



## Aboriginal governance and its role in Business Development

*Speech to SEGRA 2014 - Connecting Matters*  
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Today we talk about closing the gap between Indigenous and non-Indigenous Australians in employment participation. But up until the 1970s there wasn't a gap at all. Employment is one of the few Closing the Gap measures where the position of Indigenous people was actually better 50 years ago.

Back then Indigenous people all worked, many in primary industries in remote and country regions. There was a gap but it wasn't in participation. It was in wages. Indigenous people worked for a pittance, for tea and damper or in return for being able to live on their own lands.

Big changes to economic participation by Indigenous people occurred in the late 1960s and early 1970s after changes to laws and government policy.

Firstly the laws were changed to mandate equal pay for Indigenous people. This was a significant win for Indigenous people but it had unintended consequences and there was no attempt to manage the transition. Indigenous people working in the pastoral and agricultural industries simply lost their jobs. The station owners lost their cheap source of labour and weren't willing or able to pay them full wages. This meant Indigenous people could no longer stay on their lands and they were forced into the towns where they could not get work.

Around the same time Indigenous people gained the right to receive government welfare. So those who lost their jobs became full time welfare recipients living away from their traditional lands on the fringes of cities and towns, in the former missions or other settlements. There they received housing and other services and welfare payments without having to do anything in return.

### About NyunggaBlack

NyunggaBlack provides strategic business advice drawing on broad networks and expertise to help clients solve problems and grow their businesses in specific sectors.

Our consulting services focus on Native Title, Employment and Mining and Energy and also on how clients can ensure their Reconciliation Action Plans deliver real outcomes as well as business growth.

NyunggaBlack also works in partnership with key clients to deliver managed service business opportunities for commercial and economic opportunities in Aboriginal communities and for Aboriginal & Torres Strait Islander people.

Indigenous elders coined the pejorative term “sit-down money” to describe this situation. These people had worked hard all their lives and found it demoralising and insulting to lose their jobs and to be deemed unable to make a valued contribution.

Today we see the unintended results of these ultimately failed government policies with whole communities totally reliant on government assistance or government jobs, inter-generational welfare dependence and chronic long-term unemployment.

The tenacity and drive that once characterised Indigenous people has been buried under the weight of government dependence and good intentions. I believe we can wake it up.

And for this to happen we need good governance.

By good governance I don't just mean ensuring the minutes are prepared and people aren't sticking their hand in the till. By good governance I mean a stable, representative government, a functioning bureaucracy, no systemic corruption, the rule of law and transparency of dealings and fair, certain and transparent systems for dispute resolution.

Good governance also requires conformity with global norms and best practice.

When you create “special” systems for Indigenous people in relation to aspects of community life that are not unique to that community, you weaken governance and impede Indigenous participation in the real economy.

Today I will talk about the opportunities and challenges for Indigenous participation in the real economy and outline my vision for establishing good governance in Indigenous communities.

*Employment is one of the few Closing the Gap measures where the position of Indigenous people was actually better 50 years ago. There was a gap but it wasn't in participation. It was in wages.*

Look around and it's very obvious that good governance is essential for sustainable economic development. Most countries with poor living standards fail one or more of these criteria.

Indigenous people are the most highly governed people in Australia. At every level of government there are additional structures for Indigenous people, on top of those that exist for the rest of Australia. The resulting system is mind boggling in its complexity.

Over-governance stifles autonomy and entrepreneurship and makes it nearly impossible to get anything done. Poor governance means that no-one will want to do anything in the first place.

The future of Indigenous communities and cultures depends on the creation of real economies in Indigenous communities and on Indigenous people participating in the real economy.

By a real economy I mean an economy that relies on commerce and private enterprise – not government activities - to survive and where people have real jobs. Too many Indigenous people don't participate in the real economy today. Too many of us have become conditioned to look for government for everything.

This is in a large part because we do not have good governance.

Those that want to break away from government dependency find it very difficult to cut through the layers of bureaucracy and the limitations that the existing "special" governance and land ownership structures create.

Everywhere you look in Indigenous affairs you find structures that work against profit making private enterprises and commercial activity.

For example, the Federal government allows the registration of Aboriginal and Torres Strait Islander Corporations. Until recently, ATSI Corporations had to be not for profit. Now, they can be set up with profits distributed to members but this is a recent development. The funding arrangements for ATSI Corporations are more heavily regulated.

