



# Independent Review of the Indigenous Reference Group

Fisheries Research and Development Corporation

April 2023

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# Statement against Terms of Reference

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This project has been supported by the FRDC as *Project 2022-111: External review of the FRDC's Indigenous fishing and aquaculture coordination program*. The specific Terms of Reference for this Project are:

1. Undertake an assessment of the impact of the Fisheries Research and Development Corporation (FRDC) Indigenous Reference Group (IRG) against its current scope, and provide recommendations on how to improve adoption and impact for Indigenous ('First Nations') fishing and aquaculture and cultural fishing RD&E; and
2. Provide recommendations on the future governance structure, function and membership of a revised IRG body to deliver RD&E priorities to the FRDC that improve opportunities for Indigenous Australians in fishing and aquaculture and cultural fishing.
3. For the purposes of clarity, it is understood that the scope of the review pertains only to:
  - a. The IRG's current purpose (i.e. to provide advice to the FRDC) and is not intended to consider the question of a peak body for the Australian First Nations fishing and aquaculture industry; and
  - b. First Nations commercial fishing and aquaculture and is only relevant to customary fishing where there might be a natural intersection (such as the nature of fishing rights, use of Traditional Ecological Knowledge in fishing practices and management and use of cultural branding for commercial product) and it does not include First Nations participation in recreational fishing.

Australian Venture Consultants has delivered against these Terms of Reference under the following structure:

- **Section 1** provides a broad analysis of the FRDC, the IRG, the context in which both operate and the nature of this review;
- **Section 2** provides a high-level analysis of the industry context in which the IRG operates and relevant modern developments in First Nations fisheries and aquaculture;
- **Section 3** analyses the impacts of the IRG's specific contributions via an examination of its deliberative processes and outputs with reference to specific FRDC projects;
- **Section 4** summaries the findings of stakeholder consultation;
- **Section 5** compares the IRG and its strategic and operational context against other representative First Nations consultative bodies and groups, both domestic and international, and
- **Section 6** provides broad recommendations as to improve its functions, delivery against core mandate and optimal directions for future growth to maximise adoption and impact.

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## Executive summary

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Since its inception as part of the Cairns Forums, the Indigenous Reference Group ('IRG') to the Fisheries Research and Development Corporation ('FRDC') has served as the principal method by which the FRDC seeks to engage with Australia's First Nations and First Peoples as it discharges its statutory responsibilities.

Broadly, the IRG is charged with providing to the FRDC strategic- and programme-level advice on the fisheries and aquaculture research, development and extension ('RD&E') needs of First Nations and First Peoples across Australia. Under this core remit sit a number of complementary functions, including commissioning research, providing advice to the FRDC executive and Board on First Nations RD&E-related matters, networking, capacity building and profile raising, and other such operational and procedural matters.

The FRDC has commissioned this Governance Review to assess the impacts and outputs of the IRG against its core remit and current scope and provide recommendations as to any changes needed to the IRG or its operations in order to improve adoption and impact of First Nations RD&E, increase opportunities for Australia's First Peoples to participate in fishing and aquaculture, and deliver against and help shape the FRDC's First Nations RD&E priorities. These recommendations should address governance structure, function, membership and other core aspects of the IRG.

In the process of this Review, Australian Venture Consultants has:

- Sought to understand the specific operational, strategic and jurisdictional context in which the FRDC and IRG operates;
- Undertaken extensive desktop and documentary review of the IRG and its deliberative processes, Project Reports relating to specific projects in which the IRG is said to have made significant contributions, and other supporting material provided by the FRDC;
- Consulted widely with FRDC executive, past and present IRG members, and other key stakeholders including industry, government, First Nations and other users of the marine estate; and
- Examined the nature, structure, resourcing, and functions of other comparable First Nations advisory and reference bodies, primarily those operating within the fisheries and aquaculture sphere, both within Australia and internationally.

Very broadly, the findings of these investigative processes may be summarised in four key observations.

### **Observation 1: The IRG operates in a complex environment and is called upon to do many things.**

The IRG operates in a complex environment that can be described across three dimensions – strategic, operational and procedural – and under various lenses within those dimensions. First, from a strategic perspective, the processes which resulted in the formal launch of the IRG commenced at a period of significant development in the First Nations fishing sector in Australia. The evolution of native title determinations and jurisprudence through decisions such as the Blue Mud Bay, Akiba and Dietman cases have in turn, resulted in changes in allocation and management practices pertaining to First Nations fishing rights in Australia. Further, there has variably been efforts made by fisheries managers to integrate Traditional Ecological Knowledge (TEK) and other First Nations perspectives into fisheries management processes and decisions. This has been and remains a rapidly evolving space.

Secondly, from an operational dimension, the IRG acts in a sphere wherein the nature of First Nations tenure and rights over Sea Country is variable among the jurisdictions, as are resource allocation and licensing frameworks. Furthermore, the IRG faces challenges of representing the views of a large number of First Nations with Sea Country rights, often with different cultural frameworks that pertain to Sea Country and its resources, as well as a continuum of First Nations fishing aspirations that range from small operations wishing to service a local community market, through to large industrial scale, vertically integrated fishing and aquaculture aspirations.

Finally, from a procedural perspective, while it appears that the IRG and FRDC are clear on the remit of the IRG, because the IRG is the only formalised national body operating in the First Nations fishing and aquaculture sector, there is a tendency for external stakeholders to have an expectation that the IRG has been established to address all issues associated with the First Nations fishing sector, not just R,D&E.

A key finding is that these factors combine to place considerable pressure on a resource constrained and un-remunerated IRG.

**Observation 2: The IRG has been highly successful in elevating awareness of First Nations fisheries and aquaculture needs and has significantly enhanced RD&E output.**

Across all stakeholders consulted but particularly amongst fisheries regulators and decision-makers, there has been a consistent message that the IRG has made a significant contribution to raising the profile and awareness of the First Nations fishing sector, its opportunities and the challenges it faces.

This has been achieved through the research the IRG has supported or commissioned, the profile and advocacy of individual IRG members, and the processes the IRG has helped establish or foster. Further, there is a widely held view that the IRG's influence and advocacy has resulted in a significantly enhanced allocation of resources to RD&E that addresses First Nations fishing sector priorities

**Observation 3: The IRG faces a number of challenges which are unlikely to abate and, without resolution, will likely detract from its future performance.**

As evidenced by desktop review and validated by interviews, the IRG faces several challenges in delivering against its core remit:

- **Focusing limited resources:** Given the aforementioned external pressures placed on it by external stakeholders to contribute to matters that are outside of its direct remit, ensuring its scarce resources remain focused on advising the FRDC on First Nations Fishing R,D&E matters seems to be an ongoing challenge for the IRG.
- **Achieving industry-wide engagement:** Possibly as a result of wishing to avoid the 'elephant in the room' – the intersection between First Nations fishing rights and closed entry, full allocated commercial fisheries – the IRG has had limited success in engaging with the wider commercial fishing industry.
- **Driving adoption:** While there is a widely held view that the IRG has been successful in raising awareness of the First Nations fishing sector, its opportunities and challenges, achieving practical responses from regulators has been variable across the jurisdictions. Further and most likely a function of remoteness, diversity and limited resources, achieving adoption of IRG sponsored research at the community level has also been characterised by variable success.
- **Limited human capital and succession options:** As a result of the sector's (in the context of post-colonised Australia) infancy, relatively small scale and the relatively small



number of First Nations people working in fisheries management, the number of capable candidates who are willing to dedicate significant time to a non-remunerated advisory body is limited. This presents a challenge with respect to bringing new talent onto the IRG.

- **Operational and administrative challenges:** Most likely as a consequence of resourcing, remoteness of constituency, extensive use of out-of-session working groups to deliberate issues and cultural nuance required to operate effectively, the IRG continues to experience ongoing administrative process issues. There is no suggestion that this has resulted in any impropriety, however these circumstances may potentially enliven transparency and governance risks. While overall seemingly minor in nature, as detailed further below the risk is most apparent in the IRG's discharge of its grant allocation function.

**Observation 4: The IRG compares well to other advisory bodies in Australia. International perspectives are not comparable due to dramatically jurisdictional differences, but may indicate emerging best practices.**

In very broad summary, most First Nations consultation across Australia is ad-hoc, limited temporally or spatially, and limited in scope. The IRG is relatively unique in its longevity, depth, breadth and developed institutional expertise.

While other international examples of consultative bodies demonstrate the key importance of recognising First Nations as critical partners in resources management, and in adopting a holistic approach to use of aquatic resources, the dramatic jurisdictional distinctions identified by this Review do not lead to immediately actionable recommendations. Rather, these findings are better viewed as serving to illustrate potential future focus areas for the IRG and FRDC and the emerging nature of First Nations fisheries and aquaculture interests and knowledge needs, as well as best practice frameworks for ensuring effective First Nations engagement and shared decision-making.

## **Recommendations**

The report clearly identifies that the IRG has and continues to perform a key role, not only in the FRDC's decision-making processes but for the First Nations sector more broadly. However, as the sector grows and its opportunities and challenge elevate further in the agendas of both government and industry, it is clear that the First Nations fishing industry representative framework within the FRDC and the external structures that inform that framework will also need to evolve.

To this end, this Review makes the following recommendations:

### **Recommendation 1: First Nations fishing RD&E representation planning and resourcing summit**

In the tradition of the Cairns Forums and led by the existing IRG, the FRDC should seek to collaborate with the First Nations fishing sector, other relevant agencies such as the Indigenous Land and Sea Corporation (ILSC), Indigenous Business Australia (IBA) and National Indigenous Australians Agency (NIAA) and jurisdictional fisheries managers to participate in a forum designed to scope out the design and resourcing arrangement for a suitable First Nations fishing sector representative framework.

In the spirit of self-determination and '*nothing about us without us*', it is this proposed summit that should determine the future First Nations representative framework for fisheries and aquaculture R,D&E. However, the following Recommendations 2 through 5 are offered as a broad potential framework for further consideration.

**Recommendation 2: IRG to continue for the immediate future with enhanced administrative resourcing**

The IRG should continue to operate in its current form for at least the purpose of overseeing the implementation of Recommendation 1 and continuing its current work until a new framework is endorsed and progressively implemented.

While again there is no suggestion of any impropriety, identified throughout this Review are several relatively minor but nonetheless recurrent issues with the IRG's deliberative processes, recordkeeping and procedural conduct which, while understandable given the nature of the body and the challenging landscape it is required to navigate, nonetheless indicate areas for potential future improvement.

**Recommendation 3: First Nations participation on FRDC Research Advisory Groups**

The IRG and FRDC should work with the jurisdictional Research Advisory Groups (RACS) to ensure that an IRG member is also a member of each of the RACs. This will serve to ensure geographic and jurisdictional representation and facilitate adoption of IRG commissioned and sponsored FRDC research across the jurisdictions.

**Recommendation 4: Embedding First Nations perspectives in the FRDC organisational structure**

The First Nations fishing sector is approaching a scale where its unique structure and issues should be reflected in the FRDC organisational structure. This could take a number of forms including the creation of a senior First Nations engagement position within the FRDC, appointment of the Chair of IRG to the FRDC board, or appointment of an independent First Nations person with appropriate skills to the FRDC board.

**Recommendation 5: Establishing the case for a First Nations fishing Representative Body structure**

As the Australian First Nations fishing sector grows, the case for establishing a specific First Nations fishing representative body and associated FRDC Industry Partnership Agreement framework in accordance with the *Primary Industries Research and Development Act 1989* (Cth) will likely increase in merit. In collaboration with the First Nations fishing sector, ILSC, IBA and other stakeholders, the IRG should further explore the case for this structure, including the identification of conditions precedent for it to be implemented. Once such a structure is in place, it is envisaged that it would replace the function of the IRG.

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# 1. Background

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## 1.1. Context

Fishing and aquaculture are important industries in the modern Australian economy. With operations in every coastal State and Territory of Australia and a legacy that can be traced back to colonisation of the Australian continent, the Australian commercial fishing and aquaculture industry is forecast to produce Gross Value of Product (GVP) of \$3.63 billion in 2022-23.<sup>1</sup> This represents around 3.6 percent of total Australian primary industries GVP in 2021-22. The industry also underpins the social fabric of many, particularly coastal, communities in Australia.

Australian fishery resources also facilitate a significant recreational sector that operates in both marine and inland waters. Recreational fishing is a popular Australian pastime and makes a significant contribution to the Australian economy, as well as to the wellbeing of Australians. A recent survey estimates that the recreational fishing sector makes a direct and indirect contribution to the Australian economy of around \$11 billion per annum and indicates that recreational fishing has strong links to personal wellbeing through providing a vector for relaxation, physical activity, social connections and connection to nature.<sup>2</sup>

As important as the fishery resource is to the Australian economy and lifestyles of a significant section of the mainstream Australian community, the importance pales into insignificance when compared to cultural, spiritual and social value that many Australian First Nations people associate with the fishery resource, a resource that is also rapidly becoming an important component of First Nations economic self-determination in Australia.

First Nations Australians have taken fish from the inland waterways and coastal environments of the Australian mainland and its islands for subsistence, cultural, social and trade purposes for over 60,000 years<sup>3,4</sup>. As a function of post-colonisation anthropogenic activity that has compromised habitat; competition for fish resources from settlers; and policies and actions of colonial and subsequent state, territory and federal governments, the ability of First Nations to access culturally and economically important fishery resources has been substantially curtailed.

Despite these challenging circumstances many First Nations people, particularly in regional and remote areas of the nation, have continued to fish for subsistence, leisure and cultural reasons. Indeed, while recognition of customary fishing rights has occurred relatively late in the nation's history, all Australian jurisdictions now either exempt First Nations people from fishing regulations and licensing regimes, or have a specific licensing framework for customary and traditional fishing.

