NO MORE BUSINESS AS USUAL: THE NEED FOR PARTICIPATORY INDIGENOUS DEVELOPMENT POLICY AND SKILLED PRACTICE

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Artist's statement

The Southern Cross is known by many First Nations people as Mirrabooka, Ginan or Birubi – a body of stars that encompasses celestial stories deriving from creation-forming ancient knowledges that transcend time and space. These aided our Ancestors with navigation and as seasonal indicators, and symbolise an important relationship between people, land, sea and sky. A symbol that is as vitally significant today, that we still uniquely and collectively identify with in memory, story, art and song. This artwork is the embodiment of my style and my connection to manay (stars), interpreting the night sky using cool and dark tones. The inner space between the stars is to draw the viewer in and symbolise the powerful force within and between these bodies of stars. Our old people not only gazed upon the stars, but most importantly they looked at what lies within and surrounding those dark places in the above.

Krystal Hurst, Worimi Nation, Creative Director, Gillawarra Arts.

No more business as usual: The need for participatory Indigenous development policy and skilled practice

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Abstract

This paper explores what is required to enable First People to be genuinely able to participate in their own development in line with their right to self-determination and free prior and informed consent. It examines current major directions and opportunities in government policies and argues that 'business as usual' processes of engagement and communication will need to change significantly if people are to experience genuine participation in any place-based processes. It finishes with a call for new institutional support to enable effective participatory development to occur.

Acknowledgments

Acronyms

ACT	Australian Capital Territory
ADR	alternative dispute resolution
AHRC	Australian Human Rights Commission
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ASIC	Australian Securities and Investments Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
CAPO	Coalition of Aboriginal Peak Organisations
CATSI Act	*Corporations (Aboriginal and Torres Strait Islander) Act 2006*
CFD	Community First Development
CLC	Central Land Council
DFID	Department for International Development (United Kingdom)
FAO	Food and Agriculture Organisation
FPIC	Free, prior and informed consent
IAP2	International Association for Public Participation
IFaMP	Indigenous Mediation and Facilitation Project (AIATSIS)
KPI	key performance indicator
NADRAC	National Alternative Dispute Resolution Advisory Council
NIAA	National Indigenous Australians Agency
NSW	New South Wales
ORIC	Office of the Registrar of Indigenous Corporations
PBC	Prescribed Body Corporate
RNTBC	Registered Native Title Bodies Corporate
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples

Contents

Introduction

This paper explores what is needed to enable First People[1] to genuinely participate and make meaningful decisions about their own development, own the outcomes and take responsibilities with governments and others, where appropriate, for their implementation. This is in line with the Indigenous right to self-determination and the exercise of free prior and informed consent (FPIC) in the United Nations Declaration of Indigenous Peoples (UNDRIP). The paper sketches the current context for Indigenous development, then explores what participatory development and key related concepts imply in practice, referring particularly to 'place-based' initiatives at various scales. We argue that it is necessary to use more participatory and inclusive development processes to realise the improvements that engagements between First Peoples and other parties aim for, as well as to enable First People's organisations to work with their own people effectively. Processes and their outcomes are inextricably interlinked. We argue that there is an urgent need for more people skilled in participatory development practice who can enable genuinely empowering engagements to achieve change, and finish by identifying a need for more skilled, particularly Indigenous, participatory development facilitators and for institutional support to foster such a community of interest.

While this paper focuses largely on why this is important with changes afoot in Australian Government policies, we recognise that many aspects of Indigenous policy and programming are state and territory responsibilities, and that the issues we raise apply equally to them.

Background

From 1990, the Aboriginal and Torres Strait Islander Commission (ATSIC) with its interwoven national and regional councils, provided a governance structure which facilitated First People's local and regional input to national policies, including some national and regional decision-making powers and the management of at least some programs (Pratt, 2004). Since the abolition of ATSIC in 2004–05, Indigenous policy has generally shifted to 'mainstreaming' and 'normalisation'. Many of the Indigenous programs and institutional arrangements that existed in the latter part of the 20th Century have been systematically dismantled and replaced with often 'punitive social policies' (Jordan et al., 2020, p. 22). And despite the rhetoric of doing business in partnership with Indigenous people (Turnbull, 2017, 2018), we have mostly seen 'government knows best' top-down strategies which government itself has now recognised to have been unsuccessful and is trying to change (Morrison, 2020).

