remote Indigenous communities, and the causal density arising from their combined effects are so great that evaluations struggle to deal with attribution. It can be very difficult to find a valid 'control group', given all Indigenous communities in Australia have a history of receiving similar programs.[73]

2.6   Shared Data, Performance and Indicators

The Productivity Commission provides independent research and advice to Government on socioeconomic issues affecting the welfare of Australians. When it finally developed an Indigenous Evaluation Strategy in 2020, the Commission gave "principles-based guidance" for government agencies to follow, including how to maximise Indigenous participation when undertaking evaluations, in a culturally safe and ethical manner, through all stages of their development, including deciding what programs should be evaluated and what data should be collected.[74] This signalled a major shift from the Productivity Commission's past econometric focus on evaluation science, to more of an empowerment approach to Indigenous evaluation. This also brought it in line with Priority Reform Four of the National Agreement on Closing the Gap to ensure "shared access to data and information at a regional level",[75] and a growing movement in Australia towards "Indigenous data sovereignty".[76]

Under the National Agreement, Indigenous organisations are seeking partnerships with funders, rather than transactional programs and funding agreements. They are bringing new ideas to what data is actually needed. On a day-to-day basis, community leaders and frontline workers in Indigenous organisations are well placed to intrinsically make sense of whether they are making progress or going backwards. Through distilling additional Indigenous informed indicators, a performance framework can be built around the organisation as a single organising entity. This could well end up exceeding the current externally imposed reporting framework in both detail and quality, and it could position the organisation to argue for untied pooled or block grants. Key to the success is derivation of Indigenous indicators of success and wellbeing, as well as indicators of progress.

For example, in Broome, Western Australia, the Yawuru people worked with researchers to articulate their own concept of wellbeing founded on mabu liyan (the Yawuru concept of a good life). This included deriving a range of indicators, including the strength of their family connection, the types of cultural knowledge acquired as a child, and whether people felt able to access 'country' (traditional lands, waterways and seas to which Aboriginal and Torres Strait Islander are connected through law, custom, language, spiritual belief, cultural practice, subsistence family and identity). They then proposed that services should be prioritised according to the areas that are identified as being fundamental components of Yawuru wellbeing.[77]

Box 7: Maranguka Justice Reinvestment Project

Bourke is a remote town of around 2300 people in Western NSW, where approximately 30% of the population identify as Aboriginal or Torres Strait Islander. The town has faced persistent socioeconomic disadvantage and high crime rates. Community leaders began discussing ways of reducing crime and incarceration in 2007, together with private sector and NGO partners. In 2013, Aboriginal leaders in Bourke began to adapt and implement a model of justice reinvestment, whereby funding is redirected from imprisonment and youth detention towards preventative, diversionary, and community development initiatives that address the underly causes of crime. Maranguka Justice Reinvestment Project was formed through a partnership with Just Reinvest NSW under the guidance of the Bourke Tribal Council representing the 27 different traditional groups living in Bourke.

Evaluative data is used to track progress towards justice reinvestment against key indicators; preliminary results are positive.[78] But the collection and use of fine-grained data is also proving vital to good governance and decision making. The community worked with Just Reinvest NSW to collect linked data over the trajectories of youth through the justice, health, and education system and the events that led to them entering the justice system. Collecting this life course data from government agencies proved to be a very difficult task, over many years,

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requiring negotiations with multiple government agencies, and political support to remove blockages.[79] Government agencies closely guarded the data they had collected, and were reluctant to share it with other agencies, let alone with community leaders trying to make sense of and act on their challenges.

