



THE MCKELL INSTITUTE

LITERATURE REVIEW
OF APPROACHES TO
ABORIGINAL AFFAIRS
POLICIES & CASE STUDY
OF OCHRE
DEVELOPMENT
& IMPLEMENTATION

AUGUST 2017

ABOUT THE MCKELL INSTITUTE

The McKell Institute is an independent, not-for-profit, public policy institute dedicated to developing practical policy ideas and contributing to public debate.

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This report has been commissioned by Aboriginal Affairs, NSW.

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CONTENTS

OVERVIEW	6
PART 1 – LITERATURE REVIEW OF APPROACHES TO ABORIGINAL AFFAIRS POLICY IN NEW SOUTH WALES	7
Introduction.....	7
Section 1: A history of Aboriginal policy and ideological approaches to Aboriginal affairs in New South Wales	8
The ideological approach to Aboriginal policy prior to federation.....	8
1970s.....	10
1980s.....	11
1990s.....	12
2000s.....	12
2010s.....	13
The development of OCHRE.....	13
The influence of the Commonwealth on Aboriginal policy in New South Wales.....	15
Section 2: Policy co-production in other jurisdictions	17
South Australia.....	18
Relevant international experiences.....	19

PART 2 – CASE STUDY: THE DEVELOPMENT AND IMPLEMENTATION OF OCHRE	23
Background.....	23
Approach.....	23
Findings and discussion.....	25
Challenges.....	26
Improvements and reflections.....	31
CONCLUSION	32
REFERENCES	33
APPENDIX A – QUALITATIVE INTERVIEW	34
INTERVIEW QUESTIONS	34
APPENDIX B – QUANTITATIVE SURVEY QUESTIONS AND RESULTS	36

OVERVIEW

In March 2017, Aboriginal Affairs NSW commissioned the McKell Institute to conduct a literature review of the history of Aboriginal policy development in New South Wales, to identify the shift in policy development and implementation strategies over time, and to identify the challenges that have arisen for public servants charged with implementing *OCHRE* (Opportunity, Choice, Healing, Responsibility, Empowerment), a policy framework that exemplifies the Government's shift towards the co-production of Aboriginal policy with the communities affected.

This report has two components. The first is a literature review assessing the history of New South Wales Aboriginal policy, highlighting key shifts in policy over time, and describing the transformation of ideology shaping Aboriginal policy in New South Wales since Federation. It describes how the policy approaches of the New South Wales Government towards improving the lives of Aboriginal Australians have changed considerably, particularly since the 1967 referendum that changed the status of Aboriginal Australians. From that period, the assimilationist approaches of Governments in New South Wales, and Australia more broadly, gradually began to change, being replaced with the contemporary approach to Aboriginal policy defined by its pursuit of self-determination and co-production of policy with Aboriginal communities themselves. The literature review also explores other examples of co-produced policy in other Australian and international jurisdictions, determining that *OCHRE* is unique in its scale and extent of co-production when compared with other initiatives.

The second component is a case study identifying the challenges for public servants associated with the development and implementation of a policy framework that, as the literature review notes, has no 'road map' to follow. Through a series of interviews and a quantitative survey with senior public servants involved with the development and implementation of the policy, the findings were established. *OCHRE* is the first attempt at the genuine co-production of a

statewide Aboriginal policy. While its terms of reference are narrower than previous policies, *OCHRE* is nonetheless an ambitious initiative with a broad scope and high aims. Participants in this study generally believed that *OCHRE* was well placed to continue advancing the interests of Aboriginal people in New South Wales, and that it was meeting its objectives. However, several challenges associated with the implementation of such a notable shift in policy are identified, particularly the challenges associated with implementing the program quickly, and navigating *OCHRE's* limited resourcing, both financially and in terms of individuals working on the policy's implementation.

This study finds that *OCHRE's* development and implementation was highly unique and a notable break from the past, representing the transition from paternalistic approaches to Aboriginal affairs policy to a truly consultative and collaborative approach. The core pillars of *OCHRE* were developed through a robust consultation process that involved almost 3000 members of the Aboriginal community. The thorough consultation process led to a policy framework that the Aboriginal community felt some ownership of and demonstrated the New South Wales Government's commitment to the co-production of policy with Aboriginal communities. However, while the framework remains robust, its unique nature meant that implementing the policy has been challenging for those involved. This study identifies those challenges.

PART 1

LITERATURE REVIEW OF APPROACHES TO ABORIGINAL AFFAIRS POLICY IN NEW SOUTH WALES

Introduction

The following literature review has two aims. First, it offers a history of Aboriginal policy and ideological approaches influencing Aboriginal policy in New South Wales. It examines the evolution of Aboriginal affairs policy in the state since federation, acknowledging the history of egregious policy interventions in the first half of the twentieth century, as well as the lack of success in more contemporary policy approaches in the post 1967 referendum era before describing the contemporary policy framework. This section of the literature review also examines the shifting ideological approach of the New South Wales Government in determining policy relating Aboriginal affairs. It finds that contemporary policy (including *OCHRE*) is heavily influenced by the concept of self-determination in Aboriginal communities, as well as the notion of 'co-production', a 'type of policy generation and implementation process where actors outside of the Government apparatus are involved in creation of policy instead of only its implementation' (Belanger & Walker, 2009). Secondly, this literature review explores examples of co-production in other jurisdictions, including South Australia, Canada and New Zealand. It finds that *OCHRE* is highly unique in the scale and ambition of its co-production approach. While the theoretical foundations of co-production have been established since at least the 1980s, few jurisdictions have incorporated co-production in any significant way in the design of Aboriginal policy until New South Wales' Two Ways Together in 2003, and *OCHRE* in 2013. The examples cited in this study demonstrate policies that incorporate some element of co-production, but not to the extent that *OCHRE* incorporated in its design and ongoing implementation.

SECTION 1:

A history of Aboriginal policy and ideological approaches to Aboriginal affairs in New South Wales

The following section reviews the major milestones in New South Wales' Aboriginal policy since federation and describes the ideological shifts guiding policy development since federation. It describes the history of Aboriginal-related policy in New South Wales, noting Governmental failure to ensure the protection, and advance the interests, of Aboriginal Australians (Altman, 2000; Bielefeld & Altman, 2015), particularly in the first six decades after federation in 1901. After the 1967 citizenship referendum, Aboriginal policy in New South Wales and Australia moved substantially forward, gradually adopting the principles of self-determination and co-production of Aboriginal policy that define contemporary Aboriginal policy in New South Wales.

The ideological approach to Aboriginal policy prior to federation

Policy towards Aboriginals in New South Wales in the first century after colonisation was characterised by its brutality, ignorance of Aboriginal culture, and disregard for the welfare of Aboriginal peoples. Approaches in New South Wales pre-federation were founded on an ideology that treated Aboriginal peoples as 'barbarous' that required civilising (Godfrey, 1995). Throughout the nineteenth century, the institutionalization of Aboriginal peoples became common, and the foundations were laid for the governmental approaches to Aboriginal peoples that would characterize approaches through the first half of the 20th century in New South Wales and Australia more broadly. The Aborigines Protection Board was one such institution. Founded in 1883, it served as a

body that advocated 'protecting full-blooded Aborigines until their race died away by physically separating them from the rest of society, while seeking the assimilation of mixed race children into the 'superior' white society' (Godfrey, 1995). The Aborigines Protection Board would remain essentially in its original form until 1940, when it changed its title to the Aborigines Welfare Board, which continued until 1969.

ASSIMILATIONIST POLICIES UNTIL THE 1970S

Aboriginal policy in the first half-century after federation in 1901 continued to focus on the assimilationist foundations formalised in the latter stages on the nineteenth century. Jurisdiction over the welfare of Aboriginal peoples in the state was held by the Aborigine Protection Board, which gained legal power in 1909 (changing its name to the Aborigine Welfare Board in 1940) (ALRC, 2017). The Aborigine Protection Board was central in overseeing the policy of the removal of Aboriginal children from communities across the state. The intent of assimilation was the removal of 'pure blood' Aboriginals from Australian society, with the hope that the Aboriginal population would eventually be indistinguishable from the rest of the population (ALRC, 2017).

In 1909, the *Aborigines Protection Act 1909 (NSW)* entered into law, enabling authorities to remove Aboriginal children from their families should authorities consider them 'neglected'. In the years following the passage of the *Aborigines Protection Act 1909*, staunch assimilationists lobbied the New South Wales Government to such an extent that they 'convinced the public

and the Parliament that Aboriginal parenting was by definition negligent' (Godfrey, 1995). This led to a significant escalation in the number of children being extracted from Aboriginal communities and placed in Government run institutions, with the legislation permitting this scenario remaining in force until 1939. These policies implemented by the New South Wales government led to what is now known as 'the stolen generations'. Read (2014) estimated that these policies resulted in the removal of at least 5625 children across New South Wales, with similar policies around the nation seeing up to 50,000 children removed from their families.

In these first decades of the twentieth century, Aboriginal policy was administered by the states, with the Commonwealth demonstrating little influence over how the states pursued Aboriginal policy. A Premiers Conference in 1936 determined that while policy ultimately would be shaped by the states, a national dialogue led by the Commonwealth would also be important (Australian Law Reform Commission, 2017). In 1937, a national assimilationist goal was agreed to (but not formally adopted), stating that the objective of both the Commonwealth and the States should be 'the absorption of at least the natives of Aboriginal origin but not of the full blood' (Australian Law Reform Commission, 2017). In 1950, a formal policy of assimilation was adopted by both the Commonwealth and State governments, with policy relating to the assimilationist objective coming into effect throughout that decade. While founded on assimilationist principals that aimed ultimately towards ending Aboriginal society, states in the 1950s began to offer greater expenditure on housing, healthcare, education and training

programs that saw the decline in Aboriginal populations across the country stall. The 1960s saw the gradual adoption of reforms that granted Aboriginal people across Australia more rights, including access to social security in 1960, the granting of suffrage rights in 1962, through referendum in 1967, the formal inclusion of Aboriginal peoples as citizens of Australia and the entitlement to full award wages in 1968. The 1967 referendum was a watershed moment in the treatment of Aboriginal peoples in Australia. While it certainly did not overcome the fundamental hardships instigated through the policies of past Australian governments, it signaled a growing popular respect for the legitimacy of indigenous peoples in Australia and their place within Australian society. Additionally, while the referendum was an important milestone, it is often confused with the extension of rights throughout the 1960s. Simply, the referendum was only a stepping stone on the path towards the greater extension of rights to Aboriginal peoples in Australia. What the referendum did change in terms of policy, however, was the role of the Commonwealth Government in Aboriginal affairs. Prior to the referendum, state governments had sole jurisdiction over Aboriginal affairs. John Gardiner-Garden (1998), argues that the referendum 'cleared the way for some form of Commonwealth involvement in an area which had hitherto been the sole, and would hereafter remain primarily, the responsibility of the states.' This allowed the Commonwealth to create its own Office of Aboriginal Affairs (later the Department of Aboriginal Affairs in 1972) that for the first time saw significant Commonwealth involvement in the welfare of Aboriginal peoples throughout Australia.

POST REFERENDUM: A FOCUS ON INTEGRATION

The assimilationist policies that defined both New South Wales and Commonwealth approaches to Aboriginal affairs in the pre-1967 Referendum era gave way to policies focusing on 'integration' in the 1970s. While the idea of 'integration' from a contemporary perspective is not illustrative of an entirely respectful approach to Aboriginal policy, it did demonstrate a marked shift from the staunch ideology of assimilation that believed in the destruction of Aboriginal culture, not the preservation of it. Those advocating integration throughout the assimilationist era did so as a criticism of the assimilationists, and the term 'integration' became synonymous with those who had some respect for the traditions and customs in Aboriginal societies (Australian Law Reform Commission, 2017). The integrationists 'recognised the value of Aboriginal culture and the right of Aboriginals to retain their languages and customs and maintain their own distinctive communities' (Australian Law Reform Commission, 2017) and sought to shape policy accordingly.