Commonwealth Indigenous policy of the last 20 years has moved away from any suggestion of supporting Indigenous rights and self-determination, as they might be understood in the UNDRIP. Earlier efforts towards (limited) Indigenous decision-making and control during the self-determination policy period from the 1970s to the 1990s, have given way to bureaucratic, legal and administrative procedures which have left many Indigenous people often feeling powerless to affect the changes they would like to see.[2] But change is afoot in the rhetoric and policies of Commonwealth and other jurisdictions, towards self-determination, shared decision-making, and empowerment of First Peoples. Such change is long overdue, but little attention has been paid to how these ideal changes will be implemented locally and we argue that this will require skilled facilitation.

Self-determination implies that First People have a say in decisions affecting them and need to give their free, prior and informed consent (FPIC) to matters affecting them. The UNDRIP confirms the rights of Indigenous peoples to be consulted in 'good faith…in order to obtain their free prior and

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[1] The terms 'First People(s)', 'Aboriginal and Torres Strait Islander People(s)' and 'Indigenous people(s)' are used interchangeably in this paper particularly as we draw from international and Australian sources that use these various terms.
[2] Such powerlessness was expressed in the Uluru Statement from the Heart (2017).

informed consent' (Article 19); 'to participate fully, if they so choose, in the political, economic, social and cultural life of the state' (Article 5); and to participate in 'the decision-making in matters that would affect their rights' (Article 18).

FPIC represents an international standard, not only for the corporate world and governments but also for Indigenous corporations in their own decision-making processes. But the diversity and complexity of the governance landscape including organisational roles and mandates, raises important questions about who will be empowered to provide the free, prior and informed consent which governments (and others) are required to obtain in their programs with First Peoples: representatives of community controlled organisations, their members, constituents, service beneficiaries, traditional owners or community residents? Who is to provide consent? And how? In a changing policy landscape these questions are important and highly relevant.

First Peoples have experienced exclusion and marginalisation for a long time. And there is no overnight 'one size fits all' fix. There is a need to provide opportunities for empowerment and participation, on First Nation terms, if power relationships are to be genuinely transformed. If the right to self-determination is taken seriously, First Peoples should participate in processes which align with their aspirations, beyond 'co-design' processes which remain within non-Indigenous frameworks (Haviland et al., forthcoming). We argue that operationalising FPIC requires a participatory development approach, at a range of scales from local to regional and ultimately national decision-making, changes to both the governance of governments and of Indigenous corporations and to funding regimes.

The current policy landscape

Around the world governments have shifted since the 1990s from earlier models of working in close relationships with people, to arms-length contracting of external corporations to deliver services and meet key performance indicators (KPIs) under increasingly tight contract conditions (Kelly & Westoby, 2018, see pp. 5–9). Anthony Kelly and Peter Westoby (2018) note that the opening of the global economy in a deregulated environment meant that governments' emphasis shifted. Public servants' close working relationships with Indigenous people transformed from 'provider' to 'purchaser'; outputs and outcomes became the focus rather than inputs [and impacts]; and 'competitive tendering rather than stability and continuity…' (p. 7) became the norm. Workers and community members felt like 'objectified instruments of service delivery, or statistical numbers on graphs' (p. 7). In Australia this global phenomenon has reduced opportunities for self-determination and Indigenous-led policies and programs (Howard-Wagner, 2018).

Against this environment there are currently two major policy initiatives that cut across many areas of federal government engagement with First Peoples: the first is the Constitutional Reform process including the Uluru Statement from the Heart (Davis, 2018), the policy focus of which has transformed into the Voice proposal (Langton & Calma, 2020, Australian Government National Indigenous Australians Agency (NIAA) 2020, Australian Government NIAA, 2021a); and the second is the 2020 National Agreement on Closing the Gap. Both aim to transform structural and working relationships between governments and First Peoples often through processes of 'co-design' (Langton & Calma, 2020), shared decision-making and greater community control, though how they relate to each other is unclear (Turner, 2020).

