Received: 21 February 2022 | Revised: 8 October 2022 | Accepted: 19 October 2022

DOI: 10.1111/1467-8500.12565

RESEARCH ARTICLE

WILEY

Indigenous institutions and local government in the Torres Strait

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Funding information
Griffith University: Small Research Grant

Abstract

The relationships between local governments and Indigenous institutions in Australia are unstudied, despite both being oriented to the local level. Related research focuses on the performance of Indigenous local governments, Indigenous forms of governance and its relation to local government, relations between local governments and Indigenous communities, and the intercultural dynamics of Indigenous and Western governance frameworks in local governments. This article presents the findings of a study that examines relations between local governments and Indigenous institutions in the Torres Strait, a relationship that is framed by s. 9(3) of the *Local Government Act 2009* (Qld) (LGA) that allows local governments to 'take account of Aboriginal tradition and Island custom'. A framework adapted from health-related studies, consisting of three alternative policy approaches—*mainstreaming*, *indigenisation*, and *hybridisation*—is used in this study to characterise relationships between local governments and Indigenous institutions. Kinship and country, two important Indigenous institutions, are marginalised in Queensland's mainstream system of local government, which in turn creates obstacles for Aboriginal and Torres Strait

Islander people from participating and engaging in local government processes.

KEYWORDS
governance, Indigenous, Indigenous institutions, local government

Points for practitioners

- Government that does not recognise the institutions which are fundamental to how Indigenous people govern will marginalise them from power.
- Indigenous institutions are legitimate actors whose voice must be considered within mainstreaming discussions.
- Representation within indigenous institutions influences local government relations.

1 | INTRODUCTION

Under article 18 of the *United Nations Declaration on the Rights of Indigenous Peoples* (UNDRIP), Indigenous people have the right to be represented in decisions that affect their rights and to 'maintain and develop' their decision-making institutions (United Nations, 2007). In Australia, these principles have not received much support from Commonwealth, state, and territory powers, and the recognition of Indigenous institutions remains sparsely embedded in the functions of Australian governments (Hobbs, 2019). The impact of this lack of recognition is apparent in how local governments and Indigenous institutions relate in the Torres Strait region of Queensland. Indigenous local government councillors and Indigenous Traditional Owner groups are adversely impacted by how their institutions are recognised in the Local Government Act 2009 (Qld) (LGA) (https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2009-017) as an option rather than a requirement: 'When exercising a power, a local government may take account of Aboriginal tradition and Island custom'. Local governments do not need to comply with this clause, due to the use of the word 'may'. In this system, Indigenous councillor roles are diminished by regulations governing conflicts of interest (COI) and Traditional Owners' rights are endangered by the indifference of councils. These issues present a real impediment to Aboriginal and Torres Strait Islander peoples' full participation in local governmental decision-making.

Queensland is unique in the Australian context in that it allows local governments to recognise Indigenous institutions 'while exercising a power' (Local Government Act 2009 s. 9(3)). No other Australian jurisdiction recognises Indigenous institutions in local government legislation in the way they are recognised in Queensland under the Local Government Act 2009 (Qld).[1] Local governments have powers in deciding how land is used because they are responsible for planning. Under s. 5(2)(d) of the Planning Act 2016 (Qld) (https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2016-025), planning bodies are also required to value, protect, and promote 'Aboriginal and Torres Strait Islander knowledge, culture and tradition'. This is where the