There's nothing to stop an Indigenous Australian registering a regular Corporation but ATSI Corporations can be registered for free.

However, by law, Prescribed Bodies Corporate - which are established to hold and administer native title rights for the traditional owners - are required to be registered as ATSI Corporations.

I don't believe in special Indigenous Corporations. There is no need for racially based legislation. It creates complexity, additional compliance and over-governance. The Corporations Act already allows for a range of corporate structures, including not for profit companies without share capital.

By definition, a company that is only for Indigenous people cannot participate fully in the mainstream marketplace. For example, it can't be sold to a non-Indigenous person and its ability to raise capital is significantly constrained.

The Land Rights Act systems are also restrictive to commercial activity. Land Councils hold in some cases substantial assets – such as land or compensation for land dispossession. These assets belong to the traditional owners of that land yet there is no means by which the traditional owners can directly access or deal with those assets. Land Councils are statutory bodies.

Over many years these kinds of structures have added to the climate of Indigenous people looking to government for solutions and economic activity. It is very difficult for a statutory body or not-for-profit company to participate in private sector business activities.

For many years now governments have been moving away from owning and operating utilities and infrastructure and have sold off public assets. Governments believe this is the best thing for their constituents. Yet for Indigenous people the system assumes statutory bodies should own community assets for all time. Even if statutory bodies sell assets or profit from commercial activity there is no means by which the proceeds are distributed to Indigenous people.

I am one of a large and growing number of Indigenous people who recognize that the only way for Indigenous people to lift out of poverty is commercial and economic development.

Some years ago I established the Australian Indigenous Chamber of Commerce. The genesis for the Indigenous Chamber was the Rudd Government's 2020 Summit. There was a lot of discussion at the Summit about economic development and a lot of discussion about Indigenous affairs and closing the gap. Bizarrely, however, these topics were not part of the same discussion.

It was a stark illustration that commercial and economic development was being overlooked in efforts to close the gap, even though this is the only way to lift people out of poverty. The only way to close the gap.

The Australian Indigenous Chamber of Commerce advocates Indigenous prosperity through commerce and private enterprise.

Its founding principle is that Indigenous communities will not move from poverty to prosperity unless the conditions necessary for private enterprise and commerce to thrive exist in those communities. The Indigenous Chamber also believes that unlocking Indigenous communities to real and sustainable development and bringing all Indigenous people into full participation in the real economy will benefit the Australian economy as a whole.

The Indigenous Chamber has a Seven Point Reform Agenda for commercial activities, economic growth and prosperity for Indigenous people and communities. These seven building blocks are:

1. *Jobs:* Creation of real jobs as a result of commercial activities with Indigenous people being trained and job ready and on-boarded to a specific job at the end of their training.
2. *Regulatory reform:* Removing barriers to private asset ownership and commerce to create an environment for commercial and economic growth.
3. *Private ownership:* The economies of Indigenous communities are driven by private enterprise and asset ownership. Indigenous people participating fully in Australia's free market commercial system through real jobs in the non-government sector and through commercial activities.
4. *Investment:* Creating an environment that will enable and foster investment and flow of capital into Indigenous communities.
5. *Infrastructure:* Investment in social and physical infrastructure within Indigenous communities, including by the community members themselves.

6. *Economic sustainability:* Building structures and systems that will endure, enabling communities to thrive for the long term without disproportionate reliance on government or other external support.
7. *Desegregation:* Engagement by indigenous people and communities in the mainstream Australian and global economies.

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These principles are obvious to Australian business people and politicians when it comes to economic policy for Australia. For some Indigenous communities they are controversial even heretical.

However, I've started to see a shift in thinking over the past 10 years, a shift that is growing in pace.

Take land ownership for example. In 2004 I first publicly advocated for land reform and private land ownership on traditional lands through 99 year leases granted by the traditional owners. My mobile phone went berserk and during that week I received calls from several senior Indigenous leaders condemning my position.

At the National Native Title Conference the following year I gave a speech on the topic where I was booed and people made threats.

Today I know of many communities actively pushing for private land ownership and pressing governments and land councils to give the approvals necessary for this to happen and many more community members who are looking at how this could work in their communities.