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<sup>1</sup> Australian Bureau of Agricultural and Resource Economics (2022), *Australian fisheries and aquaculture outlook 2023*, Australian Government, Canberra

<sup>2</sup> Fisheries Research and Development Corporation (2022), *National Social and Economic Survey of Recreational Fishers 2019*, Australian Government, Canberra

<sup>3</sup> Pascoe, B. (2018), *Dark Emu: Aboriginal Australia and the Birth of Agriculture*, Magabala Books Aboriginal Corporation, Broome, Western Australia

<sup>4</sup> Gammage, B. (2012), *The Biggest Estate on Earth: How Aborigines Made Australia*, Allen and Unwin, Australia

Importantly, legislation such as the *Aboriginal Land Rights (Northern Territory) Act 1976* and *Native Title Act 1993* (Cth), and subsequent jurisprudence such as the *Blue Mud Bay Case*<sup>5</sup> and the *Akiba Case*<sup>6</sup>, have seen an increasing recognition of the right of First Nations people to not only access fish for subsistence and cultural reasons, but to exercise some degree of control and sovereign rights over fishery access and aquatic resources.

This growing recognition, combined with the fact that in many instances fishing and aquaculture enterprise allows First Nations to embark on economic self-determination, achieving economic benefits from enterprise that allows them to connect with sea country and culture, and assisted by Commonwealth and jurisdiction support in attaining fishing licences, aquaculture licenses and leases and building capacity, has seen growth in First Nations participation in the Australian commercial fishing and aquaculture industries. Today, numerous First Nations enterprises operate in a range of sectors of commercial fisheries and aquaculture, including barramundi, mud crab, pipi, oysters, tuna, abalone, tropical rock lobster, coral trout and sea cucumber<sup>7</sup>.

In the context of a growing First Nations fishing and aquaculture sector, research and development (including Traditional Ecological Knowledge) will only become increasingly important to ensure that the First Nations fishing and aquaculture sector can prosper and that the fisheries resource is managed optimally for all users.

## 1.2. The Fisheries Research and Development Corporation

The Fisheries Research and Development Corporation (FRDC) is one of 15 Rural Research and Development Corporations, the principal mechanism through which the Australian Government and different sectors of primary production (and in some cases components of their value chains) in Australia co-invest in research and development for industry and community benefits. Pursuant to Commonwealth legislation, Rural Research and Development Corporations collect levies (directly or indirectly) from primary producers<sup>8</sup> in the industry they represent. These levies are then matched by the Australian Government from consolidated revenue for investment in research and development (and in some cases market promotion) for that industry as determined by the Rural Research and Development Corporation, within limits set by its legislation and an associated funding agreement with the Australian Government.

The fishing industry differs from the other primary industries that have Rural Research and Development Corporations in that the resource the fishing industry utilises is economically speaking a common good<sup>9</sup>, as opposed to a farm environment where there are stronger

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<sup>5</sup> *Northern Territory v Arnhem Land Aboriginal Trust* (2008) 236 CLR 24

<sup>6</sup> *Akiba v Commonwealth* (2013) 250 CLR 209

<sup>7</sup> Barnett, R., Normyle, A., Doran, B. and Vardon, M. (2022), *Baseline Study: Agricultural Capacity of the Indigenous Estate*, Cooperative Research Centre for Developing Northern Australia, Australian National University and Indigenous Land and Sea Corporation

<sup>8</sup> Plus in some cases participants in other components of the value chain.

<sup>9</sup> That is, one which is rivalrous but non-exclusive, wherein no fish is 'owned' until legally caught, no fisher may prevent another from attempting to catch the same fish (it is not possible to 'exclude' others), but the catching of a fish by one party prevents their rivals from catching the same fish (there is rivalry between competing users).

tenure rights, and hence the resource is shared with other users. Reflecting this, the FRDC levy model is also unique.

In the case of other Rural Research and Development Corporations the Australian Government collects a compulsory levy from primary producers on behalf of the Rural Research and Development Corporation that it then matches and provides to the Rural Research and Development Corporation in accordance with specific provisions of the relevant legislation and funding agreement.

On the other hand, the FRDC is funded through agreements between the FRDC itself and the State or Territory Governments that regulate a specific fishing industry, with compulsory or voluntary levies paid by the fishing industry in those States and Territories. Together with these State/Territory-facilitated contributions, the Commonwealth Government uniquely funds the FRDC via a two-stage process. Firstly, the FRDC receives the equivalent of 0.5 percent of Australian Fisheries GVP from the Federal Government. It then matches industry contributions up to 0.25 percent of industry GVP.

The FRDC also uses Industry Partnership Agreements (IPA) to ensure that the research needs of the major sectors of the Australian fishing and aquaculture industry are met. An IPA is an agreement between the FRDC and a commercial fishing sector peak body, or in some cases individual companies, to manage a suite of sectoral research projects over a specified timeframe.

### 1.3. The Fisheries Research and Development Corporation Indigenous Reference Group

Initiated in 2010 as a specific FRDC project and as an interim body, the FRDC Indigenous Reference Group (IRG) was established to provide expertise-based advice on a range of matters dealing with aspects of Australia's First Nations (Aboriginal and Torres Strait Islander) fishing and seafood industry focused Research, Development and Extension (RD&E), with a view to providing the FRDC with advice that will improve the FRDC's investment in fishing and aquaculture priorities for Australia's Indigenous people.

The prescribed scope of the IRG is to assist the FRDC by:

- Providing a forum for the discussion of strategic and policy matters relevant to Indigenous Australians involvement in fishing and seafood related RD&E
- Providing advice to ensure FRDC's RD&E investments are better aligned with Indigenous Australian's strategic needs
- Identifying or developing activities that will advance Indigenous Australian's involvement in the fishing and seafood industry
- Advising on and assisting in the dissemination and adoption of FRDC's activities
- Assisting FRDC to provide advice and protocols to applicants, to add value to their RD&E proposals to better address Indigenous needs
- Providing advice and making recommendations to FRDC with respect to research strategy priorities and advice on relevant research proposals
- Providing assistance and input into the coordination and communication of identified key Indigenous RD&E needs to agencies and the research community, and R&D outcomes to fishers, managers and the broader community.

Specific tasks to be undertaken by the IRG include:

- Determining the IRG's work program, Terms of Reference and operating parameters
- Building internal and external communications channels
- Providing advice and input to FRDC (including funding applications), the National RD&E process, other FRDC program areas and assistance with the selection of scholarships
- Providing advice on how best to increase efficiency/synergies in addressing agency and researcher needs relating to Indigenous engagement and priorities
- Providing assistance to increase capacity of Indigenous and non-Indigenous stakeholders to be involved in, and undertake, relevant RD&E projects that progress management arrangements incorporating Traditional Management Practices and Knowledge
- Building the credibility of the IRG to help synthesise national indigenous fishing and seafood related RD&E, to identify and encourage funding from other sources beyond FRDC
- If required, provide advice on a process for getting the Cairns Forum (see Section 0) group back together to review the IRG outcomes and processes

Since late 2019, the IRG has been considering, in consultation with the FRDC, revisions to its structure. This has been informed by:

- An internal review of the IRG, which among other things identified a need for a body with wider scope than the IRG
- An investigation as to the merits of an Indigenous fishing peak body

## 1.4. Purpose and structure of this review

The purpose of this review is to provide the IRG and FRDC board with an independent assessment that they consider in conjunction with the internal review as a sound basis for determining the future of the IRG.

This report on the review is set out according to the structure summarised in the following

Table 1 (overleaf).

**TABLE 1 – REPORT OUTLINE**

<b>Section</b>	<b>Page No.</b>
<b>2. Contemporary Australian First Nations Fishing and Aquaculture Sector</b>	17
For the purposes of context, this section provides a brief overview of the evolution of the First Nations fishing sector in Australia	
<b>3. Summary of the IRG's Activities</b>	19
This section provides a summary of the IRG's deliberations and advice since its establishment, including an analysis of its specific input to subset of FRDC projects that pertain to the First Nations fishing and aquaculture industry.	
<b>4. Perceptions of the IRG</b>	26
This section synthesises the outcomes of a set of semi-structured interviews with IRG members, FRDC executive and external stakeholders that identifies perceived achievements of the IRG, as well as challenges that the IRG has faced.	
<b>5. Comparable First Nations and Indigenous Advisory Groups</b>	33
This section provides an analysis of First Nations and Indigenous advisory groups in comparable sectors and organisations within Australia and comparable jurisdictions and make some observations as to common issues and challenges faced by those groups.	
<b>6. Recommendations</b>	44
This final section sets out a framework of reform to advance the work of the IRG to date.	



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## 2. The Contemporary Australian First Nations Fishing and Aquaculture Sector

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As discussed in the previous section, within Australia (and indeed globally) there has been growing recognition that First Nations people have unique rights with respect to fishing, including in the context of Australia whereby in certain instances a *prima facie* case that

- First Nations people may not be bound by specific aspects of jurisdictional fishing regulations (*Karpany v Dietman*<sup>10</sup>);
- Customary fishing rights may extend to incorporate a degree of commerciality (*Akiba*<sup>11</sup>); and
- First Nations interests may provide a degree of control over access to certain fisheries, including to the level of invalidating the application of existing legislation to that First Nations-owned resource (*Blue Mud Bay*<sup>12</sup>).

The response to this jurisprudence from Australian jurisdictions has been variable. While many have done relatively little to move beyond the simple commercial, recreational, customary resource allocation framework, others have created new statutory or regulation-based rights and access regimes, including:

- The Northern Territory have introduced a Coastal Fishing Licence, whereby customary fishers may engage in limited commercial trade;
- The South Australian Government is introducing a mandatory First Nations quota for any new commercial fishery;
- The Tasmanian Government has allocated nine tonne of commercial Abalone quota to First Nations;
- The Torres Strait Regional Authority (TSRA)<sup>13</sup> manages the Torres Strait Protected Zone, the primary purpose of which is to preserve the unique natural environment and the way of life of the Torres Strait People, including traditional trading of seafood products; and
- The Commonwealth Government in 2018 extended the Indigenous Land Sea Corporation's (ILSC) remit to include sea country and freshwater estates, providing it with the ability to acquire commercial fishing licenses and divest them with First Nations interests.<sup>14</sup>

There is also increasing recognition of the importance of First Nations perspectives and input in resources management decisions. As original custodians of the lands and waters, regulators, decision-makers, private industry and the community at large have adopted varying measures and structures to seek input and advice on all aspects of policy and decision-making, particularly in the sphere of land management, primary industry and water rights. This also applies to the fishery resource where efforts are increasingly, albeit to varying extent, being

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<sup>10</sup> (2013) 252 CLR 507

<sup>11</sup> *Akiba on behalf of the Torres Strait Regional Seas Claim Group v Commonwealth* (2013) 250 CLR 209

<sup>12</sup> *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24

<sup>13</sup> A unique Commonwealth Authority created under the *Aboriginal and Torres Strait Islander Act 2005* (Cth), operated in accordance with the Torres Strait Treaty between Australia and Papua New Guinea and under a jointly agreed natural resource management regime.

<sup>14</sup> *Aboriginal and Torres Strait Islander Amendment (Indigenous Land Corporation) Bill 2018*, *Aboriginal and Torres Strait Islander Land and Sea Fund (Consequential Amendments) Bill 2018* and *Aboriginal and Torres Strait Islander Land and Sea Fund Bill 2018*

made to integrate First Nations input and Traditional Ecological Knowledge into fisheries management.

The dimensions of fishing rights more generally as well as those that pertain specifically to First Nations interests is a complex and continuously evolving area of law, the details of which are beyond the scope of this review. However, regardless of this complexity and the heterogenous nature of licensing frameworks across Australian jurisdictions, a distinct First Nations commercial fishing sector is clearly emerging in Australia. It is difficult to identify a comprehensive list of First Nations businesses operating in the Australian fishing and aquaculture industry. However, the following Table 2<sup>15</sup> provides some examples, illustrating the diversity within the sector across enterprise types, fishery and geographical location.

**TABLE 2 – EXAMPLES OF AUSTRALIAN FIRST NATIONS FISHING AND AQUACULTURE ENTERPRISES**

<b>Enterprise</b>	<b>Description</b>
Maningrida Wild Foods	100 percent First Nations owned social enterprise, supplying barramundi and mud crab to the Maningrida and surrounding communities.
Yagbani Aboriginal Corporation	First commercial oyster operation in Northern Australia, with a current capacity of 80,000 black-lip oyster and planning to expand to 1 million.
Kuti Co.	100 percent First Nations owned commercial enterprise harvesting Pipis from the lakes and Coorong Fishery in South Australia.
Wanna Mar Southern Bluefin Tuna	100 percent First Nations owned Tuna purse sein and ranching operation supported by the Stehr Group in Port Lincoln and operating 25 tonne of quota.
Tasmanian Aboriginal Abalone Fishery	First Nations fishers in Tasmania operating 40 units (equivalent to 9 tonnes) of the commercial Abalone fishery.
Zenadth Fisheries Company	Tropical Rock lobster, Coral Trout and Sea Cucumber operation in the Torres Strait

<sup>15</sup> Barnett, R., Normyle, A., Doran, B. and Vardon, M. (2022), *Baseline study – agricultural capacity of the Indigenous estate, Australian National University, Cooperative Research Centre for Developing Northern Australia and Indigenous Land and Sea Corporation*

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## 3. Summary of the IRG's Activities

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### 3.1. IRG scope, output and terms of reference

An integral aspect of any review of governance body is an examination as to its performance against the expectations placed on it. This necessarily requires an understanding of what those expectations are – its role, scope, and remit, often formalised as part of a set of Terms of Reference.

In the case of the IRG, undertaking this task with precision is challenging.

First and foremost, for First Nations advisory groups to operate optimally within Western-centric governance and organisational structures must be appropriately adapted. On the one hand, there is a critical need for deliberative bodies such as the IRG to demonstrate probity, impartiality, a proper consideration of relevant issues, and – particularly as the FRDC is publicly-funded to deliver a public good – proper principles of good governance in administering a grants stream. On the other hand, however, it is just as important to incorporate First Nations perspectives and interests in fisheries and aquatic resources, and work in a multi-stakeholder environment characterised by traditional/customary communication and decision-making processes, the exigencies of remote and regional communities, and the pronounced importance of person-to-person linkages. Hence, the IRG and other such First Nations advisory groups must adopt governance systems and decision-making frameworks which combine aspects of both Western-centric principles, systems and processes with those more akin to traditional/customary methods.

