

Mr Peter Harris and Ms Melinda Cilento  
Chairman and Commissioner  
Data Availability and Use Inquiry  
Productivity Commission

Via website: [www.pc.gov.au/inquiries/current/data-access](http://www.pc.gov.au/inquiries/current/data-access)

29 July 2016

Dear Chairman and Commissioner

**Data Availability and Use - Productivity Commission Issues Paper**

The Australian Indigenous Governance Institute (AIGI) welcomes the opportunity to provide comments on the Productivity Commission's *Data Availability and Use* Issues Paper. AIGI promotes a future Australia where Indigenous nations can pursue and exercise their right to self-determination and economic development through strong self-governance.

The purpose of our submission is to draw attention to the fact that there are specific Indigenous dimensions to all of the matters raised in the Issues Paper. If left unaddressed, these will result in a lost opportunity for Indigenous Australians, their representative organisations, and business enterprises to gain access to data that will assist in their pursuit of self-determined socioeconomic development. More pointedly, it is most likely to mean that Indigenous people in Australia will further lose even the limited access and governance control they currently have over data that are 'about them'.

We trust you find this information useful, and would be pleased to provide further input during the course of the Commission's Inquiry.

If your Office requires further information, please contact us at [admin@aigi.com.au](mailto:admin@aigi.com.au)

Yours sincerely

Jason Glanville  
Chair  
Australian Indigenous Governance Institute

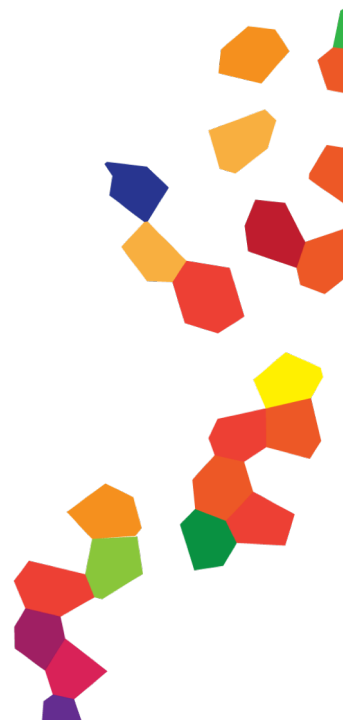


AUSTRALIAN  
Indigenous  
Governance  
INSTITUTE

**P** 0498 880 025  
**E** [admin@aigi.com.au](mailto:admin@aigi.com.au)  
**W** [www.aigi.com.au](http://www.aigi.com.au)  
**T** @AIGIInstitute

Level 2, 27-31 Cope Street  
Sydney NSW 2016 Australia

ABN 87 158 627 386





AUSTRALIAN  
**Indigenous  
Governance**  
INSTITUTE



# **Productivity Commission Inquiry into Data Availability and Use**

## **Submission from: The Australian Indigenous Governance Institute**

**With assistance and partnership of Emeritus Professor John Taylor, Australian National  
University and Dr Diane Smith National Centre for Indigenous Studies, Australian  
National University**

**29 July 2016**



## 1. Purpose

1.1 The **Australian Indigenous Governance Institute** (AIGI) was established in 2008 and formally incorporated in 2012 as an independent, non-government, not-for-profit organisation that is a centre of knowledge and excellence in governance ([www.aigi.org.au](http://www.aigi.org.au)). AIGI promotes a future Australia where Indigenous nations can pursue and exercise their right to self-determination and economic development through strong self-governance. We know that practical, effective and culturally-legitimate governance is the fundamental building block for delivering real change. AIGI seeks to realise this change by actively assisting Indigenous nations—whether their members live in remote, rural or urban settings—in their efforts to determine and strengthen their own sustainable systems of self-governance.

1.2 The purpose of this submission by the AIGI to the Productivity Commission's (PC) *Inquiry into Data Availability and Use* is to draw attention to the fact that there are specific Indigenous dimensions to a majority of the matters raised by the PC Issues Paper that require recognition and further consideration. These derive from the:

- particular data needs, rights and interests of Indigenous Australians and their governance entities that are created by Australian law;
- culturally-based Indigenous jurisdiction over a range of knowledges and related contemporary data sets;
- broader practical implications of giving effect to Australian Government commitments under international law, most notably in regard to its endorsement of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP) in 2009.

1.3 The current international context in Canada is particularly relevant for Australia. For example, the Canadian Government is currently working directly with First Nation Data organisations in the collaborative collection of data about First Nations (see: [www.bcfndgi.com](http://www.bcfndgi.com); [www.fnigc.ca](http://www.fnigc.ca)). It is also actively partnering with First Nations and their National Assembly to co-produce an extensive array of policies and legislative initiatives in order to find workable and practical ways to give effect to the intent of UNDRIP (see: <http://www.afn.ca/en/news-media/latest-news/16-7-27-assembly-of-first-nations-national-chief-perry-bellegarde>; <http://aptn.ca/news/2016/07/12/justice-minister-jody-wilson-raybould-says-adopting-undrip-into-canadian-law-unworkable/>).

