RESEARCH METHODOLOGIES AND METHODS TO EFFECT CHANGE IN LAW AND SOCIAL SYSTEMS

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Intellectual property expert Prof Natalie Stoianoff demonstrates the value of the Delphi Method and Second Track processes in developing laws and regulations that aim to achieve social change. One of her case studies deals with environmental tax and climate policy reform, while another shows how Indigenous legal systems can be integrated within the framework of Australian common law.

INTRODUCTION

This article considers the different research methodologies and methods available for decision-making as part of the proactive role of civil society in participatory democracy. In particular, this article explores methods and methodologies of decision-making as part of the development of laws and regulations that try to achieve social and economic change. This is achieved through the lens of two research case studies: one that deals with tax policy and climate change and the other that deals with Indigenous self-determination.

This article commences with an overview of the Delphi Method or technique. The decision-making method is known as the Delphi Method,[1] and its variations in some contexts were utilised in research on issues around developing and evaluating tax policy, particularly concerning the environment and climate change. The Delphi technique, primarily used in qualitative research, aims to obtain a reliable consensus of a group of experts or reference group through several

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1. Guglyuvatyy and Stoianoff, 2015

rounds of a set of questionnaires.[2] The traditionally anonymous results of each iteration encourage the experts to revise their previous answers given 'collective intelligence' so that the group may move to a consensual view.[3] Alternatively, the *group Delphi* method brings together that expert group in structured communication using rotating subgroups to address the relevant questionnaire(s) (applying Likert scaling) and open questions.[4] Plenary discussions are used to build consensus and define disagreement between iterations to foster peer review.[5] The article demonstrates how this process was used to determine an evaluative framework for environmental tax and climate policy reform.

The second case study is in the next section of this article. I have been using the Delphi Method mixed with action research methodologies to develop legislation that supports and promotes Indigenous self-determination by engaging the people that the legislation is designed to protect. The research demonstrates how Indigenous legal systems can be integrated within the framework of Australian common law.

In line with the concepts of Second Track processes, the development of such legislation initially brought together Indigenous and non-Indigenous experts from various fields and sectors to work collaboratively in developing a framework for the protection and use of Aboriginal ecological knowledge in NSW. This framework was then expanded into a national project, funded under the Australian Research Council Linkage Scheme, designed to create a legal governance structure for Indigenous Australians by utilising participatory processes within an Indigenous research paradigm.

Both case studies bring together experts and stakeholders from relevant sectors to work together in policy development and decision-making by engaging collaboratively with the issues and working towards positive solutions that may be implemented, ultimately, through the legislative system. These two case studies will demonstrate the significance of Second Track processes in decision-making to achieve positive outcomes for social change.

THE DELPHI METHOD AND ITS USE IN SOCIO-LEGAL RESEARCH

The Delphi Method or technique gets its name from the Ancient Greek temple of Apollo in Delphi. There, the oracles of Delphi accumulated knowledge on people's lives and problems and the solutions to those problems[6] with the ultimate intention to make the world a better place.[7] While answering questions for officials to the general public, '[a]n oracle's function was to tell the divine purpose in a normative way to shape coming events'.[8]

The modern-day Delphi Method has its origins in researchers at the Rand Corporation in the 1950s.[9] As Linstone and Turoff explain:

> 'The Delphi concept may be viewed as one of the spinoffs of defense research. "Project Delphi" was the name given to an Air Force-sponsored Rand Corporation study, starting in the early 1950s, concerning the use of expert opinion. The objective of the original study was to "obtain the most reliable consensus of opinion of a group of experts... by a series of intensive questionnaires interspersed with controlled opinion feedback".'[10]

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2. McKerchar, 2010
3. Guglyuvatyy and Stoianoff, 2015, p. 186
4. Webler et al., 1991
5. Ibid
6. Guglyuvatyy and Stoianoff, 2015, p. 184
7. Sokolov, 2007
8. Guglyuvatyy and Stoianoff, 2015, p. 185
9. Dalkey and Helmer, 1963
10. Linstone and Turoff, 1975

That research, conducted by Dalkey, Helmer, and Rescher at Rand Corporation, has been described by Mitroff and Turoff as a prime 'example of… Lockean inquir[y]',[11] That is, the inquiring system (I.S.) is based on the process of developing models or theory from empirical content.[12] In summary, Mitroff and Turoff explain:

> '*the data input sector is* not only *prior to the formal model or theory sector, but it is separate from it as well. The whole of the Lockean I.S. is built up from the data input sector…*In brief, Lockean I.S. are the epitome of *experimental, consensual* systems.'