1970s

The decade that followed the 1967 Referendum saw notable advances in the ways in which Aboriginal people were treated by public policy makers in New South Wales and throughout Australia, as well as the emergence of community-led initiatives aimed at advancing the interests of Aboriginal Australians. Perhaps most well known of these community-led initiatives was the formation of the Aboriginal Tent Embassy. In 1972, on Australia Day, four Aboriginal activists established the Tent Embassy on the lawns near Canberra's Parliament House. The protest was aimed towards elevating the rights of Aboriginal people forefront of public discourse by highlighting the need for reformation and reconciliation with the Aboriginal community. The Tent Embassy was representative of a new era of community activism that aimed to impact policy decisions at both a state and federal levels in order to improve the circumstances to which Aboriginal Australians were subject. This shift was

exemplified in New South Wales by the formation of the Aboriginal Lands Trust of New South Wales (1974) and later the New South Wales Aboriginal Land Council (NSWALC), which was a non-statutory, non-government funded entity founded in 1977 (NSALC, 2017). The NSWALC was established in order to lobby Australian governments to address the issue of land rights for Aboriginal communities across New South Wales. The NSWALC emerged as a result of a three-day meeting at the Black Theatre in Sydney's suburb of Redfern in October 1977, calling for 'the full scale recognition of Aboriginal rights to land, resolved to form the New South Wales Aboriginal Land Council, and called for the abolition of the Aboriginal Lands Trust' (NSWALC, 2017).

TOWARDS SELF-DETERMINATION

Throughout the 1970s, there was increasing support amongst policy makers and community advocates for greater self-determination for Aboriginal communities. The term 'self-determination' is 'subject to extremely varied interpretations' (Sanders, 1993, 13). Self-determination in international law usually refers to the 'right of people to determine their own status within or as a separate nation state' (Sanders, 1993, 13). Considering the disparate and diverse nature of Australia's Aboriginal community, however, achieving this simplistic international definition is challenging. Rather, many advocates for self-determination in the Australian context relate the principal to the idea that there should be 'Aboriginal participation in important decision-making processes within [Australia]' (Sanders, 1993, 13). In New South Wales, this move towards self-determination was exemplified by such initiatives as the Aboriginal Lands Trust of New South Wales (ALTNSW), which was in operation from 1974 to 1983. The ALTNSW emerged as a result of the 1969 *Aborigines Act (NSW)* that sought the abolition of the Aborigines Welfare Board (the body that had overseen assimilationist policies since federation) and the ownership of Aboriginal lands was transferred to the Minister of the Department of Child and Social Welfare (Norman, 2012).

THE KEANE REPORT

In 1978, the year after the formation of the non-statutory NSWALC, the New South Wales 'Parliamentary Select Committee upon Aborigines', chaired by the Member for Woronora Maurice Keane MP launched an inquiry into the welfare of Aboriginal people in New South Wales. The committee set out to inquire about 'the causes of socio-economic disadvantages of Aboriginal people, the effectiveness of Commonwealth/State arrangements in Aboriginal Affairs, and land rights for Aboriginal people in NSW' (NSWALC, 2017).

Significant debates were also occurring in the late 1970's at a Federal level. In April 1979, the National Aboriginal Conference (NAC) campaigned for a treaty between Aboriginal people and the Australian state. This campaign was adopted by the Aboriginal Treaty Committee and they proposed the protection of identity, languages, law and culture; the restoration and rights to land; the compensation for loss and damage to traditional lands and the rights of Aboriginals to control their own affairs (NSWALC, 2017), and was representative of a burgeoning movement advocating for the improvement of the welfare of Aboriginal peoples across New South Wales and the nation.

1980s

The first of two components of the Keane Report was released in August, 1980. This primary release focused on land rights and the protection of 'sacred and significant sites' (NSWALC, 2017). A second report, focusing on overcoming the socio-economic disadvantages faced by Aboriginal peoples, as well as the challenges associated with intergovernmental approaches to Aboriginal affairs policy was released in 1981. The committee's findings were highly influential in shaping the direction of Aboriginal affairs policy in New South Wales. It found that the granting of land rights was of 'paramount importance' to Aboriginal people in New South Wales, furthered

the idea that the granting of such land rights should be considered an 'act of elementary justice' for the past policies that aimed to destroy Aboriginal communities, culture and society, and noted the failure of 'assimilationist' approaches to Aboriginal policy making by previous governments (Keane, 1981).

The Keane Report was received by the Wran Labor Government, which acted on its recommendations by legislating a series of major policies throughout the 1980s. The first major act by the NSW Government was to establish a Ministry of Aboriginal Affairs in 1981. This new ministry would oversee reform of Aboriginal policy in the state. In 1982, the Government then commissioned a 'Green Paper', which included a draft version of what would become the *Aboriginal Land Rights Act*, which was passed on June 10 1983.

One of the significant components of this legislation was the Governmental funding for the New South Wales Aboriginal Land Council. The NSWALC, now a statutory body, was the first formal deliberative body consisting of members of the Aboriginal community that aimed to advise the Government on reform that aimed to advance the interests of Aboriginal communities in the state.

The *Aboriginal Land Rights Act* of 1983 was extremely significant not only in the history of New South Wales' approach to Aboriginal affairs, but also nationally, as for the first time an Australian Government had passed legislation that formally recognised the prior ownership of the land by Aboriginal peoples and the importance this reality had in improving the welfare of Aboriginal peoples. In 1989,

Charles Perkins, an Aboriginal leader and Permanent Secretary of the Commonwealth Department of Aboriginal Affairs, mainstreamed the notion of self-determination for Aboriginal peoples, and pushed for a reorganisation of Aboriginal affairs nationally. In a lecture in 1990, he argued that:

The time has come for our people to break out of this unworthy, enforced western dreamtime and charter a new course, not only for our people, and particularly for our children, but for our nation. We must throw off the yoke of welfare and the soul destroying concept of welfare and the subsequent dependency syndrome. It is destroying us and will continually do so ... We are running out of time **(Perkins, 1990).**

The 1980s reforms, based largely on the recommendations in the Keane Report (1980-81) continued to embrace the idea of self-determination in New South Wales' Aboriginal affairs policy. The creation of the New South Wales Department of Aboriginal Affairs in 1981 and the *Aboriginal Land Rights Act 1983 (NSW)* demonstrated the increasing importance of Aboriginal policy to the New South Wales Government. Perkins (1990) emphasised the need for self-determination in a lecture to the University of New England, helping to mainstream the notion of self-management amongst Aboriginal peoples in Australia. Major national developments in Aboriginal affairs throughout the 1990s, particularly the *Mabo* High Court Ruling (Amankwah, 1994), the Royal Commission into Aboriginal Deaths in Custody and *Bringing Them Home*, a Commonwealth report into the stolen generations. These major events furthered the cause of Aboriginal reform in Australia and prompted state governments to further work with Aboriginal communities to advance their interests.

1990s

The 1990s saw a significant change in the Commonwealth's approach to Aboriginal affairs that in turn affected future policy of the New South Wales government. Throughout the decade, significant developments in Aboriginal affairs occurred at a national level. In 1991, the Royal Commission into Aboriginal Deaths

in Custody delivered its highly critical and influential report and the Commonwealth passed the *Council for Aboriginal Reconciliation Act* establishing a process towards reconciliation. In 1992, the High Court handed down the aforementioned *Mabo* judgement which led to the possibility of Aboriginal Australians gaining rights to lands that had survived colonization (Short 2003). In 1993, Prime Minister Keating delivered his famed Redfern address, and in 1997, the Commonwealth's *Bringing Them Home* report acknowledged in detail, from a national perspective, the devastation wrought by assimilationist policies that led to the stolen generations in New South Wales in other jurisdictions (Australian Human Rights Commission, 2008). These significant developments at a national level in turn placed Aboriginal affairs at the forefront of the public consciousness. The Premier of New South Wales, Hon. Bob Carr, in 1997, in response to the *Bringing Them Home* report 'apologised unreservedly' for the Government of New South Wales role in 'enacting laws and endorsing policies which caused 'profound loss and grief' to the Aboriginal peoples of New South Wales (Australian Human Rights Commission, 2008).

2000s

In 2003, the NSW Government adopted the *Two Ways Together* Partnership between the Aboriginal people and the Government in order to create an improved economic, social, cultural and emotional lifestyle to benefit the Aboriginal community (Aboriginal Affairs, 2013). This plan was significant because it was the first time that all the NSW government agencies were coordinating together, and consulting closely with communities, to enhance the lives of the Aboriginal community. This was essential in ensuring that Aboriginal people have a strong say in what happens to their communities. The plan identified two key initiatives: *making services work and new ways of doing business with Aboriginal people*. Under these initiatives, specific policies were commissioned and an annual audit published to report on progress against the key

performance indicators established in the policy document. *Two Ways Together's* recognition that success in Aboriginal policy required the direct participation of Aboriginal people was a significant step forward in shifting towards self-determination for New South Wales' Aboriginal people. Although the NSW Auditor criticised *Two Ways Together* for its ultimate inability to meet the targets it sought to achieve, the process of collaboration with the Aboriginal community was an important shifting the ideological focus of the New South Wales Government's approach to Aboriginal policy.

2010s

In 2011, the NSW Auditor-General investigated the performance of *Two Ways Together* and found that 'to date, the *Two Ways Together* Plan has not delivered the improvements in overall outcomes for Aboriginal people that was intended' (NSW Auditor-General, 2011).

While the intentions of *Two Ways Together* demonstrated an important evolution in NSW Aboriginal policy, its inability to deliver the desired outcomes prompted the incoming O'Farrell Government and incoming Minister for Aboriginal Affairs Victor Dominello, MP, to re-examine the policy area and create a new program in conjunction with Aboriginal communities across the state.

In August 2011, the Government of NSW created the Ministerial Taskforce on Aboriginal Affairs and tasked it with providing advice on reformation within education, employment, service delivery and accountability among policy directives in the Aboriginal community. The NSW Government indicated its strong commitment to bringing the voice of Aboriginal people to the core of government action.

The findings of the Ministerial Taskforce on Aboriginal Affairs led to the development of *OCHRE*: a policy initiative focused on Opportunity, Choice, Healing, Responsibility and Empowerment (NSW Agency of Aboriginal Affairs, 2012).

OCHRE (2012) built upon the principle of self-determination advanced in *Two Ways Together* by advancing self-management principals even further, and pursuing genuine co-production with the Aboriginal community during the design and implementation phase of the policy. The highly collaborative *OCHRE* framework is representative of the bi-partisan adoption of the principals of self-determination and coproduction in regards to Aboriginal policy in New South Wales.

The Development of *OCHRE*

OCHRE is a policy framework established by the Government of New South Wales (Aboriginal Affairs, 2013). *OCHRE* was the result of an extended consultation process between government and communities that began in 2011 based upon the principle of policy co-production (see McKenzie et al, 2008; Belanger & Walker, 2009; Walker & Linklater, 2012). Prior to *OCHRE*, several audits and reviews had identified major shortfalls in previous programs by the New South Wales Government.

A 2011 NSW Auditor-General report into *Two Ways Together - NSW Aboriginal Affairs Plan*, the principal policy framework guiding Aboriginal affairs policy in the state, found that the program had 'not delivered the intended improvements for Aboriginal people' (NSW Auditor-General, 2011). Additional reviews by the NSW Ombudsman (2011) and the Allen Consulting Group identified a need for the NSW Government to review its strategy if it were to achieve better outcomes for Aboriginal communities in the state. The Allens Consulting Group report (2011) concluded that in addressing Aboriginal disadvantage, it is insufficient to make incremental improvements in individual economic development and employment programs. Rather a broader and more streamlined perspective towards Aboriginal policy is necessary to sustainably and permanently improve the lives of the Aboriginal community.

The report indicated that a successful policy aimed at improving the livelihoods of Aboriginal Australians would require both Commonwealth

and state/territory governments to work together and improve coordination and communication.