1.4 The central point we make is that nowhere in the Issues Paper is there any suggestion that Indigenous peoples have specific and general rights and interests in what happens to 'their' data. The fact is, there are Indigenous dimensions to all of the matters raised in the Issues Paper which, left unaddressed, will result in a lost opportunity for Indigenous Australians, their representative organisations, and business enterprises to gain access to data that will assist in their pursuit of self-determined socioeconomic development. More pointedly, it is most likely to mean that Indigenous people in Australia will further lose even the limited access and control they currently have over data that are 'about them'.

## 2. Emerging Trends

2.1 As essential background to the inquiry, we draw your attention to a fast emerging trend among Indigenous peoples around the world, including in Australia, towards the assertion and exercise of Indigenous data sovereignty. As the global data revolution unfolds, indeed accelerates, notions of data sovereignty have emerged as a 21st Century imperative prompted by the effect of information technologies in weakening impediments to data access and linkage that were previously imposed by international boundaries and extant limitations in computing capacity.

2.2 In this context, 'sovereignty' reflects the desire and ability of all nation-states, including Indigenous nations, to govern and manage the collection, ownership, and application of their own data in ways that are consistent with their laws, practices and customs. This extends to the capacity of Indigenous people to gather data for their own purposes and use. This is particularly important, as Indigenous peoples are commonly under-represented or excluded from large-scale national surveys. And even when Indigenous people are consulted, some of the information obtained may not be useful or applicable to their social, political and cultural organisation and decision-making needs.

2.3 An overarching conclusion of a recent (2015) Academy of the Social Sciences in Australia (ASSA) international workshop was to re-affirm the assertion of the UNDRIP that Indigenous peoples have a right to self-determination emanating from their inalienable relationships to lands, waters, and the natural world, and that to give practical effect to this right requires a relocation of authority over the collection and ownership of relevant data from nation-states back to Indigenous peoples (Kukutai & Taylor, in press). The workshop framed the concept of data sovereignty as referring to the proper locus of Indigenous authority over the management of information that are about Indigenous peoples, their territories and ways of life, in a way that is consistent with the laws, practices and customs of those peoples (Snipp, in press). Such sovereignty includes being able to design the rules governing access and use.

2.3 Significantly, discussions of data sovereignty are occurring precisely at a time when data are becoming more open and accessible than before:

Open data in the context of Indigenous peoples and communities can be understood as a double-edged sword. On the one hand, open data can help Indigenous communities, both internally and externally. Internally, it can be used to inform policy, allocate resources, and set a vision for Indigenous communities and spaces; externally, it can be used to influence public opinion, change perceptions of Indigenous people, and help them work towards obtaining available resources. On the other hand, the concept of opening up data is accompanied by numerous challenges and concerns pertaining to privacy and Indigenous information rights (IODC 2015: 25)

2.4 Indigenous perspectives on this issue from Australia, Canada, New Zealand and the USA are presented in a forthcoming publication of the proceedings of the 2015 ASSA workshop (Kukutai & Taylor, in press).

2.5 Particularly noteworthy is that Indigenous peoples are increasingly taking action to establish their own data strategies and institutions. Significant examples include:

- The formation of a **Māori Data Sovereignty Network** in New Zealand (Te Mana Raraunga) that is currently active in representing Māori interests in reform of the New Zealand Statistics Act 1975 and the Privacy Act 1995 ([www.tmr.maori.nz](http://www.tmr.maori.nz)).
- In Canada, the work of the **First Nations Information Governance Centre** (FNIGC) has provided a forceful statement of Indigenous data sovereignty based on First Nations' ownership, control, access and possession of data (OCAP®) ([www.fnigc.ca](http://www.fnigc.ca)).
- In Nunavut, northern Canada, the **Naasautit, Inuit Health Statistics** collates and organises Inuit-specific statistics to make a range of socioeconomic data readily available to regional Inuit organisations and communities (<http://www.inuitknowledge.ca/naasautit>)
- The formation of the **US Indigenous Data Sovereignty Network** hosted by the Native Nations Institute at the University of Arizona (<http://usIndigenousdata.arizona.edu/>)
- Also in south western USA, the establishment of the **Peablo 'Tiguanomics' Unit** within the Pueblo government derived from their efforts to transform into a data-driven nation through the enhancement of data collection and statistical analysis to promote informed

decision making and improve tribal governance, programs and services ([http://www.ysletadelsurpueblo.org/economic\\_development.sstg?id=1&sub1=40](http://www.ysletadelsurpueblo.org/economic_development.sstg?id=1&sub1=40))

- In British Columbia (BC), the **First Nations' Data Governance Initiative** established under leadership of the Ktunaxa Nation to inform decision-making and guide planning and investment strategies. The Initiative is one of a number of agreements with the BC and Canadian Governments that describe a comprehensive and ambitious provincial mandate and agenda in First Nations' health, social determinants, health information governance, and health data information sharing and system transformation (<http://www.bcfndgi.com/initiative-history/>)
- And, most recently, in Australia, a group of Indigenous social scientists, currently coordinated from the University of Tasmania, has formed the **Maiam nayri Wingara Aboriginal and Torres Strait Islander data sovereignty group**.

A sign of the current high level of importance that data sovereignty issues are afforded by Indigenous peoples worldwide is the fact that the 4th *IODC International Open Data Summit* to be held in Madrid in October 2016 will convene the first '**Indigenous Open Data Summit**' as part of its proceedings, with many of the above groups represented.