By contrast, Mitroff and Turoff point out that under Leibnizian enquiry systems, emphasis is given to the theoretical model, which is separate and necessary before collecting data.[13] Further, by adopting a Kantian inquiry system, Mitroff and Turoff explain that theory and data are inseparable:

> 'Theories or general propositions are built up from data, and in this sense theories are dependent on data, but data cannot be collected without the prior presumption of some theory of data collection (i.e., a theory of "how to make observations," "what to observe," etc.), and in this sense data are dependent on theories.'[14]

In recognition of this interdependence, both case studies demonstrate the need to formulate, if not theories, at least hypotheses based on the literature, in the case of the tax policy and climate change project, or on comparative legal regimes, in the case of the Indigenous self-determination over Indigenous ecological knowledge project.

Both case studies deal with highly politicised issues in their way and require comprehensive policy assessment to achieve careful long-term balanced law/policy-making.[15]

Recognising that there may be a lack of rationality in the processes of political decision-making, it is noted that institutional dependencies and political factors may limit the range of available policy options.[16] Rather than cooperate in the process of identifying the best overall policy option, different actors may have a specific set of preferences aimed to influence policy evaluation to achieve their own goals.[17] However, the two case studies will demonstrate that 'policy-making processes can at least be designed to a certain extent according to the principles of rational discussion and balanced problem solving'.[18] As the Indigenous self-determination project demonstrates, 'a careful analysis of the problem and the evaluation of available options should efficiently identify mutually acceptable solutions, thereby informing law and policy decision-making'.[19]

TWO CASE STUDIES IN PARTICIPATORY RESEARCH

Tax Policy and Climate Change

The first case study is concerned with the evaluation of environmental tax measures (ETMs). The Delphi study, undertaken in the development of a tax policy analysis framework to evaluate the effectiveness of ETMs, was able to build such a framework from a critical assessment of the menu of factors advanced as possibilities in the prior literature. While Australia's ETMs have been operational for over 30 years, they have not been

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11. Mitroff, I.I. and Turoff, M., Philosophical and Methodological Foundations of Delphi (in Linstone and Turoff, 1975)
12. Ibid., pp. 20-21
13. Ibid., p. 23
14. Ibid., p 25
15. Mickwitz, 2006
16. Becker, 1983
17. Bernauer and Caduff, 2004
18. Guglyuvatyy and Stoianoff, 2015, p 181
19. Ibid.

evaluated to assess their efficiency and effectiveness. *Australia's future tax system: Report to the Treasurer* (Henry Tax Review)[20] recognised that concessions and other such measures need to be evaluated for effectiveness. One important consideration is whether the design of these measures could be improved to ensure accurate targeting. The Organisation for Economic Co-operation and Development (OECD) has stressed targeting measures to encourage environmentally responsible behaviour and the need to limit investment in direct tax concessions to those 'which will have a beneficial environmental impact' while noting the difficulty faced by 'revenue authorities to verify this cheaply and effectively'.[21] A further literature review identified several other criteria to be put to a Reference group of environmental tax experts from around the globe for their consideration and prioritisation. The Delphi study adopted combined the traditional anonymous questionnaires followed by *group Delphi* sessions to develop the evaluation framework.

Indigenous Self-Determination and Indigenous Ecological Knowledge

The second case study is in two parts. The first was concerned with the 2013-14 research project *Recognising and Protecting Indigenous Knowledge associated with Natural Resource Management*, supported by the Aboriginal Communities Funding Scheme of the NSW Namoi Catchment Management Authority (now North West Local Land Services (NWLLS)). The first stage of that project comprised a comparative study of relevant international instruments to identify common provisions between the different agreements that would ideally reflect draft legislation for Australian use. These identified common provisions were then used as the criteria for analysing regional and

national legislation around the world relating to traditional knowledge and genetic resources. This law database was presented to a working party who had volunteered to be involved in the second stage of our research, drafting the model law and preparing a Discussion Paper. This working party included Aboriginal Elders and other Aboriginal People, lawyers, academics and participants with experience in developing similar laws in other countries. In essence, the working party operated under the *group Delphi* process to develop the key provisions of the model law and prepare the Discussion Paper. Then the third stage of the project carried on a series of Aboriginal community consultations in the North West of NSW to refine the elements of a model law as presented in the Discussion Paper. The result was a White Paper for the Office of Environment and Heritage proposing a model law that would protect and regulate access to Indigenous knowledge.

