

The Indigenous Self-Government Landscape in Australia: A Descriptive and Conceptual Model

by Anthea Compton, Donna Murray, and Alison Vivian*

Despite the increasing acceptance of Indigenous Nation Building (INB) practice in Australia, pervasive questions remain about the nature and operation of Indigenous self-government. This paper offers a descriptive and hypothetical model to conceptualise Aboriginal and Torres Strait Islander Nation self-government both within and outside of the 'Indigenous Sector'. It argues that from the perspective of an Indigenous Nation looking outward, the Sector can be reimagined as a series of differing zones of jurisdiction, both exclusive and shared. Such repositioning helps to elucidate relations between Indigenous Nations and the settler-state, highlighting the ways in which some Nations are utilising particular vehicles within the Indigenous Sector to build their self-governance.

Keywords: Indigenous self-government; self-determination; settler-colonialism; Indigenous affairs; Indigenous sector; community-controlled sector

Indigenous Nation Building (INB), or nation (re)building, is currently occurring within Australia. Aboriginal and Torres Strait Islander Nations are undertaking self-determined work to build their cultural and political autonomy, doing so in highly contested contexts (see, for e.g., Jorgensen et al 2023; Rigney et al 2022; Compton et al 2023; Rigney et al in press). The significance of INB for collective empowerment and wellbeing has also been recognised by some Aboriginal and Torres Strait Islander peak bodies and even in some settler government spaces (see, for e.g., Rigney et al 2022; Australian Government 2021; Victorian Government 2023).

INB practice is an international phenomenon of Indigenous Nations. Although terminology and research about INB initially emerged from the practices of Native Nations in North America, INB research within Australia is expanding as a First Nations-led field that reflects the specific concerns of Aboriginal and Torres Strait Islander Nations (Compton et al 2023; Rigney et al 2022). The fundamental goal of INB is effective and legitimate self-government manifest in Indigenous Nations with autonomous decision-making power over

*** Anthea Compton is a non-Indigenous Research Fellow with the Indigenous Nation and Building and Governance research hub at Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney. Anthea's research focuses on settler-colonial discourse and policy.**

Donna Murray is a proud Wiradyuri and Wonnarua yinaa (woman) of the Murrumbidgee River NSW and the Hunter Valley. Donna is the CEO, Indigenous Allied Health Australia and IAHA Northern Territory Workforce Development. She also holds an Adjunct Associate Professor role at the University of Technology Sydney and has formal qualifications in Community Development, Management, and Indigenous Governance.

Alison Vivian is an Associate Professor with the Indigenous Nation Building and Governance research hub at Jumbunna Institute for Indigenous Education and Research at the University of Technology Sydney. Alison's primary research focuses on Indigenous nation-building and Indigenous self-governance as an exercise of sovereignty and self-determination.

self-determined areas of jurisdiction. INB research has also provided a framework for *how* First Nations may engage in this transformative praxis, following a descriptive process known as “Identify, Organise, Act as a Nation” (Cornell 2015: n. pag).

Whilst INB is undertaken across the globe, and Indigenous Nations in settler-colonies globally face similar manifestations of settler-colonial power, the unique nature of Australian settler-colonialism creates extraordinary constraints. Thus, critical questions prevail about the institutions of Indigenous decision-making and self-government within Australia: in other words, about *what* self-government looks like. Unlike the United States and (some parts) of Canada, within Australia, in all but highly circumscribed instances around native title, land management and cultural heritage, the settler state has maintained its insistence on a single and indivisible sovereignty (Compton et al 2023; Vivian et al 2017). There is no system analogous to that of ‘Federally Recognised Tribes’ which carry particular forms of settler recognition of Native Nations’ rights to self-government, despite the theoretical ease with which such recognition could occur (see Vivian et al 2017). Nor is there federal self-government policy or negotiated agreement-making with First Nations analogous to that within Canada.¹

The October 2023 failure of the Voice Referendum further suggests that settler policy and legislative mechanisms to support Indigenous self-government within Australia are unlikely. If settler Australia is unable to accept an Indigenous advisory body to the Australian Parliament, they are unlikely to welcome the sorts of self-government that INB research shows is crucial to thriving Indigenous communities (Rigney et al 2022; Vivian & Halloran 2021).

Of course, such lack of recognition has not stopped Aboriginal and Torres Strait Islander Nations from continuing to enact their inherent rights to live as self-determining collectives, undertaking “stealth governance” (Cornell 2015). First Nations are expert at using settler-government policies and bodies for their own self-determined purposes (Jorgensen et al 2023; Rigney et al 2021; Compton et al 2023). Nor are we suggesting here that settler legal-political recognition of Indigenous sovereignty necessarily benefits First Nations; rather, just that such recognition may make it easier for settler governments and First Nations alike to conceptualise Indigenous self-government and its relationship to settler Australia.

In the absence of such recognition, the question of *what* Aboriginal self-government looks like – or could look like – are live questions for nation-building researchers and practitioners alike. This is both around the areas of jurisdiction Nations are seeking to exercise (their) authority within, and the vehicles that Nations can use to exercise that authority. We know that the jurisdictional aspirations of First Nations are diverse, but often include fulfilling responsibilities to Country as a primary objective. We also know that as First Nations “have no legal personality” as of right in settler Australia, they are expert at using “tools that are at their disposal” (Vivian et al 2017: 227). This includes structures formed under settler law, such as peak body corporations, community corporations or native title representative bodies, which Nations

¹ See, for example, the 1975 James Bay and Northern Quebec Agreement and its antecedents (Government of Canada 2023).

strategically use to pursue their INB ends (Norman et al 2021; Jorgensen et al 2023; Compton et al 2023). Whether or not these organisations are a Nation's self-government body, some First Nations are regardless using them to 'act' as a nation and interact with settler political and legal systems (Cornell 2015). This is frequently for uses beyond the structure's legislated remit (see Jorgensen et al 2023; Rigney et al 2021; Compton et al 2023).