2.6 While the precise scope of Indigenous data sovereignty is still being formulated, debates about 'big data', 'open data' and 'metadata' have been dominated by national governments and multinational corporations and have focused on issues of commercialisation, data linkage, legal jurisdictional control, and individual privacy in an increasingly connected world.

2.7 Missing from these conversations has been consideration of the inherent and inalienable collective rights and interests of Indigenous peoples related to the collection, ownership and application of data about their people, lifeways, territories and development needs (Fourmile 1989; Janke 1999; Kukutai & Taylor, in press). These rights are asserted in the UNDRIP, wherein Articles 3, 4, 5, 15(i), 18, 19, 20(i), 23, 31, 32, 33, 38 and 42 all raise urgent questions about the manner in which nation-states gather, use and make available, data on their Indigenous citizens. To date, a lack of consideration of Indigenous rights and interests has been part of what has been called a practical 'implementation gap' surrounding Articles 38 and 42 of UNDRIP whereby even good intentions by nation-states in the form of legislative and administrative changes might substantially fail to deliver the benefits and governing authority over data that Indigenous peoples seek (Malezer 2009).

### 3. Substantive Points

As a contribution to more informed consideration of Indigenous perspectives and rights in this arena, AIGI offers the following information, and observations on relevant sections of the Issues Paper.

#### 3.1 The concept of 'data'

We concur with the Commission's distinction between 'data' and 'information', with the latter enabling raw data to be put into context and given meaning and value. We also see 'big data' as including structured, semi-structured and unstructured data with public, private and personal dimensions. **However, we would add to that definitional scope, the dimensions of social (collective) and cultural data, including cultural intellectual property (IP) over various knowledge systems.**

If we think of data about Indigenous Australians as being a continuum, for much of the past 200 years we have moved from a situation where Indigenous peoples had full sovereignty over their data, to a situation of colonial suzerainty over their data, to the contemporary period where Indigenous rights to sovereignty over data are being re-asserted. It is ironic, then, that just at the

point when Indigenous rights to self-determination have been formally recognised by the Australian government via their endorsement of the UNDRIP (Article 3), the global data revolution threatens a form of neoliberal data suzerainty unless provisions are made to safeguard Indigenous rights and interests (see Pool, in press).

### 3.2 Indigenous governance of data for self-determined development outcomes

The AIGI takes 'governance' to mean how a group of people choose to share power, authority and accountability in order to make and implement informed decisions and design rules to achieve their collective goals and future vision. That includes the governance of data.

AIGI endorses research by the United Nations Development Program, the World Bank, the Harvard Project on American Indian Economic Development, and the Australian Indigenous Community Governance (ICG) Project which all conclude that a critical factor in achieving sustained development is having recognised governing authority combined with practical capacity (see for example, Dodson & Smith 2003; Jones 2002; Smith, in press; UNDP, n.d.; World Bank 1994).

Such governance is a prerequisite for innovative responses to Indigenous poverty, livelihood, environmental, family and gender concerns. It is a powerful predictor of success in economic development; it delivers a tangible return and is an investment in the future.

In AIGI's forthcoming (2016) report *Voices of Our Success: Sharing the Stories and Analysis from the 2014 Indigenous Governance Awards*, we set out research conclusions based on our analysis of applications submitted by Aboriginal and Torres Strait Islander organisations across Australia to the Indigenous Governance Awards. We found that applicant organisations:

*are putting considerable creative thought into how new media and technology can support their governance and operations. These include website content (blog, events calendar, annual and financial reports, policies, photos, interviews, videos), email, electronic newsletters, media releases and social media such as Twitter, Facebook and LinkedIn. For many organisations, the electronic age helps to enhance their governance strategies. The low cost, convenience and adaptability of electronic communication tools are particularly crucial to the functioning of non-incorporated groups.*

These media platforms facilitate effective communication with residentially dispersed members, support staff operating across varied service areas, and assist greatly board members in dispersed communities to access data and information in order to make informed decisions. More and more organisations also present their cultural vision and governance charters on their websites, as a way of telling the culture story for their governance.

eGovernance of these kinds enhances Indigenous organisational capacity to communicate with members, clients and stakeholders, and facilitates internal relations and future planning. Our analysis indicates that 73% of incorporated and 63% of non-incorporated applicants utilise electronic mediums.

The *National Indigenous Digital Excellence Strategy* (2014) produced by the National Centre for Indigenous Excellence (NCIE) has strongly reinforced the fact that with the continuing shift towards a knowledge economy, Indigenous digital excellence is:

*crucial in enabling participation in the social and economic activities that are essential to achieving wellbeing—be it physical health, economic prosperity, social and emotional health, the resilience of a community, or the health of an environment (NCIE 2014: 14).*

NCIE accordingly proposes that strengthening Indigenous participation, practice and entrepreneurship in the digital economy, within a framework of self-determination, is critical for the expression of Aboriginal and Torres Strait Islander excellence, in all its forms, into the future.

