



Suite 5
16-22 Cooper Street
Surry Hills NSW 2010

PO Box 587
Woollahra NSW 1350

Ph: (02) 9304 0373
Email: info@justice.org.au
www.justice.org.au

Indigenous Evaluation Strategy
Productivity Commission
Locked Bag 2, Collins Street East
Melbourne VIC 8003

Delivered online: www.pc.gov.au/Indigenous-Evaluation

30 August 2019

Dear Chair

Indigenous Evaluation Strategy: Productivity Commission Issues Paper June 2019

Thank you for the opportunity to make submissions on the Indigenous Evaluation Strategy: Productivity Commission Issues Paper.

The National Justice Project is a not-for-profit human rights legal service. We work with some of Australia's most vulnerable people and communities, providing legal support to people who struggle to access justice. Our major projects focus on improving access to justice for Aboriginal communities, prisoners and asylum seekers in immigration detention.

We have represented, and continue to represent, many clients whose everyday experiences are directly impacted by the approaches adopted by Government strategies concerning Aboriginal and Torres Strait Islander individuals and communities.

It is from the perspective of this experience that we make the following submissions in response to the questions raised in the issues paper. We have followed the structure of the Issues Paper and have incorporated responses to relevant specific questions asked by the Commission in each section.

We acknowledge with gratitude the contribution to these submissions of Uncle Phil Duncan, Aboriginal Cultural Training Coordinator and Auntie Sue Pinckham, Cultural Advisor (Indigenous Strategy) at Macquarie University's *Walanga Muru*. We also acknowledge the contribution of staff and students at the Macquarie University Social Justice Clinic and the Department of Media, Music, Communication and Cultural Studies.

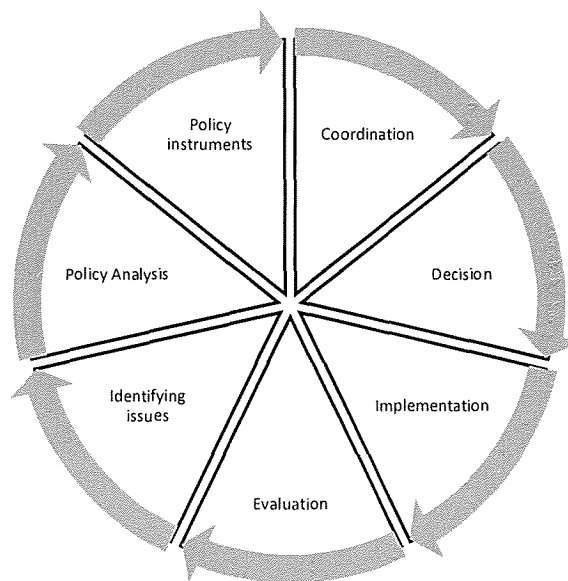
1 Objectives

We support in the strongest terms the main objective of this project, that is, delivering better outcomes for Aboriginal and Torres Strait Islander peoples.

We also strongly support the additional objective of increasing Aboriginal and Torres Strait Islander peoples' input into policy processes. We submit that this should be included as a main or core objective.

Without genuine participation and empowerment of Aboriginal and Torres Strait Islander peoples in the design and implementation of policies and programs, the additional identified objectives of building the evidence base about 'what works' and ensuring value for money in providing services will simply not be possible.

Evaluation must be considered as part of overall policy cycle and not as a separate process. It is an essential component of policy and program design right from the start. This enables stakeholders, including Aboriginal and Torres Strait Islander peoples, to make informed decisions about the desired impact, outcomes and indicators of success. It also enables the incorporation of data collection into the planning, and the gathering of baseline data where necessary.



The Australian Policy Cycle¹

This approach invites policy-makers to consider the importance of including a genuine and meaningful voice for Aboriginal and Torres Strait Islander peoples at all stages of policy-making, from identifying which issues should be included on the policy and program agenda in the first place, through the analysis, design, decision and implementation stages, and of course at the evaluation stage.

A genuine and meaningful voice requires an inclusive and participatory approach that moves beyond 'consultation' to meaningful involvement in both the goal-setting process and the identification of specific measures by which to gauge progress towards achieving the identified goals.