Such questions about the structures and mechanisms with which to self-govern, their necessary interactions with settler systems, and the issues and areas over which to self-govern, were the subject of a conversation among the authors of this article with our friends and colleagues Deb Evans and Miriam Jorgensen in Wagga Wagga, on Wiradyuri Country, in July 2023. We had gathered to teach the Wiradyuri nation building component of the Wiradyuri Graduate Certificate in Language and Heritage, a language program that also functions as a crucial nation-building tool for Wiradyuri Nation (Murray & Evans 2022).² In the class, students had been asked to design a hypothetical Wiradyuri Government. This government was to interact with local, state and federal settler governments, but stay separate to it, with authority for areas of responsibility that Wiradyuri Nation chose. Reflecting on what had been a difficult task for students, we discussed how best to describe Indigenous self-government (including both existing governing structures and hypothetical future ones) within a pervasive settler-colonial policy environment that denies its existence. The questions we asked each other were:

- What is the operating environment? Where does an Indigenous nation sit, alongside other bodies that may be exercising authority in areas of jurisdiction of interest to Indigenous Nations? What are these areas of jurisdiction, and how might these change over time?
- How can we conceptualise the different roles that various Aboriginal and Torres Strait Islander organisations and individuals undertake as vehicles for self-determination? What is the relationship between such bodies, and their differing approaches to self-determination?
- Can bodies created under settler-colonial law operate as First Nation governing bodies, even if they are established by First Nations?
- And, in the instances that First Nations wish to be visible, how do you make outsiders see Aboriginal self-government?

Wide ranging discussion ensued. To make the issues we discussed more visible, Anthea Compton mocked an early version of the below diagram (Figure 1), which we use in this article to describe our understanding of what we term the 'Indigenous self-government landscape'. Figure 1 is both conceptual and concrete: demonstrative of some of the structures that some First Nations are already utilising: and theoretical, based on INB research and practice, most recently including Gugu Badhun nation builder and scholar Janine Gertz's 2022 PhD on "Gugu Badhun Sovereignty, Self-Determination and Nationhood".

In this paper, we have two aims. The first is to provide a practical and theoretical roadmap for First Nations who are thinking about, creating or refining vehicles to undertake collective decision-making. In providing such analysis,

² Anthea Compton was not teaching, but observed the course.

we seek to further elucidate why Daryle Rigney et al (in press) maintain that Indigenous governments are strongest, and most likely able to withstand the pressures of settler-colonialism, when kept outside of Aboriginal and Torres Strait Islander organisations incorporated under federal or under state government legislation (see also Vivian et al 2017; Gertz 2022).

Our second, interconnected purpose is to provide a Nation lens through which to understand the 'Indigenous Sector', to use Tim Rowes's (2005)³ seminal phrasing, on which there is a considerable body of literature (for e.g., Rowse 2004, 2005, 2012; Norman et al 2021; Page 2018; Howard-Wagner 2022a, 2022b; Sullivan 2010), and which remains one of the most significant vehicles for and proponents of Indigenous self-determination. As many in the literature have commented, the organisations and bodies that comprise the Indigenous Sector are highly variegated (Norman et al 2021; Howard-Wagner et al 2022a; Sullivan 2010; Rowse 2012). The result is a "program and funding maze" (Hudson 2016) of overlapping bodies, with often very different priorities and accountabilities (particularly between the First Nations communities the organisation serves and the settler government funder they respond to (Howard-Wagner et al 2022a)). We propose that the lens of Indigenous self-government and jurisdiction offers a new way to conceptualise the complexities of the Sector, and the varied roles that organisations within the Sector can and already do undertake. In doing so, this paper places INB literature and analysis of the Sector more fully in conversation with each other, an emerging tenet in the field (for e.g. Norman et al 2021; Howard-Wagner et al 2022a, 2022b).

A note on language

Although this paper is fundamentally concerned with making Indigenous self-government visible within the complex and overlapping matrix of the Indigenous Sector, we recognise that making such generalised claims about First Nations⁴ and their governance is inherently problematic. The point of INB is that it is local, Nation-based praxis, responsive to specific contexts (including both specific opportunities and specific settler-colonial oppressions) (Cornell 2015). As such, we do not include Indigenous sovereignties in Figure 1 nor do we seek to define them, even as we contend that Australia already is inherently a pluralist society (whether or not such pluralism is 'seen').⁵

We also recognise that the language of 'Indigenous government' and 'Indigenous nationhood' is not relevant to or used by all Aboriginal and Torres Strait Islander collectives. A further "risk", as Gertz (2022: 181) has suggested, in designating or assuming that First Nations governments and settler governments are alike, is "perpetuating the same practices and procedures whose purpose is to colonise and assimilate" First Nations within settler nation-state. In continuing to use this language, we seek to make visible the "scope of

³ Conference paper first delivered in 2004 then published in 2005.

⁴ In this article, we use the terms First Nations, Indigenous nations and Aboriginal and Torres Strait Islander nations interchangeably.