**It is recommended that:**

**A strategic approach is developed to promoting the low cost, convenience and adaptability of electronic communication tools for Indigenous Australians, and a coordinated funding base be made available for building Indigenous data and related digital management capabilities. There be greater streamlined access by Indigenous governance entities to relevant government and private-sector data, and that those data are customised to meet Indigenous.**

Such initiatives are particularly crucial to the effective functioning and governance of Indigenous groups and their organisations, and to their future engagement in the growing knowledge economy.

### 3.3 Indigenous collective data ownership and subsidiarity

Following Article 3 of UNDRIP, we emphasise the need to recognise and address the *collective* rights of Indigenous peoples in data, in contrast to the substantive focus on the *individual* that appears in much of the PC Issues Paper.

In Indigenous Australia not all information is freely available to everyone within the same group, let alone external parties. There are influential gender and age dimensions to access to knowledge, and rules around certain restricted forms of information, about who owns, can reproduce and authorise information, and for what purposes.

As a consequence, governing authority over particular sets of Indigenous information is characterised by subsidiarity; that is, ownership rights and responsibilities over knowledge are distributed across multiple interconnected social layers and polities. Such Indigenous subsidiarity establishes thick culturally-based networks of information.

There are also hierarchies of value assigned to different sets of knowledge and information. Some highly treasured knowledges are regarded as ‘inalienable possessions’ which are passed on by senior knowledge holders from one generation to the next. These constitute what Radin (1982) and Moustakas (1989: 1185) refer to as rights in cultural ‘property for grouphood’. In other words, the ownership and transmission of some kinds of knowledge are fundamental to the ongoing collective cultural identity of Indigenous groups over time. This complex Indigenous knowledge economy has direct implications for the collection, digitisation and dissemination of Indigenous information and its transformation into data (see Nakata & Langton 2005; Ormond-Parker & Sloggett 2012).

**We strongly encourage the Inquiry to consider the implications of individual versus collective rights and the subsidiarity of ownership, for data governance, access and use.**

**Similarly, the Inquiry should give due consideration to the threats and opportunities for Indigenous peoples presented by census transformation programs, data linkage, and the advent of ‘big data’ and ‘open data’.**

Regarding the treatment of data ownership and privacy in the Issues Paper we further note the Australian Law Reform Commission’s 2008 discussion of the extension of privacy laws *beyond the individual* (Commonwealth of Australia 2008: 338-51) and the Law Reform Commission’s observation that protections for group rights *do exist* in international law. It cites the UNDRIP in this regard but, significantly, adds the caveat that Australia, in 2008, was not a signatory.

**Now that Australia has endorsed the UNDRIP, we argue that the implications of this endorsement of collective Indigenous rights for the matters raised by the current Inquiry, should be given full consideration.**

Because Indigenous knowledge is often defined as being holistic and collectively owned, appropriate protections must allow for maintaining the cultural authority and physical environment that has generated it (Marinova & Raven 2006). The 2003 UNESCO *Convention for the Safeguarding of the Intangible Cultural Heritage* specifies that communities must be full partners in efforts to safeguard their intangible cultural heritage (Hennessy 2012). Despite such recommendations, the notion of safeguarding and governing stewardship of knowledge continues to be complicated by the national politics and global economic mechanisms that promote open data and digital circulation.

**In accord with UNDRIP, protections for cultural heritage should include recognition of the self-determined Indigenous governance that protects such knowledge. In particular, UNDRIP Article 31 goes to the matter of Intellectual Property. We further encourage the Commission to give consideration to the implications of Article 31 for all the matters it is assessing in the Inquiry.**

### 3.4 Data quality, technical and relevance issues

Leaving aside the potential benefits of 'open data' and 'big data' as canvassed in the Issues Paper, a significant irony is emerging in regard to the collection of social statistics on Indigenous peoples in Australia; namely, at no time has there been such a volume and range of data potentially available on something called 'the Indigenous population'. Most commonly this is as a consequence of efforts by the Australian Bureau of Statistics (ABS 2007) but also by some government departments operating in particular industry areas (such as health, education, labour force status, law and justice etc.).

At the same time, it is well-documented that there are ongoing shortcomings in Indigenous data quality and ease of access (see for example: <http://www.aihw.gov.au/indigenous-statistics-quality-availability/>; [www.caepr.anu.edu.au](http://www.caepr.anu.edu.au); [www.lowitja.org.au](http://www.lowitja.org.au)). On the public-sector side, shortcomings include: the erratic implementation of Indigenous identifiers, federal fragmentation of departmental data, state jurisdictional frameworks with convoluted approvals and access processes, low levels of funding for education and resourcing of the the Indigenous public about ways to access and analyse public-sector data. On the Indigenous demand side, challenges include low levels of access to and skills in ever-changing digital technology and data expertise, a digital technological shortfall in many of the locations where Indigenous people reside, erratic funding for data collection and use, and significant differences in cross-cultural data concepts and priorities.