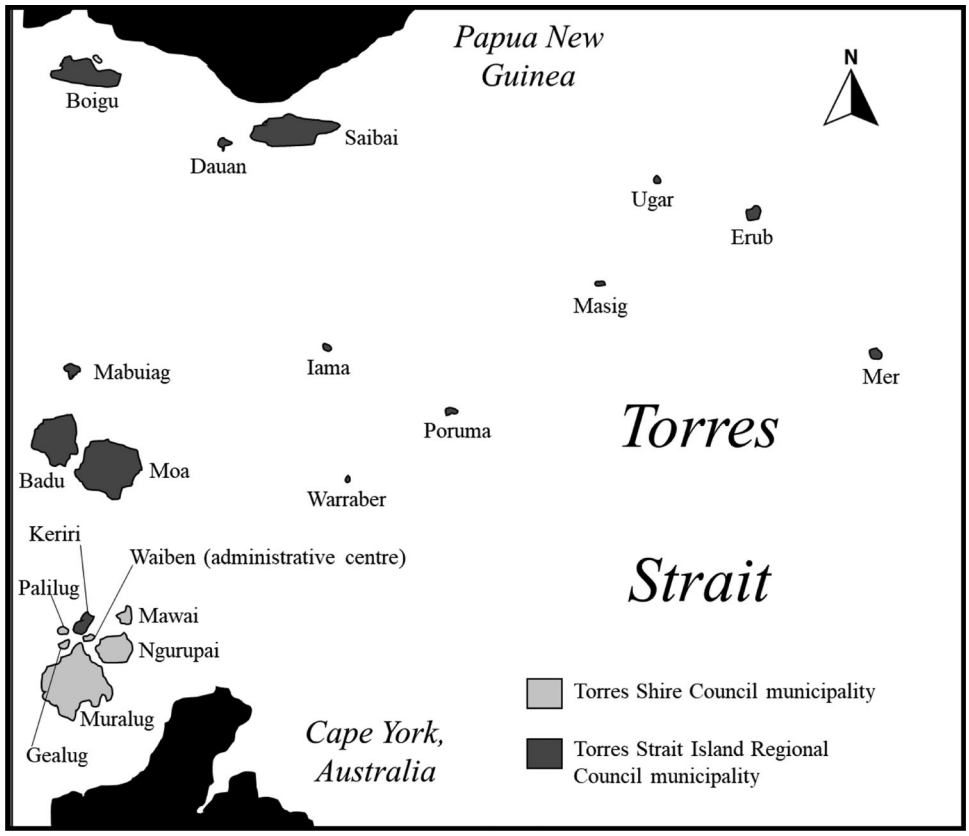

FIGURE 1 Local government municipalities in the Torres Strait
This map is not an accurate representation of the Torres Strait. This map was designed solely to depict the inhabited islands that are included in the two local government municipalities, TSIRC and TSC.

relationship between local governments and Indigenous institutions is most salient, and where Indigenous involvement in local government decision-making should be most prudent; however, Indigenous voices are rarely heard in planning processes (Porter, 2017; Wensing, 2018).

I focus on the Torres Strait for a number of reasons. It includes both types of local government found in Queensland, 'Indigenous' and 'mainstream' councils. The Torres Strait Island Regional Council (TSIRC), which is one of the Indigenous councils in the region, services the 15 'outer' island communities where 91.8% of the population identify as Indigenous (Australian Bureau of Statistics, 2020a) (see Figure 1).[2] The only mainstream local government in the region, the Torres Shire Council (TSC), governs from the administrative centre of the Torres Strait, Waiben (Thursday Island), and services communities on the adjacent islands (see Figure 1). A total of 68.6% of the people in the TSC's district identify as Aboriginal and or Torres Strait Islander (Australian Bureau of Statistics, 2020b). Indigenous and mainstream councils were once legislated for separately, but today, both come under the *LGA*. Indigenous councils have maintained their distinct classification because of the unique circumstances of their communities requiring special consideration around service delivery and funding. The Torres Strait encompasses traditional lands of both Aboriginal and Torres Strait Islander peoples, which increases the generalisability of my findings. The Torres Strait is an ideal case to examine the effect of Indigenous representation on relationships between

local governments and Indigenous institutions, as all the region's local government councillors are Indigenous.

In a region where Indigenous people are the majority of the population and most of the local government workforce, I find that mainstream approaches prevail over Indigenous institutions. Under the mainstream system of local government, Indigenous institutions are marginalised in both 'Indigenous' and 'mainstream' councils. Local governments in the Torres Strait fail to recognise Indigenous institutions because of the lack of legislative requirement to do so, and there are two areas in which this failure is especially problematic, impacting two fundamental Indigenous institutions, kinship and country.

In this paper, I first define Indigenous institutions, describing kinship and country, and explain their significance to how Indigenous people govern themselves. I then explain the theoretical framework and the qualitative methods I employ. My case study focuses on two local government entities, TSIRC and TSC, to highlight how Indigenous institutions are excluded and the associated impacts. I conclude that there needs to be stronger impetus for local governments to recognise Indigenous institutions, and that the requirement to do so must be reflected in the *LGA*.

2 | INDIGENOUS INSTITUTIONS

According to Hodgson (2006), institutions are 'systems of established and embedded social rules that structure social interactions' (p. 18). I use Hodgson's definition because he clearly demarcates institutions from other socially derived systems, like rules, conventions, habituations, social structures, and organisations. He also does not classify institutions by their perceived importance. A popular method, conceived by economist Douglass North, is to classify institutions into formal and informal categories (North, 1990). Applying North's definition of institutions, Indigenous institutions would be considered informal. But, to an Indigenous person, their institutions are as real and binding as any law enacted by an Australian legislature. Unfortunately, mainstream approaches to defining institutions fail to capture the significance and legitimacy of Indigenous institutions to Indigenous people.

The definition of 'Aboriginal tradition' and 'Island custom' in the Act Interpretations Act 1954 (Qld) (https://www.legislation.qld.gov.au/view/pdf/2022-05-01/act-1954-003) broadly describes Indigenous social systems: 'traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships'. Indigenous institutions are included in this definition as are the other social systems in Hodgson's typology (see Figure 2). This study focuses on kinship and country as these two institutions form the backbone of Aboriginal tradition and Island custom.

Indigenous societies are built around immediate and extended family networks, as well as complex kinship structures (Dudgeon et al., 2010). In Australia, Indigenous tribal groups are separated by geographical boundaries around their 'nation' but interconnected through marriage, ceremonial intercourse, trade, and, in the past, ritualistic conflict (Stanner, 2009, p. 151). An Indigenous persons' 'strongest bonds and obligations are usually to their immediate kin and family' (Martin, 2009, p. 118). The involvement of kinship systems in local decision-making can impart 'legitimacy to practice' (Smith, 2008, p. 93). But as Limerick (2009a) found, Indigenous local government councillors in discrete Indigenous communities in Queensland can find themselves in compromising situations having to make decisions which force them to choose between community need and the requests of their extensive kinship networks (p. 83).