⁵ Despite emphatic rejection of First Nations sovereignty, throughout all areas of settler government, business and media are partnerships and engagements with First Nations communities and collectives. Such agreements implicitly recognise sovereignty (see Langton et al 2004).

authority that Indigenous self-governing peoples seek to exercise” (Vivian et al 2017: 225). In line with Gertz (2022), we do not wish to place Indigenous worldviews and politics into settler frames. As Hemming et al (2016) have shown, what Indigenous collectives may assert or aspire to – for example, to Speak as Country – can involve significant epistemological differences to Western understandings of ‘nation’ and ‘government’. While using this language, we thus maintain that First Nations can (and do) re-authorise and re-imagine these frameworks from their own cultural worldviews and practices, in ways that exceed settler understandings.

Relations between First Nations and Settler Jurisdictions

Figure 1: Jurisdictional Relations

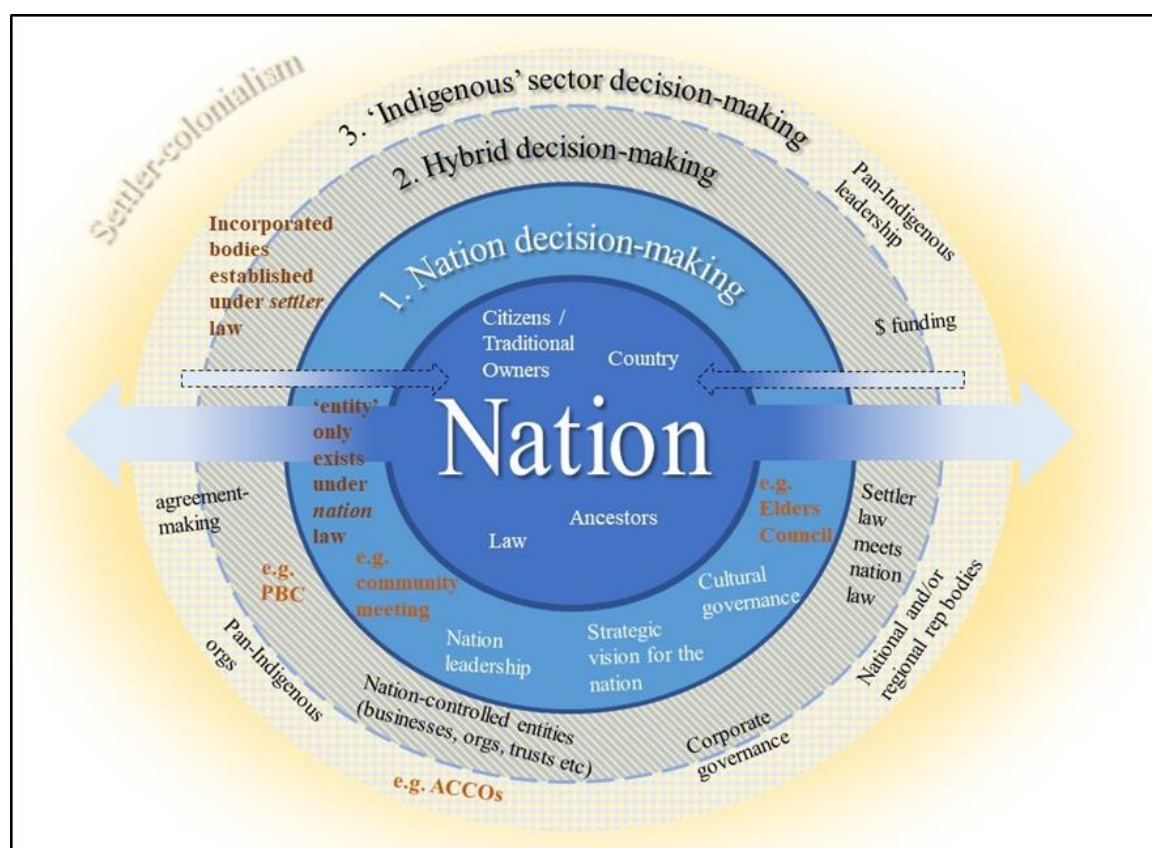


Figure 1 divides the Indigenous Sector into three distinct and overlapping zones of ‘exclusive’ and ‘shared’ decision-making that corresponds to areas that either remain under exclusive Indigenous Nation jurisdiction (both conceptually and in practice) or, due to settler-colonialism, are (whether assumed or in practice) currently shared or overlapping between First Nation and settler sovereigns. This includes one zone that is not connected to settler law (Zone 1: Nation Decision-Making), and the ‘hybrid’ zones that include incorporated bodies that interact explicitly with settler-colonial law and institutions (including Zone 2: Hybrid Decision-Making and Zone 3: ‘Indigenous’ Sector Decision-Making).

Two realities of the self-government landscape

Before analysing the three zones, we firstly discuss two constant realities of the self-government space. The first is collective Indigenous persistence, described in the diagram in the middle circle as ‘Nation’. The thick line surrounding this circle (and Zone 1, discussed below), indicates that this space is not subject to settler-colonial authority, as First Nations law emerges from its own source of authority, separate from the settler state (see Black 2011; Graham 1999; Moreton-Robinson 2015).

As we note above, the terms we use in Figure 1 are not intended to be prescriptive about the ‘content’ of Indigenous nationhood or sovereignty. Rather, INB literature emphasise the significance of *self-defined* and *self-determined* polities (that may or may not have been ‘recognised’ as ‘Traditional Owners’ in settler courts). In line with this, ‘who’ the Nation is may evolve:

Nation building is broader than looking at traditional pre-settlement nation groupings, but rather accounts for historic connections between people and place forged up until today. It differs from notions of “self-determination” or “self-management” which refer to the right or authority of Indigenous peoples to determine their own future. Instead, it refers to the doing of self-governance (Norman et al 2021, 10).