Despite the ever-increasing growth in 'big data', there remains a dearth of information on the various sociocultural entities ('peoples') that make up the Indigenous Australian population, and on their aspirations for development. As a consequence, in matters that are crucial to the interests of numerous Indigenous polities that are constituted under various land rights and native title legislation, we are increasingly information rich but invariably knowledge and infrastructure poor. So much so, in fact, that one prominent Aboriginal leader was compelled to observe in regard to the specially-designed *National Aboriginal and Torres Strait Islander Social Survey* of 2008:

The view I have about data is a long way from the current paradigm where data is collected on Indigenous society by governments for their purposes, not to support the objectives that Indigenous people want to determine. I share a pervasive Indigenous aversion to the way data is collected by governments, academics or professional researchers on or about Aboriginal people. ...despite the wealth of empirical data



dished up by countless inquiries, Royal Commissions and research projects over many decades about the social and economic condition of Aboriginal society, little practical benefit seems to come from all this data. Th[e] categories are constructed in the imagination of the Australian nation state. They are not geographic, social or cultural spaces that have relevance to Aboriginal people (Yu 2012).

Much of the data that are referred to in the PC Issues Paper are constructed (and made available) according to categories of the ABS' *Australian Statistical Geography Standard* (ASGS). For just over a century, such classifications have serviced the data needs of federal, state and territory tiers of government. In recent decades, they have also provided for a third tier—local government.

The question now arises as to what responsibilities governments need to assume under Articles 38 and 42 of UNDRIP in order to meet the data needs of the emerging fourth tier—Indigenous governance? While various forms of Indigenous organisational incorporation have been established or are required under Australian law (such as community welfare organisations and businesses, Prescribed Bodies Corporate and Native Title Representative Bodies), the culturally-based populations, polities and cultural geographies that they govern and represent are invariably not addressed by current statistical frameworks. For example, to take just a few random examples, data at the level of the Yolngu, Yorta Yorta, Nyoongar, Wiradjuri, Yawuru or Wik peoples do not exist. Nor are public and private sector data available for Indigenous Protected Areas, Land Trusts or Native Title holders consent-determination geographies.

**In order to facilitate greater access to, and use of, public and private sector data by these legitimately recognised Indigenous governing interests, we argue that a relevant government agency, such as the ABS, should follow the example of New Zealand and establish a mechanism to determine what the customised data needs of Indigenous nations and communities might be.**

A related technical matter is the scale at which Indigenous polities operate – in many cases this is small, dispersed and based on relatively few numbers, often in the low thousands and even less. This poses challenges for balancing the need to access categorical public data (for example by age breakdown) against the fact that small numbers are often confidentialised to such an extent that the data made available invariably provide no useful information. There is also the issue of the relevance of data for small polities that may arise from any future survey-based estimation of Indigenous peoples' needs and circumstances. Such data are envisaged, for example, under proposals for a rolling *Australian Population Survey* that the ABS might deploy to supersede the quinquennial census. The limitations of such population-level approximations for the governance needs of place-based groups are substantial, a fact that is already apparent in the ABS' flagship *National Aboriginal and Torres Strait Islander Social Survey* (NATSISS) as this enables only limited spatial disaggregation and is little used for community-level governance and planning.

With regard to the Issue Paper's discussion of the *Geocoded National Address File* (G-NAF), it is instructive that a comprehensive survey of all Indigenous households in Broome and surrounding region conducted by the Kimberley Institute on behalf of Yawuru Native Title holders in 2011 found that a total of 59 such dwellings (6.5% of the total) were missing from the G-NAF (Taylor et al. 2012). It is significant that the vast majority of these dwellings were located in Aboriginal Land Trust (ALT) areas and in well-known Aboriginal camping sites around the urban area. In this instance local-level knowledge and data collection proved more accurate. **This raises the prospect that similar omissions from the G-NAF may apply across the country in locations where Indigenous land tenure and living areas prevail.**

Establishing the precise national picture here has been made all the more difficult since the demise of the *Community Housing and Infrastructure Survey* (CHINS) that was administered by

the ABS in 1999 and then again prior to the 2001 and 2006 censuses. **Comprehensive knowledge of remote area, and especially small settlement infrastructure, would be enhanced by the reinstatement of a routine exercise such as the CHINS along with enhanced data linkage and open access between relevant government departments.**

**We also recommend that local Indigenous expertise and knowledge should be prioritised as the basis for all local-level data collection by public and private sector agencies.**

### 3.5 Free prior informed consent

With the above considerations in mind, we acknowledge the potential of big data and open data for contributing to Indigenous development initiatives, and the great value of increased Indigenous access to government and private sector data. Such initiatives promise to:

- enhance the goals of self-determination and self-government of Indigenous peoples (Articles 3 and 4 of UNDRIP);
- strengthen their ability to participate in the making of decisions that affect them (Article 18);
- improve their capacity for free, prior and informed consent (Articles 19 and 32); and
- define, pursue and assess development in a manner of their own choosing (Article 23).

For these recognised areas of self-determination to be progressed, Articles 19 and 32 of the UNDRIP lay out requirements for enabling free, prior and informed consent to be obtained from Indigenous peoples prior to adopting any legislative and administrative measures that may affect them, and prior to the approval of any project that may affect Indigenous lands and other resources.