While this approach demonstrably delivers far better outcomes in terms of true representation, articulation of issues and development of implementable solutions, it can result in decision-making processes that appear complex, protracted and sometimes relatively opaque from a Western perspective.

Other factors that render precision in this analysis challenging include:

- The significant passage of time since the IRG first formally met and this review;
- The non-remunerated nature of IRG members, and variability of members to be able to attend meetings or contribute to deliberations over time;
- The IRG's evolution from an interim un-constituted advisory body through to specific-purpose advisory council and to a formalised FRDC 'project' stream;
- Significant changes in the underlying fiscal, regulatory and institutional context (both within the FRDC and nationally) requiring the IRG to also evolve;
- Exigencies of remote/regional meeting locations and mixed attendance methodologies (including via teleconference, in-person and online);
- An understood practice whereby a significant amount of the IRG's work took place outside of formal IRG meeting;
- Multiple custodians of documents across both the IRG Minutes themselves and other documents (eg. project Final Reports) disclosing IRG outcomes/deliberations, and resultant variability in record keeping practices and *pro formas*;
- A practice of minutes noting that members provided reports on particular topics or issues but without recording the content of those reports or what was said;
- Practice of smaller working groups providing 'offline' feedback or input to FRDC personnel, often in an undocumented manner; and
- Understandable degree of unwritten convention and institutional culture emerging amongst a body characterised by collegial person-to-person relationships and with relatively unchanging membership over a lengthy period.

For purposes of clarity, these circumstances appear to be a function of the need to blend traditional frameworks with more Western centric notions of governance. Further, the fact that when the IRG was formed, First Nations fishing issues were far less topical than they are today, and the evolving nature of the IRG and limited resourcing of the IRG, has resulted in an understandable focus on delivery of outcomes and focus on desired end-states rather than compliance with procedural matters.

There is no suggestion that any impropriety has resulted from these circumstances. However, they have necessarily impacted on the outcomes of this Review.

### 3.1.1. Terms of Reference

The abovementioned circumstances play out particularly with respect to the formalised IRG Terms of Reference (ToR) supplied to Australian Venture Consultants for the purposes of this review, dated January 2013<sup>16</sup>. This ToR document notes that it is intended to apply until the period ending November 2015. As such, on the face of this document, the IRG has now been operating outside of its terms of reference for over seven years.

However, it is unclear whether the ToR which the FRDC believes applies to the IRG is also the ToR which the IRG believes itself to be operating under. To this point, the Minutes of Meetings provided to Australian Venture Consultants for the purposes of this review record multiple amendments to the IRG ToR over the course of its lifespan, and disclose a copy of an alternate, purportedly more updated ToR for the body.

In brief summary:

- Multiple pre-2013 references to altering the IRG's ToR to suit a 'Phase 2' transition. The text of these alterations is not documented, but it is presumed that net result of these is as reflected in the January 2013 ToR.
- Meeting 9 (March 2014) – revision noted for “members to be appointed by the Board based on recommendations from the IRG”.
- Meeting 10 (July 2014) – multiple points noted:
  - Specific tasks to include “assessing EOI and monitoring projects for the Indigenous subprogram”
  - Appendix 1 of the ToR revised – criteria added for new members to “have appropriate skills and expertise”; rewording to remove role of 2012 Cairns Forum participants in appointing new members; add new point noting FRDC Board to appoint new IRG members “based on Appendix 1 criteria”
  - None of these noted changes are reflected in the January 2013 ToR provided.
- Meeting 13 (October 2015) – notes a process of annual appointment of a Chair 'per the ToR'. No such process is contained in the January 2013 ToR.
- Meeting 14 (March 2016) – notes that members provided “a revised ToR that better reflects current and future circumstances for the IRG.” Specific noted changes include revised timing to match FRDC internal funding processes, remuneration of the Chair, and appointment processes.

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<sup>16</sup> FRDC (2013), *TERMS OF REFERENCE For the Fisheries Research and Development Corporation (FRDC) Indigenous Reference Group (IRG) as at January 2013*, supplied

- Meeting 18 (April 2018) – notes that the ToR was updated “in 2017”. The minutes of meetings in 2017 do not disclose what changes were made in this year.
  - This meeting notes further that “the current ToR provides adequate guidance for the IRG with the technical changes as were provided in the Agenda papers.” These agenda papers are not provided.
  - This meeting also states that “Members also supported in principle changes to the ToR to address members’ ability to provide the out of session input and also attend meetings”.
- Meeting 19 (June 2018) – notes an updated ToR is ‘adopted’, included as Attachment 6.
  - The document reproduced in Attachment 6 to these minutes is consistent with the changes discussed above.
  - This 2018 ToR is stated to apply for the period 2018-2022.
- Meeting 24 (November 2020) – extensive discussion of the role of the IRG under its 2018 ToR, alignment and future directions appears at Agenda Item 5.
- Meeting 25 (June 2022) – further discussion of future directions appears at Agenda Item 6.

While for all practical purposes the overall ‘Scope of the IRG’ section remains unchanged, when comparing the ‘as authorised’ January 2013 ToR provided by the FRDC for the purposes of this review with the ‘as adopted’ June 2018 ToR reproduced within the minutes of Meeting 19, there are a number of important differences.

In addition to administrative and procedural differences, these include multiple differences to the ‘Specific IRG Tasks’, as outlined in Table 3 below. The most relevant additions, removals or alterations between these documents have been underlined.

**TABLE 3 - COMPARISON OF AUTHORISED 2013 AND AS-ADOPTED 2018 IRG TERMS OF REFERENCE**

Authorised Jan 2013 ToR	As adopted June 2018 ToR
Determining an annual meeting schedule and work program;	Determining an annual meeting schedule and work program;
Developing a terms of reference for the group, including processes under which the IRG will operate;	Developing a Terms of Reference (ToR) for the group, including processes under which the IRG will operate, <u>membership, and a succession process</u> ;
-	<u>Overseeing the Indigenous Fishing Subprogram</u> ;
-	<u>Identifying national Indigenous Fisheries and Aquaculture RD&amp;E priorities each year</u> ;
-	<u>Developing a communication plan</u> ;
Providing advice and input to FRDC (including funding applications), the National RD&E process, other FRDC program areas, <u>and assistance with the scholarship selection</u> ;	Providing advice and input to FRDC including; EOI and funding applications, the National RD&E process and other FRDC program areas as required;
Providing advice on how best to increase efficiency/synergies in addressing agencies’ and researchers’ needs relating to indigenous engagement and priorities	Providing advice on how best to increase efficiency/synergies in addressing agencies’ and researchers’ needs relating to Indigenous engagement and <u>IRG key research</u> priorities;
Providing assistance to increase capacity of indigenous and non-indigenous stakeholders to be involved in, and undertake, relevant RD&E projects that progress management arrangements incorporating Traditional Management Practices and Knowledge	Providing assistance to increase capacity of Indigenous and non-Indigenous stakeholders to be involved in, and undertake, relevant RD&E projects that progress management arrangements incorporating <u>IRG priorities</u> , traditional practices and cultural knowledge where appropriate;

**Authorised Jan 2013 ToR**

**As adopted June 2018 ToR**

<u>Building the credibility of the IRG</u> to help synthesise national indigenous fishing and seafood related RD&E, to indentify [sic.]and encourage funding from other sources beyond FRDC;	Helping to synthesise national Indigenous fishing and seafood related RD&E, to identify, encourage and facilitate co-investment, including in-kind commitments;
-	<u>Assisting the FRDC to engage with Indigenous stakeholders;</u>
-	<u>Reviewing project progress, milestone, draft and final reports;</u>
-	<u>Developing an evaluation framework for the sub program project;</u>
-	<u>Undertaking other relevant activities as outlined in the 'Subprogram and coordination program establishment, governance and management policy PP-06'.</u>
<u>If required, provide advice on a process for getting the Cairns forum group back together to review the IRG outcomes and processes.</u>	-

While as noted these differences do not majorly change the overall focus of the IRG or its nature as a First Nations advisory body working within the FRDC ecosystem, it is nonetheless notable that there appears to be a difference of opinion between the FRDC and IRG as to the ToR applying to the IRG. In particular, some of the 'Specific Tasks' which appear under the 2018 ToR indicate that the IRG believes it is charged with performing a number of specific operational/procedural roles for the FRDC, including oversight of an FRDC Subprogramme (including the making of funding decisions), review of reports, development of an evaluation framework, and discharge of specific responsibilities under Policy PP-06. These 'Specific Tasks' do not appear on the 2013 ToR which the FRDC believes the IRG is operating under.

From the documentary evidence available and the findings of interviews conducted in the course of this Review, the FRDC appears satisfied with the conduct of the IRG, and there is no suggestion that the IRG has not performed to expectations. However, from a governance perspective, this documented mismatch between the basis on which the FRDC executive believes the IRG is acting (that is, providing generalised and therefore informal advice) and the basis on which the IRG believes it is acting (that is, discharging specific responsibilities assigned) creates two specific risks which are more than minor administrative quibbles:

- **Governance basis for out-of-session feedback**

As discussed throughout this Review, the individual or small working group feedback provided by IRG members on grants proposals, project reviews, advice to the FRDC Board or executive and other matters appears to occur frequently and to be a valued aspect of the IRG. However, as noted in Meeting 18, the as-authorised 2013 ToR for the IRG do not contemplate this, and individual members of sub-committees of the IRG do not appear to be vested with any power to speak with any authority on the part of the IRG as a whole.

- **Basis of serving as decision-maker over grants scheme**

While the IRG has always played a role in advising the FRDC as to allocation of resources to achieve best outcomes in First Nations RD&E, the quasi-devolution of grants authority to the IRG in later years of the IRG's existence is notable in that the IRG now serves as *de facto* decision-maker over the allocation of public funds. Under the as-authorised 2013 ToR, the IRG is not vested with any specific authority to make these decisions.

### 3.1.2. Phases of IRG operations

Finally, while the IRG has been in existence for over a decade, it should be noted that the as-authorised January 2013 ToR is stated to apply for the period 2013 to 2015, while the as-adopted June 2018 ToR is stated to apply for the period 2018 to 2022. The review has not been provided with any formal documentation covering the period 2010 to 2013 or 2015 to 2018.

Accordingly, this review has proceeded on the basis that the IRG has operated under five broad phases, as summarised below in Table 4. Given the context and issues identified above, rather than deliver an overly technical finding based on explicit point-in-time wording, this review has elected to take a more holistic approach to assessing and analysing the current and historical performance of the IRG against its current and historical scope. Accordingly, the analysis herein has proceeded on the basis that the Focus Areas identified in Table 4 broadly summarise the scope and terms of reference for the IRG in each discrete phase.

**TABLE 4 - SUMMARY OF IRG PHASES OF OPERATION**

Phase	Period	Focus areas	Terms of Reference
0	Pre-2011	Informal advice to FRDC. Input leading up to Cairns Forum 2011.	No documentation provided.
1	2011-2012	Development of 11 Key Principles and 5 Indigenous RD&E Priorities. 2011 and 2012 Cairns Forums.	No documentation provided.
2	2013-2015	Implementation and adoption of Principles and Priorities into FRDC decision-making. Capacity and capability building of IRG itself. Broad-based advice to FRDC on as-requested basis. Finalisation of outstanding Cairns Forum matters.	January 2013 ToR
3	2015-2018	Directed and undirected feedback to FRDC on varying programs. Beginning of transition to formalised Indigenous Subprogram work stream. Capacity building across First Nations fishers.	No documentation provided.
4	2018-2022	Overseeing the Indigenous Fishing Subprogram, including funding allocations, formalised review, evaluation and reporting. Annual identification of National Indigenous Fisheries and Aquaculture RD&E Priorities. Development and communication of IRG priorities. Broader assistance to FRDC in Indigenous engagement and communications.	As-adopted June 2018 ToR

### 3.2. Projects and advice subject to IRG input

A key aspect of this governance review will be to develop an understanding of the specific projects and issues that the IRG has provided advice on to the FRDC, and how it has developed and communicated that advice. However, given the issues above, this process has faced some challenges:

- **Related projects:** Public-facing documentation for the IRG on the FRDC website includes a list of 110 'related projects'. However, as confirmed with the FRDC, the selection criteria for being 'related' to the IRG merely requires that a project has been assigned an 'Indigenous' tag within the FRDC database. While the IRG's input would have been sought on a large number of these projects, there is no requirement for the IRG to have been consulted or have provided advice before the 'Indigenous' tag can be applied to



a project – for example, the significant number of 'related projects' concluding before the IRG came into existence. Hence, this 'related projects' list cannot be used as the basis for assessing matters on which the IRG has provided advice.

- **Meeting minutes:** While recordkeeping practices for the IRG have evolved over time, in most instances, the minutes of the IRG meetings provided are not adequately detailed to extract fulsome information as to the projects on which it has provided advice over the decade-plus of its existence. For example, Appendix 2 to the minutes of Meeting 17 is titled 'Summary of Assessment of IRG Funding Applications' but below the heading simply states 'Already provided'. The minutes of Meeting 19 state that, as of June 2018, over 90 projects had received IRG 'input', with Attachment 1 to those minutes providing a list of 33 'Significant' projects. The minutes of Meeting 20 have a heading 'Attachment 1- Status of current projects' but this attachment is otherwise blank.
- **Undocumented project evaluations:** As part of its broad scope, the FRDC has always desired the IRG to provide wider input as to Indigenous considerations which projects should have, respond to or take into account, rather than simply responding to direct requests for feedback on specific matters. However, as confirmed with the FRDC, the standard project evaluation process under which this occurs in most instances would result in one or two IRG members providing comments/advice on these applications rather than the whole IRG. The process by which these comments/advice have been sought and were provided does not appear to have been recorded in minutes, memos of advice or otherwise disclosed in supplied documentation.