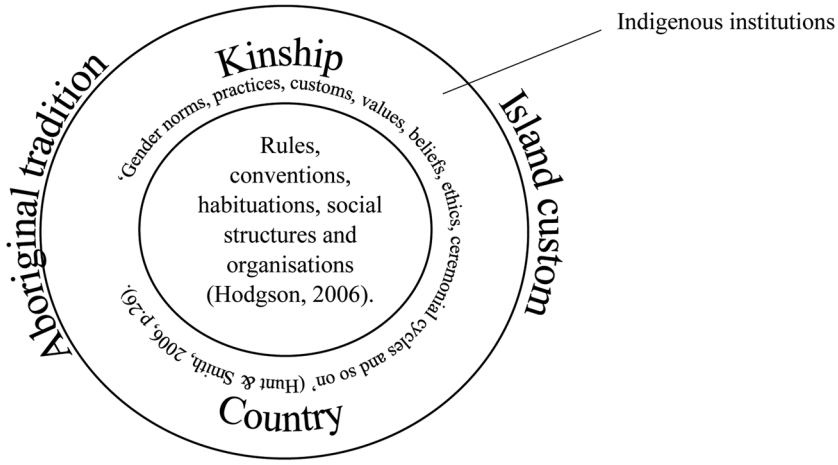

FIGURE 2 Indigenous social systems

An Indigenous person's identity is determined by a connection to kinship and to country (Dudgeon et al., 2010). Country refers to the lands to which an Indigenous person is attached through kinship. A connection to country can also be defined by an Indigenous person's link to sacred sites and laws of the land from which they descend (Aboriginal and Torres Strait Islander Social Justice Commission, 2014). 'Country' is multi-dimensional and encompasses all living and non-living elements on, above, and below the land, as well as waterways (Burgess et al., 2009). When an Indigenous person refers to their 'country', they are specifying their place of origin, culture, spirituality, and language group (Smyth, 1994). Indigenous people feel obligated to care, protect, and maintain their ancestral lands. 'Caring for country' is where Aboriginal and Torres Strait Islander people participate in activities that encourage the sustainable use of land and resources, while promoting positive spiritual and physical health for Indigenous people through traditional practices, such as hunting, Aboriginal fire management, and the collection of bush medicines (Burgess et al., 2009; Maclean et al., 2013). Aboriginal and Torres Strait Islander people belong to the land and experience it as metaphysical being, extended beyond just its physical presence (Dudgeon et al., 2010). Country speaks to them, and they respond.

Kinship and country, two of the most important institutions in Aboriginal and Torres Strait Islander societies, are also relevant to how Indigenous people govern. This is evident in how these Indigenous institutions are incorporated by Registered Native Title Bodies Corporate (RNTBCs). When a native title determination is made recognising the ongoing connection of Traditional Owners to land and or waterways, an RNTBC must be formed to manage said title, as required by the Native Title Act 1993 (Cth) (NTA) (https://www.legislation.gov.au/Details/C2019C00054). Although these corporations are predefined according to Western governance standards, native title holders have adapted them to incorporate their institutions. The Kaurareg Native Title Aboriginal Corporation (KNTAC) RNTBC, for instance, has a process for selecting leadership which is based on a tradition which places Elders at the centre of decision-making. RNTBCs incorporate Indigenous institutions for a variety of reasons. They are perceived to provide cultural legitimacy (Black & Watson, 2006); they contribute to the preservation of cultural knowledge (de Souza et al., 2016); and they resonate with most Indigenous Australians, increasing the efficacy of their organisational objectives and outcomes (Morley, 2015). RNTBCs in the Torres Strait believe it is their duty to maintain and promote Indigenous institutions throughout the region (Strelein, 2013).

3 | THEORETICAL FRAMEWORK

Mainstreaming, *indigenisation*, and *hybridisation* are different policy approaches that health authorities in Australia have adopted to engage with Indigenous people, communities, and cultures. There is a substantial literature detailing how these approaches have been embedded into health service delivery and the various outcomes associated with their implementation (Taylor & Thompson, 2011; Behrendt et al., 2012; Haynes et al., 2014). They represent the different types of relationships that governments in Australia can have with Indigenous institutions.