Meanwhile, several jurisdictions (Victoria, Northern Territory and Queensland)[3] have embarked on the long process of commencing Treaty negotiations with First Peoples,[4] (Northern Territory Treaty Commissioner, 2020). The processes by which treaties, agreements or plans are developed raise many issues about government approaches to engagement as well as to decision-making and conflict management processes and participation including as they are applied by Indigenous organisations with their constituents

Constitutional reform and the Voice proposal

Following a tortuous Constitutional Reform process (Davis 2018; (NIAA) 2020; Rowse 2021), the final proposal for a Voice to government (not Parliament as envisaged by the Uluru Statement) presented in late 2021 (Australian Government NIAA, 2021a) envisages a national Voice, state/territory Voices, and 35 Local or Regional Voices which are to:

> …undertake community engagement, provide advice to, and work in partnership with all levels of government. They would work together to set strategic directions to improve policy, program and service delivery outcomes for communities in the region and provide joint advice about how investment can be better aligned to local priorities and strategies (referred to as 'shared decision-making')…Local & Regional Voices would work cooperatively with and not displace or undermine existing bodies (Australian Government NIAA, 2021a, p. 10).

It is as yet unclear how these bodies will relate to existing ones and this will need to be locally determined, but it seems likely that a range of understandings and protocols about roles and responsibilities of different organisations to each other will be required in each region. The Voice partnership arrangements are expected to be based on a range of principles, among them empowerment and inclusive participation, with First Peoples having greater control and voice in their affairs – which is referred to as a self-determination approach (Australian Government NIAA, 2021a).

Closing the Gap

The other major policy initiative is the 2020 National Agreement on Closing the Gap. In 2018 the Closing the Gap Report to Parliament stated: 'One of the key lessons we have learned is that effective programs and services need to be designed, developed and implemented in partnership with Aboriginal and Torres Strait Islander people' (Australian Government Department of the Prime Minister and Cabinet 2018, p. 8). But a 2019 independent Retrospective Review of the original Closing the Gap policy found that Indigenous people lacked confidence in government's willingness or ability to take up Indigenous-led solutions. It indicated that for governments to be responsive to Indigenous-led solutions, this would require considerable re-thinking, re-training and changes in accountability arrangements within governments (Australian Government Department of the Prime Minister and Cabinet, p. 19).

In his Closing the Gap Speech to Parliament in February 2020,[5] Prime Minister Morrison (Morrison, 2020) indicated government was now endorsing a significant change, stating:

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[3] South Australia's initial attempt at Treaty preparations was aborted following a change of government in 2018, and the Australian Capital Territory (ACT) Government announced in 2021 that it is willing to commence a Treaty process.
[4] *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (https://www.legislation.vic.gov.au/in-force/acts/advancing-treaty-process-aboriginal-victorians-act-2018/001); in June 2018 the Northern Territory Government and Land Councils agreed to establish a Treaty Working Group and the Treaty Commissioner was appointed in March 2019.
[5] There was no Closing the Gap Statement to Parliament in February 2021 as the signatories to the new July 2020 agreement were developing implementation plans to be announced in July 2021.

Over decades, our top down, government knows best approach has not delivered the improvements we all yearn for…We perpetuated an ingrained way of thinking, passed down over two centuries and more, and it was the belief that we knew better than our Indigenous peoples. We don't. We also thought we understood their problems better than they did. We don't. They live them…Our new approach to Closing the Gap…is built on partnership. On giving back responsibility. An approach of listening. Of empowering. Of government providing the capabilities, so that Indigenous Australians can make their best choices. Of all governments accepting their own accountabilities. And of owning up to a path, that despite the very best of intentions of all Governments, hasn't worked.

The 2020 National Partnership Agreement is co-owned with Indigenous partner organisations in a complex web of systems, structures and institutions, and administered by state, territory, local and national governments through a multitude of departments, in equally complex Indigenous local and regional cultural governance systems and broader organisational networks. It focuses on four reforms related to the processes that governments use in their interactions with First Peoples, communities, and organisations to achieve sixteen socio-economic targets. The agreement is largely about the provision of government services in areas such as health, education, employment, housing, incarceration, and relationships with land and waters (Coalition of Aboriginal Peak Organisations (CAPO) & Australian Governments, 2020). States and territories announced their detailed implementation plans during 2021 (Australian Government 2021b). An intended outcome is that 'Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership arrangements' (p. 3). The place-based agreements are to ensure that a wide cross-section of Aboriginal people's voices is heard, that 'self-determination is supported', and that 'partnership parties have access to the same data and information, in an easily accessible format, on which any decisions are made' (p. 6).