The active, responsive nature of First Nations is represented in Figure 1 through the arrows emerging from each Zone back into the Nation. The arrows emerging from the Nation similarly indicate the ways in which First Nations share jurisdiction with settler governments through the Indigenous sector, with varying degrees of ability to enforce their own decision-making and advance aspirations, and thus push outwards against settler-colonialism (following Norman et al 2021; Rigney et al in press). We discuss this further below.

As Gertz (2022), writes, the existence and strengthening of the Nation is the most significant balm against the effects of invasion and settler-colonialism on collective identity. In line with this, other INB research indicates that integral to initiating successful INB requires *identifying* as a Nation; i.e. with a conscious reflection on the ‘self’ implied in collective self-determination (Cornell 2000; Cornell 2015; Murray & Evans 2022). The difficulties of such work are immense. Nations must necessarily confront the “embedded” legacies of invasion and ongoing settler-colonial policy, including a pervasive “deficit view” of First Nations (Murray & Evans 2022: 171). As Murray and Evans have argued, key to processes of *Nation* identification are community engagement with “a deeper cultural meaning and understanding” and a “deeper cultural way of doing things” – “learning the Wiradjuri way from our elders” (Murray & Evans 2022: 176). Most Nations we work with assert that the central circle of Figure 1 – the space of being, of identity, of culture, and law – is their most significant resource, requiring constant effort and protection.

Of course, prior to invasion, all areas of interest to First Nations would have been under exclusive Nation jurisdiction (correspondingly, this diagram would have only included the blue circles). However, the second reality of the self-government landscape is settler-colonialism, an ongoing and responsive process to Indigenous existence and persistence (Veracini 2011). The logic of

settler-colonialism is to replace First Nations with settler-colonial society, with ongoing efforts to suppress Aboriginal and Torres Strait Islander nationhood “parasitically enmeshed” (Whittaker 2019) throughout settler institutions and social, political and cultural systems (see also Strakosch 2019). Settler-colonialism is represented in yellow in Figure 1, corresponding to the areas that settler governments have sought to exercise jurisdiction and authority in areas of interest to First Nations (Zones 2 and 3; which in turn comprise the Indigenous Sector). Even though First Nations have never ceded such authority – this assumption and exercise of jurisdiction has very real and ongoing impacts on First Nations’ self-government.

We turn now to this interplay of jurisdiction within the three zones, and the vehicles Nations may strategically utilise to action self-government. We use the term decision-making as a shorthand to describe the power to determine and exercise authority, starting with the ‘shared’ decision-making in Zone 3. In analysing the different ‘zones’ of decision-making, we do not seek to categorise all of the different types of bodies that currently exist within the Indigenous Sector. The examples we have included in Figure 1 are fixtures of the Australian socio-legal landscape, and are relevant to many of the Nations with which we work. However, how First Nations see and utilise different bodies – and, for example, which zone a body sits within – may differ from one Nation to the next. Further, like INB processes more generally, Nations’ uses of such will inevitably change and shift over time, corresponding to new circumstances (Cornell 2015). The examples we have suggested in each zone are therefore not prescriptive, but designed to describe the ways such bodies can be conceptualised and deployed from an INB perspective.

Zone 3: ‘Indigenous’ sector decision-making

This Zone refers to the decision-making shared between Aboriginal and Torres Strait Islander peoples and the settler state over areas of jurisdiction that are likely to affect both Indigenous and non-Indigenous populations in Australia (if in crucially different ways). ‘Indigenous’ organisations established at this level address a diverse range of issues broadly affecting Aboriginal and Torres Strait Islander individuals and communities, including, for example, health, disability, housing, education and schooling, teaching, employment, legal aid and generalised economic development. These organisations provide services that are, in the words of Rowse, “invaluable to Aboriginal and Torres Strait Islander communities”. Rowse (2012: 102-103) classifies benefits across four categories of “representation”, “title-holding”, “service-delivery” and “profit-making”.

Bodies at this zone (including, for example, Aboriginal Legal Services, or region-based Land Councils) largely make decisions within these specific sectors. Settler governments currently frame these issues as part of their own jurisdictional responsibilities and, in so doing, position Aboriginal and Torres Strait Islander peoples as a singular *Australian* ‘population’ group (following Rowse 2012). As Sullivan notes, the sector thus “delivers services that normally are the province of government agencies” (2010: 5; see also Howard-Wagner et al 2022a). However, in delivering services to Aboriginal and Torres Strait Islander peoples in culturally safe and specific ways, pan-Indigenous bodies at this level see some “norms” of Indigenous governance meet settler governance

(Rowse 2012: 102). Thus, such organisations cannot be simply understood as a component of settler government.

Within the self-government landscape, such bodies can play a significant role, providing advocacy, leadership and services in areas that – at least in the short term – Nations may not seek specific jurisdiction over. This is a highly significant role. Many of the Nations we work with report that engaging in INB is deeply difficult due to the ongoing and pressing socio-economic concerns of Nation citizens. Organisations that work to meet these needs make it easier for Nations to then undertake such work.