Having recognised the ongoing challenges and failings identified by these reviews, the incoming New South Wales Government in 2011 endeavored to create a new policy platform that would better meet the needs of Aboriginal communities across the state. Accordingly, The Minister for Aboriginal Affairs convened a *Ministerial Taskforce on Aboriginal Affairs* in late 2011 which sought to establish a pathway to a new policy framework that would guide NSW Aboriginal affairs policy into the future. Throughout 2012, the *Ministerial Taskforce on Aboriginal Affairs* conducted extensive consultations with Aboriginal communities across the state. The consultation process was particularly thorough, with approximately 2700 people participating in community consultations, 207 written submissions being received and 427 individuals participating in a survey that evaluated initial recommendations that the Taskforce had put forward (NSW Agency of Aboriginal Affairs, 2013).

PRIORITIES ESTABLISHED AS A RESULT OF THE CONSULTATION

The lengthy and well-attended consultation process resulted in a renewed clarity around the priorities of Aboriginal communities from which the NSW Government could amend its policy priorities. The *OCHRE* policy document published in April 2013 outlined the key areas that Aboriginal communities believed the Government had to prioritise in any future policy platform. The areas of priority that communities' highlighted were:

- Aboriginal language and cultures
- Education and employment
- Local leadership
- Partnerships
- Accountability.

STRUCTURE OF OCHRE

The *OCHRE* policy platform was the result of the establishment of community and government priorities after the consultation process in 2012. It aims to address the concerns raised throughout this process by creating both a new framework for implementing Aboriginal affairs policies, and brand new initiatives that aimed to address the needs of the community as identified throughout the consultation process.

OCHRE both reframed the language around the New South Wales' Government's approach to Aboriginal affairs policy, and facilitated new ideas and programs that aimed to meet the stated needs of communities across the state. A clear objective of *OCHRE* was to change the way the Government spoke about Aboriginal affairs policy. The emphasis of *OCHRE* was to foster:

- Partnerships over paternalism
- Opportunity over disadvantage
- Successes over shortfalls
- 'Listening to' over 'talking at'
- Local solutions over 'one size fits all'
- Evidence over assumptions
- Participation over marginalisation
- Practice over theory.

Additionally, *OCHRE* aimed to recognise and promote the centrality of healing in all discussion around Aboriginal affairs.

OCHRE was established as a response to the recommendations proposed by the taskforce. A number of key initiatives were developed under this framework and achievements pertaining to these were evaluated. After two years, *OCHRE* has reported achievements in the fields of strengthening Aboriginal languages and culture, supporting Aboriginal students to succeed in school, engaging Aboriginal people via the 'Opportunity Hubs' initiative, promoting economic prosperity and NSW Government spending among Aboriginal communities. It has also aimed at empowering Aboriginal people to make

decisions in their local communities and getting more involved in the public sector.

OCHRE's terms of reference were deliberately narrowed recognising the inability of previous programs to achieve progress because they tried to solve too broad a range of issues simultaneously. Instead, *OCHRE* focused on key determinants of disadvantage: education, employment, service delivery and accountability (NSW Agency of Aboriginal Affairs, 2013). *OCHRE's* plan supported the following initiatives:

- Connected communities: to change the way education services are delivered in some Aboriginal communities
- Opportunity hubs to give school students pathways to real jobs by getting local employers involved in career planning at school
- An Aboriginal economic development framework that sets the strategic direction for NSW
- Industry-based agreements to improve employment and job retention outcomes for Aboriginal people
- Language and culture nests to support Aboriginal students to learn languages in communities and schools and better engage families in education so languages are preserved and used
- A local decision making model to increase the capacity of Aboriginal communities and non-government organisations to make decisions about local service delivery
- An independent Aboriginal council to ensure a stronger voice for Aboriginal people in Government and help monitor the delivery and design of the initiatives (Aboriginal Affairs, 2013).

OCHRE's narrower scope, its targeted initiatives and its commitment to the thorough co-production of policy in both the development and implementation of policy demonstrate the fullest embrace of the concept of self-determination in the delivery of Aboriginal policy in New South Wales' history.

The influence of the Commonwealth on Aboriginal policy in New South Wales

The history of Commonwealth influence on State Aboriginal policy is one that can be separated into two eras: before the 1967 referendum, and after it. Prior to the 1967 referendum, the Commonwealth's role in Aboriginal affairs policy was negligible, with the States dictating the formulation of policy and the allocation of resources relating to Aboriginal affairs. Although the Commonwealth did involve itself in the shaping of certain policy directions through conversations with the States, it had little formal oversight over the welfare of Aboriginal Australians, apart from those in Commonwealth administered jurisdictions such as the Northern Territory (NSWALC, 2017). After the 1967 referendum, the Commonwealth was required to change its approach due to the formal transition of Aboriginal citizenship status. This meant that, in theory, Aboriginal Australians would be granted access to similar Commonwealth entitlements as other Australians.

While the referendum by no means solved all the challenges faced by Aboriginal Australians (Gardiner-Garden, 1998), the change in legal status for Aboriginal peoples did enable the Commonwealth to become more proactive in identifying policy prescriptions to improve the welfare of Aboriginal Australians. Accordingly, to administer policy resulting in the changed status of Aboriginal Australians, the Commonwealth created the Office of Aboriginal Affairs, which became a federal Department in 1972.

Between 1972 and 1984, several Commonwealth bodies designed to oversee Aboriginal policy reform were introduced, including the National Consultative Committee (1973-1977) and the National Aboriginal Conference (1977-1985). While these Commonwealth bodies were important steps, they failed to deliver meaningful outcomes (Sanders, 1993). The Hawke Government decided to replace these bodies with a new entity, the Australian and Torres Strait Island Commission (ATSIC) which was legislated in 1989 with the intention to 'combine regional

and national assemblies of elected Aborigines with the program administration roles of the Commonwealth Department of Aboriginal Affairs and other Aboriginal affairs portfolio bodies” (Sanders, 1983). ATSIC’s formulation was structured around the principals of self-determination, and aimed to develop Aboriginal affairs policy through the principal of self-determination from a national perspective.

Major publications in the 1990s by the Commonwealth (the Royal Commission into Aboriginal Deaths in Custody and the *Bringing Them Home* report into the stolen generations) brought Aboriginal affairs to the center of the national conversation, encouraging state governments to adopt their own reforms to further improve the livelihoods of Aboriginal Australians. In 2005, ATSIC was abolished at the Commonwealth level with a bipartisan consensus that it had not fulfilled its objectives, with responsibilities for administering resource allocation toward policies relating to Aboriginal communities being returned to individual Commonwealth departments.

While Aboriginal affairs policy is still largely administered by the states, the Commonwealth now monitors progress in Aboriginal affairs closely through the *Closing the Gap* initiative. *Closing the Gap* is ‘a social justice campaign that aims to achieve health equality for Aboriginal and Torres Strait Islander people by 2030’ (Australian Indigenous Health Info Net, 2017). The Commonwealth Government, demonstrating significant commitment to achieving health parity between Aboriginal and non-Aboriginal Australians, monitors progress through the annual *Closing the Gap* report.

While a majority of policies are still conceived of and implemented at a State level, the Commonwealth today has a significant role in monitoring the progress of Aboriginal welfare in the country, particularly compared to in the first six-decades of Australia’s federation, and in elevating the importance of the welfare of Aboriginal Australians.

SECTION 2:

Policy co-production in other jurisdictions

The theory of policy co-production provides the conceptual foundation for the design and implementation of *OCHRE*. Policy co-production has been an established concept since the early 1980s, with Whitaker (1980, 240) arguing that citizen participation is often essential to program success:

‘Citizen participation is commonly viewed as attempts to influence the formulation of public policy. Citizens can and do also exert important influences on policy through their participation in the execution of public programs. This is particularly the case in human services, where change in the client’s behaviour is the “product” which is supposed to be delivered. Citizens “coproduce” public services by requesting assistance from the service agents, by cooperating with service agents in carrying out agency programs, and by negotiating with service agents to redirect agents’ activities. Citizen participation in service delivery is, in fact, often critical to program success.’

Co-production of policy, however, not only involves enabling citizens to engage in the delivery of programs, but also in the formulation and design of policy.

The contemporary understanding of ‘co-production’ in policy design and delivery can be defined as ‘a type of policy generation and implementation process where non-state actors are involved in the creation of policy instead of only its implementation’ (Brudney & England, 1982). In the case of *OCHRE*, government collaboration with non-state actors was central in devising a policy framework that would

advance the interests in the communities it aimed to serve. However, as the following analysis identifies, genuine co-production of policy advancing the interests of Aboriginal or indigenous citizens is extremely rare, both in Australia and internationally.

Co-production involves the sharing of risk between all entities. Public sectors internationally have been determined to be somewhat more risk-averse than entities within the private sector (Bellante, 1981), increasing the difficulty to promote the concept of co-production within bureaucracies hesitant to embrace excess risk. However, this tendency has been found to be overcome when organisations (irrespective of sector) embrace a leadership that is able to ‘trust employees and [articulate] a clarity of the organisation’s mission’ (Bozeman & Kingsley, 1998).

This is relevant to *OCHRE* and other co-produced programs, demonstrating that articulating a clarity of purpose is essential in encouraging public servants to embrace the risks associated with the co-production of policy. While the theoretical foundations of policy co-production have been established for decades, few policy interventions that genuinely involve coproduction have been advanced in collaboration with Aboriginal communities globally. The following examples illustrate that traits of coproduction are common in service design and delivery, but that genuine co-production – to the same extent of *OCHRE* – is less common.

The following case studies demonstrate (to varying degrees) examples of co-production in the design and implementation of Aboriginal affairs policies in Australia, Canada, and New Zealand. Although the following examples do not all demonstrate complete co-production, each case study illustrates the importance of co-production in policy design, with those that were less successful argued not to have been as effective because of governmental aversion to wholeheartedly co-produce policy.

South Australia

CASE STUDY - SOUTH AUSTRALIAN SOCIAL INCLUSION INITIATIVE

In 2002, the Government of South Australia attempted the implementation of a new policy framework aimed at improving 'social inclusion' amongst Aboriginal communities in the state (Robbins, 2015). The South Australian Social Inclusion Initiative was an important component of the SA Strategic Plan, which was a policy blueprint for reforming the state put forward by the incoming Rann Government in 2002. The policy had two stated aims: first, 'to reduce the gap between Aboriginal and mainstream populations in relation to health, life expectancy, employment, school retention rates, and imprisonment' and secondly, to increase the percentage of the Aboriginal workforce in the South Australian public sector from 1.2 per cent to 2.0 per cent within five years (Robbins, 2015).

The policy design demonstrated an overly simplistic view of the concept of co-production, relying primarily on the advice of Aboriginal members of the Social Inclusion Board, the body overseeing the implementation and progress of the Social Inclusion Initiative, who were responsible for engaging community members more directly (Robbins, 2015). The Aboriginal representatives were integral in engaging the Aboriginal community and in designing policy within the Social Inclusion Initiative. A review of the Initiative in 2007 based around qualitative interviews with policy participants found that:

'Aboriginal representation on the SI Board has been important in encouraging consultations with Aboriginal people to be conducted in ways which are most likely to engage them, and has been one way of maximising the likelihood that strategies and initiatives developed from these consultations draw on the views of the Aboriginal community

where appropriate. The process of gathering evidence provides advice to the SI Board and informs the Government response simultaneously.' (Newman et al, 2007, 25).

Newman et al (2007) identified in the 2007 review that the engagement of the Aboriginal population in the policy making process was an important element of the policy. However, Robbins (2015) also identified that the policy did not fulfill its objectives. On certain socio-economic indicators, the wellbeing of the Aboriginal community in South Australia was either stagnant, or went backwards. Robbins argued that the policy did not demonstrate 'strong sensitivity to Aboriginal cultural perspectives in the design of targets and strategies' (Robbins, 2015, 185).

While the intentions of the South Australian Government are thought to have been a step in the right direction, Robbins identified two major concerns that were influential in the policy not fulfilling its mandate: first, that the policy development process was too 'top-down', and second, that it lacked the 'effective involvement of Aboriginal viewpoints in formulating ... strategies' (Robbins, 2015, 172.)

