

19 Oct 2023

Mr Romlie Mokak

Commissioner Productivity Commission

Dear Mr Mokak,

## Re: The National Agreement on Closing the Gap and Indigenous Data Sovereignty

On behalf of Kowa Collaboration, please accept this submission to review the National Agreement on Closing the Gap (CtG) concerning Indigenous<sup>1</sup> Data Sovereignty (IDSov). ID-Sov has relevance to all data within CtG, but in particular, Priority Reform Three: Transforming Government Organisations and Priority Reform Four: Shared Access to Data and Information at a Regional Level.

Indigenous Data Sovereignty (ID-Sov) represents a profound shift in how we perceive and engage with data within First Nations communities. It transcends the mere act of returning data to communities; it embodies a fundamental shift in perspective and priorities. ID-Sov is about valuing and centring Community data as a cornerstone of decision-making at all system levels. It recognises that data isn't just information; it reflects First Nations peoples' lived experiences, Culture, and aspirations. At Kowa, we often use the phrase "Caring for data so data can care for Country and Community" which encapsulates the essence of the ID-Sov paradigm. It underscores the reciprocal relationship between data and the well-being of First Nations peoples and Communities. By nurturing and safeguarding data with Cultural sensitivity and self-determination, First Nations Communities preserve heritage, empower informed decisions, advocate for rights, and chart our path towards a brighter future. ID-Sov signifies a profound commitment to respecting First Nations knowledge, strengthening self-determination, and leveraging data as a powerful tool for positive change within First Nations communities and the broader society.

*"sovereignty as Tribal Nations was given to us by the Creator. It is sacred. Data to exercise our sovereignty is also sacred." Desi Small-Rodriguez Data Warriors Lab*

In the context of Indigenous Data Governance (ID-Gov) in Australia, it is imperative to recognise that government and non-Indigenous organisations, while they may have a role in data management, cannot be considered the ultimate solution for realising ID-Sov. ID-Sov underscores the fundamental right of First Nations peoples to govern, control, and make decisions about our data. ID-Sov is deeply rooted in the essence of self-determination and the acknowledgment that First Nations peoples and communities are uniquely positioned to understand and address our needs, aspirations, and challenges.

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<sup>1</sup> In this document, the terms "Indigenous," "Aboriginal," and "First Nations" are used interchangeably to acknowledge and encompass the diversity of Indigenous peoples in Australia, each with our own distinct identities, cultures, and languages. These terms are employed with utmost respect for the Indigenous communities they represent, and importantly, we recognise that preferences for terminology may vary among different Communities and individuals.



Efforts to achieve genuine ID-Sov must prioritise the leadership and self-determination of First Nations peoples and communities. Instead of relying on external institutions, data intermediaries and mainstream organisations, First Nations peoples should lead in designing and implementing data governance frameworks and sovereign infrastructures uniquely developed to align with local Cultural values, protocols, and worldviews. This approach acknowledges the critical importance of Culturally sensitive data practices and respects the rich diversity of Traditional First Nations knowledge systems across the continent<sup>2</sup>.

Mainstream data organisations are increasingly positioning themselves as solutions to the pressing needs of First Nations communities, often appropriating the concept of ID-Sov in their process of amassing Blak resources. First Nations communities must receive the necessary support and funding to become software agnostic, enabling them to develop bespoke solutions tailored to their unique local contexts. In this digital age, considerations of digital data sovereignty and sovereign technical solutions are paramount. Sovereign infrastructure, in particular, represents a wise and forward-thinking investment by governments. It respects the autonomy and self-determination of First Nations Communities. It ensures that data, often considered the lifeblood of decision-making, remains securely in the hands of those it directly affects. Several First Nations organisations and initiatives have admirably embraced these concepts, setting inspiring examples. Notable instances include The Keeping Place<sup>3</sup>, The Indigenous Data Network<sup>4</sup>, and Balkanu's Traditional Knowledge Recording Pathway (TKRP)<sup>5</sup>. Within our practice at Kowa, we have developed KowaCloud<sup>6</sup>, a web-based platform firmly rooted in ID-Sov principles. KowaCloud gives agency to Community to collect, analyse, and visualise data for alignment with their understanding, measurement, evaluation, and learning (UMEL) strategies, all while safeguarding the integrity and sovereignty of Community data. Collaborating closely with Dr Terri Janke<sup>7</sup>, the team at Kowa, led by Levi-McKenzie Kirkbright and Skye Trudgett, have meticulously constructed data-sharing agreements and legal frameworks for the digital space, ensuring that Community data remains protected through the lenses of ID-Sov and ID-Gov. These examples are compelling illustrations of what can be achieved locally, offering valuable insights for First Nations peoples, Communities and organisations.