Sector-wide decision-making also necessarily requires pan-Indigenous political leadership and advocacy. Such advocacy can influence settler policy development and, as a result, assist Nation-level self-determination (see, for e.g. Australian Government 2021; Rigney et al 2022). In fact, it is within the ‘representative’ pan-Indigenous bodies established at this zone that we hear many stories of collaborative work that ultimately assists Indigenous Nations to nation-build. This can be as simple as such bodies providing more flexible grants to Nation-specific entities to enable disparate Nation citizens to come together strategically for their own, self-determined purposes (see, for e.g. Rigney et al in press). This zone can thus also provide a crucial space for pan-Indigenous and inter-nation dialogue between First Nations, where strategies for successful INB can be exchanged.⁶ There is currently research being undertaken into the national bodies established under settler policy that can best support sovereignty and self-determination, using the case study of ATSIC.⁷ It is for this reason that we also include pan-Indigenous peak bodies such as the Coalition of Peaks at this zone, which was the self-determined creation of a number of community-controlled service delivery organisations (Coalition of Peaks 2023).

Zone 2: Hybrid decision-making

Beyond assuming particular areas of responsibility for Indigenous ‘populations’, settler law has also enforced its own social-political systems, worldviews and forms of organising into areas that it (partly) acknowledges remain under the jurisdiction of First Nations, such as native title, ‘land rights’ and ‘heritage’ (see, e.g. Povinelli 2016). These are the moments in which Aboriginal populations are conceptualised, for particular purposes, as ‘peoples’ (Rowse 2012).

If Zone 3 sees settler law meeting some ‘norms’ of pan-Indigenous cultural governance, Zone 2 can thus be conceptualised as the zone in which settler law and policy first meets *Nation* law. The key difference between decision-making at Zone 2 and Zone 3 is that the decisions made at Zone 2 are

⁶ Our experience with Aboriginal and Torres Strait Islander nations is that dialogue and information exchange between nations can be crucial to INB development. Donna Murray and Alison Vivian have been involved in three ‘inter-nation summits’ held between First Nations in Australia. At these summits, held in 2012, 2015 and 2017 First Nations swapped strategies and stories for INB success and developed protocols for cross-nation collaboration and engagement. Nations involved reported that these conversations were highly significant to their later INB work.

⁷ Led by Larissa Behrendt, the ARC Discovery Project ‘Policy for Self-Determination: the Case Study of ATSIC’ (DP230100714) explores ATSIC to inform Indigenous policy-making and governance into the future.

relevant only to the specific Nation, rather than relating to a broader local, regional or pan-Indigenous constituency. This includes areas more obviously under specific Nation jurisdiction, such as management of Country and 'heritage', and the areas in which Nations have established Nation-specific organisations. As such, outsiders are likely to directly engage with these bodies when attempting to engage with specific Nations (particularly including native title representative bodies), as the bodies are recognised – if implicitly – as having authority for certain areas (Compton et al 2023).

More broadly, if First Nations are utilising Zone 1 (discussed below), Zone 2 can be conceptualised as including the vehicles that Nations can use to exercise their decisions and jurisdiction, whilst also responding to the requirements of settler law and policy. In this way, these vehicles can be conceptualised *not* as a quasi-settler government department, but an arm of the Indigenous Nation government. These bodies deliver Nation-specific services and also undertake foreign affairs roles, dealing directly with outsiders. The decision-making at this level is therefore necessarily hybrid, as entities have political (and social, cultural and legal) responsibilities to the First Nation as well as corporate and legal requirements to settler governments and other institutions.

Zone 1: Nation decision-making

This zone describes Nation decision-making when it is undertaken solely by the First Nation, without 'hybrid' input. This includes the continuing practices of lawmaking – socially, culturally and politically regulated existences – that exist amongst First Nations across the continent, and are likely rarely seen or understood by settler Australia (Black 2011; Moreton-Robinson 2015; Povinelli 2016). It also describes the instruments of self-government that Nations may (re)establish in order to achieve collective aspirations, whether these are continuations of traditional governance structures, revitalised, or newly established. Such bodies again may or may not be visible to settler law, dependant on the priorities of the collective. In line with Vivian et al (2017: 225):

In our usage, "Indigenous government" refers to overtly political institutions that represent Indigenous constituencies and not service delivery populations; that respond to a scope of activity set by the nation/governing body/citizens rather than by external parties; that are accountable to the nation/society/people/ community instead of external funders or directors of policy and programs alone; and that seek to engage with non-Indigenous governments on a government-to government basis rather than as stakeholders participating in a consultation.

This Zone is therefore *not* about the 'representative bodies' that settler governments may establish with (or force upon) First Nations, particularly in relation to Zone 2 areas of jurisdiction such as Country and heritage. Instead, Zone 1 is authorised by the Nation itself – further suggesting the significance of bolstering Nation identity and law (following Murray & Evans 2022). While, as we indicate in Figure 1, Zone 1 is connected to and necessarily influenced by Zones 2 and 3, it is not controlled by the bodies established at these zones.

Rather, Nation decision-making informs the actions of bodies established at Zones 2 and 3. Thus Zone 1 sits between the Nation – and identity, culture, epistemology – and the bodies that interact with, and to some degree must conform with, the realities of Australian settler-colonialism.

As we indicate in Figure 1, the structure or content of Zone 1 is not prescriptive. For some Nations, such decision-making may happen through a community meeting; for others, through a more formal coalition or committee; or again, through Elders Councils that sit above the bodies in other Zones, providing guidance and cultural governance. For other Nations, there may even be multiple bodies operating with each other at this Zone. The content and structure of this Zone may need to change, in response to changing external or internal circumstances (Cornell 2015).