The South Australian Social Inclusion Initiative is illustrative of the reality that policy initiatives by Governments aimed at overcoming Aboriginal disadvantage require significant engagement from Aboriginal communities themselves, not just its representatives, if they are to succeed. The failure of the Social Inclusion Initiative was in no small part due to its inability to work with Aboriginal communities at every step of the process, from designing realistic targets to implementing the policy.

Relevant international experiences

CANADA

The concept of co-production in the design of Aboriginal policy has been advanced in Canada's academic literature since the 1980's. Brudney & England (1982) defined co-production as 'a type of policy generation and implementation process where non-state actors are involved in the creation of policy instead of only its implementation.'

The history of Aboriginal policy in Canada, like in Australia, is one defined by a history of failure and a lack of adequate consideration for the cultural norms of Indigenous populations, and the need to respect Aboriginal culture and engage Aboriginal communities in the policy design process. Co-production of policy is intrinsically linked to the principle of self-determination – the idea that Aboriginal communities are not aiming for 'separation and isolation, but rather ... the right to [fulfill] Aboriginal community aspirations in partnership with non-Aboriginal communities' (Walker et al, 2012, 164.) argue that 'it is sufficiently well documented that policy and programs co-produced with Aboriginal communities have better outcomes ... largely because Aboriginal quality of life can be improved, arguably, only on Aboriginal people's own terms and not on pre-packaged Eurocentric terms.'

The following examples of Aboriginal affairs policy implementation attempts demonstrate relevance for an Australian context. The Kelowna Accord is the primary example of co-production in Aboriginal affairs policy internationally. It was a landmark Accord that co-produced an Aboriginal affairs strategy in Canada. It was ultimately rejected by subsequent Canadian federal governments, but the process was unique and comparable to that of *OCHRE*. Additional reform attempts in the province of Manitoba, tabled below, demonstrate how avoiding co-production has a negative impact on the design and delivery of Aboriginal affairs policy.

THE KELOWNA ACCORD

The Kelowna Accord was a 'five-year, \$5.1 billion agreement designed to bridge the life gap between Aboriginal Canadians and the rest of the population' (Alcantara & Spicer, 2016). The Accord was first flagged in early 2004, with informal meetings between senior Federal Government representatives in Ottawa, and community leaders from the main Indigenous groups across Canada. The 2004 meetings were intended to identify the major issues facing the Aboriginal populations in Canada, which were agreed to be health, lifelong learning, housing, economic opportunities, negotiations and accountability. After these priority areas for reform were identified, a subsequent series of collaborative meetings between Government and non-Government actors to develop a pathway towards implementing a series of programs that would address these concerns was conducted. The Kelowna Accord was signed in 2005. However, in 2006, there was a change of Government at the Federal level in Canada, with the incoming government all but abandoning the agreement in its first budget. This decision essentially marked the end of the Kelowna Accord. However, while the agreement was ultimately watered down, the process that led to the signing of the Kelowna Accord was a constructive one that engaged Aboriginal communities in the policy making process at a national level for the first time. Alcantara & Spicer (2016) argue that 'perhaps [the] most important lesson from the Kelowna Accord was that it provided a model for how to successfully engage indigenous and nonindigenous actors in Aboriginal policy-making.'

The Kelowna Accord was defined by its highly collaborative design and its recommendations to use the concept of multilevel governance in its implementation. In effect, the nature of the plan was such that it handed the control of significant amounts of resource allocation, policy design and much of the policy oversight to communities themselves. Spicer & Alcantara (2016) suggest that the multilevel governance structure of the Kelowna Accord was a highly appealing option,

because:

'Instead of participating as stakeholders in the policy-making process, multilevel governance requires that Indigenous governments and organizations participate as co-producers of public goods (for example, policy and political decisions, among other things) ... The second advantage of multilevel governance is that it supposedly creates a decision-making process that is inclusive and empowering of Indigenous actors to meaningfully influence the co-production of public goods. Our analysis of the Kelowna Accord suggests there is some merit to this assumption.'

The concept of multilevel governance is replicated in the local decision making principle that is a central component of the *OCHRE* policy in New South Wales.

The Kelowna Accord involved extensive community involvement over the 18-month period before its signing. The 'Roundtable-to-Kelowna' process involved 1000 invitees, including representatives of the Assembly of First Nations, Inuit Tapiriit Kanatami, the Metis National Council, the Native Women's Association of Canada, the Congress of Aboriginal Peoples, as well as a majority of provincial, territorial and federal government leaders (Patterson, 2006). The result of the process was that, for the first time, a detailed agreement on the challenges Aboriginal peoples of Canada faced, and a national and jurisdictional process for addressing those challenges and monitoring progress in the future, was agreed to.

The unique nature of this process should not be underestimated. Patterson (2006) notes that 'The Roundtable-to-Kelowna process

exceeded simple consultation with Aboriginal peoples' representatives. Indeed, such a high level of involvement of government leaders and Aboriginal leaders in Aboriginal policy development was unique in Canadian history. The involvement of provinces and territories in the Multilateral Indicators Working Group and also the establishment of a regular process for ongoing high-level dialogue were significant developments.'

For the first time in Canadian history, a roadmap had been produced for long term reform of Aboriginal policy in the country. However, the Kelowna Accord ultimately fell down and was not thoroughly implemented, largely for political purposes. The incoming Harper Government in 2006 did not support the Kelowna Accord (O'Connell, 2015). This left the achievements of the process vulnerable to a change of government. A key lesson from the failure of Kelowna is that bipartisanship must be strived for at a jurisdictional level.

The Canadian Federal Government that oversaw the Kelowna Accord did so in a short time frame of just 18 months. Some opponents felt that the process in fact left many issues unaddressed. The sum of the reforms agreed to during Kelowna were CAD\$5.1 billion, meaning that political scrutiny was inevitable, particularly if certain stakeholders were displeased with elements of the agreement. Were Kelowna to have been negotiated over an extended time frame and engaged both spectrums of the political divide in Canada, the outcomes might have been improved, and the recommendations agreed to as part of the Accord upheld.

MANITOBA MUNICIPAL-LEVEL REFORM MOVEMENTS

Examples of Aboriginal policy reform in the Canadian province of Manitoba demonstrate the importance of co-production on program delivery. In their analysis, (Walker et al 2012) examine seven examples of Aboriginal policy development in the Canadian province of Manitoba, ranging from specific policy reforms, such as justice reform, to broader policy reforms across a jurisdiction, such as urban Aboriginal strategies in the cities of Winnipeg and Thompson, to Municipal Aboriginal Policy in the cities of Winnipeg, Brandon and Thompson.

Some of these policy initiatives demonstrated, to some extent, policy co-production with Aboriginal communities, and were deemed more successful than those developed without. For example, the province of Manitoba engaged appropriate Aboriginal experts in the design of an Aboriginal Housing Trust Policy that was in line with the principles of co-production, leading to beneficial outcomes for communities. Decisions not to co-produce policy, however, led to outcomes that were less successful.

The Municipal Aboriginal Policy in the city of Winnipeg, for example, was a top-down approach that didn't engage in co-production with the Aboriginal population. There was a conscious decision by the Winnipeg Council to avoid extensive consultation with the local Aboriginal community, and this led to the policy receiving 'mixed reviews'. 'The logic of deciding in-house what strategic initiatives would be possible, and then taking those out to the community', Walker et al argue, 'was a major flaw' (Walker et al, 2012, 173).

While (Walker et al's 2012) Manitoba analysis looks at elements of co-production in Aboriginal policy design, it does not examine cases of jurisdiction-wide co-production of Aboriginal policy that resembles the scale of New South Wales' OCHRE initiative.

The lessons from Manitoba, however, do emphasise that genuine co-production is central to achieving desirable outcomes in Aboriginal policy.

NEW ZEALAND

New Zealand has had success in its experience in the coproduction of policy with indigenous groups. McKenzie et al (2008, 32) outline the evolution in New Zealand's approach from a 'contract-only environment to one that encourages citizen participation and involvement in government activities'.

Te Puni Kokiri (TPK) is the New Zealand Government department that advises the government on policies affecting the Maori community. In 2006, TPK commenced a co-production trial, engaging six different community groups to participate in the development of a broad suite of policies aimed at improving the livelihoods of members of the Maori community in conjunction with the TPK.

The initiative ran until 2010, but only the 2008 study by McKenzie et al is available to directly ascertain the success of the project.

The trial was established in order to determine the best way to apply co-production principles in future policy design. It consisted of a Pre-Implementation Phase, a Research Phase, and an analysis of the Policy Implications of the first two phases. While McKenzie et al (2008) examined this project only half way through its duration, they determined the following key areas must be focused on if co-production was to succeed. These key areas included:

- **Maintaining strong relationships**
 - The authors argue that all partners in co production must 'commit to the risk' of the project they are working on. This is particularly important 'within the context of a risk-averse government sector'.
- **Outcomes**
 - The authors argue that for co-production to succeed, clarity around the desired outcomes must be established at the outset. Co-production partners must pursue 'jointly negotiated outcomes' during the 'pre-implementation' phase of a co-production policy. Methods in measuring outcomes must also be established during initial discussions between project partners.

○ Policy leadership

- The authors argue that strong leadership by the lead government stakeholder in the co-production of policy is required. This is necessary to extend relationships between communities and other areas of government if this is necessary for the success of the policy.

○ Representation

- (McKenzie et al, 2008) argue that each partner in a co-produced policy must be able to demonstrate that they legitimately represent their community's interests. Ensuring this is itself a process, particularly within Aboriginal (on in this case, Maori) communities. The authors suggest that if either partner is unable to demonstrate that they legitimately represent their community or their constituents, then the potential benefits of co-production may not be realised.

○ Capability and capacity

- The authors stipulate that 'differences in capacity, infrastructure, knowledge, resources and access to political processes' can result in 'imbalances between partners ... which are most likely to be weighted in favour of the government' (McKenzie et al, 2008, 44). This imbalance must be identified and rectified at the earliest stages of coproduction.

The TPK case study is one of few examples of a thorough evidence-based co-production approach to developing policy with regards to the welfare of Aboriginal or Indigenous populations' concerns.

It should be noted that *OCHRE* is a highly unique example of co-production. There are no other case studies of a jurisdiction the size of New South Wales attempting a policy of co-production to address a statewide issue, in this case, improving the economic and social opportunities of the state's Aboriginal population. The only somewhat comparable policy to *OCHRE* in terms of its design, scale and ambition was the Kelowna Accord in Canada, although this covered a significantly larger jurisdiction than *OCHRE*. The policy prescriptions agreed to by both communities and the Canadian Federal Government Kelowna Accord was never implemented due to partisan political reasons. This literature review notes other jurisdiction's attempts at (or failure to adequately attempt) co-production in Aboriginal policy, *OCHRE* stands alone in its scale and ambition.

PART 2

CASE STUDY:

THE DEVELOPMENT AND IMPLEMENTATION OF *OCHRE*

Background

OCHRE is the NSW community-focused plan for Aboriginal affairs in NSW. *OCHRE* is a long-term, evolving plan which will build on successful outcomes, and learn from experience (Aboriginal Affairs NSW, 2013). *OCHRE* marks a significant change in the provision of public services to Aboriginal communities in NSW, and indeed, nationally. As noted in the literature review, few attempts have been made – in NSW, Australia, or internationally – to implement co-produced jurisdiction-wide social and economic policy of the scale of *OCHRE*. While elements of co-production are relatively common in contemporary Aboriginal policy design and development, it is less common in the implementation stage of public policy. It is this element of co-production that differentiates *OCHRE* from past approaches by the New South Wales Government.

Approach

The McKell Institute was commissioned to research and identify positive and negative aspects of the development and implementation of the *OCHRE* policy platform.

This case study is based on information gathered through interviews with senior public servants who were responsible for overseeing the development and implementation of *OCHRE*. A supplementary short quantitative online survey was issued to participants to aid in triangulating the findings ascertained in the qualitative interviews.