The recent defeat of the referendum in Australia is a stark reminder of the urgent need to prioritise First Nations control and self-determination in pursuing meaningful ID-Sov and ID-Gov. The referendum's outcome vividly exposed racism and the profound gap between mainstream Australia (including government policy) and the aspirations of First Nations peoples and Communities, underscoring the imperative of placing decision-making authority and digital design squarely in First Nations hands. This setback highlighted the limitations of 'whole of Community' solutions, which express the inclusion of First Nations peoples. It emphasised that real progress can only be achieved when First Nations Communities lead and design solutions tailored to local needs and circumstances. Empowered decision-making includes having the

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<sup>2</sup> The OCCAAARS Framework© provides a practical starting point for Community. The resource can be accessed at <https://www.kowacollaboration.com/resources>

<sup>3</sup> <https://thekeepingplace.com/>

<sup>4</sup> <https://idnau.org/#/>

<sup>5</sup> <https://www.balkanu.com.au/tkrp-traditional-knowledge-recording-pathway/>

<sup>6</sup> <https://kowacloud.com/>

<sup>7</sup> <https://www.terrijanke.com.au/>



agency to make data-driven decisions from a local level to a national level based on the data that reflects the worldview of First Nations peoples and Communities<sup>8</sup>.

Powerful change demands that we confront the deeply entrenched racism perpetuating the distortion of truth within government and mainstream data institutions—racism laid bare by the recent referendum's sobering outcome. It is a stark reminder that we must seize control of “where to next” with unwavering determination. Communities should not be passive recipients of data; they must become architects of their destiny, forging their unassailable evidence bases as economic assets for Community. The conversation surrounding ID-Sov must transcend the mere return of data; it must herald the rise of Community-based assets and a seismic redistribution of power through data custodianship. It's a clarion call for unfiltered truth-telling derived from data collected meaningfully by First Nations peoples, illuminating the racism and systemic injustices that the recent referendum has laid bare. ID-Sov isn't just about data; it's about reclaiming sovereignty, dismantling racism, and forging an indomitable path to justice and equity driven by the irrefutable strength of First Nations peoples and Communities.

In data governance, the lesson is unmistakable: any approach that attempts to manage First Nations data without First Nations leadership and design risks repeating past mistakes. First Nations peoples possess invaluable Cultural knowledge, historical context, and a profound understanding of our communities' unique needs and priorities. By entrusting control over data management and governance to First Nations peoples and Communities (through sovereign digital systems), we can aspire to create data systems and infrastructure that both uphold ID-Sov and genuinely support place-based solutions.

First Nations-led data governance initiatives have the potential to foster more meaningful and respectful relationships when approached with genuine respect and a commitment to self-determination at their core. ID-Gov in Australia can only be truly effective when First Nations peoples have the authority to determine how our data is collected, managed, and used. While governments and non-Indigenous organisations can offer support and resources, they should always defer to First Nations communities and leaders as the authorities in shaping data governance practices. ID-Sov is not merely a goal to be pursued; it is a fundamental right that place-based decision-makers must contextualise and uphold.