The second part of the case study was the 2016 Australian Research Council (ARC) Linkage Grant project: *Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge* (Garuwanga Project). It builds on the first part of the case study by developing a crucial element of the governance of the model law, namely, finding the best legal structure of governance for Indigenous Australians to manage their traditional knowledge and culture and enable Australia to comply with the Nagoya Protocol.[22] The objective is to provide the communities with a path to sustainable development and capacity building. To achieve this, the Garuwanga Project had three aims:

1. identify and evaluate a variety of legal governance structures for a Competent Authority suitable for administering an Indigenous Knowledge protection regime;

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20. Henry et al., 2009
21. OECD, 1993
22. *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (ABS) to the Convention on Biological Diversity*, adopted by the Conference of the Parties to the Convention on Biological Diversity at its tenth meeting on 29 October 2010 in Nagoya, Japan and entered into force on 12 October 2014 ('Nagoya Protocol').

2. facilitate Aboriginal Community engagement in making that determination; and

3. recommend a type of Competent Authority structure based on what is vital to Aboriginal Communities and how such a Competent Authority should operate.[23]

A Research Roundtable formed to address issues and operated once again under a *group Delphi* process, the details of which will be discussed further in section 5 of this article.

TAX POLICY AND CLIMATE CHANGE

The decision-making method known as the Delphi Method and its various iterations in several contexts, were utilised in my research for developing and evaluating tax policy, specifically concerning the environment and climate change. In particular, the Delphi study undertaken to develop a tax policy analysis framework to evaluate the effectiveness of environment-related tax expenditures (ETMs) is the focus of the first case study in this article. It is hereafter referred to as the Stoianoff and Walpole Study.[24]

An international group of expert environmental taxation scholars (the Reference Group) were brought together to participate in a roundtable held during the 16th Global Conference on Environmental Taxation (GCET16) at the University of Technology Sydney (UTS) in September 2015. This Stoianoff and Walpole Study used a variation on the *group Delphi* method, employing an initial anonymous questionnaire to the Reference Group participants for round one, followed by the group version of the Delphi study, the Roundtable round two. The Roundtable utilised a single group divided into several subgroups and two plenary discussions to refine and rank the evaluation criteria. Ethics

approval from the UTS Human Research Ethics Committee was obtained, and its protocols were observed.

Reference Group members were required to complete a questionnaire before participating in the half-day Roundtable conducted on the last day of GCET16. The Reference Group participants were asked to examine the adequacy and completeness of a list of pre-selected evaluation criteria and update that list with other necessary criteria. In addition, they were asked to prioritise the most appropriate criteria for the evaluation of ETMs. Twenty-nine of the sixty-seven invited experts responded to the questionnaires, and so those twenty-nine respondents formed the Reference Group for the *group Delphi* roundtable.

The results of the first questionnaire were de-identified for use in the Roundtable. The results were converted into a priority table, reported in Table 1, with 1 being the highest priority and 12 the lowest priority. At all stages of the Delphi study, the experts were asked to comment on any feature of the questionnaire, terminology or approach. The questionnaires, both before and during the Roundtable, were designed to obtain personal responses to the issues and allow the experts to verify their views.[25] The Reference Group members identified an additional thirty-two criteria from the first round questionnaire. While there are overlaps among these thirty-two additional criteria, they were considered sufficiently different to warrant them being listed in the second-round questionnaire.

The original thirteen evaluation criteria were identified from the literature, considering the results of various Australian tax reviews, OECD reports, and the reviews in other nations such as the U.S.