We submit that inclusion of Aboriginal and Torres Strait Islander peoples at all stages of the policy cycle is absolutely necessary for consistency with the *UN Declaration on the Rights of Indigenous People*. This is particularly true for rights of indigenous peoples relating to participation in decision-

¹ Adapted from Catherine Althaus, Peter Bridgman and Glyn David, *The Australian Policy Handbook* (Allen & Unwin, 5th ed, 2013) 38.

making affecting them, active involvement in developing, determining and administering programs, and promoting, developing and maintaining institutional structures for their own development and decision-making.

Recommendation 1.1: The Commission state as a core objective the genuine and meaningful inclusion of Aboriginal and Torres Strait Islander peoples at all stages of the policy cycle.

We believe the first step towards achieving the objective of genuine and meaningful inclusion of Aboriginal and Torres Strait Islander peoples at all stages of policy development is for the government to accept and endorse the proposals contained in the *Uluru Statement from the Heart*.

In this context, we particularly endorse the establishment of the proposed *Makarrata* Commission. One purpose of the *Makarrata* Commission is as a forum to build a fair and truthful relationship between governments and First Nations.

By working with Aboriginal and Torres Strait Islander peoples to establish the *Makarrata* Commission, governments have an opportunity to demonstrate a clear and strong commitment to the objectives identified in the issues paper.

Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination. We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.²

The government to date has repeatedly rejected all aspects of the *Uluru Statement from the Heart*.³

Recommendation 1.2: The Commission recommend government endorse the *Uluru Statement from the Heart* as the basis of any Indigenous Evaluation Strategy that has as its objective ‘delivering better outcomes for Aboriginal and Torres Strait Islander people’.

2 The Commission’s approach

We strongly support the Commission’s view that any strategy to evaluate the impact of policies and programs for Aboriginal and Torres Strait Islander peoples should be more than a ‘tick and flick’ exercise for agencies.

However, we disagree with the assumption that it is an exercise for ‘agencies’ in the first place. Evaluation of impact for Aboriginal and Torres Strait Islander peoples should be a collaborative process that involves relevant stakeholders as all stages of the policy cycle.

We also disagree with the approach and assumptions underlying the question ‘What is the best way to address mainstream programs in the Indigenous Evaluation Strategy?’. We believe that this approach is ‘back-to-front’.

² *Uluru Statement from the Heart* (Statement, First Nations National Constitution Convention, May 2017).

³ See, eg, Paul Karp, ‘Scott Morrison Claims Indigenous Voice to Parliament Would Be a Third Chamber’, *The Guardian* (online, 26 September 2018) <<https://www.theguardian.com/australia-news/2018/sep/26/scott-morrison-claims-indigenous-voice-to-parliament-would-be-a-third-chamber>>.

We believe the better question is 'What is the best way to address the inclusion and voice of Aboriginal and Torres Strait Islander peoples in evaluating mainstream programs?'

It is our view that the impact for Aboriginal and Torres Strait Islander peoples should be addressed in the planning, design and evaluation of all government policies and programs, both mainstream and targeted.

Recommendation 2.1: The Commission reframe this question to consider the 'best way to address the inclusion and voice of Aboriginal and Torres Strait Islander peoples in evaluating mainstream programs'.

3 Government policies and programs affecting Aboriginal and Torres Strait Islander peoples

We agree with and support the Commission's view that there are lessons to be learned from past and current government programs in the development of an Indigenous Evaluation Strategy.

We believe that there are important lessons to be learned from the framing of *Closing the Gap* 'targets' which confuse outcomes and indicators. These targets purportedly track progress towards 'closing the gap' but do not address the systemic issues that underlie important impacts and outcomes for Aboriginal and Torres Strait Islander peoples. Specifically, we believe that examining outcomes regarding systemic discrimination in the delivery of government programs and services, and in interactions with the justice system, should be of the highest priority in any Indigenous Evaluation Strategy.

It is our submission that a focus on outputs or 'targets' rather than impacts and outcomes also creates a dangerous culture or discourse that 'blames' the people meant to benefit from a policy or program, rather than the design and implementation of the policy or program itself.⁴ This has been referred to as 'deficit discourse':

discourse that represents people or groups in terms of deficiency – absence, lack or failure. It particularly denotes discourse that narrowly situates responsibility for problems with the affected individuals or communities, overlooking the larger socio-economic structures in which they are embedded... Discourses of deficit occur when discussions and policy aimed at alleviating disadvantage become so mired in reductionist narratives of failure and dysfunction that Aboriginal and Torres Strait Islander people themselves are seen as the problem.⁵

The *National Disability Strategy* provides a more meaningful and inclusive approach from which we can learn. Consistent with our Recommendation 1.1 above, the strategy recognises that:

the views of people with disability are central to the design, funding, delivery and evaluation of policies, programs and services which impact on them, with appropriate support and adjustment for participation.