The data has been a powerful tool in the hands of Bourke community leaders and local service providers. It showed that many children were picked up by police at night, at a time when no youth engagement services were operating. By negotiation with service providers, youth engagement services were extended into the evenings. Community leaders were also able to conclude that violent behaviour in schools was tied to family violence reoffending at the youth's home. The school responded by suspending the children, who were then sent home into a violent situation, before fleeing back onto the streets. Armed with this evidence, community leaders worked with the School and Police, boosting in-school programs and supervised school holiday programs.[80]

Frontline leaders and workers in the Maranguka Justice Reinvestment Project have found 'actionable' data that they used to work up solutions to complex social problems. Conventional evaluation and performance frameworks typically focus on 'end of investment outcomes', with little detail on how to get there during implementation. When stepping through complex problems, frontline leaders and workers proceed incrementally, remaining focused on their next step. In addition to baseline and longitudinal evaluative data, they need 'actionable' data to guide implementation, that allows micro evaluations over short time periods, assesses the results of the last steps they have taken, so they can decide whether they should continue down that pathway or switch to a new one.

2.7   Performance-Based Grant Modalities

How public sector agencies fund Indigenous organisations, otherwise known as funding 'modalities', seriously influences the capabilities of Indigenous people to govern themselves. Performance-based grants to Indigenous organisations is a viable alternative to administering a multiplicity of programs, as Indigenous organisations are a sensible coordinating node to serve local jurisdictions; crucially, they have local knowledge and the most 'skin in the game' to achieve outcomes. Performance management frameworks can then be built around organisation, either the totality of the organisation itself (block funding) or restricted to key functions (core funding). Stability of ongoing funding is key to performance, preferably with a minimum three-to-five-year time frame.[81]

Box 8: Core Funding of Aboriginal Community Controlled Health Organisations

Starting with the Redfern Medical Center in 1971, Aboriginal Community Controlled Health Organisations (ACCHOs) were formed as means to provide a culturally safe and targeted approach to Indigenous primary health care and to address underservicing by mainstream health services. Indigenous clients are generally more inclined to access ACCHOs, evident in the distances they travel to reach them, bypassing mainstream health services that are more conveniently located.[82] Where other sectors in Indigenous Affairs have endured major departmental restructures and policy changes, ACCHOs have enjoyed relative stability and support from the Australian Government. They have consistently demonstrated their effectiveness as health service provider to their communities, maintaining their funding support. In a departure from the widespread practice of many short-term programs, ACCHOs and their state/territory and national representative Peak bodies have successfully campaigned for a form of core funding. Although ACCHOs receive funding from a range of other sources, including state/territory governments, this core funding gives them discretion to innovate and to respond to local needs.

Through the 2000s, funding to ACCHOs from the Australian Government Department of Health and Aged Care (DoHA) attracted increasing criticism from the sector because the grants were on an annual basis, the reporting was onerous, with uncertainty of ongoing funding.[83] DoHA responded with a single head agreement in 2011 to consolidate the separate agreements within the Department. The duration of the agreement was extended to 3-year and then 4-year contracts under the IAHP, with rolling extensions. Funding agreements are tailored to the needs of the ACCHO, including an Action Plan, that sets out the services to be provided to each ACCHO.

Through its flagship Indigenous Australian Health Program (IAHP), 164 organisations (140 of which were ACCHOs) received core PHC (Primary Health Care) grant funding through 2016-17, reportedly reaching more than half of the total Indigenous population of Australia.[84] This amounted to $470 million in 2016-17, comprising 60% of its total

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funding.[85] The AIHP PHC funding is effectively a form of rolling core grant, giving ACCHOs some discretion to innovate and respond to local issues. In addition, ACCHOs received additional tied programmatic funding from a range of other sources, including DoHA and state/territory governments. While the core PHC funding is still technically provided as a special-purpose grant, the services provided are broadly defined and the organisation has some discretion in allocating them according to their priorities. The funding guidelines include clinic services, population health (e.g., immunisation, health promotion, antenatal, postnatal care), facilitating patient access, practice management, organisational capacity development, partnerships, staffing and information technology. The certainty and flexibility of this funding allows ACCHOs to fund core critical staff and covers the central expenses of administration and governance. It provides organisations with a buffer against delays in receiving other grants, and the vagaries of whether funding applications will be approved.[86]