Unlike Zones 2 and 3, we do not include money or funding at this level. Of course, traditional economies are ongoing within and amongst some First Nations, even as the encroachment of neoliberalism sees shifts take place (Altman 2007, 2010). Further, economic development can be crucial prefigurative INB work (see Norman 2021; Petray & Gertz 2018), while evidence from North America is clear that long-term, Indigenous self-government must be self-funded. However, we suggest that incorporating, for example, the delivery of programs and acceptance of funding, in Zones 2 and 3 rather than Zone 1 stresses that Zone 1 is primarily concerned with *political* responsibilities to the Indigenous Nation, rather than *corporate* responsibilities to external funders, groups or other outside bodies. This leaves the bodies at Zones 2 and 3 to interact directly with settler law and economies, under instruction from Zone 1.

Why separate Nation decision-making from the ‘Indigenous Sector’?

The Indigenous Sector emerged from the self-determined efforts of First Nations peoples, becoming entrenched in the settler legal-political landscape from the 1970s (Sullivan 2010: 1-2; Howard-Wagner et al 2022b). As it stands, the Sector is, as Rowse puts it, “essential to the representation and satisfaction of Indigenous wishes”. Without it (2004: 39):

Indigenous Australians would lack public policy recognition of their needs and aspirations; they would be invisible, as Indigenous people, within Australian society and they would be unable to make any demands, as Indigenous Australians, on Australian institutions.

In line with the breadth of political advocacy undertaken by organisations within the Sector since the 1960s, Aboriginal community-controlled organisations have always seen themselves as both “expressions” and agents of self-determination (Howard-Wagner et al 2022a: 2). Furthermore, as Norman et al (2021) have analysed, those involved in such organisations are often working for their communities across multiple organisations, and in sometimes voluntary capacities, in ways that appear to correspond to some INB processes.

As we describe above, we maintain that there are crucial roles for the myriad of bodies established in the Sector within First Nations’ INB work. Particularly considering Australia’s policy history (including, for example, ongoing settler refusal to recognise Aboriginal and Torres Strait Islander

Nations, and the long-standing relationships between settler-colonial governments and service delivery organisations), it is inevitable that bodies that undertake hybrid decision-making (that are also meeting the everyday and pressing needs of Aboriginal people) may become a typical configuration for Indigenous government, at least in the short- to medium-term. We are aware of many stories of Nations coming together through bodies established at Zone 2 (see Jorgensen et al 2023). In fact, paper authors have suggested elsewhere that Prescribed Body Corporates – a key Zone 2 body for many Nations – are a likely initial vehicle for collective decision-making, after Nations have gone through the arduous process of receiving a native title determination (an undertaking that so happens to correspond to many fundamental nation-building processes) (Compton et al 2023). However, in terms of Figure 1, we would classify the actual native title rights and interests determined by a settler court as sitting at the Nation itself (alongside the rights and interests *not* recognised). It is the *Nation* that has responsibility for and obligations to Country. The PBC, on the other hand, we would classify as sitting at Zone 2 (as the Nation is *not* the PBC, even if outsiders and sometimes insiders conflate the two (Vivian et al 2017)). Finally, we would classify the Nation decision-making to ensure the PBC is used strategically and, where possible, for INB ends, as existing at Zone 1. The Gugu Badhun Nation, for example, are currently utilising their PBC to implement decisions made by Gugu Badhun leadership. They have adapted their PBC to suit Nation cultural protocols (Petray & Gertz 2018; Gertz 2022). However, ultimately, Gugu Badhun Nation are working towards an institution of self-government that exists entirely outside of the remit of settler-colonialism (see Gertz 2022).

The reasons for separating Zone 1 from Zones 2 and 3 are both practical and theoretical. As we indicate in Figure 1, settler-colonialism is inescapable within the Indigenous Sector. Since the 1980s under “New Public Management” frameworks, the Sector has been “paradoxically overregulated” (Sullivan 2010, 7; Howard-Wagner et al 2022b; Hunt 2008). Deficit narratives are critical to its operation, where Indigenous peoples are positioned as “lacking agency and political capacity” and “thus requiring significant governmental intervention” (Page 2018: 191). This has continued under even refreshed Closing the Gap Agreements, as organisations “remain situated” by settler governments “within a service mentality” (Howard-Wagner et al 2022a: 1). First Nations organisations are pitted against each other, and against non-Indigenous organisations, for the same pools of funding (Sullivan 2010: 5; Page 2018: 189). As Gertz (2022: 190) puts it, rather than radical acceptance or supporting of self-government, the “government’s preferred version of self-determination is a model where Indigenous organisations implement government policy through service delivery contracts under the premise of being self-managed”.⁸

Bodies within the Sector therefore exist in a deeply “precarious” position (Howard-Wagner et al 2022b: 224). The stories common to nearly all Aboriginal and Torres Strait Islander bodies, whether established at Zone 2 or Zone 3,

⁸ This can be considered in line with initial Federal Government support for “self-determination” under the Whitlam administration. Such shifts in policy were not intended to bolster Indigenous self-government. Rather, and in line with previous assimilationist discourses, such policy envisaged greater Aboriginal participation within settler legal and political systems (Perheentupa 2022).

include the external institution attempting to: set the agenda; undermine Nation or cultural authority; create arduous requirements that make self-determined priorities difficult to achieve; or quickly change their own priorities (see Cornell 2013; Cornell & Kalt 2007; Rigney et al in press). This is regardless of the underlying intention of the funding institution, which may have been acting in good faith (see Povinelli 2002). The logic of settler-colonialism fundamentally permeates settler institutions, and thus shapes their encounters with First Nations in mercurial ways (Vivian and Halloran 2022; Strakosch 2019).