Now when I speak about land ownership on traditional lands I don't create quite the same stir.

When we talk about investment in Indigenous communities we mean creating the conditions necessary for investment. These include private asset ownership and commercial leasing. They also include safe and stable communities and an educated workforce. Investors assessing whether to invest in an area look at whether the local area can supply a job ready workforce.

This is missing in those Indigenous communities, which have poor literacy and numeracy or inter-generational welfare dependence and no real work experience. That is why getting kids to school every day is the number 1 priority for Indigenous participation in the real economy.

If kids don't go to school they won't get educated. If they don't get educated they won't be job ready and will not be able to find work. And they will not participate in the real economy.

Of course, the quality of schools and the education they provide is critically important. But a school could be providing the best education available and it will make no difference if the kids don't attend. If Indigenous children are attending school every day, governments and education departments will be unable to ignore the resource needs of the school.

The new Federal government's Indigenous Advancement Strategy focuses on three areas – jobs, education and making communities safer. These three areas are the fundamental building blocks for commerce and business. If we make a difference in these three areas then we will make a difference to the future of Indigenous businesses.

The first thing that comes to mind when people talk about "Indigenous business" is businesses owned by Indigenous people. I think this misses the mark.



When I talk about Indigenous business I mean Indigenous people participating in the real economy through private sector business.

I'll use the example of my son. When he left school he trained as an electrician. He finished his apprenticeship he got a job. Eventually he went out on his own and built up a successful small business. In time someone offered to buy his business and amalgamate it into a national operation. He stayed on in the larger company and progressed to a management role.

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All through that time my son has been participating in the real economy with a real job. But there was only one time where he did this through an Indigenous owned business – the time when he was operating his own small business. This ceased to be an Indigenous owned business when he sold it and amalgamated it with a national operation.

This example illustrates that we need to be careful that our initiatives to encourage Indigenous businesses don't end up hindering Indigenous people from full participation in the real economy.

For example, if my son's small business had won contracts under programs that help Indigenous businesses, he could have lost those contracts after the business amalgamated and ceased to be Indigenous-owned.

If he had set up his business through an ATSI Corporation then he couldn't have sold the company in these circumstances and (until relatively recently) couldn't have realised the proceeds.

These restrictions don't help Indigenous business. It is a normal part of the business cycle to build up a business and then sell it. "Special" initiatives that assist Indigenous businesses need to be very careful they don't restrict Indigenous people from the normal business cycle and the opportunities it brings for growth and profit.

It's important for Indigenous people to be participating in all aspects of commerce and private enterprise – as employees, as business owners, as investors and as profit makers:

A company that employs a high percentage of Indigenous people is enabling Indigenous people to participate in the real economy through commerce and private enterprise. Whether or not it is majority Indigenous owned.

As does a partnership between traditional owners and an investor to develop a cattle station or a mining services company on traditional lands and which generates local employment and skills transfer. Even though the external investor shares in the returns and makes a profit.

As does an Indigenous business owner who brings in new investors to raise capital to enable that business to grow. Even though this dilutes the Indigenous ownership interest.

All of these are examples of Indigenous people participating in the real economy through private sector business and achieving economic prosperity through commerce and private enterprise.

And all of these scenarios should be open to Indigenous people. It is very important that the steps we take to create economies and promote Indigenous business, we don't fall back into the trap of imposing more limitations that work against commercial activity.

The Forrest Review's model for defining Indigenous businesses is centred around ownership, management and employment. It recommends 25% (not 51%) as the right percentage for minimum Indigenous ownership but also 25% Indigenous management.

Directionally I support this approach. It has been designed specifically to enable business growth and get the capital necessary to do that and also ensure that Indigenous people are not just passive shareholders, but active participants in the business.

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These things I have spoken about are necessary to lay the foundations and create the environment for Indigenous business to operate. I'd like to spend a bit of time now talking about the opportunities for Indigenous business in Australia in the context of the broader economic and policy shifts that are taking place in this country.

And also why getting governance right is essential for Indigenous Australians to take advantage of those opportunities.

Earlier this year Australia signed free trade agreements with Korea and Japan. It seems likely Australia will also secure a free trade agreement with China. These are major achievements for our country.



The Federal Government is also genuinely committed to developing Australia's North and it has commissioned the Northern Development Review to be completed this year.