⁴ For a discussion of this issue in the context of the delivery of health services, see Angela Durey and Sandra C Thompson, 'Reducing the Health Disparities of Indigenous Australians: Time to Change Focus' (2012) 12 *BMC Health Services Research* 151.

⁵ William Fogarty et al, *Deficit Discourse and Indigenous Health: How Narrative Framings of Aboriginal and Torres Strait Islander People Are Reproduced in Policy* (Lowitja Institute and National Centre for Indigenous Studies, ANU, May 2018) vii.

Consistent with our Recommendation 2.1 above, the strategy also focuses on including outcomes and performance indicators in all mainstream programs to make sure that they address the needs of people with a disability.⁶ The strategy aims to ‘guide government activity across mainstream and disability-specific areas of public policy’.⁷

There are other positive aspects of the *National Disability Strategy* that could inform the development of an Indigenous Evaluation Strategy. The strategy prioritises an ‘inclusive agenda’, recognising not all people with a disability are alike, but rather have a diversity of experiences that must be incorporated into policy and program development.⁸ The strategy considers outcomes from human rights, social and economic perspectives⁹ and explicitly considers policy directions that focus on the elimination of discrimination. It identifies policy themes and outcomes representing a ‘whole-of-life’ approach: Inclusive and accessible communities; Rights protection, justice and legislation; Economic security; Personal and community support; Learning and skills; Health and wellbeing.¹⁰

In terms of the *Indigenous Procurement Policy* identified by the Commission, we observe that the ‘targets’ of success are expressed as monetary and participation outputs.¹¹ We submit that this does not effectively evaluate the success of the policy in terms of its stated objective to

stimulate Indigenous entrepreneurship and business development, providing Indigenous Australians with more opportunities to participate in the economy.¹²

We also note concerns have been raised about the *Indigenous Procurement Policy*, including the capacity to exaggerate success through using contract numbers instead of actual spend,¹³ and a perverse incentive for ‘black-cladding’.¹⁴

We believe that other models, including the *National Disability Strategy* (discussed above) and the Federation of Community Legal Centres (Victoria) Outcomes Measurement Framework (discussed below) provide better examples of evaluating policies and programs using real outcomes and impacts for the people affected.

As this extract from the *Uluru statement from the Heart* demonstrates, outcomes for Aboriginal and Torres Strait Islander peoples are not about number or participation targets, but about the structural nature of problems, and the need for empowerment and hope for the future.

Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future. These dimensions of our crisis tell plainly the structural nature of our problem. This is the torment of our powerlessness.¹⁵

⁶ *National Disability Strategy 2010-2020* (Strategy, Council of Australian Governments, 2011) 13.

⁷ *Ibid* 9.

⁸ *Ibid* 14.

⁹ *Ibid* 16–20.

¹⁰ *Ibid* 10.

¹¹ *Commonwealth Indigenous Procurement Policy* (Policy, Australian Government, 1 July 2015) 6.

¹² *Ibid*.

¹³ Charles Jacobs, *Risky Business: The Problems of Indigenous Business Policy* (Research Report, Centre for Independent Studies, Prosperity Project, November 2017) 1, 15.

¹⁴ *Ibid* 18.

¹⁵ *Uluru Statement from the Heart* (n 2).

Recommendation 3.1: The Commission ensure evaluation strategies focus on meaningful outcomes and impacts related to the lived experience of Aboriginal and Torres Strait Islander peoples.

4 Evaluation concepts and practice

We draw the Commission’s attention to the *Victorian Community Legal Sector Outcomes Measurement Framework* developed by the Federation of Community Legal Centres (Victoria).¹⁶ We submit that this is an approach that could usefully be adapted for an Indigenous Evaluation Strategy.

This framework was designed to demonstrate the individual and collective impact of the work of Community Legal Centres in Victoria. It starts from the premise that the desired impact is a ‘Fair and Just Society’, then identifies themes, high level outcomes, intermediate outcomes and indicators.