PARAMETERS OF THIS CASE STUDY

The emphasis of this case study is to identify the challenges, difficulties, and the successes in implementing the *OCHRE* platform in NSW. This case study does not focus on the process of consultation during the Ministerial Task Force on Aboriginal Affairs. Rather, it explores the shift in policy development and implementation strategies from one where Aboriginal peoples were involved in some aspects to co-production, and how the public servants in charge of overseeing this shift in strategy managed its implementation.

METHODOLOGY

The McKell Institute interviewed just over 80 per cent of the senior public servants identified by Aboriginal Affairs who had leadership responsibility for developing and/or implementing *OCHRE* or aspects of it (14 of 17 nominees). All participants had worked in NSW Government agencies with lead responsibility for *OCHRE*. Just over half the interviewees no longer worked within the NSW government.

- Participation in the interviews and survey was voluntary.
- The participants were informed of the confidentiality of the interview prior to participation and that their comments would be anonymized in the final report. Each interview was approximately one hour in length, with six being conducted in person and eight via teleconference. All interviews were recorded.
- The interviews were conducted between April 3 and April 11 2017.
- Approximately two weeks after the interviews, participants were asked to complete a supplementary quantitative survey to report their level of agreement with various statements about *OCHRE*. Ten of the 14 participants completed the survey.

SUBJECT MATTER COVERED IN THE INTERVIEWS

The interviews aimed to ascertain the following:

1. Extent to which the approach differed from those previously experienced
2. The main difficulties with developing and implementing policy that is co-produced with Aboriginal communities
3. How each difficulty was addressed
4. How was support for *OCHRE* encouraged
5. Resource requirements for this approach
6. Any conflicting agency priorities or policies
7. The main benefits of this approach
8. Any unresolved issues with this approach
9. Success of redistribution of power from government to community and any issues in obtaining this
10. What processes, procedures and systems still needed to change
11. resolution of conflicts between the goals of the Aboriginal communities and NSW government
12. learnings and reflections from participation.

The interviews were structured over four key areas: participants' role in the development and implementation of *OCHRE* and general experiences, success factors, challenges in development and implementation, and improvements and reflections.

NATURE OF THE INTERVIEWS

Participants were emailed a copy of the guiding interview questions (Appendix A) at least one day prior to their interview. The questions served largely as a guide to the interview as the interviews were conversational in nature.

QUANTITATIVE SURVEY

In addition to the interview, participants were asked to complete a short quantitative survey distributed via email. They were asked to rate their level of agreement regarding a number of propositions relating to the development and implementation of *OCHRE*. The survey questions and data are found in Appendix B.

TIMEFRAME

Participants were asked to reflect primarily on the early implementation period of *OCHRE*, after the publication of *OCHRE* in April 2013. Participants were also asked to reflect on the implementation of specific initiatives in *OCHRE*, such as local decision making, opportunity hubs, language nests and industry based agreements, up until the present day, or the date which the participant concluded their participation in the implementation of *OCHRE*.

Findings and discussion

The *OCHRE* policy is a unique example of a policy co-produced with Aboriginal peoples in practice. While the ideological predisposition of Australian governments has shifted towards accepting the virtues of co-production and self-determination in the generation of Aboriginal policy, *OCHRE* is among the first truly co-produced Aboriginal affairs policy frameworks in the nation.

FINDING 1: Clear roles and responsibilities and enthusiasm supported development and implementation

All participants had a strong grasp of the history of Aboriginal affairs policies, including what had and had not worked in the past; understood the extent to which the co-production of *OCHRE* was unique in the history of Aboriginal policy making in Australia; and were well informed about the nature of the *OCHRE* policy, the challenges in successfully implementing it and their role and responsibilities within it.

While the policy is still in its infancy, participants in this study were highly confident that it would be able to deliver on its mandate, despite noting genuine challenges in implementing such a notable shift in policy. Participants felt encouraged at the direction of *OCHRE*, and genuinely supported the policy with a high level of enthusiasm and passion. This passion, clarity of purpose, and broad level of competence assisted in ensuring that the implementation of *OCHRE* was completed within the parameters set by the NSW Government despite the challenges.

FINDING 2: Ongoing consultation with Aboriginal communities is integral to policy design and implementation

Central to the concept of the co-production of public policy is a mutually respectful consultative relationship between Government and non-Government stakeholders (Holmes, 2011). Co-production requires a non-traditional response for policy development that has its roots in genuine engagement and consultation.

All the participants commended the Ministerial Taskforce on Aboriginal Affairs for what they considered to be a robust consultation process that delivered buy-in not only throughout the communities but throughout the public service as well. Describing the scale of the consultation, one participant noted that a consultation of equal scale conducted amongst the non-Aboriginal population, would require over 100,000 individuals. Continuing the principles of co-production, participants worked with Aboriginal communities to develop policy and practice responses that would achieve the recommendations of the Ministerial Taskforce on Aboriginal Affairs. There was a sense in both the interview and survey results that the robust nature of the consultation process gave *OCHRE* an enhanced legitimacy in policy circles and Aboriginal communities when compared to previous Aboriginal affairs policy.

FINDING 3: Widespread enthusiasm and sense of purpose by those driving *OCHRE*

Co-production requires a sustained level of commitment from all those involved in order to achieve the desired outcomes. This commitment was evident in speaking with all participants who shared a sense of pride and purpose and an overwhelming desire for *OCHRE* to succeed. While no participant denied the scale of the challenge, they also appeared to have been inspired by it.

FINDING 4: Effective leadership

As noted in the academic literature on the co-production of policy, key to its success is policy leadership from senior stakeholders (McKenzie et al, 2008). Participants spoke of the strong and active leadership of the then Minister of Aboriginal Affairs and the Head of Aboriginal Affairs, NSW.

In response to the Auditor General's findings on *Two Ways Together*, the then Minister for Aboriginal Affairs (Victor Dominello MP, Minister of Aboriginal Affairs 2011-2013) led a process to deliver a new Aboriginal affairs policy and implement it promptly. Participants noted that the Minister's 'hands on' leadership, while presenting some challenges discussed below, drove the process and supported the quick resolution of issues as they arose.

The strong leadership of the Head of Aboriginal Affairs NSW was also noted as one of the key factors of success. This included active engagement of senior executives across portfolios and support of line managers with the task of developing and implementing *OCHRE*. The role of the Head of Aboriginal Affairs in establishing a workforce to support the change that *OCHRE* brought to the functions of Aboriginal Affairs NSW was also key to providing suitably trained and experienced public servants who could undertake the significant task of a co-production.

Challenges

Participants were cognisant of the challenges associated with shifting Aboriginal affairs policy towards a space of genuine co-production. Although one participant noted that '*OCHRE* and especially local decision making focused on service delivery and not changes to strategic government policy', other participants felt that the policy was genuinely different to previous approaches that they had been involved with.

FINDING 5: The public service and Aboriginal communities work differently

Two main issues were identified by participants here – the operation of public service accountability and differences between Aboriginal and government approaches.

Successful implementation of *OCHRE* initiatives was predicated on significant change to public service practice including the allocation of the NSW Government budget and procurement practice. As would be expected, public service accountability demands high standards of control over the expenditure of public funds. A cost-benefit analysis would be the usual path before allocating funds to any community. This issue is addressed in detail in findings 10 and 11 below.

Similarly, government procurement policy and practice aims to ensure fair, equitable and transparent processes which lead to best value for money and the time allocated to the process reflects this. However, there was evidence that in some cases these processes created road-blocks in implementing *OCHRE* initiatives with Aboriginal communities. One of the issues regularly cited was that Aboriginal suppliers were not as familiar as others with what was required in a tender nor did they have the resources to devote to the tender process in the time required. One participant noted that the procurement process 'favoured the providers who were better at bidding'.

Change is also required to the place of cultural knowledge in public service practice. For one participant this was evident in the different community priorities identified by public servants and Aboriginal communities. The participant cited the bemusement of public servants when a regional community outlined their three priorities for reforming the region as: more focus on language, more investment in fish traps, and more education about the importance of scar trees among younger community members. From the community's perspective, more investment in fish traps and knowledge about scar trees could provide a means of employment through cultural tourism and aquaculture, and a greater emphasis on language would help preserve local identity whilst simultaneously engaging younger generations with education more generally. The actions would achieve the same outcomes as government priorities, but with an emphasis on traditional cultural practices. It is a clear example for how utilising local Aboriginal community knowledge and cultural understandings can orient government expenditure more appropriately.

Reflecting on the different approaches, 60 per cent the survey participants agreed at least to a certain extent that 'there were conflicts between [their] goals as a Government employee and those of the Aboriginal communities'.

FINDING 6:

Tight timeframes for deliberation remain

Co-production is a process and requires time for engagement and deliberation (Holmes, 2011). Participants noted challenges in managing the expectations of government to push timeframes so that a new policy was delivered, and the needs of Aboriginal communities to consider what it was they needed and to reflect on what is proposed.

Participants noted that while the Ministerial Taskforce on Aboriginal Affairs undertook extensive consultations spanning nearly two years following its establishment in 2011, the long-term

nature of *OCHRE* has not necessarily meant that its implementation has been approached with patience. For many, meeting government requirements and oversight bodies to deliver the *OCHRE* initiatives promptly and demonstrate results quickly has a negative impact in that it limits opportunities for both internal and external consultation. The consequences of this were sometimes negative with one participant citing a focus of one initiative developing more narrowly than it would otherwise – the focus developed into 'getting kids into jobs and training' rather than equipping them first with key skills to achieve this.

Such a 'hot house' and fast moving environment presents communication, consultation and practice challenges. This is particularly the case for initiatives where there is no road map. Participants experience a squeeze between the requirements to implement new initiatives within government and public service timeframes and apprehension regarding the devolution of power, and facilitating genuine participation. It is of note that this was not the experience of all participants in this study.

FINDING 7:

Accountability for the development and implementation of *OCHRE* remains confused

Participants noted that the default position of many in the public service is that all policy related to the development of Aboriginal communities falls within the remit of Aboriginal Affairs NSW. Despite accountability being one of the Terms of Reference for the Ministerial Taskforce on Aboriginal Affairs, in practice this view prevails with NSW Aboriginal Affairs effectively at the center of implementation, and other government agencies and departments and non-government entities involved in the delivery of particular *OCHRE* initiatives.

This view is manifestly untrue as *OCHRE* is the NSW Government community-focused plan for

Aboriginal affairs in NSW with agencies across all clusters having a role. Positioning accountability for *OCHRE* with Aboriginal Affairs NSW poses a risk to the ongoing implementation of *OCHRE* since Aboriginal Affairs remains a very junior portfolio in the NSW government and has limited authority to bring government agencies together. It is of note that the total current workforce of Aboriginal Affairs NSW is fewer than 100 people.

FINDING 8: Co-design requires constant attention to the operational environment

Since the days of the Ministerial Taskforce on Aboriginal Affairs, there have been changes to the political and government agency operational environment that have affected the ongoing implementation of *OCHRE* initiatives. These include managing emerging and changing policy interests and priorities of the NSW Government, and changes to the function of agencies and public service activities.

Participants noted that the former has led to periods of human resource gaps while government agencies work to reallocate existing resources or recruit new resources to meet changing priorities. NSW Government priorities will continue to shift and there was concern among some participants that a lack of human capital allocated to the ongoing implementation of *OCHRE* may result. This was significant during the early development and implementation period. *OCHRE* had triggered a major restructure of Aboriginal Affairs NSW. While this ultimately delivered a structure and workforce better positioned to support *OCHRE*, it created a degree of uncertainty in the workforce that was exacerbated by changes in the legislation governing the recruitment of public servants. Some participants noted that this led at times to personnel resources challenges.

Participants were clear that achieving the

generational change with *OCHRE* requires implementation over the long term. Achieving this requires discipline, enthusiasm, focus and strong oversight and governance in an environment when immediate 'return of investment' is the norm. Successfully countering this challenge takes sustained effort and includes providing the information needed by Ministerial and government agencies, promoting a shared ownership and stewardship and a narrative that has meaning for all stakeholders. These challenges are not peculiar to *OCHRE* and come as no surprise. It is the addition of co-designing *OCHRE* with Aboriginal communities that creates the complex operational environment and the careful management of both political and community expectations.