Australia has vast tracts of undeveloped land and sea positioned right on the doorstep of the fastest growing region in the world. China is the largest economy in this region and the second largest economy in the world. It's also the fastest growing economy in the world. North West Australia faces into this region and sits in the same time zone.

Free trade agreements, the focus on Northern development, deregulation and economic reform create substantial opportunities for the undeveloped North of our country, particularly in the pastoral, mining and agricultural industries. There are also the secondary industries that flow from these developments – like roads, wharves, electricity grids, ports and other facilities and the utilities and technology infrastructure needed to operate those facilities.

Our vast geography has great unlocked potential. And for the traditional Indigenous owners of these lands this presents enormous opportunities. To date about 20% of the Australia land mass has been handed back to Indigenous people and Indigenous people have recognised cultural and other interests all across Australia.

New developments in remote and regional areas will need local populations that are job ready and educated. Australia's population is concentrated in the South, South West and South East of the country. The North and North West are sparsely populated. Indigenous people are disproportionately represented in these and other remote and regional areas. In 25 years Indigenous people will make up half the population of Northern Australia.

Our communities are also younger and growing faster than the rest of the Australian population. The population pyramid for Australia looks like most developed countries, with an aging population and largest distribution of population in the 30 to 55 aged groups.

The Indigenous population pyramid is shaped like the population pyramid of developing countries like Ghana or India - wide at the bottom (younger age groups) and tapering off at the top (older age groups).

To take advantage of these opportunities for Indigenous communities and traditional lands, there needs to be a regulatory framework that embraces agility wanting to do business. Good governance is critical to delivering this.

The current system is crippled by over-regulation and does not meet the criteria for good governance.

Most statutory Indigenous governance bodies are not truly representative and many are not transparent. The bureaucracy encasing Indigenous people is complex, inefficient and unwieldy. We have seen over the years examples of corruption taking hold in Indigenous governance bodies - I do not believe this is the norm but the perceived lack of transparency makes these bodies more vulnerable to it.

In Indigenous communities there are too many examples of a complete failure of the rule of law – with alcohol abuse, violence, sexual abuse of children, property crime and systemic truancy.

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A major deficiency in Indigenous governance frameworks is that too much is expected of the special statutory bodies with levels of authority in Indigenous communities, such as Land Councils, Regional Councils, Homeland Councils, Aboriginal Corporations and Indigenous Shire Councils. If you want to run a business on traditional lands you usually need permission from one or more of these special statutory bodies.

I was a councilor on Dubbo City Council for nearly 10 years. The Council's job was to ensure a clean, functioning community, encourage investment and provide municipal services. The Council did not run business operations unless it could demonstrate that it would do so better than anyone else and it certainly could not stop private operators from competing with it. The Council had to tender for any contracts it awarded. Council meetings were open to the public and dealings were transparent.

But many Indigenous statutory bodies are expected to be all things to all people, carrying out normal municipal functions as well as running commercial operations and owning all the land and housing. Seeking permission from the Council may mean seeking permission from the local government authority and the landowner and the monopoly service provider all in one. If they say "No", there is nowhere practically to go for review. This wasn't the case for Dubbo City Council and it shouldn't be the case for these bodies either.

I don't believe that we need special Indigenous bodies to handle things like municipal services, commerce and service delivery on traditional lands when these are common features of every community in Australia. We should have Local Shire Councils that are part of the regular local government system performing these municipal functions. They can perform the services just as effectively, if not more so, as an agency established under some special statute.

At the same time a Local Shire Council performing normal municipal services should not be performing other special functions in Indigenous communities like owning all the land or housing or running all the commercial services.

What I am really talking about is normalising Indigenous governance for the aspects of community life that aren't unique to Indigenous communities.

Special governance is only relevant is for those unique matters, such as the use of traditional lands, native title rights, culture, heritage and language. And for that special governance there should be one governance body for each traditional nation.

At the moment engaging with traditional owners and Indigenous communities in relation to these unique matters is riddled with unpredictability and uncertainty.

Nobody can ever be certain whether they are dealing with the right group of people, the people who truly speak for the traditional owners or community.

The multiple different statutory bodies with authority in Indigenous communities have substantial and sometimes overlapping "gatekeeper" power over traditional lands and preservation of cultural rights. There are also multiple systems of Indigenous land recognition and can be competing claims under different legal avenues.