As we indicate in Figure 1, Zone 3 arguably sits most directly at the interface between settler-colonialism and First Nations peoples; even as Zone 3 bodies have also seen some of the most significant advocacy against settler-colonialism (e.g. Cronin 2021). Bodies sitting at this zone are unlikely to play a specific decision-making or self-governing role for a singular First Nation. Due to the nature of their remit and relevant 'service populations', the priorities of bodies established at Zone 3 are necessarily broader than the specific aspirations of a First Nation, speaking to concerns or priorities that Aboriginal people may hold more broadly (or, are specifically for pan-Aboriginal land holdings).⁹ We are not aware of any First Nation using a pan-Indigenous, sector organisation as the primary vehicle for their INB work.

We maintain that Zone 2 organisations are unlikely in the long term to be the most effective vehicle for Indigenous self-government. Although Zone 2 organisations are working in Nation-specific areas, critical questions remain about *who* such organisations are responsible to, and *where* they are receiving their mandates and instructions from. Having responsibilities to both settler law and Indigenous law means there is often "tension between their objectives" of fulfilling obligations to community and to funding arrangements (Howard-Wagner et al 2022b: 223). Beyond this, INB thinking asserts the necessity of separating Nation decision-making from implementation, and political from corporate governance. This is in order to ensure that First Nations' governments have accountability firstly to the Nation itself (Cornell & Kalt 2007: 9-11). Such distinctions cannot be easily maintained by Zone 2 organisations with vast corporate governance requirements under settler law.

Similarly, the 'foreign affairs' role – or the mechanism through which First Nations primarily engage with the settler state – is not straightforward for Zone 2 bodies. As Norman et al (2021: 10), has argued, the "extent of engagement" between community-controlled organisations and settler governments is varied, and is sometimes limited only to the "provision of grant funding". Further, and as we suggest above, this role risks conflating the community organisation with the Nation itself. As Gertz puts it, this can compromise the "political *voice of a nation* as opposed to a voice of a ... corporation" (2022: ix).

Finally, as both zone 2 and 3 bodies are incorporated under settler law, they are generally not the product of Indigenous choice over institutional form.

⁹ This is not to suggest that region-based Lands Councils, such as the Northern Territory Land Councils or the NSW Land Councils, cannot support INB, but rather that they may not be the strongest apparatus for advancing a nation's specific collective interests. As Norman et al (2021: 8-9) have discussed, within NSW, "LALCs are member based and therefore have some claim as representatives of Aboriginal voices. However, the interests and roles of LALCs do not always coincide with understandings of traditional connections to place, nor do they define connections to Country (other than in relation to joint management of National Parks)".

As Cornell & Kalt (2007) have argued, for self-government systems to be effective, they must have “cultural match” and legitimacy within the Nation (see also Cornell 2013). Gertz (2022: 181) takes this idea further, arguing that ultimately:

If Gugu Badhun do not deliberately design our own political apparatus, rationalities, and techniques of Gugu Badhun Government we risk perpetuating the same practices and procedures whose purpose is to colonise and assimilate Gugu Badhun into the Australian state. Gugu Badhun also have a cultural, moral, and ethical responsibility not to imitate the governmentality of the Australian state in our relationships with other Indigenous Nations.

Thus, for Nations to be able to strategically plan for their citizens and futures, and to act first for the Nation itself in ways that are culturally legitimate and do not replicate “neoliberal power arrangements” (Gertz 2022: 179), we argue that Zone 1 Nation decision-making is strongest when removed from organisations that also have obligations to settler law and funders. As we describe above, those Zone 2 and 3 bodies then become the “tools” that First Nations can use to engage outwards (Vivian et al 2017: 227).

To reiterate, the content of the decision-making institution Nations (re)establish at Zone 1 is not prescriptive. We are aware of instances where the membership between hybrid bodies at Zone 2 and Nation self-government bodies at Zone 1 are identical (which, in respect of ‘stealth governance’, we do not name). The significance of this separation – even if it is, at times, a nominal distinction – is to ensure that Nation decision-making is less affected when settler policy inevitably changes (Strakosch 2019), impacting the bodies established at Zones 2 and 3. Separating Zone 1 from Zones 2 and 3 is thus deeply practical. It enables Nations to more easily ask themselves: leaving aside what settler governments are doing, what are our goals? What are our strategies? And how do we best utilise the opportunities that are available to us for our *own* ends? (Jorgensen et al 2023).

Concluding thoughts

Figure 1 diagrammatically presents one way Nations can conceptualise self-government, and the particular vehicles and areas of jurisdiction that may be fruitful. Of course, and unlike Figure 1, the ‘lines’ of such jurisdiction are not clear cut. As Bignall (2014) suggests, both settler and Indigenous polities are spiky, overlapping, and in flux. In practice, jurisdictional divisions are similarly messy.

In line with this, the movement from Zones 1 through to 2 and 3 we have suggested is not necessarily linear. Following Norman et al (2021), who note that Aboriginal communities can change and shift the character and uses of organisations within the Indigenous Sector, the reality of Indigenous self-government within Australia is that the decision-making undertaken at Zones 2 and 3 can also be used to create Zone 1. There could also well be a time within Australia in which all zone 3 sector decision-making was transformed into Zone 2 decision-making. While “refreshed” Closing the Gap policy is still firmly

embedded within “service” mindset (Howard-Wagner et al 2022a: 1), outside of this, Nations may work to arrangements where, through agreement making or otherwise, service delivery is entirely under *their* jurisdiction and thus not subject to ‘hybrid’ input (see, for e.g. Gertz 2022).