Victorian Community Legal Sector Outcomes Measurement Framework: Overview¹⁷

We submit that a ‘Fair and Just Society’ is an overarching impact that should be applied to all government programs and policies, including those mainstream and specific programs and policies that impact on Aboriginal and Torres Strait Islander peoples.

Reimagining the themes for a whole of government approach to an Indigenous Evaluation strategy could involve replacing ‘Effective CLCs’ to ‘Effective government policies and programs’. The high level outcomes could then be adapted for specific programs and policies. We submit that this is consistent with the principles based approach being considered by the Commission, and also ensures that impact and outcomes are measured in place of simple outputs.

Examples of high level outcomes that could be mapped in this approach include:

¹⁶ Federation of Community Legal Centres (Victoria), ‘Outcomes Measurement Framework’ (2018) <https://www.fclc.org.au/outcomes_measurement_framework>.

¹⁷ Federation of Community Legal Centres (Victoria), *Victorian Community Legal Sector Outcomes Measurement Framework* (2017) 4.

- **Access to justice for all:** The justice system in Australia does not discriminate against Aboriginal and Torres Strait Islander peoples.
- **Empowered communities:** At all stages of the policy cycle, Aboriginal and Torres Strait Islander peoples are actively included in decision-making.
- **Holistic responses to needs:** Integrated and culturally appropriate services are developed and available for Aboriginal and Torres Strait Islander peoples.
- **Fair laws and systems:** Policies and programs consider and address system issues, particularly around discrimination.
- **Effective government policies and programs:** Policies and programs are evaluated for success based on impacts and outcomes (not outputs).

These high level outcomes are a preliminary set of ideas from just one perspective. We emphasise the absolute necessity of the development of any framework being driven by the people who will be affected, in this case Aboriginal and Torres Strait Islander peoples. We cannot, and do not purport to, speak for Aboriginal and Torres Strait Islander peoples.

Recommendation 4.1: The Commission consider the *Victorian Community Legal Sector Outcomes Measurement Framework* as an example of evaluation concept and practice that could be adapted for an Indigenous Evaluation Strategy.

The Commission has raised questions concerning evaluation approaches that will successfully encourage self-determination and valuing of Aboriginal and Torres Strait Islander knowledges, and how Indigenous and Western evaluation approaches can be successfully combined.

We again draw the Commission's attention to the *Uluru Statement from the Heart* as an example of how Indigenous and Western approaches can work together.

We call for the establishment of a First Nations Voice enshrined in the Constitution.

Makarrata is the culmination of our agenda: the coming together after a struggle. It captures our aspirations for a fair and truthful relationship with the people of Australia and a better future for our children based on justice and self-determination.

We seek a Makarrata Commission to supervise a process of agreement-making between governments and First Nations and truth-telling about our history.¹⁸

Aboriginal and Torres Strait Islander peoples have demonstrated a willingness to work with Australian institutions – the government and the Constitution – to find a way forward to a better future. We all need to do the same.

Recommendation 4.2: The Commission emphasise the importance of a *Makarrata Commission* as proposed in the *Uluru Statement from the Heart* as a first step to a collaborative approach for policy development, design and implementation.

With regards to the questions that the Commission raises about ethical research and conduct in the context of evaluation of policies and programs affecting Aboriginal and Torres Strait Islander peoples, we note that the Commission has canvassed a wide range of appropriate considerations. We do

¹⁸ *Uluru Statement from the Heart* (n 2).

however seek to draw the Commission's attention to the work of Lester-Irabinna Rigney who has researched and written extensively on the issue, and in particular on the principle of political integrity of Indigenist research:

Indigenist research is research that upholds the political integrity of Indigenous peoples as sovereign First Nations Australians. By political integrity I mean Indigenous ontological and epistemological views about the world that directly translate to Indigenous philosophies, languages, cultural and spiritual values and beliefs. To preserve this political integrity Indigenist research is research undertaken by Indigenous communities themselves who determine their own research priorities and agendas. In doing so Indigenism embraces the need for Indigenous communities to build their own capacity mechanisms to realise the benefits of research. Indigenism acknowledges that history has left Indigenous Australians with deep concerns and suspicion of research. These anxieties if allowed to reproduce threatens the work of researchers who seeks to engage with Indigenous communities. It is imperative that Indigenous and non-Indigenous researchers who work with Indigenous communities uphold the political integrity of the studied group to build trust and cooperation. Moreover, I would argue that Indigenous autonomy and control over Indigenous knowledges, languages and cultures are fundamental to Indigenist Research and that such anxieties about these matters must be resolved if Indigenous communities are to value research.¹⁹