Reporting under head agreements is orientated to activities, rather than performance against outcomes. The lack of quantitative performance data has reduced the reporting burden on ACCHOs but has attracted criticism from the Australian National Audit Office.[87] ANAO noted that 98% of grants were not awarded through a competitive process, as required under the Commonwealth Grant Rules and Guidelines. DoHA was able to obtain ministerial approval to get around this requirement, as tendering out to private or NGO providers would have drastically undermined the community-controlled health care model. ACCHOs have survived major restructures across Indigenous Affairs, largely because of their effectiveness and political support they can muster. This stability has in turn allowed the sector to grow. While ACCHOs range in size and focus, some have grown into multi-million-dollar operations. Their impact now extends beyond health. Their peak national body, NACHHO led the establishment of the Coalition of the Peaks, which led to the co-design of National Agreement on Closing the Gap (see Box 4).

There are other precedents of core funding occurring in other sectors. Under the *Native Title Act 1993*, eligible bodies can apply to be the representative body for native title for a geographical area. If approved, it becomes eligible for core funding for three years to perform its statutory functions and exercise its powers as defined by the Act, primarily for the facilitation, agreement-making, dispute resolution and subsequent exercise of native title for and on behalf of traditional owners.[88]

When an Indigenous organisation can report and assert its own 'whole of its organisation' performance data, through an annual reporting process, it can create an alternative to reporting more frequently against multiple external programs. Indigenous organisations need not be limited to existing indicators and outcome measures. They can innovate and drive their own internal performance metrics, including place-based qualitative and quantitative mixed methods, as well as measures of cultural wellbeing and empowerment. As they are representative bodies, they can include indicators for transparency, accountability and responsiveness to their constituents, which sets them apart from competing private sector and NGO providers. By banding together, they can also set new standards in evaluation data and science, and thereby legitimate and lead much needed reforms. This would mirror the long-term evolution of capacity building initiatives among First Nations in both Canada[89] and the United States.[90]

To achieve this, Indigenous organisations need additional resources to engage their own Monitoring Evaluation Research and Learning (MERL) expertise. ACCHOs maintain a high standard of medical care while enabling the benefits of improved access, local employment, and cultural competency that comes from being an Indigenous controlled organisation. As they do with medical practitioners, ACCHOs could employ staff with MERL expertise and ensure that performance data is fit for their needs.

2.8   Jurisdictional Devolution

Indigenous organisations have tended to benefit from general purpose and more expansive and flexible funding arrangements in cases where they have a recognisable jurisdictional boundary or a well-defined service delivery catchment area. Organisations in the latter category have tended to be community controlled organisations who have specialised in culturally specific service to their constituents, that could not be otherwise readily outsourced to non-Indigenous organisations.[91] In the absence of treaties or overarching policy, establishing these jurisdictions has largely occurred through the intergenerational commitment and tactics of Indigenous leaders, which is evident in the case of the Torres Strait and the formation of the Torres Strait Regional Authority (TSRA).

Box 9: Torres Strait Regional Authority

The Torres Straight Regional Authority (TSRA) is the only example of a representative Indigenous organisation in Australia that receives a single direct appropriation via a block grant ($36Million in 2021-22).[92] This affords it a significant degree of flexibility to self-govern, with powers to plan, allocate resources, monitor and evaluate outcomes, and streamline reporting via one consolidated TSRA Annual Report, which is tabled in parliament.[93] Its fiscal relationship with the Commonwealth is best described as inter-governmental, similar in status to an Australian state or territory, or for First Nations in Canada and Tribes in the USA with Treaty rights. While it is difficult to generalise about this special arrangement, there are some local and regional Aboriginal organisations who could demonstrate a similar capability trajectory where they might similarly claim self-government over a clear jurisdiction.[94] Critical to these claims would be demonstrated fiscal capabilities, operational performance, and undisputed jurisdiction over a geographic, cultural, or service delivery area.