**The need for free and open access to relevant data by Indigenous representative groups should form an essential part of the Commission's proposals for future opening of government and other data sets.**

**The implications of free prior informed consent provisions for the gathering of data from Indigenous peoples by public and private sector interests should also be given consideration by the Inquiry**

### 3.6 Holding governments accountable

Over twenty-five years ago in Australia, the Royal Commission into Aboriginal Deaths in Custody (1991) in Australia recommended that:

- When social indicators are to be used to monitor and/or evaluate policies and programs concerning Aboriginal people, their informed views should be incorporated into the development, interpretation and use of the indicators, to ensure that they adequately reflect Aboriginal perceptions and aspirations (RCIADIC 1991, Recommendation 2:53).
- In the development of future national censuses and other data collection activity covering Aboriginal people, the Australian Bureau of Statistics and other agencies ... ensure that full account is taken of the Aboriginal perspective.
- Commonwealth, State and Territory Governments provide access to all government archival records pertaining to the family and community histories of Aboriginal people (RCIADIC 1991, Recommendations 2:63).

Arguably, there has been poor progress in implementing these recommendations. As a consequence, it continues to be difficult for Indigenous people to obtain accurate robust data by which they can evaluate government accountability for its own decision-making, expenditures, procedures and outcomes in Indigenous Affairs.

In the past, the Aboriginal and Torres Strait Islander Commission provided some formal Indigenous check and balance on government activity in the area of Indigenous data collection under s.7 of the *Aboriginal and Torres Strait Islander Commission Act* (1989). Amendment to that Act to abolish ATSIC in 2005 therefore extinguished an important Indigenous representative validating environment for statistical data collection and dissemination. With this now gone, the question remains as to who governments should/could legitimately and formally engage with in order to ensure Indigenous input and imprimatur for its activities in this area.

Another issue raised recurrently as impeding Indigenous access to government data about them, has been that of the poor 'governance of governments' and their low capacity for inter-departmental and cross-jurisdictional cooperation in this area. In this context, much has been said about the *Indigenous Community Coordination Pilot* (COAG) *Trials* conducted between 2002 and 2006, and much of it negative (e.g. see Gray 2006). However, a basic aim of those trials was to examine how to 'improve the way governments interact with each other and with (Indigenous) communities to deliver more effective responses to the needs of Indigenous Australians'.

One element of this cooperation where at least one trial site (Wadeye) demonstrated a positive outcome, was to do with a coordinated response by governments to enable Indigenous access to departmental program data. At the commencement of the trial, traditional owners of the Wadeye region proclaimed no factual knowledge of their social and economic circumstances and had no locally-relevant data available to them with which to enter into discussions or planning about their future. Following a whole-of-government release of customised social and program expenditure data mandated by the COAG process, this 'information deficit' was overcome with positive results for community development, planning and participation (Taylor 2004; Taylor and Stanley 2005).

It would be worth revisiting such positive lessons in data sharing that arose from these expensive trials as this particular aspect appears to have been overlooked in their evaluation. Support for such a consideration appears in the recent *Empowered Communities: Empowered Peoples Design Report* (Wunan Foundation Inc. 2015) which argues convincingly that governments should support Indigenous communities to regain responsibility for, and control over, decision making and general planning. It further argues that governments and their representatives (with their data) need to come to the table to act as enablers and facilitators in a place-based Indigenous-led process that is backed up by a data-informed monitoring and evaluation process (Wunan Foundation Inc. 2015: 41, 90-94). As the Wadeye COAG trial demonstrated, this cannot be achieved without open access to relevant public sector data.

**Accordingly, we suggest that the Commission's inquiry develop practical recommendations about how such enabling and facilitation can be practically achieved.**

### 3.7 Data capacity

To govern well for the future, Indigenous people are looking for what could be called 'culture-smart' data; that is, data which can be produced locally, captures local social units, conditions, priorities and concerns, and is culturally-informed and meaningful. These kinds of data build on existing Indigenous capabilities and knowledge, have direct practical application, and represent collective identities, rights and priorities (AIGI 2016; Smith, in press). For that to occur, resources and support need to be dedicated to further building Indigenous data capacities and digital expertise (NCIE 2014).

This is an urgent need given the fast-changing global and national environment in which the evolution of data technology is occurring. Over a decade ago, Daly (2001) considered the implications of changes in the technological and regulatory environment in the telecommunications industry for Indigenous Australians living in remote and rural areas. She

noted that this group is particularly vulnerable to falling on the wrong side of the 'digital divide' because of their geographical location and their low socioeconomic status. Key issues here include availability of skills and resources required for data collection and management. A more recent analysis of digital and internet access in remote Indigenous outstations in the Northern Territory found the continuing same low levels of necessary infrastructure, funding and education/training (Rennie et al. 2016).

Access to the skills and technologies required to obtain and utilise public and private sector data is an increasingly critical issue for Indigenous community governance and development outcomes. Any development of future data policy frameworks, regulations and related technology infrastructure for Australia must include an assessment of required training, equipment and resource needs of Indigenous people.

The statistical capacity needs of Indigenous Australians have recently been examined by Lovett (in press) on the premise that statistics developed from an Indigenous 'frame of view' and with greater engagement by Indigenous people in data conceptualisation, design, collection, analysis and reporting would greatly enhance the utility of information for Indigenous Australian nations. However, to achieve this requires a quantum increase in professionally-trained Indigenous statisticians and digital experts in a professional field that has struggled with student enrolments generally in recent years. One solution, for Indigenous data training, is to make coursework more relevant to Indigenous worldviews and priorities. There is also a pressing need for official statistical agencies to make more meaningful use of existing statistical skills among Indigenous professionals (Lovett, in press).