As such, it is difficult for Australian Venture Consultants to assess or otherwise incorporate this 'offline' project feedback into this governance review.

### 3.2.1. Significant projects receiving IRG input

Accordingly, and following discussions with the FRDC, for the purposes of this governance review the consideration of the form, nature, effectiveness and communication of IRG advice will be a limited to an agreed list of 24 projects deemed as significant by the FRDC, given below in Table 5. Projects have been categorised by the broad phase of IRG operations applying at the time.

**TABLE 5 - AGREED LIST OF IRG-REVIEWED PROJECTS**

Period	Project code	Project title	Notes
<i>Phase 4</i>			
02/2020 – 02/2021	2019-168	Integrating indigenous fishing: extending adoption pathways to policy and management	
11/2020 – 05/2022	2019-127	Developing a traditional fishing harvest strategy to support the sustainable harvest of Quampie ( <i>Pinctada albina</i> ) in Moreton Bay	Commercial in confidence – no public information
08/2019 – 03/2020	2018-183	Identifying and synthesizing key messages from projects funded by the FRDC Indigenous Reference Group	Key IRG review point
01/2019 – 12/2019	2018-135	Sharing and preserving knowledge through story	
10/2018 – 09/2019	2018-016	Improving data on Aboriginal and Torres Strait Islander marine resource use to inform decision-making	



Period	Project code	Project title	Notes
02/2019 – 09/2022	2018-005	Where should I farm my oysters? Does natural Cadmium distribution restrict oyster farm site selection in the Northern Territory	
<i>Phase 3</i>			
11/2017 – 09/2023	2017-132	Indigenous Fishing Subprogram: Ensuring that fishing and seafood industry focused RD&E delivers improved economic, environmental and social benefits to Australia's Indigenous people – IRG and Indigenous Subprogram Support	Ongoing; involves review of IRG perceptions, capacity and actions
-	2017-121	People Development Program: Indigenous development scholarship - Culture based fisheries training course in Vietnam	Unable to find project page on FRDC website
08/2017 – 11/2019	2017-069	Indigenous Capacity Building Program	
03/2016 – 06/2018	2016-206	Indigenous fishing subprogram: Business Nous - Indigenous business development opportunities and impediments in the fishing and seafood industry	
12/2016 – 11/2018	2016-204	Indigenous business development opportunities and impediments in the fishing and seafood industry - 'Wave to plate' establishing a market for Tasmanian cultural fisheries	
08/2016 – 02/2018	2016-201	Indigenous fishing subprogram: Business opportunities and impediments for Aboriginal community development in supportive fishing industries in the Roper River to Robinson River area of the Northern Territory	
06/2015 – 08/2017	2015-205	Indigenous fishing subprogram: mapping livelihood values of Indigenous customary fishing	
02/2015 – 06/2015	2014-409	Production of a Sea Cucumber product processing training video for Torres Strait communities	
<i>Phase 2</i>			
08/2014 – 06/2017	2014-404	Indigenous fishing subprogram: Planning, developing and coordinating Indigenous input to the Research, Development and Extension (RD&E) for Australia's fishing community - Indigenous RD&E Subprogram (IRDES) management	Key IRG review point
11/2015 – 05/2016	2014-404.20	Indigenous fishing subprogram: Facilitation of the third FRDC National Indigenous Fisheries RD&E Stakeholders Forum	IRG proposal to expand functions and touchpoints
11/2014 – 05/2015	2014-240	Development of a Torres Strait Islander and Aboriginal Traditional Inhabitant Commercial Finfish Fishery Action Plan for the Torres Strait Finfish Fishery and supporting Communications Plan	
06/2014 – 07/2016	2014-233	Indigenous Fishing Subprogram: Improving access for Indigenous Australians to and involvement in the use and management of Australia's fisheries resource	
08/2014 – 08/2016	2014-226	Indigenous Fishing Subprogram: Improving the recognition and integration of traditional owner customary fishing and ecological knowledge in the management of Victoria's fisheries	Commercial in confidence – no public information
04/2013 – 07/2016	2013-218	Indigenous fishing subprogram: Building the Capacity and Performance of Indigenous Fisheries	Key IRG review point

Period	Project code	Project title	Notes
07/2013 – 07/2016	2013-017	Optimising the management of tropical reef fish through the development of indigenous scientific capability	
<i>Phases 0 &amp; 1</i>			
06/2012 – 09/2013	2012-403	Development of the East Arnhem Fisheries Network Training Framework	
05/2011 – 01/2016	2010-405	Facilitation of the FRDC Indigenous reference group (IRG) to progress RD&E outcomes	Executive and operational support of IRG
06/2010 – 01/2014	2010-205	Identifying the key social and economic factors for successful engagement in aquaculture ventures by indigenous communities	

### 3.2.2. Governance implications of the IRG's input into projects

In project assessment four broad observations emerge.

- **High degree of focus:** Over each Phase of its operations, and to the extent possible to ascertain from documentary evidence available, the IRG appears to have consistently demonstrated a high degree of internal institutional focus on the specific matters within its remit.

This has been complicated at times by what appears to be specific requests for advice/input from other institutional bodies and functions (both within the FRDC and externally). However, as particularly demonstrated through the projects funded under the FRDC Indigenous Subprogram and the degree of careful consideration given to the compliance (or otherwise) of funding proposals with the specific remit of the IRG, when acting within its own authority and motion the IRG appears to have remained focused on delivery against its core mission.

- **Documentary and process challenges - internal:** As alluded to above, a significant complicating factor in performing this Review has been the dearth or disparity of documentation provided. On any particular topic, IRG Minutes of Meetings run the full gamut from highly detailed to cursory overviews or an absence of any mention entirely on matters regarding which other Minutes later or earlier in time necessarily imply that some discussion must have taken place.

While again this Review does not suggest that any impropriety has taken place, and while recognising that the IRG's processes must incorporate a balance of traditional/customary dialectical approaches and Western-centric documentary requirements, from a governance perspective it would be challenging for the IRG to demonstrate the depth of its deliberative processes on some matters. This therefore results in some documentary and hence governance and potentially reputational risk.

- **Documentary and process challenges – external:** While not specifically a matter for the IRG itself, in the process of this Review it has become apparent that the records of output from FRDC-supported projects with IRG input also exhibit significant differences in their acknowledgement and/or attribution of the IRG. In some cases fulsome recognition is made of the input of the IRG as a whole or specific members. In other cases Project Reports are entirely silent, while IRG Minutes disclose substantive consultation processes.

Although not within IRG direct control, a greater degree of consistency in recognition of IRG input and contributions would be desirable, not only to afford the proper degree of recognition to First Nations perspectives but also improve transparency and consistency.

- **Governance implications of sub-committees:** Both the documentary evidence available and interviews indicate that in many instances the input of the IRG is instead provided via 'offline' feedback direct to FRDC members (or project lead researchers), either individually or as part of a smaller subset of IRG members.

As discussed elsewhere in this Review, such an approach has some advantages in speed, flexibility, a recognition of the varying ability of IRG members to speak for country or otherwise, and traditional/customary decision-making processes. However, from a governance perspective, the lack of any particular delegation, authorisation or other deliberative process disclosed in Minutes of Meetings empowering particular IRG members to act in this role does enliven some concerns as to risk, transparency and accountability.

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## 4. Perceptions of the IRG

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A key component of this review was the synthesis of a series of semi-structured interviews with IRG members, FRDC executive and external stakeholders undertaken to better understand internal and external perceptions of the IRG.

The following subsections set out the key observations from these interviews.

### 4.1. The IRG operates in a very complex environment

The IRG operates and provides advice to the FRDC in a very complex and multi-faceted environment. This environment is characterised by several dimensions – strategic, operational and procedural – as well as important 'lenses' within those dimensions which bring into focus specific matters (summarised below).

Overall, from the minutes of IRG meetings that have been assessed by this review and the findings of interviews conducted, it is apparent that the IRG and the FRDC are very clear on the boundaries of the IRG's remit – providing advice to the FRDC on First Nations fisheries and aquaculture RD&E issues. However, the IRG is and remains the only formally constituted First Nations-focused fishing body with a national remit, operating within a climate in which the recognition by decision-makers and regulators of the extent, importance and complexity of First Nations interests in and over Australia's seas, waters and aquatic resources is only just beginning to take the prominence it requires.

Thus, operating within these complexities often results in the IRG being approached by external stakeholders with respect to a wider range of issues associated with First Nations fishing and aquaculture, not merely First Nations fishing and aquaculture RD&E issues. Naturally, this places strain on the IRG's constrained resources. It can also create a perception that the IRG is overreaching with respect to its specific remit.

#### 4.1.1. Strategic dimension

The strategic dimension refers to the evolving nature of the regulatory environment in which the IRG operates, with two lenses in this regard – the evolving nature of First Nations fishing rights and the integration of TEK into fisheries resource management.

##### **The evolving nature of First Nations fishing rights**

As discussed earlier in this report and in more detail at Section 5.2, the nature of First Nations fishing rights in Australia are arguably decades behind comparable jurisdictions, particularly with respect to commercial rights. As a result of the aforementioned trajectory of jurisprudence and sustained advocacy on the part of the growing First Nations fishing and aquaculture industry, this is a rapidly evolving issue, and from both a First Nations sector and broader industry perspective an issue of increasing criticality.

It is likely that the IRG will continue to be drawn into dialogue and action on the issue of First Nations fishing rights.

## **Integration of Traditional Ecological Knowledge into fisheries management frameworks**

The extent to which Australian Fisheries management agencies integrate First Nations perspectives and TEK into resource management frameworks is, as discussed earlier in this report, variable across the jurisdictions. However, on the whole, it lags comparable nations. This is a frustration for First Nations users of the fisheries resources and similarly an increasingly topical issue.

Given the obvious utility and desirability of integrating Traditional Ecological Knowledge into fisheries research and development, and fisheries management frameworks, this aspect of strategic dimensions falls squarely within the remit of the IRG.

### **4.1.2. Operational dimensions**

As a relatively small group facing constrained resources, the IRG must navigate significant national variability. This includes, for an estimated approximately 400 First Nations groups across Australia, varied views, rights, intersections and interests over sea country and inland water estate, perspectives on fishing allocation policy and licensing regimes, and fishing and aquaculture aspirations.

#### **Sea Country and freshwater tenure**

The frameworks and tenure arrangements that deliver First Nations rights of control or tenure over sea country and freshwater estate are highly variable across Australia, a full discussion on which is beyond the scope of this review. However, by way of example, under the *Aboriginal Land Rights (Northern Territory) Act 1976*, approximately 85 percent of the Northern Territory coastline (including the intertidal zone) is the subject of Aboriginal inalienable freehold title and in the Torres Strait special zoning of the marine environment provides First Nations in that region with unique access. However, in other areas of Australia, specific legal tenure is achieved through 'Western'-centric individual property rights or quota allocations, where it is not negligible or non-existent.

#### **Resource allocation and licensing**

The nature of First Nations fishing rights, resource allocation to First Nations interests and the licensing regimes that apply to these interests are also variable across the jurisdictions. For example, in the Northern Territory a special Coastal Licence can be granted to First Nations interests that provides for limited commercial trade of catch. In other jurisdictions such as Tasmania and South Australia, resource allocation policies that provide a specific commercial allocation to First Nations of both existing and new fisheries are being implemented. Whereas in others, First Nations fishing rights are limited to customary fishing practices only and do not have an element of commerciality.

#### **Who speaks for country?**

It is customary for First Nations people to respect traditional notions of sovereignty, meaning that only those who belong to specific country may speak for that country in most circumstances. Using native title determinations as a proxy for recognised holders of specific rights to country, there are around 400 specific first nations groups in Australia. With a membership of only 10, this predicament renders it very difficult for the IRG to feel comfortable adequately representing all Australian First Nations fishing interests in their deliberations.

## **A continuum of First Nations fishing and aquaculture aspirations**

As discussed earlier in this report, Australia's aquatic resources have performed an important function in subsistence, trade, cultural and spiritual First Nations life for millennia and continue to do so today. However, for an increasing number of First Nations people, a fishing or aquaculture enterprise offers a pathway to economic self-determination where they can operate a business that provides connection to sea country and culture, as well as generating an income for individuals, families and communities.

The aspirations in this regard are diverse and range from sole-operators wanting catch small volumes of fish and sell fresh fish to their community on a not-for-profit or commercial basis, through to ownership of large commercial scale fishing and aquaculture operations. The issues and considerations along this continuum are therefore similarly diverse.

### **4.1.3. Procedural dimensions**

The IRG's ToR are specific to providing the FRDC advice on First Nations fishing and aquaculture RD&E issues at a strategic and project level and to commissioning specific RD&E that it believes will support that function. It does not have a fisheries management or industry peak body remit.

However, as discussed above, because it is the only formalised national body operating in the First Nations fishing sector and by virtue of the high-profile and well networked nature of its membership, it is often considered by external stakeholders to be a quasi-peak body and as such, is often approached to consider issues outside of its remit.

## **4.2. Perceived key IRG achievements**

There is a very widely held view that the IRG has, both through the research it has commissioned and advised on and the advocacy of its highly visible members, contributed significantly to the elevation of awareness of First Nations fishing and aquaculture issues across a range of stakeholders, but particularly fisheries managers. While adoption of First Nations perspectives into fisheries management frameworks across jurisdictions has been variable, an acceleration of interest and action across all jurisdictions has occurred in the past several years.

There is also a widely held view that the IRG's influence of RD&E investment has seen a significant increase in the amount of resources expended on First Nations fishing and aquaculture RD&E and a more acute focus on issues that are valued by First Nations interests in fishing and aquaculture.