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23. Indigenous Knowledge Forum, 2018

24. Stoianoff and Walpole, 2016

25. The personal responses are reported in The Stoianoff and Walpole Study (Stoianoff and Walpole, 2016

TABLE 1

EVALUATION CRITERIA	PRIORITY
The closeness of the link between the concession and the environmental damage to be remedied or behaviour desired	1
Considering what is the most appropriate design of the instrument	2
Whether other policy instruments would better achieve the program objectives	3
The establishment of the goals behind the concession	4
Consistency or 'mutual reinforcement' between environmental and tax policies and between their institutional frameworks and administrative structures	5
Accountability	6
Transparency and the cost to the community	7
Equity including intergenerational equity of the program	7
Considering whether the measures are meeting a valid government objective	8
Administrative costs including compliance costs	9
Simplicity of the fiscal structure	10
Efficiency and the need to identify the deviation from the neutral tax	11
Controllability	12

Joint Committee on Taxation evaluation of tax expenditures that have been taking place since 1972.[26] The fact that thirty-two additional criteria were suggested as alternatives indicates that the literature provided criteria that were either 'poorly expressed, mix concepts together that ought to be separated, separate[d] concepts that ought to go together, or [just] miss[ed] the point of being evaluative criteria'.[27]

During the second round of the Delphi study, that is, during the Roundtable of the Reference Group members (and various other GCET16 delegates who chose to participate), an initial plenary was conducted to explain in more detail the purpose of the Stoianoff and Walpole Study and the nature of the evaluation criteria identified and presented in the first questionnaire. At this point, the second questionnaire was distributed to all present at the Roundtable, and several sub-groups were formed of varying sizes to discuss the initial prioritisation and the additional criteria and any other issues of relevance. The second plenary brought the sub-groups back together to discuss the evaluation criteria before the members of the Reference

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26. Mann, 2009
27. Stoianoff and Walpole, 2016

Group present completed and returned the second questionnaire. A table of de-identified results from the first questionnaire was reproduced in the second questionnaire to enable Reference Group members the opportunity to revise their initial responses regarding the importance of the pre-selected evaluation criteria. A total of fifteen responses were received. The result of the second round of the study, employing the variation of the *group Delphi*, was a significant readjustment to the weightings of some of the pre-selected criteria,

as demonstrated in Table 2 below. Further, in the plenary discussions, it became apparent that the number of evaluation criteria ought to be limited to no more than ten and that there was consensus that the first four criteria in Table 2 were the most important for an evaluation framework. As for the additional criteria, the final plenary concluded that refining the thirty-two additional criteria would benefit from focusing on a small number of broadheads with several subheadings providing greater specificity.

TABLE 2

EVALUATION CRITERIA	PRIORITY 1ST ROUND	PRIORITY 2ND ROUND
The closeness of the link between the concession and the environmental damage to be remedied or behaviour desired	1	1
Considering what is the most appropriate design of the instrument	2	2
Accountability	6	3
Equity including intergenerational equity of the program	7	3
Transparency and the cost to the community	7	4
Whether other policy instruments would better achieve the program objectives	3	5
The establishment of the goals behind the concession	4	5
Consistency or 'mutual reinforcement' between environmental and tax policies and between their institutional frameworks and administrative structures	5	5
Administrative costs including compliance costs	9	6
Considering whether the measures are meeting a valid government objective	8	7
Simplicity of the fiscal structure	10	8
Controllability	12	9
Efficiency and the need to identify the deviation from the neutral tax	11	10

INDIGENOUS SELF-DETERMINATION AND INDIGENOUS ECOLOGICAL KNOWLEDGE

The second case study in this article focuses on Indigenous ecological knowledge (IEK) and its protection. IEK is of significant spiritual, cultural and economic value to Aboriginal and Torres Strait Islander communities and society at large, including governments, research institutions and commercial interests.[28] Such knowledge is relevant across several spheres, from medicinal treatments and pharmaceuticals to food production and land management, such as cultural burning to safeguard ecosystems and avoid wildfires.[29]

What is crucial to the development of a protection regime for such IEK is the involvement of Australia's Indigenous Peoples in the creation, operation and administration of such a regime. Indigenous empowerment is crucial to achieving sustainable development. As the Empowered Peoples Design Report points out, 'a development approach foregrounds the role of individual, family and collective agency and responsibility' in achieving 'success in closing socioeconomic disparity', thereby avoiding the 'crippling effect of dependence' that the current Australian social policies of welfare payments have produced.[30]

Australia has a history of paternalism concerning making laws for the 'benefit' of Indigenous Australians.[31] Consequently, it was imperative for the projects in this case study that Indigenous communities be empowered through direct involvement in the research process. In this way, community-led solutions could be achieved through axiologies (ways of doing) and ontologies (ways of being), with the use of the Working Party in the first part of the case study and the Research

Roundtable in the second part, but in each instance following up with a community consultation process.