3.1 | Mainstreaming

Mainstreaming in a socio-political sense, and within the context of understanding Indigenous specific policies, is when hegemonic values, laws, cultures, and practices are propagated as the status quo (Northern Territory Government, 2007, p. 51). This type of approach to engagement is common when there is one ethnic group in possession of most of the power in society. Governments engage with their citizens through cultural devices that resonate with majority understandings (Robbins, 2010). It is through the engagement process that the socio-cultural norms of the dominant culture are legitimised (Chong, 1996), while minority views are mostly marginalised (Moore, 2014). This is recognised by many cultural observers as 'mainstreaming'. Mainstreaming is an appendage of assimilation (Mowbray, 1990). It is a process which is characteristic of the paternalistic Indigenous policies that Australian, Canadian, and New Zealand governments adopted in the 20th century. It reinforces monoculturalism and disregards the cultural practices and customs of Indigenous peoples. In Australia, mainstreaming is observed across all sectors. After the abolition of ATSIC in 2004 by the Federal Government, all Indigenous programs were mainstreamed through relevant governmental departments (Scambary, 2009). Now, Aboriginal and Torres Strait Islander people have no representative body at the federal or state and territory levels of government and in most cases must deal with mainstream agencies directly. Mainstream services are designed to meet the needs of the common user (Marsh, 2012), and fundamentally, are not designed to consider the cultural or linguistic diversity of Indigenous Australians (Robbins, 2010). Proponents of the mainstreaming approach view it as a way to encourage Aboriginal and Torres Strait Islander people to engage with the dominant culture, while also reducing the public cost of Indigenous specific services (Scambary, 2009). However, critics view mainstreaming as a form of assimilation, and a threat to the continuation of Indigenous cultural traditions (Mowbray, 1990, 1994; Sullivan, 2011).

3.2 | Indigenisation

Indigenisation is a process that involves acknowledging, legitimising, and valuing Indigenous institutions by developing strategies to include them within organisations where they have historically been absent (Ottmann, 2017). The broad purpose of indigenisation is to increase Indigenous participation in social, economic, and political systems (Maguire & Young, 2015). It is the recognition and inclusion of the distinct cultural practices and customs of Indigenous people within Western organisations that modifies structures, which has the potential to encourage greater Indigenous engagement. Indigenisation may also involve the deliberate employment of Indigenous people (Tauri, 2005); the adoption of Indigenous practices, protocols, and knowledges

(Gaudry & Lorenz, 2018); and the assertion of Indigenous culture within organisational structures (Smith, 2008; Memmott, 2012). Although indigenisation presents as socially just, there are inherent risks involved with this process. One such issue is how it is conceptualised within existing western frameworks. Indigenisation may provide Western governments with an opportunity to appear socially and morally virtuous, without actually modifying existing policies or power imbalances that prevent Indigenous people from attaining equitable human rights (McNamara, 1992). When Indigenous values and practices are co-opted and re-contextualised by agencies of Western governments, they may become tools of the state and no longer authentic elements of Indigenous culture (Tauri, 2005), potentially further disempowering Indigenous people. Effective indigenisation requires the input and consent of local Indigenous leaders to work collectively with stakeholder groups (Leftwich & Hogg, 2008). Institutions with matching cultural expectations to Indigenous groups will be better able to achieve beneficial outcomes for Indigenous communities (Eversole, 2010). Indigenous representation on local government councils may, according to Phillips (1998), 'change the agenda and bring new perspectives to bear on existing ways of seeing and doing politics' (p. 125).

3.3 | Hybridisation

Hybridisation is when entities of different origins come together to form new bonds with some shared objective. Partnerships between mainstream and Aboriginal community-controlled health services constitute some of the first Indigenous/government hybrid relations in Australia. These relationships have improved the general health of Aboriginal and Torres Strait Islander people (Taylor & Thompson, 2011; Haynes et al., 2014). Forming them requires the recognition of the historical and ongoing race relations between Indigenous and non-Indigenous people (Haynes et al., 2014). Taylor and Thompson (2011) recognise that successful mainstream–Indigenous partnerships utilise power sharing techniques to encourage respectful relations based on the acknowledgement of historical power imbalances between Indigenous and non-Indigenous communities. Haynes et al. (2014) suggest that mainstream institutions can achieve this through cross-cultural learning, or professional development centred around culturally sensitive healthcare approaches for Indigenous Australians. When separate organisations hybridise, they remain distinctly individual while also appearing to overlap in terms of their utility and function (Buchanan, 2016). The coming together of different institutions does not usually result in hybridity, but instead a fusion or merger of forces that can be both unstable and dynamic (Lloyd, 2012; Mongelli et.al, 2017). It is when governments begin working with Indigenous groups, but still impose certain forms of regulatory conditions that are based solely on the Australian legal system. Hybridisation is a 'consequence of societal evolution' resulting from the merger of different social forms (Lloyd, 2012, p. 22), and in some cases may be the only option for marginalised groups. Agreement-making between Indigenous groups and governments can be a precursor to hybridised relations. The NTA provides an instrument for agreement-making in the form of Indigenous Land Use Agreements (ILUAs).