## **4.3. Challenges that the IRG has faced**

The main perceived challenges faced by the IRG pertain primarily to the external pressure placed on it with respect to being the 'go to' body for all things First Nations fisheries and aquaculture (see Section 4.1), together with its broad remit and constrained resource environment.

While compared to many other indigenous reference groups the FRDC IRG is moderately well resourced, it remains inadequately resourced for the task. This is not stated as an indictment on the FRDC, but rather as an acknowledgement that the task of thoroughly and properly integrating First Nations interests into the fisheries and aquaculture RD&E, management and

industry is a very significant task. This is particularly so given the low base from which the current sector has rapidly emerged.

While the FRDC has a role to perform with respect to the RD&E aspects of a framework that better integrates First Nations interests into the fishing and aquaculture industry, other aspects of that framework such as industry representation and advocacy are more in the remit of other agencies. Further, the non-remunerated nature of the IRG membership constrains the extent to which members can allocate time to the task, regardless of how dedicated they may be.

Specifically cited challenges are summarised in the following subsections.

### **Industry-wide engagement**

While there are many issues to be addressed with respect to First Nations interests in the fishing and aquaculture industry (e.g. primacy of cultural fishing rights over regulated catch, integration of TEK into management frameworks), the 'elephant in the room' is and has remained for over a decade the allocation of commercial quota to First Nations interests.

As a result, many stakeholders seem to resist in engaging on this topic. Fisheries managers and regulators may be reluctant to step outside regulatory comfort zones or to embark on reforms which would prove electorally divisive; existing commercial operators typically approach such matters from a risk-averse perspective with a mindset that any change could only be to their detriment; and First Nations peoples may view any 'tinkering around the edges' as a waste of time which fundamentally disrespects their needs, ancestral rights and lived experiences.

### **Driving adoption**

While the IRG has raised awareness of First Nations fishing and aquaculture issues across the jurisdictions, achieving adoption of those issues and specific recommendations from IRG sponsored research has proved challenging in many instances and some instances remains challenging.

Among other matters, achieving adoption of research outputs at a community level is challenged by remoteness, infrastructure, language difficulties, challenges in aligning traditional decision-making processes with Western-centric project management frameworks, known skills and capabilities gaps, and in some instances a lack of mutual trust.

### **Limited human capital**

There are very few First Nations fisheries officers and staff in regulatory agencies, which serves as a barrier to adoption. As well as affecting internal culture and appetites, the limited number of First Nations fisheries and aquaculture researchers presents a challenge to driving First Nations considerations across the broader fisheries and aquaculture research agenda.

Given its comparatively small nature, there is currently only a limited pool of First Nations fishing and aquaculture industry leaders that can make themselves available to participate on the IRG, particularly given its unremunerated nature. This therefore reduces the capacity of the IRG to drive change over time.

Further, while a number of IRG projects have been specifically directed at addressing this, in general a capabilities gap remains in this area whereby First Nations peoples face significant barriers in attaining the skills, formal qualifications and technical/legal understandings of the frameworks under which Australian fisheries operate, which in turn reduces their ability to engage with consultation and strategic advice processes.

## **Operations of the IRG**

Most likely as a result of some deficiencies in meeting records (primarily in its establishment phases (Phases 0 and 1)), there is some perception that the IRG does not present optimal transparency with respect to its decisions, advice, recommendations and membership appointment processes. This is exacerbated by the FRDC's longstanding practice of seeking input from individual IRG members or small working groups, the outputs/findings of which are not formally recorded or communicated to stakeholders in the same way as IRG Meetings.



## 5. Comparable First Nations and Indigenous Advisory Groups

As part of this Review and in consultation with FRDC executive and past and present members of the IRG, the Review has undertaken a desktop review of other significant Indigenous advisory groups operating in a similar context to the IRG. This analysis has included both those operating within Australia and other former colonies characterised by significant Indigenous populations – the United States, Canada and New Zealand.

Given the large number of potential consultative bodies and the highly variable context in which each operates, this desktop analysis is also not intended to 'scorecard' the IRG or any other consultative body considered in this Review. Rather, the purpose of this exercise is to:

- Understand the broader strategic context within which the IRG operates;
- Understand the varying approaches across Australia and internationally to seeking Indigenous input and advice at a strategic, programmatic and implementation level; and
- Identify the specific strengths, weaknesses and any unique features of the IRG in comparison to this broader contextual landscape.

The outcomes of this analysis and the 'lessons learnt' are incorporated into the recommendations made below at Section 6.

### 5.1. Australian First Nations and Indigenous Advisory Group

As summarised below in Table 6, this review has identified 23 consultative groups, forums and other processes operating in the fishing, water rights, and Indigenous customary usage space which bear sectoral relevance to the FRDC IRG. Operating across Australia and in a variety of different contexts, each individual group is analysed in more detail below at Appendix 1.

**TABLE 6 - SUMMARY OF MAJOR INDIGENOUS CONSULTATIVE GROUPS AND PROCESSES - SECTORAL FOCUS**

Jurisdiction	Entity	Type
Commonwealth	First Nations Environmental Water Guidance Project	Internal advisory body
Commonwealth	Reef Advisory Committee (former)	Internal advisory body
New South Wales	Aboriginal Fishing Advisory Council	Statutory advisory body
New South Wales	Aboriginal Land Council Fishing Advisory Committee	Internal advisory body
New South Wales	Aboriginal Water Coalition	Notional peak body
Victoria	Water Is Life Advisory Panel	Oversight committee
Victoria	Traditional Owner Groups w. recognised Treaty	Statutorily mandated consultation process
Victoria	Body to likely arise out of implementation of Victorian Aboriginal Fishing Strategy	Yet to be determined
South Australia	Reconciliation Working Group	Internal advisory body

Jurisdiction	Entity	Type
South Australia	Aboriginal Partnership Unit	Internal business unit
South Australia	Aboriginal Advisory Council	Peak body
South Australia	Economic Participation Working Group of Aboriginal Affairs Executive Council	Subcommittee of internal advisory body
South Australia	Traditional Owners w. State ILUA	Statutorily mandated consultation process
Queensland	Working Groups to Department of Agriculture and Fisheries	Internal advisory body
Queensland	Consultations facilitated by Cultural Liaison Officers	Informal consultative processes
Queensland	Consultations arising out of Water Allocation Planning	Informal consultative processes
Queensland	Body to likely arise out of implementation of Queensland Sustainable Fisheries Strategy	Yet to be determined
Tasmania	Consultations facilitated by Aboriginal Fisheries Officers	Informal consultative processes
Tasmania	Vestal processes (abalone fishing rights)	N/A
Western Australia	Ad hoc fisheries consultations by State Govt.	Varying
Northern Territory	Fishery Management Advisory Committees	Statutory advisory bodies
Northern Territory	Aboriginal Fisheries Consultative Committees	Ad hoc consultative process
Northern Territory	Sea Country Working Group	Peak body

In addition to these sectoral relevant bodies, this review has also examined a small number of higher profile Indigenous advisory or consultative groups and entities active in other spheres of policy and industry. These are summarised below in Table 7 and also analysed in more detail at Appendix 1.

**TABLE 7 - SUMMARY OF HIGH PROFILE INDIGENOUS CONSULTATIVE GROUPS AND PROCESSES – OTHER SECTORS**

Sector	Entity	Type
Northern Agenda	Northern Australia Indigenous Reference Group	Peak body
First Nations	Indigenous Evaluation Committee to National Indigenous Australians Agency	Oversight and advisory body
Digital economy	First Nations Digital Inclusion Advisory Group	Internal advisory body
Aged care	National Advisory Group for Aboriginal and Torres Strait Islander Aged Care	Internal advisory body
Intellectual property	Indigenous Advisory Panel to IP Australia (proposed)	Internal advisory body

By comparison to this varied strategic landscape, the FRDC IRG exhibits some similarities to other bodies, but also crucial differences. From these differences emerge six key takeaways, detailed below.

### **5.1.1. Most Indigenous consultation in the sector is ad-hoc or as-needed**

While many Indigenous advisory bodies are expressed (at least aspirationally) as being a permanent fixture of the Department, Agency or entity to which they provide input, an analysis of their operations reveal many of these have been formed in response to a specific policy need or strategic level planning/renewal processes. Their engagement and resourcing peaks in the course of this particular project or process, and falls away afterwards over time. Others are 'on again, off again' bodies activated from time to time as needed to suit business or operational tempo (for example, the release or renewal of fisheries management plans) and with little scope outside those processes, while other still have no formalised independent existence as an entity, instead representing an entirely ad-hoc process.

The FRDC IRG is not alone as a formally constituted body with a standing remit and scope to provide broad-based advice and an independent existence supported by the requirements of legislation or charter (with other such examples including the NSW Aboriginal Fishing Advisory Council or the Northern Australia Indigenous Reference Group). However, it is certainly in the minority, and represents one of if not the longest-lived example of this kind of entity in Australia.

### **5.1.2. Most Indigenous consultative processes are temporally or spatially specific**

Most Indigenous advisory bodies studied are primarily charged with providing input which is targeted at the impacts of particular processes or proposals over a particular period of time or within a particular region. This can be seeking feedback on a particular fisheries management plan, consulting with Elders and other custodians of traditional or customary law as to the views and needs of a particular group of Traditional Owners, or seeking a snapshot point-in-time summary of the state of Indigenous participation in a particular economic sector.

A body such as the FRDC IRG with a standing remit to provide ongoing advice as to Indigenous fishery RD&E needs across Australia, to set and maintain strategic direction, communicate with researchers, other agencies, communities and affected fishers, seek other funding sources or in-kind contributions, and look outside the FRDC itself in attempting to influence decision-makers across Australia as a whole is virtually unique. While the IRG in its records of decisions and deliberations does stress that individual members cannot speak for the wider Indigenous community, its national remit is unequalled within the specific sector, while the breadth of its responsibilities and strategic remit also sets it apart from other national-scale Indigenous consultation groups (such as the National Advisory Group for Aboriginal and Torres Strait Islander Aged Care or First Nations Digital Inclusion Advisory Group).

### **5.1.3. Most consultative processes have either strategic, operational, outreach or funding responsibilities – rarely all four**

As noted above at Section 4.1, the scope and specific responsibilities of the IRG demonstrate both an ongoing strategic advice function, input and quasi-review of broader FRDC operations, outreach, networking and connection-building responsibilities, and as of its Phase 2/3 transition direct decision-making powers over funding streams. While other Indigenous

consultation groups have similar powers in isolation, the IRG is virtually unique in exercising all five.

#### **5.1.4. Building strategic linkages is a consistent but rarely-achieved theme**

Where not wholly internally- or project-focused, a number of Indigenous consultation groups have stated aims to build linkages between the primary entity they advise and other decision-makers, regulators, stakeholders and the public – as does the IRG. From publicly available material, successes in this area have been mixed, with few consultation groups able to point to concrete examples of this occurring or real-world change resulting from advocacy in this regard.

Notably, only the First Nations Environmental Water Guidance Project (within the context of the Murray-Darling Basin), the Northern Australia Indigenous Reference Group (within the context of the Northern Agenda) and to an extent the National Advisory Group for Aboriginal and Torres Strait Islander Aged Care and First Nations Digital Inclusion Advisory Group (within the context of aged care and the digital economy respectively) are as explicitly ‘multi-agency’ in their scope as the FRDC IRG or have a specific agenda to influence the operational and funding decisions made by actors other than their ‘host entity’ within their sector.

#### **5.1.5. Multiple approaches are taken to achieving comprehensive representation**

Particularly evident in newer entities is an increasing recognition that Australia’s First Peoples are not homogenous, and that the multitude of pre-colonial First Nations speaking for country requires organisations to consult widely, fully and truthfully. This is managed in differing fashions across the analysed entities, with best practice generally demonstrated by non-Indigenous partner or host entities approaching Traditional Owners directly to ascertain direct from them what an effective consultation pathway would look like.

While the IRG in its minutes demonstrates a keen awareness by individual members that they are unable to speak with authority for other First Peoples, the underlying relatively loose membership requirements of the IRG, and a membership over time which tends to exhibit a northern and eastern Australian focus, is potentially an area in which more recently constituted bodies are closer to best practice.

#### **5.1.6. Resourcing, secretariat and governance processes are a sectoral-wide challenge**

A very consistent theme in all publicly recorded decisions and commentary by all surveyed bodies is the challenges which face organisations with a primarily non-remunerated membership. This is particularly so for those (like the IRG) working in a very complicated socio-politico-legal-economic sphere with multiple competing priorities and a range of interests and stakeholders to balance. While not typically highlighted in public-facing commentary, secondary sources, media interviews and personal comment by former members of other analysed bodies suggests a lack of resourcing and executive/secretarial support is a common feature of many organisations.

Against this context, while as noted above at Section 4 general perceptions are that it is insufficient to the task, the IRG has nonetheless been provided with a degree of fiscal and administrative support in excess of many other comparable organisations for much of its existence. While assessing precise quantum is difficult from public domain material, only high-profile Commonwealth supported bodies such as the Northern Australia Indigenous Reference Group or the First Nations Environmental Water Guidance Project are likely to have benefitted from a quantum of resourcing at a step change greater than the FRDC IRG, while many State-based or regional consultative bodies are likely significantly less resourced.

As a corollary, while Section 3 of this Review has identified a number of documentary issues and the recommendations given below at Section 6 note improvements to process and governance, in general the quality of the minutes of meetings and agenda papers produced for and by the IRG is consistently at or exceeds national best practice.

## 5.2. International examples of First Nations and Indigenous advisory groups

In addition to Australian Indigenous reference groups and other advisory bodies, Australian this review has also undertaken a desktop review of high-profile comparable bodies in the United States, Canada and New Zealand.

These nations share similarities with Australia in that they are all former British colonies wherein the national government has its roots in Colonial-era predecessor entities which dispossessed former Indigenous inhabitants and First Peoples of their ancestral lands and natural resources, there are important jurisdictional differences which are highly relevant to Indigenous consultation. While a full examination of these issues falls well outside the scope of this Review, a high-level review of these differences is critical to understanding the unique context which applies to each and which necessarily informs the context for Indigenous consultation.