More broadly, Snipp (in press) advanced three preconditions for data decolonisation to meet Indigenous needs:

- i) that indigenous peoples have power to determine who should be counted among them;
- ii) that data must reflect the interests and priorities of indigenous peoples; and
- iii) that Indigenous communities must not only dictate the content of data collected about them, they must also have the power to determine who has access to these data.

In other words, data governance is a foundation stone. It requires the building of Indigenous expertise in the production and management of data, and the formation of Indigenous self-determined governance arrangements that allow for their own institutional oversight of research and data collection in their communities.

### 3.8 An Indigenous Forum/Inquiry

Data collection for exercising effective Indigenous governance, and the effective governance of data, are emerging as twin capabilities that are fundamental to underwriting the daily exercise of Indigenous self-determination and sovereignty for the social good. These matters are of such import for the future of Indigenous Australians that they must be fully considered and strategies/recommendations should be developed by Indigenous peoples themselves.

As noted in this submission, there are now numerous Indigenous self-governing entities all of which have unique public and private sector data needs and, no doubt, many that overlap. In line with principles of Indigenous data sovereignty, **we strongly urge the Productivity Commission to recommend a separate Indigenous Data Forum/Inquiry to identify and consider the wide range of data needs and the issues that are relevant to Indigenous data governance, access, ownership and use. Such a Forum/Inquiry should be tasked with providing recommendations to the Australian Government for its consideration.**

### 3.9 Implications of trade globalisation

Australian Governments have generally been in favour of Free Trade Agreements, however the implications of these international arrangements have rarely been considered for Indigenous peoples. One such assessment followed the release of the Free Trade Agreement (FTA) with the USA on 8 February 2004 where it became evident that Indigenous Australians were not consulted throughout the negotiation phase (see Behrendt & Davis 2016; Davis 2004).

This general lack of understanding of the content and implications of FTAs is a concern as there are potentially many areas in which the rights and interests of Indigenous Australians could be significantly impacted upon by such Agreements; including in respect of data control, access and use.

This is not to deny that FTAs can be sensitive to Indigenous needs. The USFTA, for example, contains an exemption that allows for 'the right to adopt or maintain any measure with respect to investment that accords preferences to any indigenous person or organisation or provides for the favourable treatment of any indigenous person or organisation'. This exemption relates to goods and services and is, in turn, relevant to the Australian Government's implementation of its Indigenous procurement policy; for example, this will encompass services and contracts dealing with data. It should be noted, however, that the exemption does not ensure the protection of cultural, intellectual property and other rights, including over related data (Behrendt & Davis 2004).

**Given the increasing number of Trade Agreements entered into by the Australian government we urge the Inquiry to examine the implications for Indigenous data sovereignty of the terms and conditions of existing and proposed FTAs.**

#### **4. Final Remarks**

Sovereignty includes being able to design rules for the restriction and opening of data. The UNDRIP, which has been signed by the Australian Government, asserts the self-determined right and interests of Indigenous people in this arena.

Open data in the context of Indigenous peoples is a double-edged sword. On the one hand, open data could be used to inform development, allocate resources, and help set a future vision; and to influence wider public opinion and debates. On the other hand, opening up data may be accompanied by concern about protecting Indigenous collective cultural information rights and intellectual property and further remove the subjects of data and information from the locus of its control and ownership.

Importantly data sovereignty means taking on a significant responsibility to collect and maintain data that reinforce particular collective identities and assist in delivering real improvements in people's circumstances. From this perspective, Indigenous governance of data assets is about stewardship for both present and future generations.

The Australian Indigenous Governance Institute proposes that strengthening Indigenous self-determination, participation, practice and entrepreneurship in the data and digital economy is critical for the expression of Indigenous development, in all its forms, into the future.

Indigenous data governance and digital tools provide new institutional platforms and opportunities through which to deliver programs, spark ideas and realise individual and community goals. They enable new models for engagement and effective delivery of services.

We believe that Indigenous data governance and enhanced skills in digital technology can bolster the many existing community developed and controlled programs, initiatives and solutions that already create positive wellbeing and economic outcomes. We see tremendous

opportunity for a mix of Indigenous data, governance and digital expertise to inspire new, as yet unimagined, solutions.