Aboriginal communities have a genuine sense of ownership of *OCHRE*, and its promise to achieve lasting, meaningful outcomes in communities. A common thread is the desire of both to achieve outcomes quickly. Communicating the reality that the significant change to practice and relationships takes time is a perennial challenge.

The survey findings suggest that these expectations were felt by just over half of the participants with the majority feeling that 'the needs and expectations of Aboriginal communities in New South Wales were being met.'

FINDING 9: Maintaining a workforce able to support co-design and self-determination

The restructure of Aboriginal Affairs, NSW following *OCHRE*, delivered a workforce capable of delivering the Taskforce recommendations. *OCHRE* represents a shift towards self-determination requiring the devolution of power from government agencies to Aboriginal communities, and in the participants' experiences requires a very different approach and substantial practice and attitude change across the public service.

Participants felt that the small size of Aboriginal Affairs NSW was a factor here since it was seen to influence the Agency's ability to keep larger Government agencies at the table. Without across agency involvement it is difficult to provide the information needed and model the practice and attitude change required.

FINDING 10: Caution about handing control of public funds to communities

Local decision making is the strongest expression of self-determination to date in NSW and a key initiative within *OCHRE*. It enables communities to have more agency over government expenditure within their own environment. As Holmes (2011, p.26) notes "accountability for the use of the taxpayer's dollar is another tricky dimension" of co-production. Not surprisingly, while changes to the allocation of public funds has significant merit and support amongst the participants, some noted that other members of the public service remain hesitant to hand further power to communities including those accustomed to strong control of their expenditure. Many participants noted the difficulty in translating the idea of local decision making into a functioning reality because of this push back.

A prerequisite to this knowledge of the quantum of government funds spent on programs throughout Aboriginal communities. One participant noted that on a trip to a community, he/she was asked by a community member for a precise distribution of the Government spend on programs related to that community. To the participant's and community member's surprise, providing this has been a 'very very complex beast'. Commitment to devolution (and hard work) delivered a model that enables bureaucrats and Aboriginal communities to understand, from a Government-wide perspective, what was being spent in communities to a '90 per cent' level of accuracy.

FINDING 11: Managing *OCHRE* within a tight fiscal environment

The fiscal environment was a challenge in 2013 as the NSW Government worked to bring the state budget into the black. This coincided with the development and early implementation phase of *OCHRE*. The resulting resource constraints were cited by many participants as a challenge that endures with a one suggesting that were *OCHRE* to thrive, at least a quadrupling of funding is required. For some any increase would symbolize an increase in the standing of *OCHRE* and Aboriginal Affairs NSW in government making the work to achieve government buy-in easier.

There is also the issue of Aboriginal community perception. One participant in this study did note that, when *OCHRE*'s community stakeholders become aware of the limited funding *OCHRE* has been allocated, they question where *OCHRE* sits in the hierarchy of Government priorities. Identifying ways to communicate the limited funding allocated to *OCHRE* itself is a challenge, and this limited resourcing does not demonstrate a marked shift from previous approaches of the New South Wales Government.

While *OCHRE* itself has an ongoing cost, it is in many ways an 'umbrella' that sits over existing government and non-government services, some of which already have their own funding sources and challenges. It is also likely that more transparency around the complicated funding structure of Aboriginal affairs initiatives across the New South Wales Government would allow participants to better understand the resources they have at their disposal.

FINDING 12: Maintaining Aboriginal community ‘buy-in’

Co-production is predicated on ongoing community engagement and participation. Participants gave many examples of how this has occurred over the course of *OCHRE* to date including the extensive consultations undertaken by the Taskforce. Participants felt it is essential for Aboriginal Affairs to stay heavily involved in the *OCHRE* programs and in communication with communities around the *OCHRE* programs in order to encourage communities themselves to continue to push the New South Wales Government to continue to realise the ambitious goals set out in *OCHRE*.

FINDING 13: Generating and maintaining public service ‘buy-in’

OCHRE was developed and implemented on the back of a history of Government expenditure on services and programs that had not delivered their intended outcomes. It was the view of some participants that this manifested in ‘an expectation of failure’ across government in the Aboriginal affairs policy space. Against this backdrop, generating the buy-in of NSW Government agencies to *OCHRE* and long-term commitment has proved challenging. It was not just about buying into a different approach but also about a willingness to invest properly into these initiatives. The relatively modest amount of annual funding demonstrates that there is some way to go. Critical to success was that *OCHRE* was developed after a lengthy consultation process, that generated widespread support amongst communities that holds government to account.

Some participants indicated that *OCHRE* was seen as a “small” program. When competing for public servants’ time “larger” programs win out.

Several participants mentioned (often uncomfortably) that casual and structural racism continues to exist within the public service, and that this had a detrimental impact on generating support for *OCHRE*. This was often manifest in a view that Aboriginal communities were simply unable to reform and embrace necessary change that would enable the Aboriginal people to achieve a higher standard of living or access opportunities provided. Some participants cited this as underpinning the belief, at least for some, that new expenditure on Aboriginal affairs would not achieve any tangible progress.

Improvements and reflections

FINDING 14: *OCHRE* was well positioned to succeed into the future, but improvements in implementation could be made

There was a broad consensus that *OCHRE* was positioned to continue advancing the interests of Aboriginal communities in NSW. For individuals that maintained visibility of *OCHRE* today, more caution was evident. One participant noted that a sustained effort needs to continue as 'there were consequences' for the future success of elements of *OCHRE* if the effort was not maintained. As discussed above, this also relates to the available workforce and juggling conflicting priorities.

Overall, participants were proud of their personal contributions to *OCHRE*, and confident in the policy's future. For many, *OCHRE* was unlike previous policy they had worked on. Seven of the 10 survey respondents agreed to varying extents that '*OCHRE* was fundamentally different from previous approaches in the way Aboriginal people were involved in policy development.' However, respondents to the survey also felt there was room for improvement with the implementation process over all. Eight of the respondents to the survey agreed with the statement that 'at the conclusion of [their] work on *OCHRE*, [they] felt there was significant room for improvement in the way the implementation was handled'. This suggests that although participants are confident in *OCHRE*'s chances of future success, they are cognizant of the challenges that have emerged and may continue throughout its implementation.

Although participants felt confident in *OCHRE*'s future, most were reluctant to speak on community's behalf regarding how successful *OCHRE* had been and noted that it was also still too early to adequately identify *OCHRE*'s long term potential and benefits, particularly from the community perspective.

This finding demonstrates that *OCHRE* has been and is continuing to be implemented successfully, despite the noted challenges with implementing a policy so unique in nature. The co-production of policy and its implementation, however, requires considerable attention from Government as well as the communities involved. To this end, the New South Wales Government must ensure a sustained commitment to *OCHRE* over the long-term.

CONCLUSION

This study has examined the history of ideological and policy approaches to Aboriginal affairs in New South Wales, and explored the process of the development and implementation of *OCHRE*, the principal policy framework guiding Aboriginal affairs policy in New South Wales. The literature review identified the shift in ideology and policy shaping Aboriginal affairs in New South Wales culminating in *OCHRE*. This was complemented by the case study where we examined senior public servants' experiences and observations about developing and implementing *OCHRE*.

OCHRE is guided by the principle of self-determination, ensuring the Government works with communities for the coproduction of policy and implementation. This approach has been identified to have substantial benefits in terms of outcomes, but the findings of this study suggest that this approach also has its concomitant challenges, primarily because it was a new way of doing things, and thus the standard government approach was not necessarily suitable.

The 14 findings identified in this study highlight some of the successful elements of *OCHRE*'s implementation, but also highlight challenges identified by participants. Some of these challenges, it must be noted, are not unique to *OCHRE*, but others are a direct result of using a co-design approach. While these challenges require continued attention, they have not been, to date, so significant as to impact the overall successful trajectory of *OCHRE* since implementation began in 2013.

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APPENDIX A:

QUALITATIVE INTERVIEW

Interview Questions

SECTION 1: Introduction

1. Could you describe the process from your perspective, for developing *OCHRE 2013* into policy guidelines, or service contracts?
2. Could you briefly describe your role in this?
3. Did your work on *OCHRE* differ from other policy work you had been involved in? If so, in what way? Did these differences cause any challenges or difficulties for you in your role? Or Did these differences make your job easier or more difficult?
4. Did your experience in *OCHRE* have any impact on how you subsequently undertook policy work? In what way? What did you learn?
5. What were some of the unique aspects of the (development and/or implementation) of *OCHRE* from your point of view?

SECTION 2: Successes

6. What were some of the positive aspects of *OCHRE* development or implementation? Were these positives for yourself, for the government, or for the Aboriginal community in New South Wales?
7. Are there aspects of *OCHRE* that you think could be used by other government agencies in policy development and/or implementation?

SECTION 3: Challenges and tensions

8. What challenges did you experience?
9. What led to these challenges?
10. Were challenges experienced addressed successfully? If so how and in what timeframe? If not, why do you think they have stayed unresolved?
11. What was the professional and personal impact of these challenges on you?
12. Where did you find support and from whom when there were challenges?
13. Did you identify any tensions between various parties in the implementation?
14. What about achieving the goal of co-production resulting from Aboriginal community and bureaucratic processes?

SECTION 4: Improvements and reflections

15. Looking back at your involvement in *OCHRE*, what could have been done differently to facilitate your participation?
16. If you were asked to undertake similar work again now, what lessons would you take from *OCHRE*?
17. What were the main benefits of co-production? Did it fall short? And if so, why?
18. Were there any unintended consequences of the 'policy' or service design?
19. Overall, do you feel you achieved what you set out to in *OCHRE*?
20. How do you think Aboriginal communities would judge the *OCHRE*'s achievements?
21. What were the main things that you learned from your experience?
22. What do you think are the main things that government needs to pay attention to from the *OCHRE* project (e.g. policy development, consultation, procedures, systems)?
23. Do you have any additional reflections that you would like to share?

APPENDIX B:

QUANTITATIVE SURVEY QUESTIONS AND RESULTS

The survey

Thank you for taking the time to complete this survey as part of your participation in this research to further understand the development and implementation of *OCHRE*.

The aims of this survey are to determine if issues identified by one or more stakeholders were also experienced by others, and if they did, the degree to which they were experienced.

For each statement, please indicate your level of agreement on a scale of 0-10 (with 0 being most disagreement and 10 being most agreement):

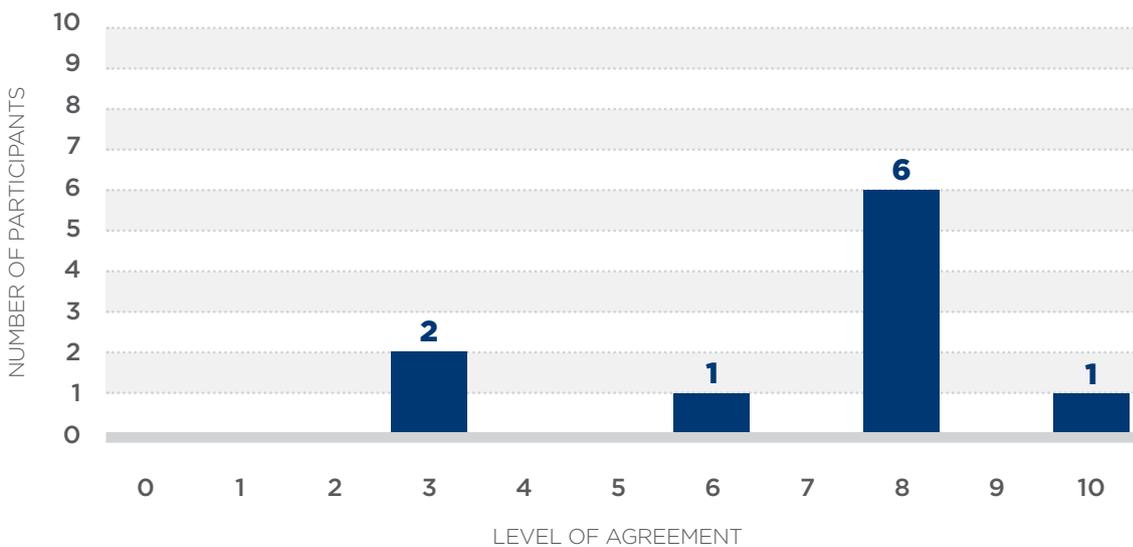
If a question is not relevant to your circumstance, or if you would prefer not to answer a question for any reason, simply skip it without assigning a score, and move on to the following question.”