4 | METHODS

This study was conducted as a qualitative small-*n* case study drawing on 27 semi-structured interviews with elected and former councillors; local government executives, managers, and

employees; native title bodies; Indigenous organisations; and Indigenous community members in the Torres Strait. I chose interview participants on my presumption of their suitability to provide insight into how local governments and Indigenous institutions relate in the Torres Strait based on their current or former professional experience and/or roles in their communities. I cast a wide net, sending emails to over 60 potential participants, but only successfully engaged 27 individuals. Many ignored my requests and those who did respond I noticed a common reluctance to speak on the topic. Most of the individuals interviewed for this study did not want to be identified in research materials. Therefore, I have only referred to interview participants job titles or elected positions. Field work was carried out in the Torres Strait in late 2019 and early 2020. At the onset of the COVID-19 pandemic and the subsequent travel restrictions imposed by the Queensland State Government, I incorporated phone interviews (17 of the 27) as my main method of data collection. Because of phone connectivity issues in the Torres Strait, some interviews were done across numerous phone calls. It was impossible to implement a systematic interview schedule, with regular postponements due to covid, phone connection issues, and the responsibilities of interview participants which forced frequent rescheduling.

This study also drew on local government meeting minutes, RNTBC documents, Federal Court proceedings, and Queensland legislation. Triangulation was used to find common themes across data sources and to corroborate information learnt in interviews with relevant documents (Creswell, 2013). For example, after being informed about issues regarding how COI declaration rules affected Indigenous councillors, I examined relevant legislation to understand how said rules were established in the *LGA*. I used a thematic method of data analysis, drawing on interview transcriptions and information obtained from documents.

5 | ANALYSIS: DEVELOPMENT OF LOCAL GOVERNMENT IN THE TORRES STRAIT

Local governments in the Torres Strait have developed under differing circumstances. TSIRC has evolved from Queensland's Indigenous reserve and missions' system. From 1904 until 1984, the outer island communities of the Torres Strait were governed under a series of changing policies based on protectionism, segregation, and assimilation. Under this system, restrictions were placed upon Islanders' freedom of movement, schooling, employment, and wages (Hodes, 2000). Indigenous institutions were essentially outlawed and the traditions and practices which had upheld Islander societies in the Torres Strait for thousands of years were excluded from government. Island councils were established in 1937, but as Kidd argues this was merely 'intended to present a cosmetic overlay of democracy within Queensland's dictatorial administration' (cited in Fitzgerald, 2001, p. 27). In practice, Island Councils remained subservient to the authority of non-Indigenous government administrators and only acted in an advisory role (Singe, 1979). This was the situation until the passing of the *Community Services (Torres Strait) Act 1984* (Qld) which, for the first time, placed local decision-making squarely in the hands of elected Islander representatives and greatly increased the powers of Indigenous councils in Queensland (Queensland Legislative Assembly, 2003).[3] Under the *Act*, island councils were 'charged with the good rule and government thereof in accordance with the customs and practices of the Islanders concerned' (s. 23.1), and prospective councillors had to identify as an Aboriginal and/or Torres Strait Islander, and reside in the community they intended to represent for no less than 2 years. These two provisions provided Island Councils some means to recognise Indigenous institutions and guaranteed Indigenous representation on council.

In 1904, mainstream local government was established on Waiben (Thursday Island), and it was charged with the task of providing municipal services to the inner islands. It was under the control of non-Indigenous administrators located in Cairns until 1991. It was this year when elections were first held, and since 1994 the mayor has been an Islander person. Today, the council's elected arm and CEO are Indigenous. For most of this council's history, it has been concerned mainly with protecting the rights and interests of the non-Indigenous population in their region (Sanders, 1999). Before 1994, council showed little interest to the Kaurareg Aboriginal Traditional Owners (Arthur, 1999), with whom it now has an ILUA.[4]

When the Labor state government amalgamated local governments in 2008, they transferred Indigenous councils, operating under the Community Services Acts, to the *LGA*. In doing so, they repealed the provisions which upheld Indigenous institutions. Now, although Indigenous and mainstream local governments maintain their separate classification, they are both legislated under the *LGA*, and subject to the same regulatory requirements, creating challenges for Indigenous councillors and the communities they serve.

6 | ANALYSIS: EMPIRICAL

Kinship is one of the most important institutions in Aboriginal and Torres Strait Islander societies. It is the interconnected network of familial relations that utilise, maintain, and give expression to Indigenous institutions within Aboriginal and Torres Strait Islander communities and into broader society (Dudgeon et al., 2010). Indigenous kinship, however, has not been considered in local government legislation and as a result is unduly impacted by the statutory requirements governing COI and material personal interest (MPI). In May 2018, the *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Qld) (https://www.legislation.qld.gov.au/view/pdf/asmade/act-2018-009) was enacted to institute new rules for how councillors should deal with a COI and MPI, but the definitions remained the same. A COI is

> 'a conflict that is between a councillor's personal interests; and the public interest; and might lead to a decision that is contrary to the public interest' (s. 6.177D).

A councillor may have an MPI,

> 'if any of the following stand to gain a benefit, or suffer a loss, (either directly or indirectly) depending on the outcome of consideration of the matter: the councillor; a spouse of the councillor; a parent, child or sibling of the councillor; a person who is in a partnership with the councillor; an employer, other than a government entity, of the councillor; an entity, other than a government entity, of which the councillor is a member; another entity prescribed by regulation.' (s. 6.177B).