There is a long history to how the TSRA achieved this unprecedented level of self-government, with its claims for autonomy dating back to the 1930s. When the Aboriginal and Torres Strait Islander Commission (ATSIC) was created in 1990, the Torres Strait Regional Council became one of the 63 Regional Councils that constituted ATSIC's elected arm. Immediately, it was assigned special status, with the Torres Strait becoming one of 18 ATSIC Zones represented by its own Commissioner. A 1992–93 review of ATSIC recommended the Torres Strait Regional Council become an Authority (the TSRA) to exist within ATSIC legislation but with a 'single line appropriation'.[95] The new Authority was then formed in 1994, and its first direct appropriation was granted in 1997.[96] But as Sanders argued in their pursuit of regional self-government, "the marriage between Islander aspirations for regional autonomy and the ATSIC structure [was only ever one] of convenience in which the Islanders have, in many ways, dictated the terms".[97] The TSRA certainly did well from its brief association with ATSIC. When the Australian Government moved to disband ATSIC in 2004, the TSRA kept the powers and functions granted to ATSIC under what remained of *Torres Strait Islander Act 2005*, including its annual direct appropriation from the Australian Government.

Calls for regional autonomy in the Torres Strait date back to the 1930s, and have been ongoing, spurred on by native title determinations, and the formation of the Gur A Baradharaw Kod Land and Sea Council (GBK). In 2022, Torres Strait Islander leaders held a forum on Masig Island, which led to the Masig Statement towards regional sovereignty. Debate over an appropriate jurisdictional structure continues to be debated. In 1997, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs recommended the creation of a Torres Strait Regional Assembly as a 'joint statutory agency' of the Queensland and Commonwealth parliaments.[98] Others have appealed for territory status. In Australia's federal system, territories typically assume responsibility for "health, education, policing, town planning, physical infrastructure, natural resource management and community services".[99] As Torres Strait Islander local governments and community organisations already hold considerable sway over these services, there is questionable benefit in assuming responsibilities for health and education services when these were already well provided by the Queensland Government.

3   Conclusions and Discussion

3.1   Secondary Gains from a Public Economy

The economies of remote Indigenous communities are heavily reliant on public finances. These return a limited local circulation, mostly through the community store, although these too are generally operated by external agents. Subsistence remains an important traditional economic activity in many communities, but there is little private enterprise activity by way of retail stores, cottage industry, or markets. Exceptions include art sales, ecotourism and ecosystem services including carbon farming. Local employment is largely limited to community administration and service delivery positions, with management and professional positions often filled by outsiders. Private sector employment and small enterprise is more common in settlements located near mining.[100] Indigenous communities in urban and regional areas are more engaged in the market economy, but public finances are still strongly influential.

These public finances are tied to the conditions and reporting requirements placed on programs, services, and welfare payments. Although Indigenous organisations are increasingly engaged in service delivery, they too remain tied to the conditions of government contracts. Grants and royalties from mining and other private investment also largely adhere to the rules of administrative law and public finance management in how they are administered or distributed. This is essentially more of a 'public economy' than a market one, with a competitive politics of distribution at play, wherein material and individual advancement is largely a matter of securing public resources. The terms under which these resources are channelled through elected bodies significantly impacts on the kinds of pressures, whether democratic or patrimonial, that are placed on leaders to deliver.[101]

The overarching policies driving them at federal, state and territory levels are in a constant state of flux, often driven by public opinion and ideology of the government of the day. Over the last century, these policies have been variously described as protection, assimilation, integration, self-determination, shared responsibility, intervention, normalisation, reconciliation, and 'closing the gap'. Sanders has proposed a schema to describe these policy shifts due to the relative influence of three competing principles: individual equality of opportunity, group choice/autonomy, and group guardianship.[102] A feature of this flux is how new policy reform typically discredits whatever precedes it, and in the aftermath much fledgling capability and learnings is swept away. When these combined effects are seen in terms of local capability, there is need for more stability.