Let the recent referendum outcome serve as an urgent catalyst for change, rallying First Nations Communities to take charge of what ID-Gov, ID-Sov and digital data sovereignty truly mean at the grassroots level. First Nations Communities are the true architects of our destinies, including the responsible management of our data. To actualise ID-Sov, there is an immediate imperative to shift the power and decision-making, granting First Nations peoples the autonomy to shape the most fitting solutions for our Communities and to lead with genuine ID-Sov.

At Kowa, we firmly advocate against government funding mainstream intermediaries to deliver to Communities, recognising that this approach falls short of achieving true ID-Sov. It is vital to acknowledge that the government cannot realise ID-Sov. Instead, we recommend a concerted effort to bolster the technical skills of First Nations peoples and Community-controlled organisations, enabling them to sovereign digital infrastructure in alignment with local ID-Sov and ID-Gov protocols. This approach empowers communities, strengthens their autonomy,

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<sup>8</sup> A framework for IDS informed approaches across layers of the system is explored by Trudgett S, Griffiths K, Farnbach S, Shakeshaft A. A framework for operationalising Aboriginal and Torres Strait Islander data sovereignty in Australia: Results of a systematic literature review of published studies. *EClinicalMedicine*. 2022 Feb 17;45:101302. doi: 10.1016/j.eclinm.2022.101302. PMID: 35243269; PMCID: PMC8861650.



and allows for the genuine realisation of ID-Sov that respects the principles of self-determination.

## Recommendations

Based on our experience and having learnt from many locally led approaches to realising ID-Sov and ID-Gov, Kowa provide the following recommendations for your consideration:

1. The CtG Agreement would benefit from explicitly naming ID-Sov and ID-Gov as components of Priority Reform Four.

## Governance of APS Data and Implementation

The APS Governance of Indigenous Data Framework and Priority Reform 4 hold immense potential for advancing Indigenous data governance and ensuring that First Nations voices and priorities are central in data management. These initiatives signal a commitment to addressing the disparities First Nations communities face. However, the recent outcome of the referendum serves as a stark reminder of the need for humility and learning from the past. It underscores the importance of genuinely engaging with First Nations peoples and communities when developing solutions, recognising diversity and autonomy, and respecting self-determination. These initiatives should embrace flexibility, Community consultation, and the diversity of First Nations data needs nationwide and directly invest in Community-defined infrastructure and confidence acceleration/capacity building<sup>9</sup>. By doing so, they can build a more robust framework that empowers First Nations communities to govern their data while avoiding the pitfalls of imposing solutions from above.

2. To guide the Culturally appropriate implementation of the APS Governance of Indigenous Data Framework and Priority Reform 4, we suggest that there should be a governance group (Indigenous Data Authority and infrastructure) of Aboriginal and Torres Strait Islander peoples who are not employed by the APS established. An example of a state-based approach to this is the establishment of governance of Indigenous data group for data held by the Beauru of Crime Statistics and Research (BOCSAR)
3. Before immediately enacting the APS Governance of Indigenous Data Framework, there should be Community-based testing of its suitability and feasibility for implementation and upholding ID-Sov at the Community level. This should be explored in rural, regional and remote communities.

## Community-led Data Infrastructure and Governance

Supporting Aboriginal communities in designing and developing our data infrastructure is not just a matter of empowerment but an essential step towards respecting Indigenous

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<sup>9</sup> It is important to clarify that the term "capacity building" should not be misconstrued to imply that First Nations communities lack inherent skills. Rather, it signifies the importance of empowering and accelerating the confidence of these communities to actively engage in the data space. Our stance at Kowa vehemently opposes any suggestion that First Nations communities are incapable; on the contrary, we firmly believe in providing support that enables them to gather meaningful data, establish responsible data practices that align with their values, and harness their data as a powerful economic asset. This approach is rooted in the conviction that communities should not be dependent on external expertise but should have the tools and knowledge to shape their data destiny in a manner that resonates with their unique cultural perspectives and aspirations.



self-determination and advancing data sovereignty. Aboriginal communities possess an intimate understanding of their cultural values, knowledge systems, and unique needs that no external entity can fully comprehend. By enabling Aboriginal communities to lead in crafting locally defined data infrastructure, we ensure that it aligns with cultural protocols, worldviews, and aspirations. This approach fosters trust, engagement, and meaningful participation in data-related initiatives, ultimately leading to more accurate, Culturally sensitive, and locally relevant data and data warehousing in ways that align with Cultural practice.