Indigenous councillors for TSIRC are disproportionately affected by how COI and MPI are defined in legislation. To demonstrate this, I have identified and counted every instance of COI and MPI recorded in council meeting minutes from March 2016 to February 2020 in which councillors left a meeting and/or abstained from voting on a matter. Over the 4-year local government term, the average COI and MPI for TSIRC councillors was 16, whereas for the TSC it was 6. For further comparison, in the Redland City Council, a mainstream local government in

South-East Queensland, the average COI and MPI was only 2, based on my calculations from council's ordinary meeting minutes, available on their website. On numerous occasions indicated in meeting minutes, the COI and MPI has been so extensive in TSIRC that every councillor has had to withdraw from meetings, leaving decision-making in the hands of administrators. As Michael Limerick (2009a) points out, there was already some concern within Indigenous communities regarding the amount of authority that non-Indigenous local government administrators exert. This has potentially significant implications for council/Indigenous relations, especially considering that some TSIRC councillors believe their powers as community representatives have been 'weakened' by the transition to the *LGA*, and that too much power now resides in the hands of unelected staff members. As one former councillor reflected:

> 'Now everything has been taken away, counsellors have been disempowered and I feel that the power that the CEO and council management have is causing intergenerational trauma for me, from having white people coming into our communities and telling us what to do, and it's happening again now. Things are dictated to us by non-Indigenous people again.'

A long serving councillor for TSIRC remarked on the situation,

> 'Island councils had greater meaning to Island people. The way they operated was more in line with Island custom.'

There are also ramifications for councillors in their dual roles as directors for RNTBCs. When matters are being discussed in TSRIC meetings around land usage, often councillors, some of whom are also elected board members of the relevant RNTBC, will find themselves affected by the COI and MPI provisions. This is because native title interests are not deemed to be congruent with the broader public interest, and RNTBCs are an 'entity prescribed by regulation' and fall within the purview of MPI disclosure (*Local Government Electoral [Implementing Stage 1 of Belcarra] and Other Legislation Amendment Act 2018* [Qld] s. 6.177Bf). Any such matter will necessitate a departure from a meeting and withdrawal from voting on the issue. Again, the legislation has failed to recognise the unique circumstances of representation in the Torres Strait, where an individual may, by their own choosing or through the decree of the community, occupy one or more positions of leadership concurrently. There are limited suitable candidates for representative positions in Islander communities, so individuals will have to take on multiple roles. The maximum penalty for non-compliance with COI and MPI rules is up to 200 penalty units or up to 2 years imprisonment.[5] Councillors are acutely aware of these consequences, especially after the recent and widely publicised corruption scandals which engrossed Logan and Ipswich City Councils in South-east Queensland, triggering the Crime and Corruption Commission's investigation into local government misconduct in Queensland, *Operation Belcarra* (Crime and Corruption Commission, 2017).

The main issue with the statutory rules for dealing with a conflict is that it unfairly penalises Indigenous councillors and severely restricts their ability to govern based on the rights imbued to democratically elected government. The legislation not only fails to recognise the closely intertwined kinship networks that permeate Indigenous communities, but also characterises them as a potential criminal issue if not properly disclosed. This turns a pillar of Indigenous culture into an obstacle of democratic participation. 'Everyone on the island are relatives or friends in one way or another' as described by one councillor in TSIRC meeting minutes from October 2017, so naturally

there will be many occasions where 'conflicts', as currently defined in legislation, arise in councils (TSIRC, 2017, p. 4). Similar issues arise for other remote Indigenous communities in Queensland, such as Yarrabah. Many of the residents know each other or are connected to each other through family which can create tension in the community when council decisions are perceived to be affected by favouritism or COIs (Limerick, 2009b; Rerden & Guerin, 2015). It is important to note that this factor was raised well before the local government amalgamation (Ellerman, 2002), but it was never addressed in the *LGA*.

'Country' is the place from which Aboriginal and Torres Strait Islander cultures derive (Smyth, 1994). When this term is used by Indigenous Australians, they are referring to areas that they are descended from, and which hold immense spiritual and ancestral significance (Burgess et al., 2009). In Australia, the ongoing connection that Traditional Owners have to 'country' is sometimes recognised under native title. The Torres Strait is the birthplace of native title law in Australia, but the only mainstream council in this region seems to have a perilous relationship with its recognition. The rights of the Kaurareg Aboriginal Traditional Owners have been put into jeopardy by TSC and consequently soured their relationship with this mainstream local government.

Interaction between TSC and the Kaurareg is characterised by a legal case that was initiated by KNTAC RNTBC over proposed council works on Muralag, an island recognised under a Kaurareg native title determination. The Kaurareg sought an injunction to these works in 2019 through the Federal Court of Australia (*Kaurareg Native Title Aboriginal Corporation RNTBC v Torres Shire Council* [2019] FCA 746), and the Honourable Justice Logan, the presiding Judge, granted this request and stated that:

> 'it is just necessary, in today's age, to take into account not just the native title determination but also the native title claim. I am far from persuaded that that need has fully resonated in the local government' (*Kaurareg Native Title Aboriginal Corporation RNTBC v Torres Shire Council* (2019) FCA 746).

