

Submission to the Productivity Commission on the Draft Report on the Review of the National Agreement on Closing the Gap

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Introduction

From August 2020 to June 2022, we conducted research to understand and document the factors beyond corporate compliance that contribute to the governance success of Indigenous corporations. The research, funded by the Office of the Registrar of Indigenous Corporations (ORIC), is available here: [Supporting corporations beyond compliance: advancing ORIC's governance approach](#) (the Report). For context, governance is a broad concept (distinct from 'government') that includes the ways in which social and political communities organise themselves and negotiate power, authority, accountability and reciprocal responsibilities (Productivity Commission, 2020, p. 5.1).

The overall findings of our research are that that understanding and supporting the factors that contribute to Indigenous corporation success requires engaging with the position of Indigenous corporations at the interface of interactions between two peoples and governance traditions. Indigenous corporations are necessarily intercultural institutions that are often sites for the interaction of divergent values, processes, and practices. It is therefore crucial to recognise Indigenous cultural governance and values, and grapple with their relationship with mainstream corporate governance.

While our research was focused on ORIC, participants spoke about government organisations more broadly and that many of our findings have wider implications. The body of our submission responds to **information requests 3, 10, and 11** and should not be taken as indirect commentary on ORIC and its operations.

Information Request 3

We note the Commission's preference for information 'provided by individual government organisations as public submissions to this review'. However, our research delivers findings that bear upon the Commission's deliberation about transforming government organisations (Priority Reform 3). In particular, our research relates to your request to understand what government organisations need to do to 'understand the systemic and structural changes that they need to make to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people'.

Our research found that there is a tendency for many government organisations to see themselves as technical, neutral players and to falsely assume that policy development and implementation is a neutral (and thus apolitical) exercise (Strakosch 2019). Furthermore, government organisations tend to see themselves as accomplished governance actors while lacking the ability to recognise and engage with Indigenous cultural governance. These matters speak to the 'governance of government'.

We suggest that the foregoing patterns arise because government organisations take their institutional and operational cues from the dominant cultures of government and mainstream (corporate) governance. Meanwhile, there is a large body of research which shows that there is a dominant perception in the Australian political setting that sees cultural difference as negative, meaning Western values and norms predominate (Checketts, 2016; Howard-Wagner, 2018). Therefore, cultural difference is more likely than not to be seen as a barrier rather than a resource for successful governance. This leads to a context that considers ‘good governance’ in ways that place a racialised limit on the range of Indigenous factors that are likely to be recognised as valuable resources when government organisations deal with Indigenous peoples and corporations/organisations.

To counter these issues government agencies engaging with First Nations peoples and ACCOs should acknowledge and become willing to critique the governance of government and recognise that they are located amid the political entanglement of Indigenous and mainstream (European-derived) governance. As instruments of the settler state operating in a complex inter-cultural domain, government organisations are ‘actually actors in the whole thing as well’ (Report p. 106).

With this acknowledgment and critical self-analysis comes potential for greater awareness of the positioning of government organisations at the interface of Indigenous and mainstream governance. A natural consequence of this process would be the recognition of Indigenous governance as a valuable resource and peer of mainstream governance. This development could, in turn, open meaningful opportunities for negotiation and partnership. In the process government organisations may find it valuable to actively learn about Indigenous governance knowledges, principles, and systems. This learning would reveal that Indigenous governance delivers a range of often underappreciated benefits to governments, including through the work of Indigenous organisations in conducting unpaid consultations and providing social support services outside their specifically contracted roles.

Government organisations also need to recognise and understand the position of ACCOs at the interface of interactions between two peoples and governance traditions. ACCOs are necessarily intercultural institutions that are often sites for the interaction of divergent values, processes, and practices, with the result that forms of governance are highly varied across organisations depending on context and corporation purpose. Indigenous law and culture are central to the rationale for many ACCOs and are likely an important resource for many Indigenous organisations. Our research found that Aboriginal and Torres Strait Islander values, customary law and governance systems often underpin ACCO success. Nonetheless, ACCOs must grapple with and manage the relationship between Indigenous cultural governance and mainstream corporate governance in their operation because they are required to operate on the terms of state-based legislative regimes. If government organisations understand these challenges, they will be better placed to engage and partner with Indigenous peoples and organisations.

Information Request 10

Our input on ‘[w]hich senior leader or leadership group should be tasked with promoting and embedding changes to public sector systems and culture’ and ‘what tasks should they be assigned’ is

focused through our consideration of the role of ORIC and (indirectly) peer regulators rather than the wider public sector.

ORIC is a unique regulator rather than simply another regulator. This signals an opportunity and responsibility for ORIC and other senior stakeholders and players in the sector to initiate and lead macro-level policy conversations.