Most of these statutory bodies aren't aligned to the traditional language groups or nations. This creates confusion as to who actually represents the traditional owners.

Companies wanting to do business in an area can go "forum shopping" or attempt to bypass the bodies altogether by putting ads in the paper calling for community members to attend meetings.

Interest groups can find individuals who oppose a development and can claim they represent a particular group.

Commercial negotiations become protracted or disintegrate with arguments as to who speaks for the nation and who speaks for others. Usually it's Indigenous people who lose out.

Negotiations may become so protracted that the development goes ahead without traditional owners realising any benefits. Or benefits that have been agreed are lost if a competing claim blocks the development.

There will always be differing opinion within any group of people. You will never achieve 100% agreement amongst traditional owners or any community. Therefore you need a clear governance structure that has both legitimacy within the traditional nations and the authority to make final decisions which provide certainty.

Governments in Australia make decisions every day that some Australian citizens do not agree with. But this country has an established governance system based on Australia's laws and traditions that all Australians are subject to. This gives those government decisions legitimacy and therefore certainty.

What I have proposed for Indigenous communities is that there be one governance body - and one governance body only - representing each Indigenous nation on matters uniquely relevant to that nation, such as the use of traditional lands, native title rights, community assets, culture, heritage and language. Only members of a nation should be involved in its governance system using an objective and transparent test for identifying them based around descent.

Finally it is a no-brainer that all governing authorities and statutory bodies in Indigenous communities – be they mainstream or special - should have transparent operations like other arms of local government and with open meetings, probity and Freedom of Information, proper record-keeping and enforcement of compliance and probity requirements based on the best practice global norms.

Also their officeholders must meet character requirements for public office and be appointed based on appropriate criteria, which may be a merit based appointment or appointment by representative elections.

People should not put into a position of authority in these bodies because of their position or seniority within a clan or because they are an elder. Recognising authority or seniority based on kinship systems or clan hierarchies is fine for traditional and ceremonial purposes but not for the operation of governing authorities, organisations and statutory bodies.

*What I am really talking about is normalising Indigenous governance for the aspects of community life that aren't unique to Indigenous communities.*

Clans are essentially families and kinship systems are about family relationships. In traditional societies there was no real distinction between civic and family life – they were one and the same. That is not the case today. Relying on family relationships is not good governance for public office. The English word for it is nepotism.

In every community I visit I meet leaders and community members who want to take charge of their own futures and who understand that to do that their community needs to be sustainable and not reliant on government and government activity to survive.

I am seeing a groundswell of momentum coming from the communities themselves. They are sick and tired of governments a long way away who don't understand what is going on and whose repeated efforts to help too often result in waste and mismanagement on the ground.

We often hear that these problems will be solved if Indigenous communities can control programs and government spend. This is not a magic solution. As long as government is paying the bills it will be in control, regardless of what notional controls are handed to community. What government gives, government can take away. We saw how this can happen during the Northern Territory intervention.

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Indigenous communities will not be truly empowered unless and until they have real sustainable economies that are no more tied to government than the rest of Australia. Indigenous community leaders know that breaking away from government dependency and creating real economies is about more than lifting people out of poverty.

It's also about preserving culture and having a strong community where culture can thrive. The forces that have weakened Indigenous communities and created patterns of dependence also weaken Indigenous culture.

I have lost count of the number of elders and community leaders who have told me that they fear that their culture and values – which are founded on independence and empowerment – are slowly slipping away and being replaced by a culture of dependence and disenfranchisement.

For Indigenous businesses to thrive in the Australian and global economies, our communities and systems also have to liberalise both within our own communities and in our dealings with others. I believe Indigenous communities can make this transformation and build a future with real economies supporting thriving, prosperous individuals and communities.

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*Highly respected and influential businessman, political strategist and advocate for empowering Australia's First People to build a sustained economy and to create business opportunities, Warren's life and career have been shaped by a personal commitment to the Australian and Australia's First Peoples' communities. More than 26 years' experience working in the public, private and community sectors. Nyunggai Warren Mundine is a member of the Bundjalung nation of northern NSW and a descendent of Gumbaynggirr, Yuin and Irish peoples.*