The reason why the Traditional Owners took this action is based on their understanding that the proposed works would have breached the terms of an ILUA signed between these parties in 2001 (AIATSIS, 2019). Whether TSC took this into consideration is unknown. What is clear is the ILUA failed to prevent these parties from entering litigation (*Kaurareg People/Torres Shire Council/State of Queensland*—ILUA QIA2000/003). Now, there is a fracture in the relationship. A male Kaurareg Elder reflected on the issue with dismay, stating 'that's all Black family in there in the TSC', referring to the fact that all of the elected council are Indigenous. A councillor for TSC shared their general thoughts on the Traditional Owners without referring specifically to the legal case, saying that the Kaurareg people 'had been left aside', and that they 'do not trust anyone'. This is because, from the Kaurareg perspective, they are not being shown the recognition and respect from a council which is comprised of people they consider to be Indigenous 'family'.

What has led these parties to this situation? If we examine this relationship solely based on the details of the legal case, it could be interpreted as a failure of council to comply with native title law. But it is in issue of recognition, or more specifically, a lack thereof. The dispute must also be seen in the context of a long-term failure to recognise the Kaurareg as Traditional Owners by local government. It has been well documented that the Kaurareg people have endured horrendous treatment by colonial authorities and subsequent governments. Massacred on Muralag in 1869 and all but dispossessed of their traditional lands (Southon & the Kaurareg Tribal Elders, 2014), many Kaurareg people have left the region because of the ongoing discrimination they

feel they still experience. The ones who have remained feel marginalised, especially from decisions that affect their homelands. This is in part because they are not represented in any of the local, state, or Commonwealth elected bodies, but it is also because they believe they are not adequately recognised. TSC, for instance, does not acknowledge or even mention the Kaurareg as the Traditional Owners on its website; numerous other councils in Queensland acknowledge Traditional owners in this way. The Kaurareg have withdrawn (by choice) from council's 'Kaurareg Traditional Owners Advisory Committee', which was established under the ILUA. One of the last meetings between the Kaurareg and Council was to resolve the issue over the location of the proposed works, but Council was opposed to any change, despite Kaurareg insisting that the area holds cultural significance for them. I made numerous attempts to obtain information about the Kaurareg Traditional Owners Advisory Committee from council over a period of 18 months (2019–2020) but was ignored. I lodged several right to information (RTI) applications with Council, in which I requested information pertaining to the membership and function of this committee, how often this committee convenes, attendance at meetings, how long this committee has existed, and the current status of the committee. Council ultimately denied my request to access information citing their 'limited resources' as a reason as to why they could not process my application within the 25-business-day time frame stipulated by the *Right to Information Act 2009* (Qld). I sought an external review of their decision with the *Office of the Information Commissioner* (OIC). The OIC asked council to search for the documents 'within the scope of my request', a process which took Council 4 months. In the finalisation of the review, the OIC was 'satisfied' that Council had searched for relevant information with 'sufficient diligence', although they only managed to locate one document of meeting minutes from 26 September 2017.[6] The Kaurareg Traditional Owners Advisory Committee has existed for over 10 years, and according to the Mayor, met on a quarterly basis. That fact that Council is in possession of only one document speaks to their lack of consideration for Kaurareg and for Council's formal relationship with them.

Council, as of March 2021, have rescinded their proposal to build on Muralag after receiving an independent report from an anthropologist, sent to them by the Federal Environment Minister. A director for KNTAC RNTBC acknowledged that this issue could have been easily resolved if Council 'had worked with them' (Wiggins & Carrick, 2021). The disagreement between TSC and Kaurareg was based on native title. But the relationship arrived at this point, in part, because of how local governments in Queensland operate according to the *LGA*. These actions by TSC are emblematic of a broader issue: local councils are neither compelled nor accountable for recognising Indigenous institutions. And this very reason has created a paradoxical situation, whereby an elected council of Indigenous people have presided over a decision that was so staunchly opposed by the Traditional Owners. A female Kaurareg Elder declared: 'until a Kaurareg person sits on that seat, nothing will run right'. This may be true, but the issue of recognition remains, and until this is addressed in legislation, Indigenous institutions will not be considered in council decision-making.

This study demonstrates that recognition of Indigenous institutions by local governments in the Torres Strait is inadequate. Part of this has to do with how the *LGA* is designed, but another important factor is the legacy of colonialism. Mainstream government has been imposed on the region for over a century and is deeply entrenched in local conceptualisations of governance. Some argue that the Torres Strait is over-governed (TSIRC, 2016; GBK, 2019). There are Commonwealth bodies, state government agencies, local governments, and Indigenous institutions that emerge as a function of the *NTA* and managed by RNTBCs. The governance framework is congested, and Indigenous institutions are constrained in this environment.