Furthermore, the potential danger of non-First Nations data and tech companies seeking to benefit from Closing the Gap Priority Reform Four is a concern that cannot be ignored. While data plays a crucial role in addressing disparities and achieving equity, it is imperative to remain vigilant against non-Indigenous entities' commercialisation of First Nations data. Profiting from Indigenous data without meaningful consent, control, and benefit-sharing with Indigenous communities perpetuates historical injustices and undermines the principles of self-determination and Indigenous data sovereignty. It is vital to prioritise the interests and rights of Indigenous peoples in all data-related endeavours rather than allowing non-Indigenous companies to exploit these efforts for financial gain. Such exploitation can exacerbate existing inequalities rather than contribute to genuine reconciliation and empowerment. Therefore, safeguarding Indigenous data from predatory practices by white data companies must be paramount as we work towards closing the gap and advancing Indigenous self-determination.

4. **Local Empowerment:** As components of the CtG Agreement, we believe there should be funding to support Aboriginal and Torres Strait Islander place-based approaches to realising IDSov and IDG. We champion the idea that local First Nations communities should have the authority to decide on their data. The agency to determine how data is collected, used, and shared should reside within Community, respecting Cultural values and worldviews. A standardised approach or mainstream solution that is specified for Community is in direct contradiction to self-determination.
5. **Community-Defined Data Management:** Kowa Collaboration firmly believes that data management and sharing should prioritise the unique needs and perspectives of each First Nations Community. We advocate for ID-Gov-defined approaches rather than rigid, standardised systems, recognising the rich diversity among and between First Nations communities.
6. **Cultural Sensitivity:** Kowa Collaboration places great importance on cultural sensitivity in all data practices. Standardised systems may not adequately address cultural protocols and ethical considerations associated with Indigenous data. Each Community should be able to define and uphold Culturally sensitive data management practices.
7. **Respecting Diverse Data Needs:** Our organisation recognises Indigenous communities' diverse data needs and priorities. We advocate for community-driven data governance as it allows flexibility in addressing unique challenges and opportunities that standardised approaches may not accommodate. The government should equip itself with the capability to meet the diverse data infrastructure needs and aspirations of many Communities.
8. **Upholding Self-Determination:** Kowa Collaboration stands firmly behind the principle of self-determination, which includes the right of First Nations communities to govern their data in ways aligned with their self-identified goals and aspirations. We caution



against centralised approaches that may inadvertently infringe upon this fundamental right.

9. **Supporting Bottom-Up Approaches:** We recommend a bottom-up approach to data governance, where decisions about data collection, analysis, and sharing originate in Community and are shaped by local knowledge and perspectives. Centralisation can hinder this grassroots approach that is essential.
10. **Mitigating Data Extraction:** We express concerns about data extraction from Indigenous communities for external analysis without adequate Community input and benefit. Centralised data repositories may facilitate this practice, which contradicts our commitment to avoiding the historical exploitation of First Nations knowledge.
11. **Advocating Community Ownership:** Kowa Collaboration advocates for Community ownership of data. First Nations communities should have complete control over their data, including the ability to grant or deny access to external organisations based on their criteria and priorities.
12. **Prioritising Consultation and Consent:** We strongly emphasise ongoing consultation and informed consent in all data-sharing arrangements. First Nations communities should actively engage in data access and usage decisions rather than having decisions made centrally without their input.
13. **Investing in Capacity Building:** Our organisation recommends substantial capacity and confidence-building investments within First Nations communities. This empowers communities to play a more active role in data governance, enabling them to manage their data effectively and make informed decisions about its use.

We hope these suggestions are helpful and welcome further discussions with you and your team.

**Kowa Collaboration**