> Successive intervention, mimicking, criticism and purging of policy initiatives by a comparatively small number of external experts and politicians, removed from local interaction, implies the existence of higher-level knowledge. Yet the complexity and indeterminacies can be such that there may be no clear basis from which to design universal reforms. The policy practice nexus is heightened in remote Indigenous communities due to the complexity of the social problems and the state's multifarious institutional responses. Each new program exacerbates the complexity of the social problem it seeks to solve. In this unintended dynamic, solutions themselves become problems.[103]

Funding modalities and their reporting requirement have significant impacts on local capability and the performance of local organisations, leaders, and frontline workers. The modality of choice continues to be the ubiquitous 'program', which aggregate in large numbers in locations of disadvantage, leading to marked institutional complexity, competition between programs, and sheer intensity that consumes the effort. The administrative burden of meeting the reporting requirements and attending to visiting funders and providers, consume much of the time of local organisations and leaders (see Box 3). Despite the considerable collection of performance data, the institutional saturation and causal density from multiple overlapping and competing programs raises serious questions about their effectiveness and claims to evidence. Yet its dominance continues along with its resistance to reform and coordination, protected by the different governmental silos and departments that spawn them.

From a political economy perspective, it is important then to view public finances beyond their program logics and performance and outcome measures, to other 'secondary' returns, which can be considered across three areas.

1. <u>Public sector employment:</u> Successive Australian Government have set targets for increased employment of Aboriginal and Torres Strait Islander people, with the current government setting a target of 5 per cent. Numbers have increased above 3 per cent, but challenges remain with retention and lack of employment in middle management and executive positions.[104]

2. <u>Procurement from Indigenous suppliers:</u> Federal, state and territory governments are increasingly using their spending power to stimulate Indigenous business development. Australia Government's successful Indigenous Procurement Policy sets targets and allows Indigenous businesses to demonstrate value before an approach is made to the market to tender. When it does go to the market, it also places minimum employment and business participation targets on all tenderers. The policy has led to increase in the number, volume and value of contracts awarded to Indigenous businesses.[105]

3. <u>Casual labour for community development projects:</u> First launched in 1977, the Community Development Employment Program (CDEP) paid unemployment benefit recipients the equivalent in casual wages for them to work on community projects. It was purpose built for remote communities, where labour supply greatly exceeded demand. The program provided considerable 'support funding' to all communities to select and self-manage projects, such as land management, lawn mowing, elderly care, and arts and craft enterprises. While the program was closed for a time in the mid 2000s, and has been the target of ongoing reforms since, it too has survived successive governments.[106]

3.2   Funding Modalities, Performance, Evidence and Capability

Many of the problems faced in Aboriginal and Torres Strait Islander are known in social science as 'wicked' problems due to their resistance to resolution. Because of their complex interdependencies, efforts to solve one aspect of the problems often only reveal others. Intractable social problems – such as family and gender violence, alcohol and other drug abuse, youth suicide, child neglect, parolee reoffending, and foetal alcohol spectrum disorder – do not respond to simplistic programmatic solutions. These problems are characterised by high uncertainty and often marked disagreement among diverse stakeholders about how to achieve results. As key variables and their interactions are unknown in advance (unknown unknowns), they are best approached incrementally in practice, by trying different approaches, then sensing the effects of an approach, before taking the next step.[107] With complex problems, implementation pathways cannot be predicted. Fixating on contracting New Public Management style 'end-of-investment' outcomes puts the "cart before the horse" and perversely abrogates government of its responsibility to achieve those outcomes. Aboriginal and Torres Strait Islander people, while acknowledging that their challenges may be complex, contend that it's the so-called solutions that are the 'wicked' part.

Community leaders and frontline workers can be highly innovative, adept a trialing, learning, and adapting on the run, harnessing strategic partnerships, and making the most of limited resources, which are many of the characteristics displayed by entrepreneurs internationally. [108] The specific factors and conditions underpinning this practice could be captured through case study analysis, to discern its potential for broader uptake: accurately identifying these "key facts" are central to understanding whether and how 'lessons learned' in one place can be scaled or replicated elsewhere.[109] On a day-to-day basis, community leaders and frontline workers in Indigenous organisations are well placed to intrinsically make sense of whether they are making progress or going backwards. Their knowledge could provide a new generation of Indigenous outcome indicators, for them to control performance measurement, in better governing their organisations, and in innovating to build on their strengths, and tackle their problems.