### 5.2.1. Jurisdictional differences between Australia and other former Colonies

A profound difference between Australia and other former British colonies is the absence of any recognition of First Australians or Australian First Nations in nation forming documentation, and the dramatic differences in the legal doctrine relied upon by the colonising powers to claim sovereignty over the lands and waters which would come to form these modern nations. These matters are technically and legally complex and fall well outside the scope of this Review.

However, for present purposes, they may be summarised at a very high level as given below in Table 8.

**TABLE 8 - SUMMARY OF LEGAL STATUS & RELATIONSHIPS BETWEEN NATIONAL GOVERNMENTS AND FIRST PEOPLES**

Nation	First Nations given legal status or recognition in founding law	Basis on which colonising power claimed sovereignty	Nature of relationship established between national government and First Nations
Australia	No	Doctrine of <i>terra nullius</i> – deemed ungoverned and unsettled hence free for taking.	First Nations and the descendants of Australia's First Peoples have no special status under the Australian legal system above that which may be enacted by Parliament in the ordinary course of lawmaking (such as the system of native title). While some States are progressively moving towards increasing recognition of First Nations under treaty-like negotiations and the proposed First Nations Voice, at a national level there is presently nothing in the Constitution which affords special status to First Peoples or requires their views be sought or considered.
New Zealand	Yes	Treaty of Waitangi 1840	In exchange for recognising British sovereignty, the tribal autonomy of Māori peoples and their property rights were guaranteed by the Treaty of Waitangi, as well as special representation in the new Parliament. The State of New Zealand must thus comply with the terms of historical treaties signed to claim former tribal lands, is liable to pay compensation for any breach, and works with Māori communities to deliver many aspects of self-governance.
Canada	Yes	Treaty of Paris, Royal Proclamation of 1763, Indian Act of 1876, Constitution Act of 1982.	<p>Following the Treaty of Paris and the Royal Proclamation of 1763, permission from the bands who held title was required to expand settlement of the Canadian nation. This resulted in a large number of individual treaties struck over the 18th, 19th and early 20th century, in which bands ceded territory in return for compensation, usually monetary, protected reserves, and issue of perpetual rights for such activities as hunting and fishing.</p> <p>The Canada Act and Constitution Act of 1982 saw the Canadian Constitution amended to include a specific reference and guarantee of 'existing Aboriginal and treaty rights', with the Inherent Right Policy enacted in 1995. Under the Policy, the Crown took the view that an inherent right for Indigenous self-government already existed in the Constitution, and that the Crown would enter into partnerships with Indigenous peoples to implement that right. Self-government arrangements would take a form based on the particular historic, cultural, political and economic circumstances of each community, typically paired with negotiated land claims.</p>

Nation	First Nations given legal status or recognition in founding law	Basis on which colonising power claimed sovereignty	Nature of relationship established between national government and First Nations
United States	Yes	1778 Treaty with the Delawares, Treaty of Paris, Treaty of Fort Laramie 1851 and following.	<p>Legal status is a complex matter arising from the shifting alliances between varying Colonial and First Nations powers in the Americas since first European settlement in the late 15<sup>th</sup> century.</p> <p>Most relevantly, the sovereignty of First Nations ('Indian tribes') in the United States is recognised by the United States Supreme Court's interpretation of Article 1 Section 8 Clause 3 of the United States Constitution, whereby it has determined that the United States Constitution intended First Nations to be recognised as sovereign governments, in a similar way that it recognises States of the United States and foreign governments.</p> <p>Accordingly, Indian Tribes in the United States are recognised as a form of sub-national government similar to the States, with rights to self-government within defined territorial boundaries. Presently, there are 573 sovereign United States Tribal Nations that have formalised nation-to-nation-like relationships with the United States Federal Government.</p>

For present purposes, the key takeaway from the summary given in Table 8 above is that, unlike in Australia, in other former Colonies Indigenous consultation occurs in a context where the views, advice and input of First Nations peoples are given a privileged position under law, and in many instances the permission of those First Nations peoples needs to be obtained before the decisionmakers may legally take any action on their lands.

Against this backdrop, major consultative bodies and other processes relating to fishing, water rights, and Indigenous customary usage in these jurisdictions are detailed below.

### 5.2.2. United States

While the specific nature of First Nations fishing rights will depend on the wording of the relevant Treaty between that Tribe and the United States Federal Government, most will have rights reserved to them the right to fish in 'usual and accustomed' fishing grounds (or similar wording). As such, most First Nations with sea country are co-managers and co-owners of aquatic resources with the Federal and relevant State Government.

Since 2000, consultations with Tribal Governments by the Federal Government have been required by law<sup>17</sup>, with foundational principles requiring maximum deferral (where possible) to the self-determination rights of Tribal governments and co-design of any regulations, policies or other instruments which would affect their rights. Thus, the National Marine Fisheries Service (NOAA Fisheries/Department of Commerce) is required to engage in continuous and highly structured consultations with the over 500 sovereign Tribal governments as to any impacts of

<sup>17</sup> Executive Order 13175 of November 6, 2000



fisheries or water rights policies applying within their particular Tribal lands, as is the Bureau of Land Management (Department of the Interior) in regards to terrestrial resources.

Given the extent and nature of these nation-to-nation processes, a full analysis of these 'government to government' relations (as they are characterised) falls outside the scope of this Review. For present purposes, it is illustrative to note the salient features required by law to be part of any Tribal consultations by dint of Executive Order 13175, the Federally approved Procedures for *Government-to-Government Consultation With Federally Recognized Indian Tribes and Alaska Native Corporations*, and the emerging Guidance on Indigenous Knowledge arising from the 2022 White House Tribal Nations Summit:

- The relationship between Federal Government decisionmakers and affected Tribal bodies is one of 'government to government';
- Consultation requires an accountable process, ensuring meaningful and timely input from tribal officials on Department policies, regulations, legislative comments, or proposed legislation that have tribal implications;
- Communication and consultation processes with Tribal Governments should be designed to suit the needs and customs of that Tribe, provide adequate consideration and deliberation time, provide all relevant information, and respect confidentiality;
- Tribal Governments may have developed their own consultation processes and procedures and these should be respected and followed;
- Consultation should occur at the earliest possible stages at which it becomes clear a policy may have Tribal implications, and at a stage where policies are flexible enough to be modified;
- Consultations should be closed through a formal, written communication addressed to the most senior Tribal official participating in which the agreed-upon issues or Tribal concerns raised are summarised, and steps to be taken to meet these concerns are noted, or alternatively that a detailed explanation as to why the Federal Government cannot address those concerns.

### 5.2.3. Canada

Following Confederation in the mid-19<sup>th</sup> century, the newly formed Canadian Federal government was vested with powers to manage fishery throughout the nation. However, due to the numerous Treaties signed between the nascent Canadian state and predecessor entities and the First Nations of Canada, for the most part those First Nations retained rights to 'carry on fisheries as formerly', and were granted hunting and fishing rights over unoccupied Crown lands. Paired with Constitutional recognition of the right to traditional and customary governance of tribal lands, waters and aquatic resources, and Canadian Supreme Court jurisprudence arising out of the 1990 *Sparrow* case, the net result of this is to accord significant weight to First Nations voices in fisheries management. As with the United States, the upshot of this is that most First Nations with sea country will be co-owners and co-managers of aquatic resources.

For the purposes of this Review, three particular processes are of most relevance to the IRG.

#### **National Indigenous Fisheries Institute (NIFI)**

While decision-making and day-to-day management of Canadian fisheries is the responsibility of the Department of Fisheries and Oceans (Fisheries and Oceans Canada, FOC), following the pivotal National Indigenous Fisheries and Aquaculture Forum of 2017 the Federal Government recognised that further collaboration was required between First Nations and the government to deliver nationally consistent best outcomes, and to maximise the benefits returning to Indigenous peoples.



As a result, the National Indigenous Fisheries Institute was formed, charged with leading a wide-ranging whole-of-government Indigenous Program Review and recommending legislative and policy change required to meet those goals. A permanent budgetary allocation has been legislated for the Institute, placing its status on par with any other government Department. Since formation, the Institute has held over 200 consultations with Indigenous fishers, hunters, trappers, communities, tribal leaders and other stakeholders, and delivered five keystone reports into Indigenous fisheries and First Nations business and RD&E needs across the nation.

Its findings have resulted in significant programme review by FOC, while the Institute continues to monitor delivery of and achievement against agreed goals and priorities by releasing annual scorecards and recommendations for further reform.

### **Aboriginal Aquatic Resource And Oceans Management Program (AAROM)**

First launched in 2004 in response to a comprehensive review of Canadian fisheries management, the Program (AAROM) aims to support First Nations in utilising their own resources, as well as grant funding supplied by the Federal Government, to manage, develop and grow aquatic resources within their territory or under their control. Working directly with First Nations, AAROM seeks to build administrative capacity, scientific/technical expertise, and appropriate management structures to better design and implement most effective aquatic resource management, integrated ecosystem/watershed planning, and strengthen their ability to meaningfully contribute to co-management dialogue with the Federal Government. Importantly, a key objective is to build the capacity and ability of First Nations to engage in not only traditional/customary fishing for personal or community usage, but also that of commercial fishing for profit.

Indigenous organisations benefitting from AAROM funding have come to be known as 'AAROM Departments', reflecting the importance of self-government to Canadian First Nations, with 33 Departments found across Canada.

### **Integrated Commercial Fisheries Initiatives**

First launched in 2007 as the Pacific and Atlantic Integrated Commercial Fisheries Initiatives respectively, with a third Northern Initiative launched in 2017 as a key recommendation of NIFI (discussed above), the initiatives are designed to provide First Nations communities with fishing licenses, vessels, and gear to support participation in the commercial fisheries, boosting wealth and underpinning viability of First Nations communities.

Initially operating as successive rounds of short-term funding over rolling five-year periods, following NIFI review and advocacy the Initiatives were transitioned to a permanent funding basis, with an annual allocation of some CAD \$40 million to provide funding, training, on-ground works and other capacity boosting measures. Importantly, funding is provided on a Community Fishing Enterprise (CFE) basis, with local decision-making structures empowered to manage these CFEs and apply for funding on a competitive grants basis

#### **5.2.4. New Zealand**

Indigenous fishing rights in New Zealand reflect an unusual fusion of 'treaty-based' traditional rights, reflecting Indigenous sovereignty, and a modern implementation via dedicated quota.

Under the Treaty of Waitangi, the Crown and the nascent State of New Zealand guaranteed to the Māori tribes and signatories full exclusive and undisturbed possession of their customary

fisheries. Accordingly, in the varying fisheries legislation subsequent, provisions were inserted to note that these Acts did not apply to limit or disturb traditional fishing rights. While the enjoyment of these rights (as with other rights under the Treaty) was severely disturbed for many years, by the 1980s significant uncertainty had arisen as to the nature and extent of First Nations fishing rights in the modern context and as to whether they derived from the Treaty or common law or both.

This was brought to a head by the introduction by the New Zealand government in 1986 of one of the world's first nationally comprehensive private fisheries management systems, or Individual Transferable Quota (ITQ) system. Among other matters, Māori peoples objected that the blanket issuance of quota units to fishers essentially amounted to a government appropriation of their traditional owned resources, and disturbed their enjoyment of Treaty rights.

After a nation-spanning consultation process, the *Treaty of Waitangi (Fisheries Claims) Settlement Act 1992* formalised a settlement between the Crown and Māori, which provided for:

- Ongoing recognition of Māori rights to engage in subsistence and traditional fishing undisturbed;
- Through special purpose vehicles (the Māori Fisheries Commission and Aotearoa Fisheries Ltd), transfer to Māori ownership of approximately 23% of total ITQs issued;
- A guarantee of 20% of all ITQs created in new fisheries to be reserved to Māori ownership;
- Reserved seats for Māori members on statutory bodies charged with fisheries management; and
- Recognition of customary fishing rights as a priority allocation of aquatic resources, to be favoured over recreational and commercial allocations and managed separately from recreational and commercial usage.

While a somewhat fraught process of allocation of fishing rights within and between Māori ownership from iwi to iwi was then required, reflecting historical justice and dispossession, and a fusion of Māori ITQ ownership vehicles into the Te Ohu Kai Moana Trust, as of the present day approximately half of all ITQ units in New Zealand fisheries are wholly or partly owned by Māori First Nations. Together with reserved representation on Boards of statutory authorities, this thus provides New Zealand's First Nations with significant formalised consultation channels and ability to provide input to decision-making.

### 5.3. Learnings from international Indigenous consultation mechanisms

As is apparent from the analysis above, there are dramatic differences between the context in which Australian Indigenous fisheries, access to water and usage of aquatic resources occurs and those that apply to the First Nations of the United States of America, Canada and New Zealand. In very general terms, the enhanced sovereign rights, constitutional recognition, historical backdrop of treaties empowering 'government to government' relations and body of supporting jurisprudence all combine to create a scenario where First Peoples voices are not just heard but may speak with binding and legally-recognised authority.

For the purposes of this Review, and having heed to these important differences, there are three key learnings from this international context which are most relevant to the IRG.

### **5.3.1. Emerging best practice sees a holistic approach to Indigenous fishing rights, including commercial and community uses**

A consistent theme emerging from other nations is the importance to First Nations and Indigenous communities of fishing rights and access to aquatic resources to deliver not just personal satisfaction or enable traditional/customary practices. Just as important – if not more so – is the ability of fisheries and traditional sea country to support community-wide benefits from economic usage. With appropriate support and resourcing, activation of these resources can become a rising tide that lifts all boats.

### **5.3.2. First Nations are natural and important partners in resources management**

While vastly accelerated and enabled by the ability of First Nations in other jurisdictions to exercise self-government rights over their territorial holdings, there is a clear movement towards enhancing Indigenous input into the setting of management arrangements not merely as an interested stakeholder, but rather as a holder of important traditional knowledge. In many instances, First Nations are actively supported in education, training and other support to better actualise this traditional knowledge and pair it with the ecological and other scientific rigour required to make best possible management decisions over their own resources, and to contribute the totality of their knowledge to decision-makers and regulators within the wider government sphere.