In line with this, we recognise the somewhat problematic distinction we’ve made in repeating the assumption that ‘health’ or ‘legal’ services, for example, are issues (partly) shared with non-Indigenous Australians. The community-controlled sector is clear that such issues do not affect Aboriginal peoples in the same way as non-Indigenous people, and require culturally safe and responsive practice. Recent research has also highlighted that Indigenous health and wellbeing has specific political determinants, and thus INB both strengthens, and is informed by, Nation health (Rigney et al 2022).

A conceptual challenge for a future paper – one being currently addressed by paper author Donna Murray – is a roadmap for how Indigenous sector organisations (Zone 3) can conceive of themselves in relation to First Nations’ INB efforts (whether they are receiving instructions from a specific or not). Murray has designed a framework for how such bodies can respond to, and be informed by, Zone 1 cultural governance corresponding to the Country that the organisation exists upon.¹⁰ A different diagram could be made if we undertook analysis of the self-government landscape from such a perspective.

There is also one crucial area that we have not included in Figure 1 – namely, First Nations businesses. This was a deliberate choice, as Indigenous businesses are not frequently positioned as playing a self-government role for First Nations. The reality is that businesses play crucial and complex roles both within and outside of the Indigenous Sector, and can contribute significantly to INB (see, e.g., Petray & Gertz 2018). In fact, a recent project the authors of this paper have been involved with has highlighted how many First Nations citizens are using businesses to engage collectively and raise wealth for collective endeavours. They are doing so deliberately, in an attempt to avoid the CATSI Act and other state legislation regarding community organisations. Some Nations are also using environmental and other programs on their Country to both generate collective wealth and build internal governance (see, e.g. Langton et al 2014; Jarvis et al 2018; O’Neill et al 2021). A connected challenge for Nations (re)establishing Zone 1 decision-making will therefore be to create frameworks that clearly situate where specific businesses sit in relation to Nation decision-making, and whether this changes, for example, if businesses are situated on- or off- Country; are privately or collectively owned; or are owned by non-Nation citizens. Jon Altman’s work (e.g. 2007: 2010) on the meeting of customary, market and state economies in the ‘hybrid’ space will be highly useful.

This paper has sought to demonstrate how Nations may reconceptualise bodies established under settler law within the Indigenous Sector towards self-government. An implication of this argument, then, is to suggest why some Indigenous collectives are using their community organisations to highly fruitful ends, and why others are not (yet). This paper thus ultimately reinforces key INB research findings: that Indigenous Nations are most likely to be achieving their self-determined collective aspirations when they are: organising

¹⁰ On file with author.

collectively, in institutions of self-government that are both effective and have cultural legitimacy; strategically planning, for the long-term; creating excellent dispute resolution management, to ensure Nation-level disputes are managed internally (Cornell & Kalt 2007; Cornell 2015); and, particularly within Australia, building Nation-specific political literacy, cultural engagement and knowledge (Murray & Evans 2022; Gertz 2022).

Of course, actually undertaking this work to ‘best’ structure Nation decision-making around Zones 1-3 is deeply fraught. The practical difficulties First Nations face in implementing these real and hypothetical distinctions are immense. The nation-builders we work with emphasise how difficult it is to build collective capacity for self-government when the socio-economic needs of their citizens are not being met. This, they theorise, is the reason that the instruments of self-government often naturally arise from, or can become entangled with, Zones 2 and 3, as Nation leadership is focused on improving the pressing needs of their communities. This can be an important iterative process – whereby the wellbeing of citizens can strengthen INB, and INB can aid in building wellbeing (see Rigney et al 2022) – but separating the instruments of political decision-making from this work remains difficult. Further, using an INB approach does not mean that the needs of citizens will automatically be met, or that settler-colonialism, as an endlessly responsive reality, will stop its attempts to permeate the Nation and Zone 1. As Cornell (2013: 160) has found in regards to Native Nations in North America, INB “success – even modest success” means that both internal and external pressures on the Nation are likely to increase.

For some First Nations, the type of thinking we advocate for in this paper will be a hypothetical exercise. We regardless maintain that such hypothetical thinking is required for the sorts of collective aspirations many Nations articulate. In a post-Voice Referendum Australia, it is unclear whether any promised treaty negotiations will commence with the settler state.¹¹ However, if they do, they will inevitably see fundamental conversations between Aboriginal people and settler Australia take place about the allocation of jurisdiction. They are also likely to see such conversations take place between community-controlled organisations and settler governments, even if this changes the character of those conversations away from fundamental questions about sovereignty (see Gertz 2021). It is thus highly likely that Figure 1 will continue to be relevant. Separating the Indigenous Sector into such zones enables a clearer vision of (some of) the realities of Indigenous-settler relations in Australia, including the theoretical and actual areas of jurisdiction and institutions that First Nations may seek to exert decision-making authority through, and the potential INB roles for Indigenous Sector organisations.

In any case, we will utilise Figure 1 in our INB teaching going forward.

¹¹ The future of treaty negotiations in both NSW and Queensland have been cast into doubt, while the Victorian Opposition have withdrawn their support for negotiations in Victoria (Butler 2024; McGowan 2023; Kolovos & Ore 2024).

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