ORIC and other senior leaders and stakeholders should advocate for the value of culturally informed Indigenous governance (the latter is widely accepted and amply demonstrated in our report). Such efforts could form part of championing the strategic identification and promotion of Indigenous governance to counter deficit thinking and facilitate a shift in how Indigenous governance is viewed across government and by mainstream sectors. This work could include celebrating ACCOs as a strength for delivering services to meet the expectations of First Nations communities and the wider Australian community.

In some settings this work could recognise the value and importance of relative autonomy for Indigenous organisations, pre-colonial Indigenous governance models, belonging to Country and speaking from Country as key foundations for contemporary governance processes. Leaders should be able to confidently assert and support the ‘out-sized role’ that ‘Indigenous corporations in Australia fulfill ... compared with their international counterparts ... in service delivery and representation for their communities and the wider Australian community’ (report page 106).

These same senior leaders and stakeholders could also consider leading efforts to reduce the outsized compliance and reporting burdens that many Indigenous corporations face, including by supporting and profiling Indigenous-led monitoring and reporting frameworks and mechanisms.

Information Request 11

Our input on how well sector-specific accountability mechanisms are working for Aboriginal and Torres Islander people, and what should be done to ensure that government agencies are held accountable for change, are again focussed through what our research has told us about ORIC. Nonetheless, our research enables us to make observations about ORIC and beyond.

We concur with the Commission’s observation that governments ‘need to establish stronger mechanisms so that they [government organisations] are held accountable for making changes from within’. As noted above, the ‘governance of government’ means that questions of accountability are often likely to be addressed within the frameworks, and using the tools of measurement, of dominant European-derived governance. However, recognising and more fully inhabiting and exploiting the natural tensions that accompany the entanglement of two governance traditions invites the development of non-standard indicators of accountability for change.

Government organisations should be asked to demonstrate their understanding of and engagement with Indigenous socio-cultural and/or governance traditions and knowledges in relation to their core

responsibilities and delivery thereof. They should be tasked with demonstrating this in a place-based way that is mindful of the diversity of the regions in which they operate. They should be asked to demonstrate consideration of how engagement with Indigenous socio-cultural and/or governance traditions and knowledges can provide advantages for delivering on their responsibilities to Indigenous and mainstream populations. Finally, government organisations should be tasked with demonstrating how they have reviewed and altered their regimes of regulation, accountability, and measurement to reflect or engage Indigenous values or accountability processes.

We acknowledge that these are bold and challenging proposals, but nothing less will move the dial on transforming government organisations to being accountable to Aboriginal and Torres Strait Islander peoples. The associated work is also conceptually and practically challenging. Consider, for instance, the challenge of developing appropriate accountability frameworks. Our research found that many ACCOs are deeply invested in locally and culturally grounded indicators of success, both at high levels and in everyday operational terms. However, these aspirations are rarely recognised by the other entities and systems that they are required to engage with for their operations, and Indigenous frameworks for evaluation success are only in their infancy (Report page 105).

It is important to note that fundamental differences between Indigenous and mainstream commitments are likely to underpin differing conceptualisations and measurements of success. As one participant in our research stated: ‘I think part of the challenge is educating funders [to say], “What you think successes is, [is] fundamentally different to what we know and feel that success to be. And if you want your cash, your financial kind of input to change things, to have a difference, and to have a real difference, we need to educate you differently about what success actually looks like’ (Report page 103). While Indigenous values and commitments can partially be reflected in conventional metrics, with these metrics serving as a proxy for meeting Indigenous aspirations, this is not fully the case. A different mindset is needed to value and measure the cultural elements of ACCO success.

Blair (2017, pp. 147-148) notes that while Indigenous ways of knowing are diverse and contextualised, they share commonalities such as “pattern thinking”, or a sense of interconnectedness and localisation that are not recognised through mainstream measurement regimes. But as Redden (2015, p. 27) notes “numeric solutions to political and social affairs seem everywhere” as a reflection of “programmatically strains of instrumentalism” (p. 28). Despite appeals to the neutrality of numbers, he notes that indicators both shape how the world can be known as well as underpinning decision making, which consolidates certain forms of power whilst displacing others. Further, any measurement framework relies on (contestable) ideas about what is important to measure, and how to quantify sometimes intangible concepts underpinning human activity.

Nonetheless, there are clearly opportunities for finding congruence and accommodation between Indigenous and mainstream indicators in both high level and operational terms. One case study corporation in our research is experimenting with developing a locally informed Indigenous measurement system. Alongside education of funders and others who engage with the corporation, this approach shows promise for reducing administrative burden and providing confidence to both

the corporation and its partners in ways that are informed by Indigenous values and aspirations (Report page 105).

References

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