7 | DISCUSSION

The mainstreaming of local government poses several significant issues for Indigenous/government relations in Queensland. The first and foremost relates to Indigenous participation in government decision-making. Article 18 of the UNDRIP states that, 'Indigenous peoples have the right to participate in decision-making in matters which would affect their rights' (United Nations, 2007). The Australian Human Rights Commission (n.d.) argues that 'governments must promote our [Indigenous peoples] right to participate in all levels of decision-making'. This notion is reflected in the object of the Commonwealth's Aboriginal and Torres Strait Islander Act 2005 (Cth) (https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/79773/85946/F605997544/AUS79773%202019.pdf),

> 'to establish structures to represent Aboriginal persons and Torres Strait Islanders to ensure maximum participation of Aboriginal persons and Torres Strait Islanders in the formulation and implementation of programs and to provide them with an effective voice within the Australian Government' (p.2)

There are, however, no formalised measures at any Australian government level to ensure Aboriginal and Torres Strait Islander involvement in decisions affecting Indigenous communities. After the abolition of the Aboriginal and Torres Strait Islander Commission in 2004, Indigenous participation in government decision-making now occurs primarily through mainstream channels. I found that there are barriers to their participation built into the *LGA*. Issues like these obviously need to be resolved to allow Indigenous councillors 'maximum' participatory rights in democratic decision-making, and to do this, relevant legislation needs to be indigenised.

The second issue involves recognition. Engagement between governments and Indigenous Australians is necessary to addressing the disproportionate levels of disadvantage affecting Aboriginal and Torres Strait Islander communities. To engage effectively, governments must recognise the historical, cultural, and social dimensions of local Indigenous contexts (Hunt, 2013). TSC has failed to do this and exacerbated past traumas inflicted upon Kaurareg from previous government authorities. Actions like these are sure to damage relations and any prospects of reconciliation moving forward. ILUAs provide parties with the means to engage in hybrid relations, but TSC's seeming non-adherence to their ILUA with the Kaurareg has unfortunately set a bad precedent for any agreement or treaty-making endeavours in the future.[7]

Indigenous recognition is usually discussed in terms of constitutional recognition at the national level. But I ask, what about recognition at the local level, where Indigenous institutions are arguably more relevant, contextual, and oriented? If Indigenous people are to be included in the processes of government, then their institutions need to be recognised in the structures which give governments their powers and authority. Aboriginal and Torres Strait Island institutions are place based, and their continuance is somewhat dependent on their recognition at the local level.

8 | CONCLUSION

There is tension between local governments and Indigenous institutions in the Torres Strait. In a region where Indigenous institutions remain strong, they can and will be sidelined by mainstream hegemony. Kinship maintains cultural traditions through the bonds of familial and extended ties but creates a serious issue for councillors serving on council, requiring them to step aside in moments of important decision-making. Country is a fundamental Indigenous institution, but a

council composed of Indigenous councillors has failed to recognise this fact. Local government in the Torres Strait operates according to mainstream regulatory requirements and priorities, which has quite negative implications for their relationship with the Indigenous communities of this region. After the 2008 amalgamation, Indigenous and mainstream councils were merged under the *LGA*, which recognises Aboriginal tradition and Island custom but is heavily oriented towards mainstream modes of governance. There are clear opportunities for indigenised and hybrid relations to take place, through Indigenous representation and ILUAs with native title groups, but these mechanisms are adversely affected by the prevailing mainstream orthodoxy.

ACKNOWLEDGEMENTS

I acknowledge the contribution of the Traditional Owners of the Torres Strait, Registered Native Title Bodies Corporate (RNTBCs), the Torres Strait Island Regional Council (TSIRC), and the Torres Shire Council (TSC) to this research. The Indigenous Research Unit and the School of Government and International Relations at Griffith University funded this research.

Open access publishing facilitated by Griffith University, as part of the Wiley - Griffith University agreement via the Council of Australian University Librarians.

CONFLICTS OF INTEREST

I note my family heritage and identity as a Torres Strait Islander. My immediate family members were not interviewed for this research project. I notified all research participants of my familial ties to the Torres Strait region.

DATA AVAILABILITY STATEMENT

Due to the nature of this research, participants of this study did not agree for their data to be shared publicly; therefore, supporting data are not available.

Funding Statement

Open access publishing facilitated by Griffith University, as part of the Wiley-Griffith University agreement via the Council of Australian University Librarians.

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ENDNOTES

[1] Local governments are legislated for by the state and territory powers of Australia.

[2] The other Indigenous council is the Northern Peninsula Area Regional Council which services resettled Torres Strait Islander communities and established Aboriginal communities on Cape York.

[3] In 1984, the Queensland Parliament also passed the *Community Services (Aborigines) Act 1984*. Both acts mirrored each other, with few differences.

[4] An ILUA is a voluntary agreement permitted under the *NTA*.

[5] The value of one penalty unit in Queensland is $137.85 (current from 1 July 2021).

[6] Right to information application reference number 316173.

[7] The Queensland Government is currently conducting treaty discussions with Aboriginal and Torres Strait Islander communities across the state.

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How to cite this article: Stanford, B. M. (2023). Indigenous institutions and local government in the Torres Strait. *Australian Journal of Public Administration*, *82,* 308–324. https://doi.org/10.1111/1467-8500.12565