The case studies considered in the paper suggest that successful initiatives tend to have four things in common:

1. strong alignment with Aboriginal and Torres Strait Islander culture, with community-controlled organisations who specialise in delivering culturally safe and specific services to their constituents, that could not otherwise be contracted out to private companies or non-Indigenous organisations.
2. recognised representational authority with clear jurisdictional boundaries or a well-defined service delivery catchment area, especially if this authority is legislated.
3. entrepreneurialism towards adapting and innovating in finding solutions to complex problems.

4. stability in leadership, key personal and funding.

For these successful initiatives to become more widespread and effective in driving policy formation requires close attention to two key aspects of public administration: performance data and funding modalities.

The mismatch in performance data can be seen in the tension between strengths-based and evidence-based approaches (see Box 6), when the later becomes dominated by reporting requirements and evaluative data by individual programs and centralised funding agencies and national clearinghouses. Alert to this problem, peak national Indigenous organisations have negotiated more control over the design, collection, and analysis of data. Aboriginal organisations are taking control of defining what their wellbeing and development means, which is often culturally distinct from the mainstream, including deriving unique indicators of success. Local innovations are also starting to emerge in the bottom-up use of actionable data to drive innovation in implementation (see Box 7). Considerable constraints remain with getting government departments to share the data that they have already collected. To counter this, the Australian Government has established a Deputy Secretaries Data Governance (DSDG) working group, including data experts within and external to government.

Given that the loci of evidence and performance in tackling complex problems sits with local capacity in implementation, then an alternative funding modality to vertical program delivery is decentralised grant funding to local organisations. Block funding can occur to different degrees, from an intergovernmental appropriation to fund the organisation entirely, or via a partial grant to fund some of its core activities. While there are precedents for both in Australia, there are many organisations who receive neither. These organisations survive by cobbling together their own source income, and by charging programs as little as a 10% administration fee, from which they must cover the basic operating costs including office rent, utilities, and staffing.

The few Indigenous organisations who have achieved core funding have typically enjoyed relative stability in their policy environment, largely through a combination of demonstrated effectiveness and political advocacy, allowing them to build capability over a long period of time. The experience of the community-controlled health sector is illustrative here, where capacity has built gradually through sustained support of the Australian Government, with a trajectory of programs being pooled in core funding (see Box 8). Another example is where Indigenous leaders have been able to establish a clear political jurisdiction of a defined geographic and cultural territory, as has occurred in the Torres Strait (see Box 9).

This mirrors the growth of the community-controlled health sector in Canada, where self-governance has been more consistently valued and government investment has purposefully invested in long term capability development. In Australia, support for capacity development has not been systemised, provided in an ad hoc manner, and largely reactively to political presses from Indigenous leaders. Based on their review of policy literature, Lavoie and Dwyer (2015) reached three broad conclusions on its comparative success:[110]

> First, implementing community control takes time. It took Canada 20 years to achieve 89% implementation [of community-controlled health services. To succeed, Australia will need to make a firm long-term commitment to this objective. Second, implementing community control is complex. Communities require adequate resources to support change management. And third, accountability frameworks must be tailored to the Indigenous primary health care context to be meaningful.

Over several decades of growth, the community-controlled health sector in Australia has organically grown its influence through coalition building to a stage where it now politically sits at the table of co-designing policies in Canberra. Notably, the National Aboriginal Community Controlled Health Organisation (NACCHO) led the formation of the Coalition of the Peaks and Closing the Gap National Agreement (see Box 4). The Aboriginal and Torres Strait Islander Child Care sector is also another fine example of the strength, resilience and efficacy of how the Indigenous community-controlled sector has evolved into a primary voice representing the interests of Indigenous families, and in particular children at the state, national and international levels.