## References

- ABS (Australian Bureau of Statistics) (2007). *ABS directions in Aboriginal and Torres Strait Islander statistics*, Cat no. 4700.0, ABS, Canberra.
- AIGI (Australian Indigenous Governance Institute) (2016). *Voices of our success: sharing the stories and analysis from the 2014 Indigenous Governance Awards*. AIGI. Available at: <http://www.aigi.com.au>
- Behrendt L & Davis M (2004). Adverse effects of free-trade deal will hit indigenous groups hard'. Available at: <http://www.smh.com.au/articles/2004/03/07/1078594233872.html>
- Commonwealth of Australia (2008). *Australian Privacy Law and Practice*, Report 108, Australian Law Reform Commission, Canberra.
- Daly AE (2001). Implications of developments in telecommunications for Indigenous people in remote and rural Australia, *Centre for Aboriginal Economic Policy Research Discussion Paper* No 219, CAEPR, The Australian National University, Canberra.
- Davis M (2004). Indigenous Australia and the Australia–United States Free Trade Agreement, *Indigenous Law Bulletin*, 19.
- Dodson M & Smith DE (2003). Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities, *Centre for Aboriginal Economic Policy Research Discussion Paper* No. 250, CAEPR, The Australian National University, Canberra.
- Fourmile H (1989). Who owns the past? Aborigines as captives of the archives, *Aboriginal History*, 13(1): 1-8.
- Gray W (2006). *Council of Australian Governments (COAG) trial evaluation: Wadeye, Northern Territory, an independent evaluation*, Bill Gray AM, WJG & Associates, 25 May 2006. [http://www.dss.gov.au/sites/default/files/documents/05\\_2012/coag\\_nt.pdf](http://www.dss.gov.au/sites/default/files/documents/05_2012/coag_nt.pdf)
- Hennessy K (2012). Cultural heritage on the web: applied digital visual anthropology and local cultural property rights discourse, *International Journal of Cultural Property*, 19:345–369.
- International Open Data Conference (IODC) (2015). *Final report: enabling the data revolution*. Conference report, 3rd International Open Data Conference 2015, Ottawa.
- Janke T (1999). *Our culture: our future*. Report on Australian Indigenous cultural and intellectual property rights. Michael Frankel and Company, Sydney <http://www.terrijanke.com.au/img/publications/pdf/24.culture.pdf>.
- Jones P (2002). *Maori governance: foundations for indigenous social capability*, Report of the Social Policy Branch, New Zealand Treasury. Available at: <http://www.treasury.govt.nz>
- Kukutai T & Taylor J (eds) (in press). *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra.
- Lovett R (in press). Aboriginal and Torres Strait Islander community wellbeing: identified needs for statistical capacity. In Kukutai T & Taylor J (eds), *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra.
- Malezer L (2009). Dialogue with States regarding respect for and application of the UN Declaration and follow up on its effectiveness. Paper presented at the International Expert Group Meeting on the Role of the United Nations Permanent Forum on Indigenous Issues

- in the Implementation of Article 42 of the United Nations Declaration on the Rights of Indigenous Peoples, United Nations Department of Economic and Social Affairs, New York, 14-16 January, 2009.
- Marinova D & Raven M (2006). Indigenous knowledge and intellectual property: a sustainability agenda, *Journal of Economic Surveys*, 20(4): 587-605.
- Moustakas J (1989). Group rights in cultural property: justifying strict inalienability, *Cornell Law Review*, 74: 1179–227.
- Nakata M & Langton M (2005). *Australian indigenous knowledges and libraries*, UTS ePress, Sydney.
- National Centre for Indigenous Excellence (NCIE) (2014). *The national Indigenous digital excellence strategy*, Discussion Paper, NCIE, Redfern Sydney.
- Ormond-Parker L & Sloggett R (2012). Local archives and community collecting in the digital age, *Archival Science*, 12(2): 191-212.
- Pool I (in press). Colonialism's and post-colonialism's fellow traveller: the collection, use and misuse of data on Indigenous people. In Kukutai T & Taylor J (eds), *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra.
- Radin MJ (1982). Property for personhood, *Stanford Law Review*, 34: 957–1015.
- Rennie E Hogan E Gregory R Crouch A Wright A Thomas J (2016). Internet on the outstation: the digital divide and remote Aboriginal communities, *Issue No 19*, Institute of Network Cultures, Amsterdam.
- Royal Commission into Aboriginal Deaths in Custody (RCIADIC) (1991). Recommendations. Available at: <http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>
- Smith DE (in press). Governing data and data for governance: the everyday practice of indigenous sovereignty. In Kukutai T & Taylor J (eds) *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra.
- Snipp M (in press). What does data sovereignty look like - what does it imply? In Kukutai T & Taylor J (eds) *Indigenous data sovereignty: toward an agenda*, ANU Press, Canberra.
- Taylor J (2004). *Social indicators for Aboriginal governance: insights from the Thamarrurr Region, Northern Territory*, ANU E Press, Canberra.
- Taylor J, Doran B Parriman M & Yu E (2012). Statistics for community governance: the Yawuru indigenous population survey of Broome, *Centre for Aboriginal Economic Policy Research Working Paper No. 82*, CAEPR, The Australian National University, Canberra.
- Taylor J & Stanley O (2005). The opportunity costs of the status quo in the Thamarrurr region, Northern Territory, *Centre for Aboriginal Economic Policy Research Working Paper No. 28*, CAEPR, The Australian National University, Canberra.
- United Nations Development Program (UNDP) (n.d.). Available at: <http://www.undp.org/>
- World Bank (1994). *Governance: the World Bank's experience*, The World Bank, Washington, D.C.
- Wunan Foundation Inc. (2015). Empowered communities: empowered peoples: design report, Wunan Foundation Inc., Kununurra. Available at: <http://empoweredcommunities.org.au>
- Yu P (2012). The power of data in Aboriginal hands, *Centre for Aboriginal Economic Policy Research Topical Issue 2012/4*, CAEPR, The Australian National University, Canberra.