Recognising and Protecting Aboriginal Knowledge Associated with Natural Resource Management

The research project *Recognising and Protecting Indigenous Knowledge associated with Natural Resource Management* was funded by the Aboriginal Communities Funding Scheme of the Namoi Catchment Management Authority (now NWLLS) (the NSW White Paper project). The research was carried out through UTS and on behalf of the Indigenous Knowledge Forum. The project aimed to:

a. identify key elements of a regime that will recognise and protect Indigenous knowledge associated with natural resource management;

b. facilitate Aboriginal Community engagement in the process of developing a regime;

c. develop a draft regime that no only accords with the aims and goals of North West NSW Aboriginal Communities but would be a model for implementation in other regions in NSW;

d. produce a Discussion Paper through which the draft regime could be distributed for comment;

e. conduct community consultations to refine the draft regime into a model that may be implemented through NSW legislation by finalising a White Paper delivered by the UTS Indigenous Knowledge Forum and NWLLS to the Office of Environment and Heritage (NSW).

The White Paper proposed a legislative 'Competent Authority' framework for recognising and protecting Aboriginal knowledge associated with natural resource management. The Authority

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28. Indigenous Knowledge Forum, 2014
29. Commonwealth of Australia, 2013, pp. 21, 31, 36-37, 39
30. Wunan Foundation, 2015, p. 13
31. Maddison, 2008

would provide the governance framework for administering a legal regime covering the creation, maintenance and protection of Aboriginal community knowledge databases. The use of the term 'Aboriginal' instead of 'Indigenous' was preferred by the Indigenous members of the Working Party, and the communities involved in the project as the Indigenous communities of NSW are Aboriginal and are recognised as such in the NSW Constitution.[32]

The inaugural Indigenous Knowledge Forum, held at UTS in August 2012, inspired the design of the NSW White Paper project to develop a model of involvement in natural resource management and access to *Country*.[33] The funded project proceeded with the advice of the Aboriginal Officer of the NWLLS and the Namoi Aboriginal Advisory Committee (NAAC). It was carried out in three stages, commencing with developing a comparative framework, followed by drafting the *sui generis* regime and Aboriginal community consultation to refine the regime. The first stage involved a comparative, doctrinal study, analysing legislative and policy regimes operating worldwide. Critical elements in each regime were identified and then compared to international obligations. This comparative analysis provided the framework on which a model could be developed to ensure the recognition and protection of IEK.

In stage two, a working party was formed to develop a *sui generis* regime, comprising Indigenous and non-Indigenous members from the UTS Indigenous Knowledge Forum committees,[34] participants from the 2012 Indigenous Knowledge Forum, and key personnel from the NWLLS and the NAAC (the Working Party). This working party was, in effect, a reference group of experts and stakeholders for what would turn out to be

a *group Delphi* process of determining the key provisions for a *sui generis* regime to protect IEK. The comparative framework provided the pre-selected criteria for such a *sui generis* regime.

Once determined, a Discussion Paper incorporating the Comparative Study Report and Draft Regime was prepared, and in stage three, it was distributed through the NWLLS to the Namoi Catchment Aboriginal Communities and other interested parties. Consultation sessions were conducted on Country according to relevant cultural norms and protocols in key locations in the region. The consultations tested the draft legal framework against Aboriginal community concerns and expectations, thereby enabling it to be refined into a culturally acceptable model set out in the NSW White Paper and presented to the Office of Environment and Heritage.