There is no structured process in Australia where an organisation can reduce its reporting requirement or increase its funding by demonstrating performance. The Department of Finance has in the past floated the idea of 'earned autonomy': "rather than applying a one-size-fits-all approach to regulation within government, the nature and extent of regulatory intervention under an earned autonomy model would be dependent on an entity's risk profile and performance".[111] Unfortunately, the advice was not picked up and the report is no longer available on the Department's website. There are times when an organisation is judged lower risk, leading to less oversight, but this tends to occur subjectively, at the bequest of departmental officers. Perversely, organisations that are performing poorly can also attract increased support, especially if their collapse carries a high political risk. But there is no structured process whereby performance is rewarded or incentivised. For example, a clean audit for five consecutive years, or evidence of achieving outcomes, might be followed by an increase, or pooling of funding. There is considerable operating experience for how performance-based funding operates in international development that might be adapted for a trial.[112]
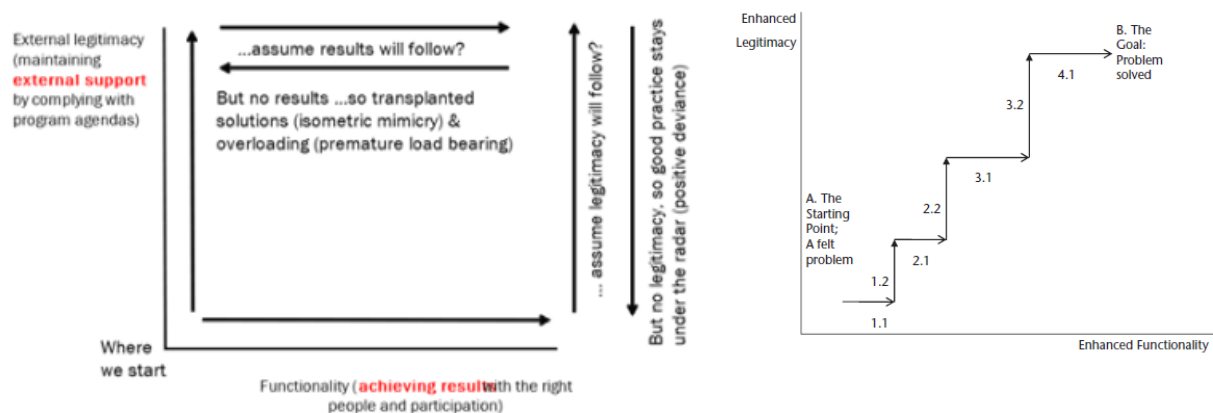
3.3   An Authorising Environment for Alternative Practices

The Australian Government can exercise significant powers and resources to implement, responding at great speed over a matter of weeks, as occurred when it declared the Northern Territory Emergency Response (Box 1). It acted to demonstrate its capability to the Australian public, of its guardianship of vulnerable children. Its motives were intertwined with a broader mainstream politics of social welfare reform (see Box 2), and the effectiveness of its interventions has been broadly questioned. But its capability to act quickly and at scale was clearly demonstrated.

In comparison, the ability of the Australian Government to respond to alternative practices, emerging from community level innovations, tends to occur in a stepped fashion over several decades, as a positive trajectory becomes evident in capability development, as local organisations build network and coalitions, who then politically advocate for wider uptake and reform, leveraging off niches of endogenous institutional change where they form (see Box 5). This incremental process of policy formation through innovations in grounded practice sits in stark contrast to the Northern Territory Emergency Response (see Box 1).

This stepped process of achieving results and building legitimacy has otherwise been observed in low- and middle-income countries with limited state capability, as graphically depicted below (Figure 4).