### **5.3.3. The communal importance of fishing rights and resource access cannot be overstated**

Finally, there is a demonstrated movement towards supporting and enabling communal ownership channels to formalise ancestral and traditional entitlements within current modern legal systems. Rather than a model which focuses on personal entitlements, international examples demonstrate a preference for a model which instead allocates rights on a whole-of-community basis, to be managed by that community according to traditional decision-making practices.

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## 6. Recommendations

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A clear finding of this Review has been that the IRG has and continues to perform a key role, not only in the FRDC's decision-making processes but for the First Nations sector more broadly. However, as the sector grows, both the scale of the potential opportunities and the impacts of the challenges it faces will similarly grow in importance for both government and industry. In order to continue to deliver best outcomes for the FRDC, First Nations fishers and communities, industry stakeholders and the Australian public at large, it is clear that the First Nations fishing industry representative framework within the FRDC and the external structures that inform that framework will also need to evolve.

To that end, within the specific context of the Terms of Reference applying to this Review, five specific recommendations are made, detailed below.

### 6.1. Recommendation 1: First Nations Fishing RD&E Representation, Planning & Resourcing Summit

Having the foresight to establish, over a decade ago, a First Nations body to advise the nation's principal funder of fisheries and aquaculture research in Australia on First Nations RD&E priorities demonstrates a level of leadership in First Nations affairs from both the IRG and FRDC that was rare in Australia at the time and remains far from commonplace.

However, over the past several years, awareness and preparedness to act on activating a First Nations fishing and aquaculture industry has accelerated – circumstances that the IRG appears to have performed a significant role in driving and facilitating. It is this Review's opinion that this has now reached a critical point where a more robust First Nations fishing and aquaculture industry representation framework across the Nation is required.

Accordingly, and following the tradition of the Cairns Forums and led by the existing IRG, the FRDC should seek to collaborate with the national First Nations fishing sector, other relevant agencies such as the Indigenous Land and Sea Corporation (ILSC), Indigenous Business Australia (IBA) and National Indigenous Australians Agency (NIAA), and jurisdictional fisheries managers to facilitate a forum designed to scope out the design and resourcing arrangement for a suitable First Nations fishing sector representative framework.

Key design principles and matters for consideration by this Summit should include:

- **Co-design: nothing about us without us**  
As with all initiatives pertaining to First Nations interests, the design of any emerging national framework must be done under a process of co-design that revolves around significant, meaningful and genuine engagement with the First Nations fishing and aquaculture industry, researchers and managers from the outset and at its conclusion. As such, the process suggested under recommendations 2 through 5 below are only provided as a possible pathway for further consideration.
- **Planning and resourcing: a whole-of-systems approach**  
An approach of this nature will require considerably greater coordination between the First Nations fishing and aquaculture industry, relevant jurisdictional agencies, and instrumentalities responsible for supporting First Nations economic development such as the National Indigenous Australians Agency, Indigenous Land and Sea Corporation and Indigenous Business Australia. It will also require significantly greater resourcing, much of which will be beyond the remit of the FRDC. As such, a national summit is the

best forum to identify potential preferred framework options, refine those option and identify resourcing solutions.

- **IRG to work with new entity to transition role to more appropriate setting**

As noted in this Review, while the IRG has specific formal responsibilities on which it has tried to focus of the course of its lifespan, the dearth of similarly authoritative bodies at a national scale has resulted in the IRG being called upon to take up a quasi-peak body role. Under this approach, its opinion on non-core matters has been sought – and critically that opinion used to justify actions taken by multiple decision-makers – by multiple parties both within and without the FRDC. This has added to the IRG's already significant internal expertise via a body of institutional knowledge which would be highly valuable to any body taking up this First Nations fishery 'peak body' role. As such, the IRG should to the fullest extent possible work to achieve knowledge and capacity transfer.

- **National input to national challenges and opportunities**

Given the key national role the FRDC plays, a key output of this proposed Forum will be to test and ground-truth the recommendations contained within this Review.

For the avoidance of doubt (and in accordance with the Terms of Reference for this Review), it is not intended that any body or entity recommended by or arising out of this national forum necessarily serve as a First Nations Fishing and Aquaculture 'peak body'. Rather (as detailed below in Recommendation 5), it is contemplated that the Summit may support the creation of a First Nations Fishing and Aquaculture Representative Organisation under the *Primary Industries Research and Development Act 1989* (Cth), which is then empowered to advise the FRDC on matters within its remit. This Representative Organisation may, at the discretion of its members, may also assume a wider remit over matters that would typically concern an industry peak body.

## 6.2. Recommendation 2: Enhanced resourcing of IRG over transitional phase to address procedural, process, documentary and other matters

The IRG should continue to operate in its current form for at least the purpose of overseeing the implementation of Recommendation 1 and continuing its current work until a new framework is endorsed and progressively implemented. However, in the intervening period, this Review has identified a need for greater resourcing of the IRG.

*Prima facie*, the minutes of the IRG meetings demonstrate many elements of good governance practice, including apparent routine disclosure of potential conflicts of interest, attendance and apologies of members, and presence and status of observers.

However, there is also a clearly apparent need for the IRG to improve the recording of its deliberations as they pertain to specific projects. As highlighted throughout Section 3, there are apparent gaps in information pertaining to the IRG's deliberations on certain projects. The extent to which this is the result of deliberations occurring outside of formal meetings or the meeting minuting process is not clear. Regardless, it is important that there is an adequate historical record of all IRG deliberations.

This can be achieved by implementing a practice of pro-forma agendas and minutes whereby a debrief on discussions that have occurred outside of the formal meeting settings is had and an update on each active project is a standing item, the discussion on which is summarised.

Further, it is notable that some aspects of good record-keeping have been variably implemented or have fallen away over time. In particular, earlier minutes routinely disclose specific action items, responsibilities of particular members, status updates and progress over time. By later minutes, this practice becomes more organic or absent entirely. While recognising the non-remunerated nature of IRG membership, a more stringent adherence to this practice would both assist in improving transparency of the IRG and its processes, allow members and the IRG as a whole to more ably demonstrate (akin to the 'business judgement rule') that members have turned their minds to particular matters, and ensure that all members are clear as to what is required of them between sessions.

In particular, where individual IRG members are consulted by the FRDC executive, project leads or external parties, the authorisation/delegation provided to them by the IRG as a whole to allow this to occur should be clearly expressed. At the earliest opportunity following the provision of this advice, the nature of this contact and the advice/input provided should be tabled, such that the IRG as a whole may continue to exercise appropriate oversight and ensure that principles of transparency and accountability are upheld, particular where the expenditure of public funds is involved.

### 6.3. Recommendations 3 & 4: Amplifying First Nations voices within the FRDC's internal structure

In addition to the creation of an external entity with a formalised remit conducive to serving as a national First Nations fishing and aquaculture Representative Organisation, from an internal perspective there is a clear demand from stakeholders to more deeply embed First Nations interests in the governance and operational framework of the FRDC itself and the nature of its relations with the IRG. As evidenced in this Review, the IRG has to an extent already demonstrated this trajectory, with IRG input sought on a greater range of matters and the IRG holding specific responsibilities for delivering or contributing to many operational aspects of the FRDC.

Accordingly, this Review recommends that the FRDC and IRG work to more deeply embed First Nations perspectives and interests across the FRDC, including at a senior leadership level:

#### **Recommendation 3: More efficient geographical and jurisdictional representation: Research Advisory Committees**

Membership of the IRG and each of the FRDC Research Advisory Committees should be transitioned such that there is an IRG member on each of the State and Territory FRDC Research Advisory Committees, providing a clear link between the Research Advisory Committee framework and the First Nations fishing and aquaculture industry and IRG FRDC priorities. This will also serve to ensure geographic representation and to drive adoption across the jurisdictions.

#### **Recommendation 4: First Nations representation in FRDC senior leadership**

To ensure appropriate elevation of First Nations fishing and aquaculture RD&E priorities, as well as a First Nations lens on all considerations of the FRDC, clear and consistent stakeholder feedback throughout this Review has focused on the need to appropriately platform First Nations voices at the highest levels of the FRDC.

An appropriate mechanism to allow this to occur will require further development (and likely legal advice given the statutory nature of the FRDC). However, preferred models would include:

- a) the IRG Chair to be appointed as a Director of the FRDC Board;
- b) an appropriately qualified First Nations person to be appointed as an Independent Director of the FRDC Board; or
- c) a senior executive position within the FRDC to be created, to be filled by a First Nations person, whose responsibilities include the extension, implementation and promotion of the findings of the IRG and Representative Body within the FRDC and more broadly.

## 6.4. Recommendation 5: Establishing the case for a First Nations Representative Organisation

As discussed throughout this Review, since inception the IRG has delivered strongly positive outcomes for First Nations fishers and the FRDC itself. However, in the emerging national context and given the history of the sheer volume of calls on the IRG's time and limited institutional capabilities, there is a clear need for a new framework approach to be delivered via a National Summit (see Recommendation 1 above).

Without foreclosing the potential option space, arising from commentary and interviews conducted in the course of this Review it is clear that a potential framework approach that is likely to garner support at that Summit would be the creation of a new First Nations Fishing and Aquaculture Industry Representative Organisation in accordance with the *Primary Industries Research and Development Act 1989 (Cth)* (PIRDA). Under this model, an Industry Partnership Agreement (IPA) would be created to support a co-management approach by that representative body and the FRDC, while the Representative Organisation itself would be empowered to provide input to the FRDC in accordance with s15 of the PIRDA. As the First Nations fishing and aquaculture sector matures over time, it may be that this mechanism becomes the primary custodian of RD&E specific to the First Nations industry.

As an alternative to the creation of a new Representative Organisation, the IRG could remain in place with a modification to its ToR giving it responsibility for assessing and coordinating input from the FRDC RACS and the First Nations representatives on those RACs, as set out in Recommendation 3.



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## Appendix 1: Key features of Indigenous advisory groups

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Significant comparable Australian Indigenous advisory, consultative and other reference groups operating in the fisheries, water rights and related primary industries sectors

Entity	Type	Membership	Scope/remit	Outcomes & output
<b>Commonwealth</b>				
First Nations Environmental Water Guidance Project	Internal advisory body	Representatives nominated by member entities.	Supported by Commonwealth Environment Water Office, the Project supports the Murray Lower Darling Rivers Indigenous Nations (MLDRIN) and the Northern Basin Aboriginal Nations (NBAN) to work with the Murray-Darling Basin Authority to identify and incorporate Indigenous environmental watering objectives, interactions and priorities into Basin-scale water planning policies.  Specific support and activities include Commonwealth funded executive and secretariat support to work with First Nations peoples and communities to translate National Cultural Flows Research Project outcomes into practical activities and support on-ground works.	Body deliberations do not appear to be public domain, but advice and input incorporated into publicly release water planning documents.



Entity	Type	Membership	Scope/remit	Outcomes & output
Reef Advisory Committee (former)	Internal advisory body	Members selected by Authority, with Indigeneity and subject-matter expertise requirements.	<p>The Committee was charged with providing strategic advice to the Great Barrier Reef Marine Park Authority Board on matters affecting First Nations peoples and to reflect Indigenous traditional, customary and other fishing perspectives in management arrangements.</p> <p>The current status of the Committee is not clear from publicly available materials. Stated to be funded through to 2018, the latest publicly available documentation dates to 2016, and for the purposes of this Review it is assumed to be defunct.</p>	Terms of Reference and detailed meeting minutes reflecting deliberations and outcomes are available on the Authority website through to October 2016. Further activities of the Committee through to the stated end of funding in 2018 are unclear.
<b>New South Wales</b>				
Aboriginal Fishing Council	Statutory advisory body	Prescribed per Regulations, including regional representation, DPI staff, land interests, Ministerial appointee.	<p>Broad scope – charged under <i>Fisheries Management Act 1994</i> with providing advice to Minister for Fisheries on any matter referred to it or any matter the Council considers relevant to Aboriginal fishing.</p> <p>Specific functions to set priority areas (Indigenous fishing interests, commercialisation, RD&amp;E), advise on expenditure from Aboriginal Fishing Trust Fund.</p>	<p>Advice to Minister does not appear to be public domain.</p> <p>DPI NSW publishes regular short-form 'Chair's Summary' notes of meetings which record overall outcomes but do not provide deliberative details.</p>
Aboriginal Land Council Fishing Advisory Committee	Internal advisory body	Unclear from public documentation. Likely joint appointments by NSW Aboriginal Land Council and National Indigenous Australians Agency.	Provide advice on funding allocations under NSW Aboriginal Land Council Fishing Fund, a joint initiative of the NSWALC and the National Indigenous Australians Agency to support growth and development of NSW Indigenous fishery.	Advice by Committee to NSWALC does not appear to be formally publicised, although NSWALC has published press releases noting some aspects of advice delivered in relation to successfully funded grant proposals.