5 What are the benefits, costs and challenges of evaluation?

Evaluation is an essential component of the policy cycle that considers whether a policy or program is meeting its objectives, holds officials to account for the policies and programs they administer, and provides information and data to inform future policy-making.²⁰

However, these benefits of evaluation cannot be realised unless genuine reflection and review forms part of the culture of an organisation, and there is a recognised value in allocating resources to this process. Our experience of both government and non-government organisations is that the reality of cost-cutting and limited resources means that this process is often overlooked as non-essential, or the least important part of the policy cycle that can be sacrificed in the face of other pressing priorities.

This is a particular problem for Aboriginal and Torres Strait Islander organisations that are already stretched for resources. In the context of Aboriginal and Torres Strait Legal Services:

The review consistently heard that ATSILSs lacked the capacity to fully participate in all potential partnership or collaboration opportunities, in terms of both service planning and service delivery. Some other legal assistance providers and government representatives reported that ATSILSs were not able to participate in interagency forums consistently. The NATSILS in its submission to the review, and some individual ATSILSs' staff, identified that time allocated to service planning competes with frontline service delivery. Some legal assistance providers also identified this as a reason that ATSILSs' staff did not consistently participate in all planning, service delivery or partnership opportunities.²¹

¹⁹ Lester-Irabinna Rigney, 'Indigenous Australian Views on Knowledge Production and Indigenous Research' in Julian E Kunnie and Nomalungelo I Godulka (eds), *Indigenous Peoples' Wisdom and Power: Affirming Our Knowledge Through Narratives* (Ashgate, 2006) 32, 40–41.

²⁰ Althaus, Bridgman and David (n 1) 191.

²¹ Cox Inall Ridgeway, *Review of the Indigenous Legal Assistance Program (ILAP) 2015-2020* (Final Report, Attorney-General's Department (Cth), February 2019) 84.

And further, the peak body *National Aboriginal and Torres Strait Islander Legal Services* reported that:

it does not have sufficient resources to engage on national issues with state and territory governments in a collaborative and strategic way.²²

If government genuinely wants to include Aboriginal and Torres Strait Islander organisations and peoples in the evaluation and review stages of policy, program and service planning, it is essential that clear and consistent funding is allocated for this purpose, not just ‘within agencies’ but within funded organisations.

Recommendation 5.1: The Commission recommends that resource allocation for evaluation and review must be addressed at the level of Aboriginal and Torres Strait Islander organisations and not only for government departments.

The Commission asks the question ‘How do we better enable Aboriginal and Torres Strait Islander organisations to lead evaluation and strengthen their evaluation capability?’.

This question is based on an assumption that it is the Aboriginal and Torres Strait Islander organisations that need to improve their capacity in policy and program evaluation. We submit there is a broader problem and government agencies generally have not demonstrated a consistent capacity to undertake best practice or even high level evaluation projects. Our discussion of the *Closing the Gap* strategy above is one such example. It shows that there is a capability gap for government in getting the objectives right in the first place. Again, ensuring that Aboriginal and Torres Strait Islander peoples are actively involved at all stages of the policy process is fundamental to addressing this successfully. We reiterate our Recommendation 1.1 above.

Recommendation 5.2: The Commission consider evaluation capacity building in the context of both government agencies and Aboriginal and Torres Strait Islander organisations.

The Commission also asks the question ‘How effectively do government agencies work with Aboriginal and Torres Strait Islander organisations when evaluating policies and programs? What can agencies do better?’.

Building on our earlier responses, we submit that current evidence shows Aboriginal and Torres Strait Islander peoples believe government does not work effectively with them in planning services and policy. For example, the recent review of the Indigenous Legal Assistance Program reported a perceived reluctance amongst certain government agencies to involve Aboriginal and Torres Strait Islander organisations, and tensions between governments and Aboriginal and Torres Strait Islander organisations that had an advocacy role.²³

It is essential that all non-Indigenous persons involved in any aspect of policy and program design, implementation and evaluation receive cultural competency and awareness training. This training must be designed and delivered by Aboriginal and Torres Strait Islander peoples. It must not be a ‘check the box’ exercise, but a genuine effort to ensure that people making decisions that affect

²² Ibid.