Figure 4: Iterating to Progressively Improve Functionality and Legitimacy [113]

An alternative to a slow and reactive response to innovation is to proactively create an authorising environment for alternative practices and innovation to flourish. A group of nine primary health care researchers similarly concluded that successful administration reform occurs when an authorising environment for alternative practices is "locked-in" from the start in the design of the reform, with adequate time and resources committed.[114]

Many of the conclusions in this section align with international practice movement known as PDIA (Problem Driven Iterative Adaptation), which in essence argues for four things: local solutions for locally defined problems; innovate and solve problems by authorising and pushing 'positive deviance' (described as 'alternative practices' above); trialling, learning, iterating with adapting with feedback to identify solutions; and the eventual diffusion of solutions through horizontal and interlinked non-organizational networks.[115] Initiatives based on this approach – especially those focused on enhancing implementation capability to address complex policy problems in the public sector – have been explored in many sectors and countries (and sub-national levels within them). PDIA is not a 'quick fix' technical solution or a replication of expert-driven 'best practices', but rather a concerted effort to create and protect space for sustained conversations between providers and receivers of key public services (e.g., health, education, agriculture) to identify and prioritize problems, to explore, authorize, and implement plausible solutions, and use regular feedback to refine and iteratively improve them. From this perspective, the underlying principle is not that 'good institutions' generate success (as is commonly believed), but rather that success, sustained over time, itself builds durable, locally legitimate, and effective problem-solving institutions. In this sense, such institutions build capability in ways similar to those deployed by humans seeking to speak languages or learn how to play musical instruments – that is, by persisting, struggling, and practicing in a structured way until greater (collective) competence is attained.

3.4   Representational Platform

Due in part to a lack of treaties, legislated jurisdiction, fiduciary duty, and constitutional recognition, Indigenous governance in Australia has largely arisen from organic movements driven by the political guile of leaders, and coalitions that have formed between Indigenous organisations. Indigenous affairs in Australia is highly politicised, driven by ideologies of the government of the day. Very few organisations have a statutory basis beyond their incorporation, with notable exceptions being the two Northern Territory Land Councils, the Torres Strait Regional Authority (see Box 9), and some Indigenous local government authorities. In comparison to Canada, Indigenous people in Australia do not have a representation platform from which argue for reform.

There have long been calls to establish a Treaty in Australia, but efforts have gained strength since 2017, with the 'Uluru Statement from the Heart' calling for a Makarrata Commission to supervise a process of agreement making and truth telling and a constitutionally enshrined First Nations Voice to parliament.[116] Indigenous leaders and Australian Government representatives have worked for over a decade on the current constitutional reform process, and have secured the Australian Government's support for a referendum to alter the Constitution, slated for late 2023. If successful, an elected group of Aboriginal and Torres Strait leaders will be authorised to make formal representations to the Australian Parliament (Senate and House of Representatives) and Executive Government (Cabinet and Ministry) given them a direct say on national laws, policies, and programs affecting their Peoples. The Parliament and Government would also be obliged to consult on matters that overwhelming impact Aboriginal and Torres Strait Islander Peoples.

While The Voice is not intended to address the issue of First Nations sovereignty or seek to be an alternative to treaties at the national level, several state and territory governments have independently started their own Treaty processes. .[117] South Australia has become the first jurisdiction in the country to set up an Indigenous Voice to its Parliament. In Victoria, the First People's Assembly has clarified that in addition to negotiating a Victoria-Wide Treaty there will be individual Treaty negotiations with different traditional owner groups. Similar negotiations are underway in Queensland and the incoming Government of NSW has committed to enter into treaty discussions with its First Nations Peoples. While it is too early to tell, these negotiations might clarify the types of territorial jurisdictions for different traditional groups, which might open opportunities for intergovernmental agreements and untied funding arrangements. These efforts at a state/territory level might also open the way to a national Treaty. In Canada, although Treaties were first signed with the Crown at a national level, there are also treaties in place with different Provinces.

At the time of writing, the ever-present contestability on matters pertaining to Aboriginal and Torres Strait Islander Peoples in Australia is already fuelling disquiet, objection and uncertainty over the importance and validity of the Voice to Parliament.

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