After the instructions the twelve statements were presented to which the participants were asked to rate their level of agreement. Respondents were also given the opportunity to provide any other comments. The rating items are listed with the findings.

Findings

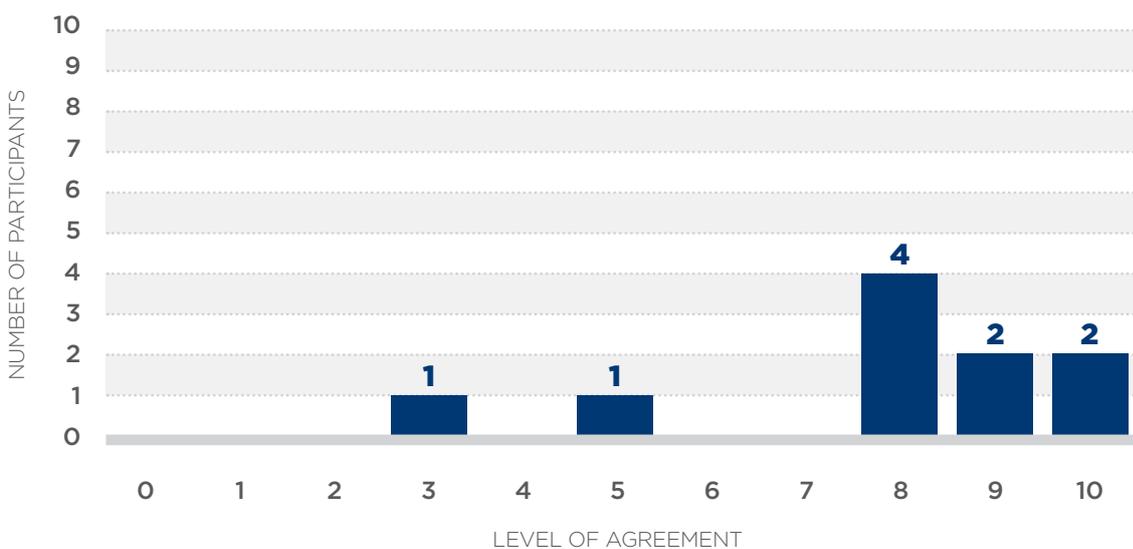
QUESTION 1

The nature of my personal role, my responsibilities and the objectives I was expected to meet in *OCHRE* were clear.



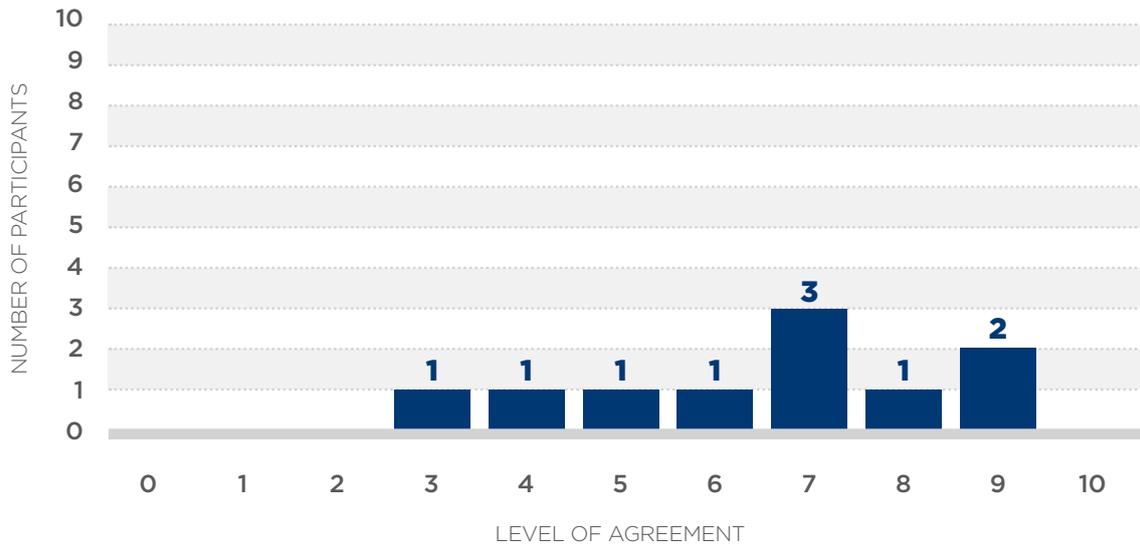
QUESTION 2

Overall I was well informed about *OCHRE* and its objectives.



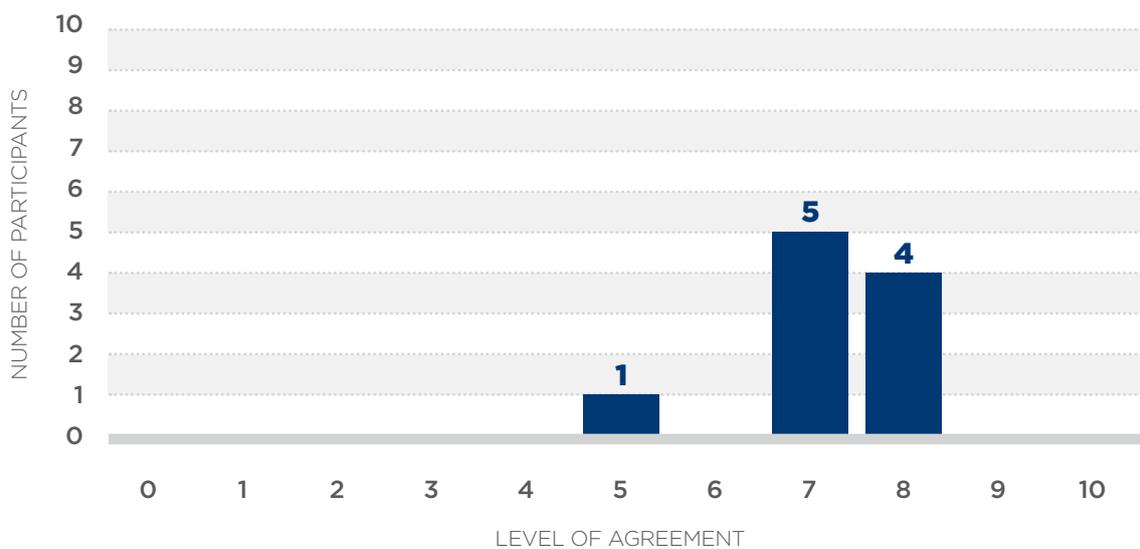
QUESTION 3

I felt comfortable with the expectations of me in my work on *OCHRE*.



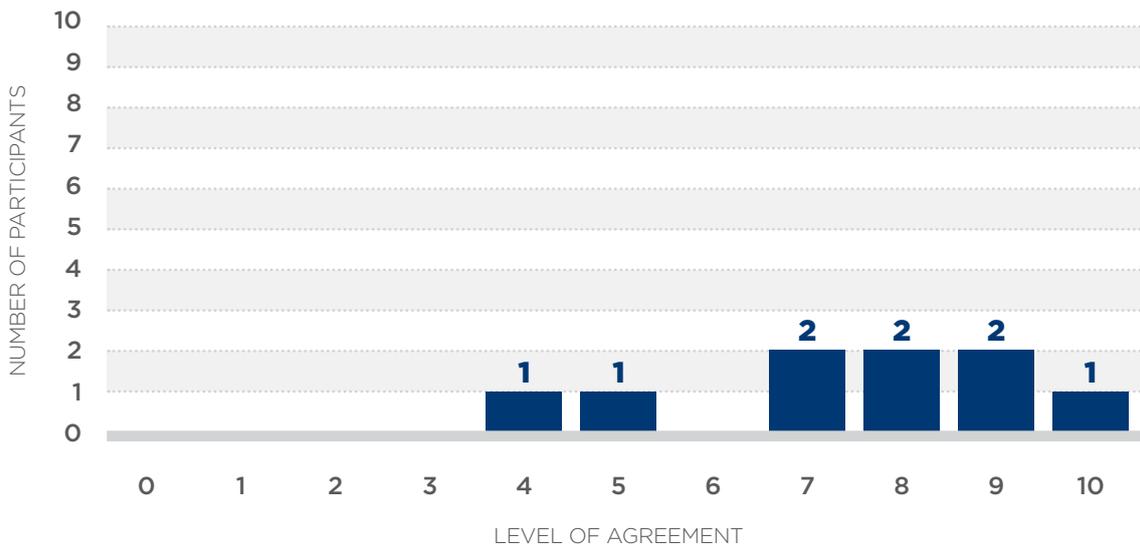
QUESTION 4

While working on *OCHRE*, I felt there was an adequate support structure in place to allow me to meet my objectives.



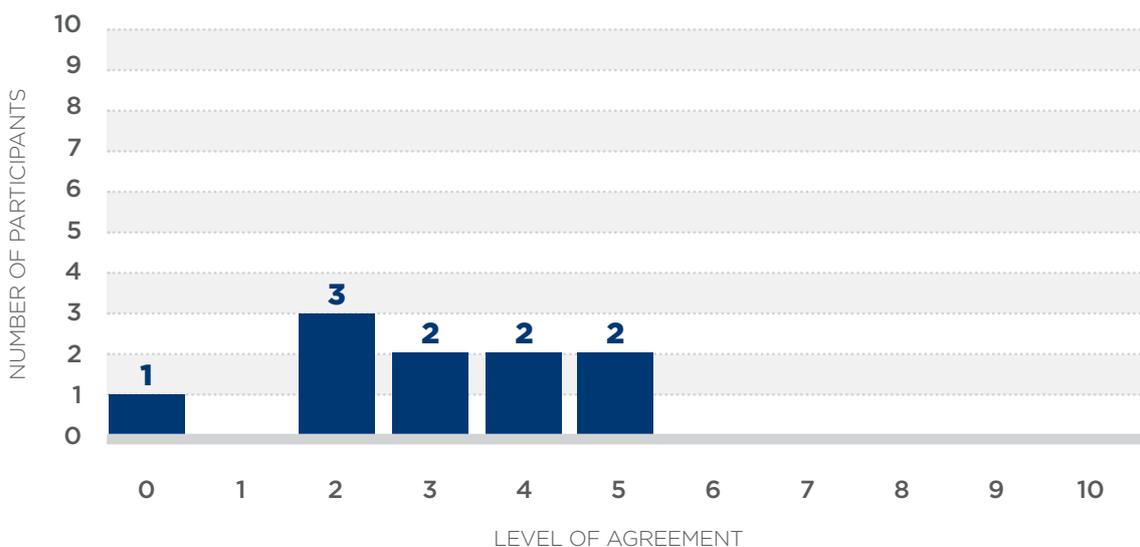
QUESTION 5

Working on OCHRE was more complicated than other policy work I have been involved in.