²³ Ibid.

Aboriginal and Torres Strait Islander peoples have at least a basic understanding of and commitment to facilitating the inclusion of Aboriginal voice.

Recommendation 5.3: The Commission consider cultural competency and awareness training designed by Aboriginal and Torres Strait Islander peoples as an essential pre-requisite for all policy-makers and evaluators.

6 Developing an Indigenous evaluation framework

The Commission asks 'What are the barriers to further increasing engagement with Aboriginal and Torres Strait Islander people during Australian Government evaluation projects?'

We are concerned that the question has been framed in the context of 'Australian Government evaluation projects'. We suggest that the Commission reframe this idea to broaden the ownership of evaluation projects affecting Aboriginal and Torres Strait Islander peoples to include Aboriginal and Torres Strait Islander peoples. Designing program and policy development at all stages – not just at the evaluation stage - as a reciprocal, respectful and collaborate process is fundamental for success.

Recommendation 6.1: The Commission reframe questions about 'Australian Government evaluation projects' to be more inclusive of Aboriginal and Torres Strait Islander peoples.

The Commission asks 'How can the costs to government and communities of engaging more meaningfully with Aboriginal and Torres Strait Islander people during evaluation be better integrated into existing and future program and evaluation budgets?'

We believe that framing questions about the 'cost' of evaluation is representative of the cultural shift required in government before there can be meaningful and genuine participation by Aboriginal and Torres Strait Islander peoples.

Evaluation, and in particular the engagement of Aboriginal and Torres Strait Islander peoples in evaluation and policy-making more broadly, should not be framed as a 'cost'. So long as government perceives it as such, there is little hope of meaningful and genuine participation of and collaboration with Aboriginal and Torres Strait Islander peoples about the policies and programs that affect them.

While we acknowledge there will always be competing valid and important claims for government expenditure, we submit that meaningful engagement is not a cost, but an essential component of effective policy and program development. We reiterate our Recommendation 5.1 above.

We argue that an additional significant barrier to engagement with Aboriginal and Torres Strait Islander peoples in policy-development is the perception that funding arrangements under the *Indigenous Legal Assistance Program* ('ILAP') do not support law reform and advocacy activities to address systemic change.²⁴

It is our position that Aboriginal legal services are in a prime position to contribute essential front-line information about how policies, programs and the law affect Aboriginal and Torres Strait Islander peoples. Aboriginal legal services should be encouraged and supported to contribute to discussions about law and policy reform to address systemic issues at every opportunity. The

²⁴ Ibid 126.

Productivity Commission has in the past recognised that ‘strategic advocacy and law reform can reduce demand for legal assistance services and so be an efficient use of limited resources’²⁵

Recommendation 6.2: The Commission support Recommendation 12 of the *Review of the Legal Assistance Program* that:

Consistent with the Indigenous Legal Assistance Program objective of reducing Aboriginal and Torres Strait Islander disadvantage in the justice system, and to address persistent perceptions from Indigenous Legal Assistance Program grant recipients that the Indigenous Legal Assistance Program does not support law reform and advocacy work or research, the Indigenous Legal Assistance Program should incorporate a clear definition of activities that can be undertaken under the program.²⁶

The Commission has asked the question ‘How can the cultural capability of evaluation commissioners and practitioners and their respect for Aboriginal and Torres Strait Islander culture, knowledges, history and values be demonstrated and improved?’.

We submit that the need for improved cultural capability goes far beyond ‘evaluation commissioners and practitioners’ and extends to all levels of policy and program development and administration. We reiterate our Recommendation 5.3 above relating to cultural competency and awareness training.

The Commission asks the question ‘To what extent does a lack of high-quality, accessible data, including data gaps, act as a barrier to undertaking effective evaluation of policies and programs affecting Aboriginal and Torres Strait Islander people?’.

In the context of Aboriginal and Torres Strait Islander Legal Services, there is a significant identified gap in the consistency and reliability of data which inhibits capacity to clearly report on outcomes, and stakeholders have previously recommended ways that this could be improved.²⁷

However, while it is true that there are significant gaps in the ‘hard’ data, particularly in remote communities, and a lack of understanding about how to interpret the data that is available, we submit there is also a significant gap in the type of data that is considered relevant in the evaluation of programs and policies that affect Aboriginal and Torres Strait Islander people.