The NSW White Paper project addressed the need for recognition and protection of IEK by engaging the local, grassroots level, employing variations of an action research methodology coupled with an Indigenous research paradigm at both stages two and three. Indigenous Australians actively participated in the process of formulating legislation for their benefit. The action research methodology emphasises cooperative or collaborative inquiry[35] whereby all active participants, Indigenous and non-Indigenous, are fully involved in research decisions as co-researchers.[36] The project provided all interested parties with access to analysis of current models for and outcomes of implementing similar legislation in other countries through the internet. This assisted in the process of identifying how best to accommodate unique aspects of IEK and culture as they relate to the interests of Indigenous Australians.

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32. Constitution Act1902 (NSW), s. 2
33. Indigenous Knowledge Forum, 2012
34. The Organising Committee and the Advisory Board
35. Heron, 1996
36. Reason and Bradbury, 2007

The methodologies demonstrated in the NSW White Paper project emphasise the significance of Second Track processes in decision-making to achieve positive outcomes for social change. Participation assisted in generating Indigenous ownership of the outcomes, understanding of any resulting legislation and its intent, and an opportunity to deliver legislation that meets Australia's international obligations and effectively protects the interests of a sector of the Australian community. During stage two, the Indigenous research paradigm was important in engaging all participants in collecting research data through the method of storytelling by Indigenous Elders in the group, exploring the meaning and working through issues together to ensure accurate interpretation of language.[37] This process was then adopted during consultations on *Country*, being mindful of the culture of place and the privilege of sharing in the flow of cultural knowledge.

Garuwanga: Forming a Competent Authority to Protect Indigenous Knowledge

This project has worked with several Aboriginal communities to identify, evaluate and recommend an appropriate Competent Authority legal structure so Australia can meet the requirements of the Nagoya Protocol. This Protocol calls for a Competent Authority to govern and administer a framework that ensures Indigenous communities' informed consent is obtained for access to their traditional knowledge (referred to as Indigenous Ecological Knowledge (IEK) in this article), and that fair and equitable benefit-sharing mechanisms for the use of that knowledge are established. Working with Aboriginal communities, this project addresses concerns over the form, independence and funding

of the Competent Authority so IEK and Indigenous culture can be protected and shared.

Much like the NSW White Paper project, the use of mixed modes of research was applied in a structured way, commencing with a doctrinally based comparative analysis of existing protection regimes employing a competent authority for their governance. Inspiration for the extent of the comparative study undertaken – 69 nations – came from attendance at the 2015 World Expo in Milan, where numerous nation-states showcased their traditional or Indigenous knowledges and farming practices that resulted in potential export markets.[38] Given the World Expo theme of 'Feeding the Planet, Energy for Life', it became apparent from that event that both government and non-government organisations were instrumental in promoting Indigenous food resources and Indigenous knowledges regarding the same. Simultaneously, the project has collected data of Aboriginal governance case study examples around Australia, drawing upon the list of community concerns identified in the NSW White Paper project as the initial criteria for evaluating these different forms of governance.

The evaluation of these regimes and governance case studies has been carried out through the Research Roundtable employing a variation on a *group Delphi* method in much the same way as in the NSW White Paper project. In the Garuwanga project, the expert panel forming the Research Roundtable was comprised of the chief investigators under the ARC grant, the Aboriginal partner investigators and several other Indigenous and non-Indigenous experts (additional investigators) in various relevant fields. The criteria for evaluating the variety of governance

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37. Czaykowska-Higgins, 2009
38. Bureau International des Expositions, Expo Milano, 2015

regimes adopted for the Competent Authority were first identified using the existing literature.[39] However, the Research Roundtable determined that these lists of 'good governance principles' needed to be refined for the Garuwanga Project. Utilising the *group Delphi* open plenary process, a set of ten governance principles were identified and discussed to achieve consensus for the preparation of a discussion paper to be presented to the Aboriginal communities being consulted via the project Aboriginal Partner Organisations. The list of governance principles identified for evaluating potential governance structures for the Competent Authority are as follows: [40]

- Relationships/Networks
- Trust/Confidence
- Independence from government
- Community participation
- Guarantees/Confidentiality
- Transparency/Accountability
- Facilitation
- Advocacy
- Communication
- Reciprocity[41]

The consultations were carried out in focus group sessions with Elders and knowledge-holders from each of the communities. The outcome of those sessions was analysed for incorporation into the drafting of the final report recommending the most appropriate and acceptable form of governance, keeping in mind the identified governance principles. The analysis of the consultations can be found on the Indigenous Knowledge Forum website.[42]