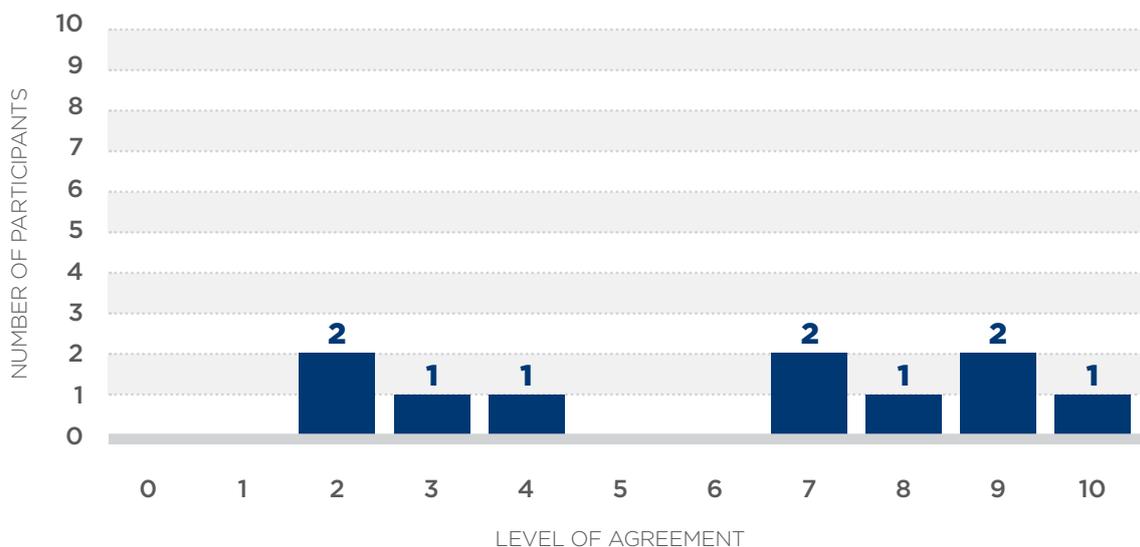
QUESTION 6

While working on OCHRE, I felt that there was more pressure placed on me from my superiors than for other work I did.



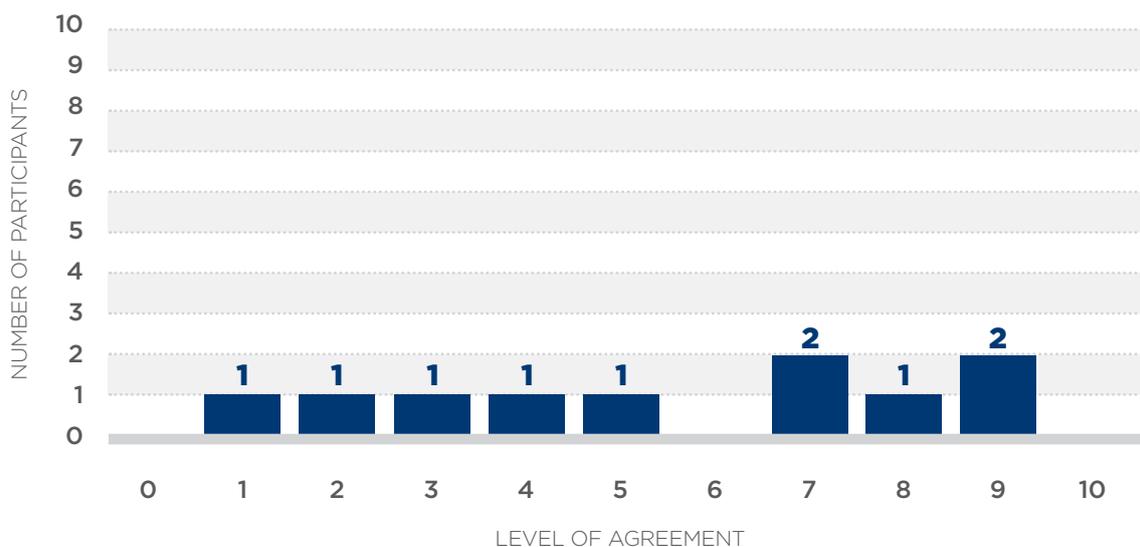
QUESTION 7

While working on *OCHRE*, I felt that there was more pressure placed on me from external sources than for other work I did.



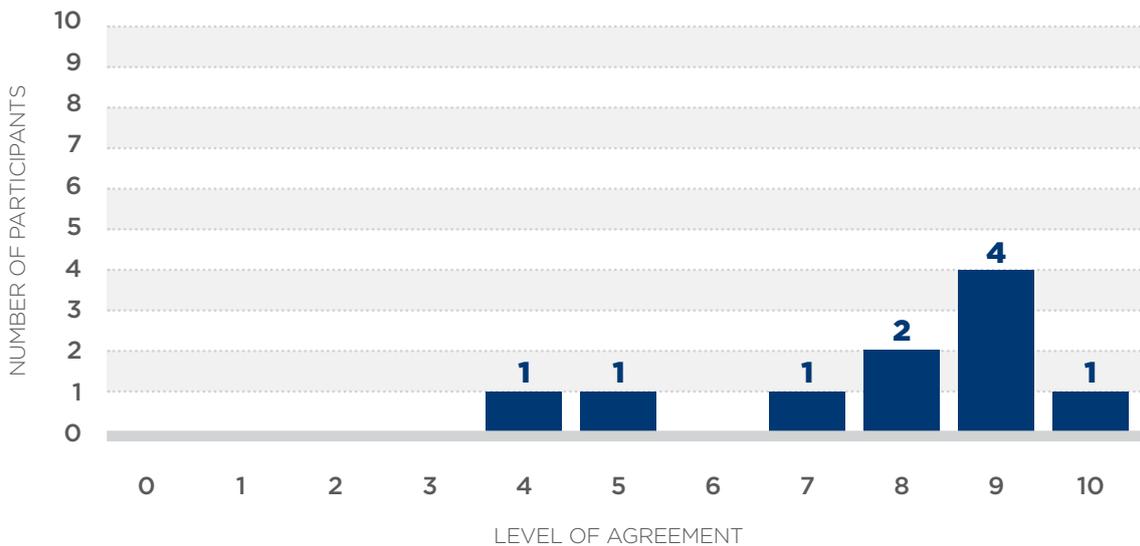
QUESTION 8

I felt that working on *OCHRE* was more resource intensive than other work I did.



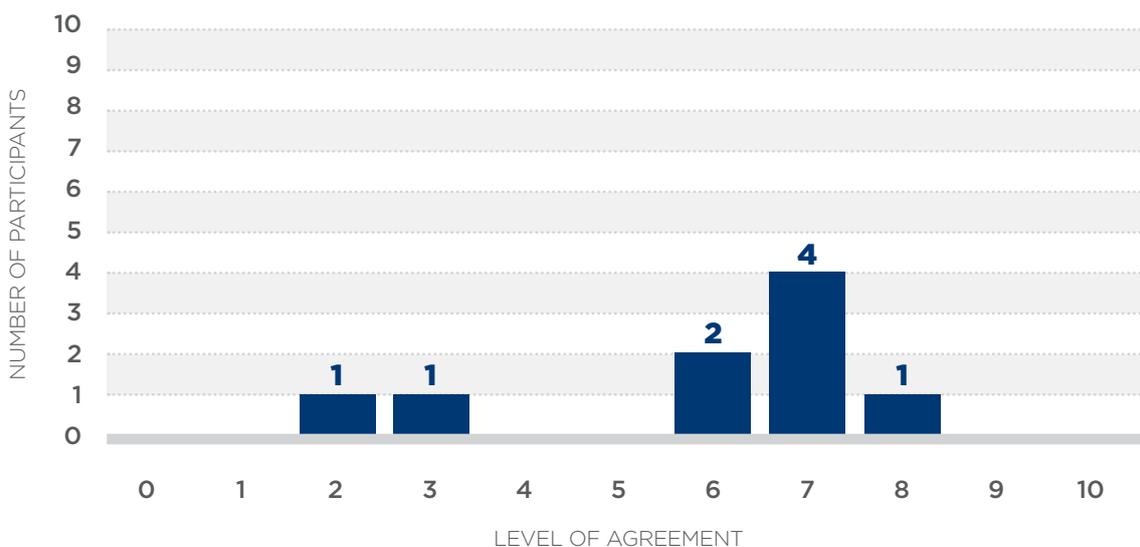
QUESTION 9

I felt that *OCHRE* was fundamentally different from previous approaches in the way Aboriginal people were involved in policy development.



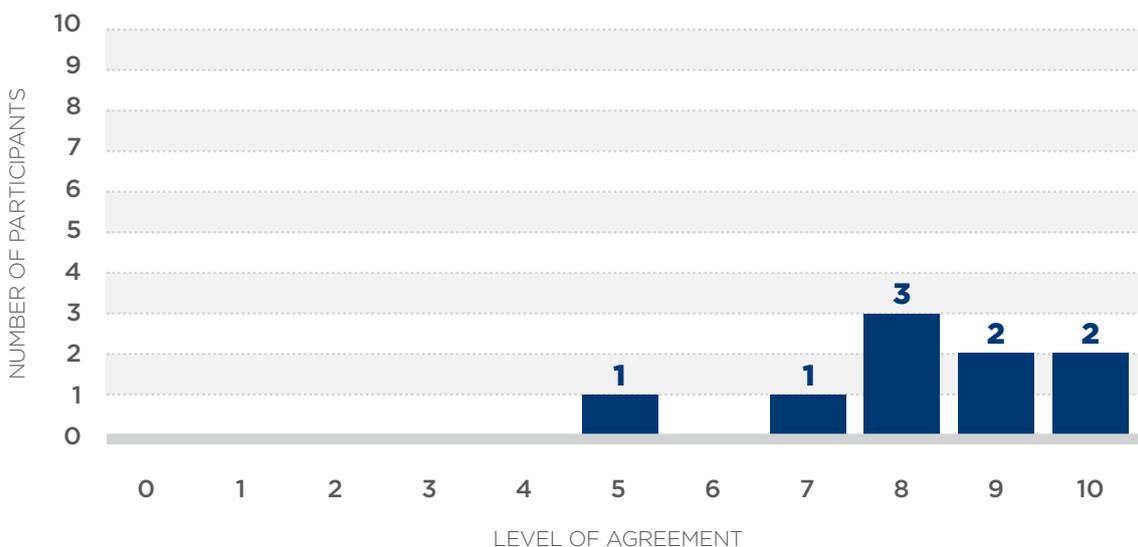
QUESTION 10

While working on *OCHRE*, I felt that the needs and expectations of Aboriginal communities in New South Wales were being met.



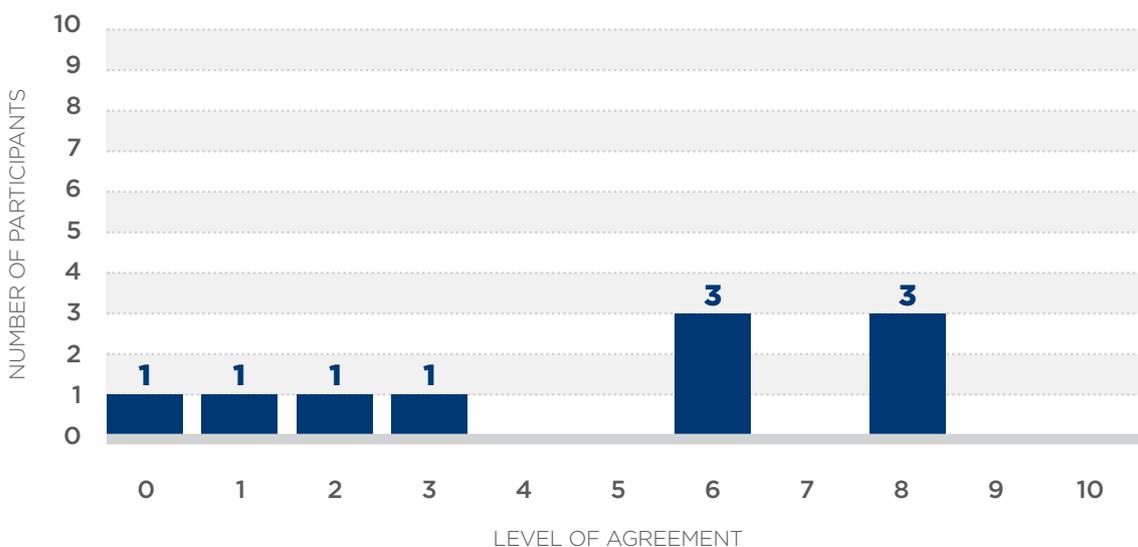
QUESTION 11

Because of involvement of Aboriginal people in the development of OCHRE I felt it achieved a better outcome than it would otherwise have.



QUESTION 12

I felt that there were conflicts between my goals as a government employee and those of the Aboriginal communities.







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