This question as framed by the Commission assumes that for the purposes of evaluation of policies and programs, ‘hard’ data is the only data that matters. However, it is well established that story-telling is a valuable and even essential input into policy-making.²⁸

We submit that in the context of the design, implementation and evaluation of policies and programs for Aboriginal and Torres Strait Islander peoples, it is the lack of understanding and

²⁵ Productivity Commission, *Access to Justice Arrangements: Report* (Report No 72 Vol 2, Australian Government, 5 September 2014) 709.

²⁶ Cox Inall Ridgeway (n 21) 136.

²⁷ Ibid 114.

²⁸ Nicole Matthews and Naomi Sunderland, *Digital Storytelling in Health and Social Policy: Listening to Marginalised Voices* (Routledge, 2017) 185.

acceptance of narrative and story- or truth-telling that is the real gap in the 'data' and a significant barrier to effective evaluation.

This has been an ongoing issue throughout Australia's history, with Aboriginal and Torres Strait Islander peoples facing barriers in the way oral evidence is recognised in the legal process.²⁹

The *Bringing Them Home* Report provides a good example of both where story-telling was recognised as a fundamental form of 'data' about the lived experience and history of Aboriginal and Torres Strait Islander peoples, and also of how story-telling as evidence is discredited and creates a barrier to effective inclusion.³⁰ Robyn Ober has also completed recent research from an Aboriginal perspective about the role of storytelling or 'yarning' as a data collection method in Indigenous research.³¹

Recommendation 6.3: The Commission consider how story-telling and narrative can be incorporated as a valuable source of data in the policy process.

7 Ensuring effective evaluation

The Commission asks a series of questions about how to determine the policies and programs that should be prioritised for evaluation.

We submit that a better approach would be to prioritise specific outcomes for Aboriginal and Torres Strait Islander peoples. It is these outcomes that should drive the evaluation process.

We refer back to our Recommendation 4.1 and the related discussion concerning the definition and prioritisation of high level outcomes.

8 How can people contribute

Aboriginal and Torres Strait Islander peoples have diverse views, histories and experiences. There is no single 'Aboriginal' perspective. This must be recognised and supported.

However, once again we emphasise the importance of government recognition and support for the *Uluru Statement from the Heart*. The current government is in a unique position in that it has access to a consensus position statement about the establishment of a First Nations voice in the Australian government and community. If this unique opportunity is disregarded, and the reforms that are sought as a result of the National Constitutional Convention are ignored, how can any government or associated institution ever claim a desire for genuine engagement with and inclusion of Aboriginal and Torres Strait Islander peoples?

These are the 'community and expert' voices most relevant to this project.

²⁹ For a discussion of this issue in a variety of contexts, see, eg, *Recognition of Aboriginal Customary Laws* (Report No 31, Australian Law Reform Commission, 12 June 1986). See also Katherine Biber, 'Fact-Finding, Proof and Indigenous Knowledge: Teaching Evidence in Australia' (2010) 35(4) *Alternative Law Journal* 208.

³⁰ Bernadette Brennan, 'Bringing Them Home: The Power of Story as Public Discourse' (Article, Australian Literature and the Public Sphere Conference, July 1998) 23.

³¹ Robyn Ober, 'Kapatī Time: Storytelling as a Data Collection Method in Indigenous Research' (2017) 22(Special Issue: Decolonising Research Practices) *Learning Communities* 8. We draw the Commission's attention to other relevant studies included in that volume.

Government acknowledgement of the Aboriginal and Torres Strait Islander people's commitment to engagement and collaboration is an essential first step. Without this, the Indigenous Evaluation Strategy will be meaningless.

In 1967 we were counted, in 2017 we seek to be heard. We leave base camp and start our trek across this vast country. We invite you to walk with us in a movement of the Australian people for a better future.³²

Thank you again for the opportunity to comment on this Issues Paper. We would welcome the opportunity to expand on this submission at hearings and in response to future papers.

Yours sincerely,

GEORGE NEWHOUSE | Principal Solicitor

REBEKAH STEVENS | Solicitor³³

³² *Uluru Statement from the Heart* (n 2).

³³ Ms Stevens is a volunteer solicitor with the National Justice Project and a PhD candidate at Macquarie University researching the impact and evaluation of law reform advocacy. She holds degrees in law and economics, and a master's degree in research. Ms Stevens also has extensive experience as a policy advisor within government.