Once again, underpinning the Garuwanga Project is an action research methodology[43] with the Chief Investigators, Aboriginal Partner Investigators and members of the Aboriginal Partner Organisations researching together through the mechanism of the Research Roundtable and after that the community consultations as described above. The project applied an Indigenous research paradigm[44] encompassing epistemologies (ways of knowing) through stories, narrative and reflection, connectedness to Country, culture and spirituality in a collaborative and interdisciplinary process. When referring to 'Country' in this context, it is in recognition that 'Aboriginal communities have a cultural connection to the land, which is based on each community's distinct culture, traditions and laws' and 'takes in everything within the landscape – landforms, waters, air, trees, rocks, plants, animals, foods, medicines, minerals, stories and special places'.[45] This process proved successful under the NSW White Paper project to ensure a deeper understanding of Aboriginal communities' concerns, especially the knowledge-holders charged with protecting the knowledge of a community.

As for the NSW White Paper project, the Garuwanga Project reinforces a model of respect, engagement, and reciprocity for Aboriginal and non-Aboriginal researchers to solve a problem. Then, the further engagement with communities emphasises the value of Second Track processes in producing the outcome of a more refined model of legal research and a mechanism for Aboriginal, indeed Indigenous, self-determination.

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39. See United Nations Development Programme (UNDP) (1999), Governance for Sustainable Human Development, 1997 cited in International Fund for Agricultural Development, Good Governance: An Overview, Doc No EB 99/67/INF.4 (22 August 1999) 5-6; Australian Public Service Commission (2007), *Building Better Governance Guide* 2007, https://legacy.apsc.gov.au/building-better-governance; Municipal Association of Victoria, Victorian Local Governance Association, Local Government Victoria and Local Government Professionals (MAV et al.) (2012),'Good Governance Guide – Helping Local Governments Govern Better', https://www.vlga.org.au/governance-leadership/local-government/good-governance-guide; and Australian Indigenous Governance Institute (AIGI), 'Indigenous Governance Toolkit', http://toolkit.aigi.com.au accessed 20 January 2019

40. Indigenous Knowledge Forum, 2018

41. See Indigenous Knowledge Forum, 2018, for detailed explanation of each criteria

42. Davis et al., 2020

43. Lewin, 1946

44. Wilson, 2001.

45. Office of Environment and Heritage, 2019

CONCLUSION

The two case studies demonstrate two crucial issues to consider when employing the Delphi process as a decision-making tool:

- Ensuring the participants understand the aim of the project; and
- The careful selection of the participants in the Delphi study.

While the typical characteristics of the Delphi Method are anonymity, controlled feedback and statistical response, what the two case studies analysed in this article have demonstrated is the important role that group engagement brings to a better understanding of the project aims and, therefore, the greater consensus in the final results of the project.

The Stoianoff and Walpole Study found four standout criteria from the 13 canvassed that demonstrated a consensus of the essential criteria for the evaluation of ETMs, namely, in order of priority: the closeness of the link between the concession and the environmental damage to be remedied or behaviour desired; considering what the most appropriate design of the instrument is; accountability; and equity including intergenerational equity of the program. The benchmarking achieved in the Stoianoff and Walpole Study due to employing the variation on the *group Delphi* method in the second round has assisted in developing a robust evaluation framework. The selection of participants in the Stoianoff and Walpole Study was also significant in this benchmarking process. The range of environmental tax expertise in the Reference Group covered law, accounting, economics and policy. Nevertheless, while such a reference group provides a consensus among international experts, what is missing is the input of stakeholders in the ETMs. This is why the next stage

in developing the evaluation framework is a deeper dive into specific ETMs. To this end, stakeholders from three ETM case studies have been identified for the commencement of a new evaluation criteria Delphi study in order to refine the benchmark produced by the Stoianoff and Walpole Study.

Meanwhile, the use of the open plenaries, that is, for the Working Party in the NSW White Paper project and the Research Roundtable in the Garuwanga Project, proved essential to harnessing the project participants' collective expertise enabling the group to work through issues and achieve consensus. Equally, the selection of the participants in these projects was crucial to their success. The participants could be described as an inner circle of Indigenous and non-Indigenous experts (comprising the Working Party and Research Roundtable) supported by an outer circle of supporting community members enabling grassroots level consultations. In this way, inappropriate and unworkable generalisations could be avoided.