Entity	Type	Membership	Scope/remit	Outcomes & output
Aboriginal Water Coalition	Notional peak body	Members appointed by each entity to be represented on Coalition.	<p>NSW State Government initiative to form 'peak body' consultative forum to solicit feedback/advice and canvass issues relating to First Nations usage of water rights and regional water planning, including in the context of the Murray-Darling Basin Plan. Specific focus on allocation of cultural flows and Indigenous fishing rights.</p> <p>Formerly comprised of representatives from the NSW Aboriginal Land Council (NSWALC), Northern Basin Aboriginal Nations (NBAN) and Murray Lower Darling River Indigenous Nations (MLDRIN), as of mid-2021 NBAN and MLDRIN are understood to have withdrawn from the Coalition due to perceived systemic issues and failure to afford sufficient time for consultation.</p>	Unclear. Media reporting suggests degree of internal disfunction. No documentation of decisions, outcomes or advice located.
<b>Victoria</b>				
Water Is Life Advisory Panel	Oversight committee	Members appointed by each recognised Victorian Traditional Owner Group.	Commitment by the Victorian State Government and the Department of Environment, Water, Land and Planning (DEWLP) under the <i>Water is Life</i> State-wide water planning framework to establish an advisory committee. This committee would allow Traditional Owners to have oversight and hold government accountable for delivery of cultural flows and other commitments to return water to Traditional Owners for spiritual, customary and economic usage.	Body not yet established. Documentation released by Victorian State Government suggests focus will be on advice made to DEWLP and Minister.
Traditional Owner Groups w. recognised Treaty	Statutorily mandated consultation process	Members appointed by recognised Traditional Owner Groups (Gunaikurnai, Gunditjmarra, Dja Dja Wurrung, Taungurung, Wimmera, Yorta Yorta)	Due to operation of <i>Traditional Owner Settlement Agreement Act 2010</i> , recognised Traditional Owner Groups that have entered into a settlement agreement with the State Government attain treaty-like rights to access fisheries resources for personal, communal and cultural purposes. Under Part 4 and Part 6 of the Act, decision-makers are obliged to consult with Traditional Owners in developing land use or resource access plans.	Variable public-domain documentation under each agreement. Input provided to VicFisheries does not appear to be regularly published.

Entity	Type	Membership	Scope/remit	Outcomes & output
Body to likely arise out of implementation of Victorian Aboriginal Fishing Strategy	-	-	<p>Evolving commitment by Victorian Fisheries Authority as part of refreshing Aboriginal Fishing Strategy to consult more closely and in a more structure fashion with Victorian First Nations.</p> <p>New Strategy not yet finalised but 'Guiding Principles' published which call for the creation of a process with some similarities to the IRG, to deliver better management, community benefit, economic opportunities, education, employment and training for Indigenous fishers.</p>	Consultations as to final form of body ongoing.
<b>South Australia</b>				
Reconciliation Working Group	Internal advisory body	Determined by Department. requirement for one member to be Indigenous.	<p>Internal advisory group charged with advising Department of Primary Industries and Regions (PIRSA) on progression and implementation of Reconciliation Action Plan, achieve 'Closing the Gap' objectives and increase First Nations engagement and involvement with primary industries, including fishing and aquaculture.</p> <p>Notably, members drawn from internal Departmental staff, and only one Indigenous member is required.</p>	Advice provided to Department does not appear to be public domain.
Aboriginal Partnership Unit	Internal business unit	Determined by Department. Indigeneity requirements unclear.	<p>Broad stated aim to be 'central point of contact' for 'leadership and strategic advice' on Indigenous engagement by and with PIRSA to primary industries and community at large.</p> <p>Appears to function as independent business unit within PIRSA, with little public domain information as to activities, priorities or specific tasks.</p>	Advice provided does not appear to be public domain.

Entity	Type	Membership	Scope/remit	Outcomes & output
Aboriginal Advisory Council	Peak body	Appointed by Minister, with requirements for Indigeneity and desire to balance gender, language groups and urban/rural divide.	<p>Broad scope, aim to provide South Australian Government, Cabinet and Departmental processes with advice on effects of policies/programs on First Nations, and advocate on behalf of First Nations to government, including in primary industries, water rights and resource access.</p> <p>Specific focus/tasks on maintaining links with other advisory bodies, building outreach and advising on appropriate consultation processes. Required to meet bi-monthly, executive support provided by Attorney-General's Department.</p>	<p>Advice provided does not appear to be public domain.</p> <p>Extent to which touches on water rights, fishing or First Nations economic participation unclear from public domain material but appears within scope.</p>
Economic Participation Working Group of Aboriginal Affairs Executive Council	Subcommittee of internal advisory body	Selected by broader Aboriginal Affairs Executive Committee from within public sector, requirement for at least 50% indigenous.	Specific subcommittee/working group providing advice on economic participation and empowerment of First Nations population with State. Assists broader Executive Council on providing advice to Cabinet and Department Senior Leadership Committee on concerns, impacts, advice and other input on effects of government decisions.	<p>Advice provided does not appear to be public domain.</p> <p>Extent to which touches on water rights, fishing or First Nations economic participation unclear from public domain material but appears within scope.</p>
Traditional Owners with State ILUA	Statutorily mandated consultation process	Members appointed by recognised Traditional Owner Groups (Narungga Nation, Yandruwandha Yawarrawarrka)	<i>Fisheries Management Act 2007</i> requires the development of an Aboriginal Traditional Management Plan to be drafted where an ILUA has been negotiated between the holders of native title and the State. Among other matters, the Plan will address Indigenous fishing rights, land access and related matters.	Management Plans are public domain. Ongoing consultations or monitoring between TOs and PIRSA is not disclosed.

Entity	Type	Membership	Scope/remit	Outcomes & output
<b>Queensland</b>				
Working Groups to Department of Agriculture and Fisheries	Internal advisory body	Determined by Department, usually with requirement for at least one Indigenous member.	<p>As part of Sustainable Fisheries Strategy, the Department of Agriculture and Fisheries (DAF) convenes a number of Fisheries Working Groups, charged with providing advice on operational aspects of fisheries management on a per-species or per-region basis.</p> <p>For most of these groups, a specific aspect of their terms of reference will include traditional, customary and other Indigenous usage of aquatic resources, and the impacts of any decisions on First Nations fishers and communities.</p>	Terms of Reference for each Working Group and Communiques from the Group to the Department or Minister are public domain and publicised on the DAF website. Communiques disclose both advice given and feedback received.
Consultations facilitated by Cultural Liaison Officers	Informal consultative processes	Officers appointed by Department.	The Queensland Boating and Fisheries Patrol is understood to have instituted a program of semi-structured consultation between Indigenous communities, First Nations Land and Sea Ranger groups, traditional/customary fishers and the Patrol and wider Department. It is not apparent from public domain material the extent or methodology of consultations, but this is understood to involve Elders and other semi-formalised groupings.	No public domain material located on outcomes from consultations.
Consultations arising out of Water Allocation Planning	Informal consultative processes	-	Under amendments to the <i>Water Act 2000</i> , since 2018 new or replacement water allocation plans must explicitly address allocations to be made to First Nations peoples for cultural, economic, spiritual or traditional purposes. Consultation with 'affected Aboriginal and Torres Strait Islander peoples' is required in this process, however the form in which this occurs does not appear to be specified.	No public domain material located on outcomes from consultations.

Entity	Type	Membership	Scope/remit	Outcomes & output
Body to likely arise out of implementation of Queensland Sustainable Fisheries Strategy	-	-	Evolving commitment by DAF to boost participation of First Nations in fisheries and fishing management actions. Semi-structured consultations have been undertaken already, with a key action under the Strategy has been to commence development of a specific First Nations development plan and consultative process, and findings of independent expert review Institute for Sustainable Futures has recommended formalised consultation body.	Consultations as to final form of body ongoing.
<b>Tasmania</b>				
Consultations facilitated by Aboriginal Fisheries Officers	Informal consultative processes	Officers appointed by Department.	The Tasmanian Department of Primary Industries, Parks, Water and Environment (DPIPWE) has recently created a position under its Marine Resources Team charged with providing input from a First Nations perspective on marine resources management strategies and facilitating engagement with First Nations communities and fishers to provide advice. It is not apparent from public domain material the extent or methodology of consultations.	No public domain material located on outcomes from consultations.
Vestal processes	-	-	In early 2022, the Land and Sea Aboriginal Corporation Tasmania was vested by the State Government with rights to fish 40 formerly State-owned unit allocations in the abalone fishery. It is understood this process involved extensive consultation with First Nations, with potential future opportunities noted in this space. The methods by which this is to occur is not apparent from public domain material.	No public domain material located on future consultation avenues related to this process.

Entity	Type	Membership	Scope/remit	Outcomes & output
<b>Western Australia</b>				
Ad hoc	-	As deemed appropriate by Department	<p>Western Australian fisheries legislation (<i>Fish Resources Management Act 1994 / Aquatic Resources Management Act 2016</i>) explicitly recognises the customary and traditional fishing sector and requires management plans and other operational decisions to account for this sector. The Department of Primary Industries and Regional Development views First Nations fishers as 'key stakeholders' under its Customary Fishing Strategy, with First Nations peoples to be consulted in the development of management plans.</p> <p>However, no standing formalised processes appear to exist to facilitate this occurring beyond the normal course of calls for stakeholder input on draft Departmental decisions.</p>	-
<b>Northern Territory</b>				
Fishery Management Advisory Committees	Statutory advisory bodies	As appointed by Minister on advice from Department	<p>Under the <i>Fisheries Act 1988</i>, Fishery Management Advisory Committees may be constituted to provide expert advice and input to the Department of Industry, Tourism and Trade (DITT) on scientific, industry, operational, cultural/traditional and other aspects of fisheries management plans.</p> <p>Committees have varied in scope, subject matter and regional focus over time, but typically include significant focus on First Nations participation, interests and intersections.</p>	Terms of Reference and meeting summaries/minutes vary by Committee, but are typically well publicised on DITT website with adequate records of deliberations and advice given.

Entity	Type	Membership	Scope/remit	Outcomes & output
Aboriginal Fisheries Consultative Committees	Ad hoc consultative process	Representatives invited by Department/Minister from participating bodies	<p>Under previous Northern Territory governments, Aboriginal Fisheries Consultative Committees were a mechanism for allowing the Territory Government, traditional owners and the fishing industry to discuss fisheries management issues and initiatives as well as economic development opportunities.</p> <p>Particularly active during the 1990s and early 2000s, the last public domain material regarding Committee meetings was in 2018/19 and none are understood to still regularly meet.</p>	No public domain material located on outcomes.
Sea Country Working Group	Peak body	As appointed by the Northern Land Council	<p>Reflecting the unique nature of Northern Territory Aboriginal land rights and the outcomes of the <i>Blue Mud Bay</i> case, the Northern Territory Government effectively has limited ability to legislate within the boundaries of Aboriginal land under the <i>Aboriginal Land Rights Act 1976</i>.</p> <p>In order to facilitate access by non-Indigenous peoples and fishers, the Northern Land Council has since 2015 formed a Working Group to progress treaty-like negotiations between recreational fishers, commercial fishers and the Northern Territory Government.</p>	Deliberations do not appear to be public domain, although annual transparency reports by the NLC are lodged with the Commonwealth Government and disclose key actions and outcomes of the Group.



## Other high profile Australian First Nations advisory, consultative and reference groups

Entity	Type	Membership	Scope/remit	Outcomes & output
Northern Australia Indigenous Reference Group	Non-statutory advisory body to Northern Australian Ministerial Forum	As appointed by the Minister, from Indigenous sectoral and subject - matter experts.	<p>Broad scope – charged with providing policy advice and input to Commonwealth Government on achieving the five-year plan <i>Northern Australia Our North, Our Future: 2021-2026</i>.</p> <p>As part of achieving desired outcomes and meeting Closing the Gap targets, also serves as vehicle for engagement with other Commonwealth, State/Territory and statutory entities (CRCs) such as the Northern Australian Infrastructure Fund, Northern Territory Indigenous Business Network, Office of Northern Australia and the Cooperative Research Centre for Developing Northern Australia.</p>	<p>NA IRG deliberative processes and outcomes are intended to be published through official communiques of meeting outcomes.</p> <p>However, while meetings are said to occur quarterly, as of the date of this Review the only publicly available communique is from the first meeting in February 2022.</p>
Indigenous Evaluation Committee	Oversight and advisory body.	As appointed by the CEO of the Agency. No Indigeneity requirements appear to apply.	The Committee aims to support transparency, accountability and learning with regard to evaluation and program performance reporting for the National Indigenous Australians Agency. It has specific oversight of the Indigenous Advancement Strategy Evaluation Framework and provides a review function for the outcomes and performance of the Agency as a whole.	Terms of reference and regular meeting communiques are public domain and well publicised on the Agency website. However, the communiques do not appear to contain much detail as to outcomes or deliberative processes.
First Nations Digital Inclusion Advisory Group	Internal advisory body.	As appointed by Minister, from Indigenous sectoral experts.	<p>As part of addressing the Northern Agenda and meeting Closing the Gap targets, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts has constituted an Advisory Group to provide advice and policy input on address the access, affordability and digital ability barriers to First Nations digital inclusion.</p> <p>Specific priorities and outputs of the Group will initially focus on meeting Closing the Gap targets, and advancing shared decision-making in programme design and implementation.</p>	<p>Advisory Group terms of reference, deliberative processes and outcomes are intended to be published through official communiques of meeting outcomes.</p> <p>However, as of the date of this Review the only publicly available communique is from the first meeting in January 2023, and the Terms of Reference have not been released.</p>

Entity	Type	Membership	Scope/remit	Outcomes & output
National Advisory Group for Aboriginal and Torres Strait Islander Aged Care	Internal advisory body.	As appointed by Minister, with Indigeneity and subject-matter expertise requirements.	Advising the Commonwealth Department of Health, the Advisory Group (currently relaunching as the National Aboriginal and Torres Strait Islander Aging and Aged Care Council) provides high-level advice and advocacy to the Commonwealth and the Minister on aged care policies, programs and services that meet evidence-based needs of older Aboriginal and Torres Strait Islander people living in urban, regional, rural and remote locations.	Corporate plan, terms of reference and annual reports all public domain and regularly updated. Deliberative processes not published.
Future Indigenous Advisory Panel to IP Australia	Internal advisory body	-	As part of its ongoing Indigenous Knowledge Project, the Commonwealth Government through IP Australia has been seeking to enhance recognition and protection of Indigenous Traditional Knowledge. As of the most recent proposals put forth for public comment in 2021, IP Australia proposes to create a formalised Indigenous voice to IP Australia to provide input and advice on public policy, as well as potentially having a role in assessing intellectual property applications which feature Indigenous Traditional Knowledge.	Consultations as to final scope and form of body ongoing.