> 'What is apparent is the importance of "cultural fit" in recognition that Indigenous communities across Australia are different with different needs, expectations and cultural protocols.'[46]

In order to achieve Indigenous empowerment, the embedding of culture and cultural practices are central to Indigenous governance. The methodologies employed in the second case study projects emphasise how governance capacity can be strengthened by enabling communities the flexibility to define their needs, design and control their response,[47] and thereby achieve self-determination. Adopting such Second Track methodologies more broadly would go some way towards addressing the failures of imposed 'western' governance systems.

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46. N. Stoianoff, 2020, Sustainable Use of Indigenous Ecological Knowledge: A Case Study for Implementing the Nagoya Protocol, in Mauerhofer V., Rupo D., Tarquinio L. (eds) Sustainability and Law. Springer, Cham., pp. 431- 451, https://doi.org/10.1007/978-3-030-42630-9_22

47. Australian Institute of Family Studies (2015), 'What works in effective Indigenous community-managed programs and organisations CFCA Paper No. 32' – May 2015, https://aifs.gov.au/cfca/publications/what-works-effective-indigenous-community-managed-programs-and-organisations/critical
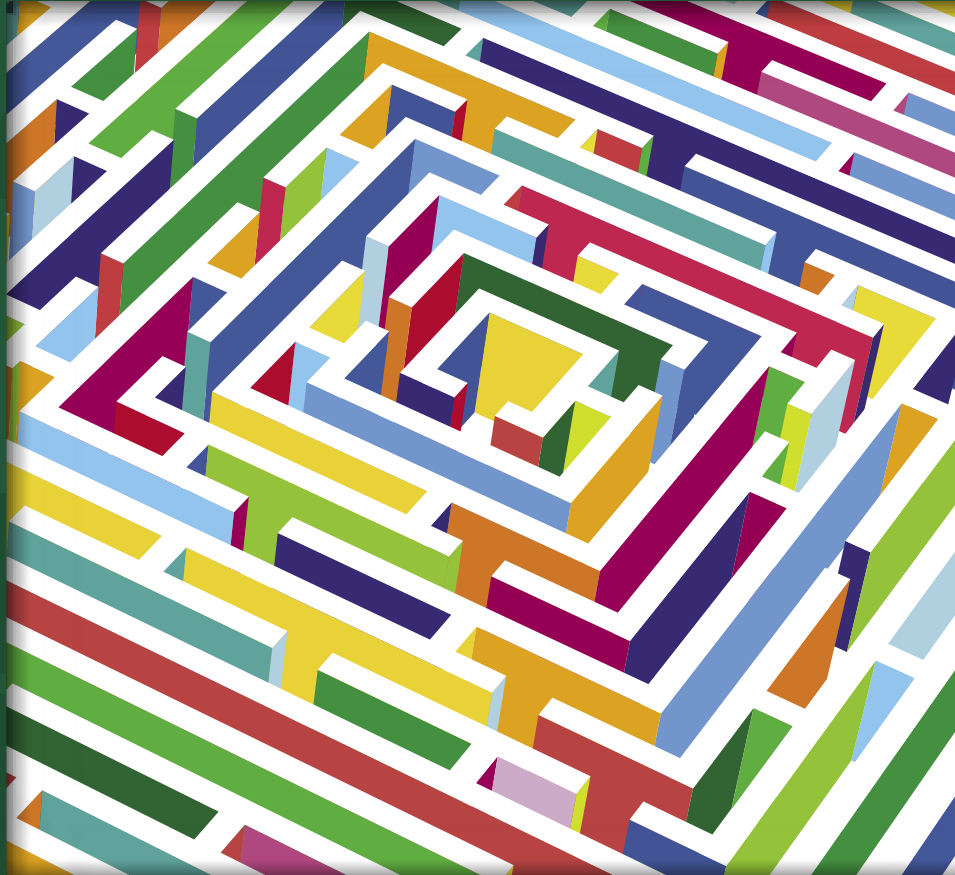
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