While the National Agreement on Closing the Gap focuses on the substantive targets that will drive government actions, many are interrelated. They demand holistic programs that address root causes of the problems they seek to solve (Government of South Australia, Department of Human Services, 2019) and require significant participatory development skills. Achieving the targets requires quite deep social transformations including the healing of those whose lives are trauma-affected, restoring or managing fractured or dysfunctional relationships, reducing violence, and nurturing wellbeing and safety, as 'whole' wellbeing is at the core of Indigenous development success (Durie, 2011; Thomassin et al., 2020). It is also necessary to ensure that the Closing the Gap and Voice processes are open to Indigenous knowledge systems and holistic ideas about wellbeing.

And while 'self-determination', 'empowerment', 'partnerships', 'place-based', 'shared decision-making' and other buzz words appear in current policy discourse, there is no guidance as to *how* these goals might be achieved. Yet the key message from the literature is that empowering *processes* lead to empowered outcomes; imposed and poorly facilitated decision-making processes do not. They usually deny procedural fairness and lead to conflict (Bishop, 2009a, 2009b, 2015, 2019; Perkins & Zimmerman, 1995). The attention now paid in development agencies to political economy analysis also reflects the recognition that empowering development is an inevitably political process, and it requires practitioners who can analyse the political interests and dimensions in any context to 'reveal the underlying interests, incentives and institutions that enable or frustrate change' (Department for International Development (DFID), 2009, p. 1) and who can shift these to enable the more marginalised to be empowered, and so effect change.

Changing the way governments work with Indigenous Australians and considering how Indigenous Australians and their organisations work with each other will be critical to whether the targets are reached. For the Closing the Gap and the Voice proposal to have any impact, the place-based processes which are needed to complement 'top-down' initiatives, must shift away from business as usual 'consultation' processes. There is a need to clarify what is meant by 'place' and 'community'. At what scale? Which communities of interest? Who should participate in decision-making? Who wants to? These complex issues require the facilitation of deep conversations within governments and Indigenous communities and between them. But people with the specialised communication skills to facilitate such processes are few and far between and there is an urgent demand, particularly for Indigenous practitioners.

We argue that skilled Indigenous participatory development including capacity building and engagement services are a critical missing piece of infrastructure in realising the aims of the Closing the Gap refresh and the Voice proposals. These services are essential to facilitate participation because the decision-making processes in which First Peoples and communities are involved will determine the sustainability of outcomes. Without ownership of outcomes by First Peoples, supported by appropriate implementation measures and funding, there will remain a large gap between the rhetoric of policies and Indigenous realities on the ground.

Understanding key concepts and how they are applied

There is a need to build shared understandings about the key concepts, policies and rights on which this 'new' way of doing business is apparently based. These include what rights-based policy might mean, and how different players understand the concepts of self-determination; free prior and informed consent (FPIC); empowerment; participation; shared decision-making; co-design and partnerships. These critical concepts, which are inextricably interwoven, will have different meanings to different people, including amongst First Peoples themselves. Ultimately, what these terms mean in practice is a matter for First Peoples to define themselves at local, regional and national levels, as they are informed by their meanings in international law and the conditions of possibility on the ground. In the following section we define *our* understanding of the terms and assess how they are currently being implemented, and explore how to strengthen them in practice, drawing on literature and our own experience.

Rights-based

Rights-based approaches to policies and programs are those which are based on universally recognised human rights, including Indigenous-specific rights, and which respect those rights in the processes they use. They aim to ensure that Indigenous people realise their civil and political rights, as well as social, cultural and economic rights through their activities. Participation itself is a human right (Food and Agriculture Organisation (FAO), 2016).

Many engagement processes fall short of what First Peoples might consider to be a just response to sharing their land and enabling the realisation of rights (Hunt, 2013). First peoples can rightfully expect to enjoy conferral of rights, interests and decision-making powers in Australian law, power sharing and equal partnerships, involvement in policy formulation, planning, management and evaluation, all in a paradigm of self-determination. At issue is how rights, including the principle of FPIC, are operationalised and implemented as discussed below. A rights approach can assist in levelling an asymmetrical playing field (see partnerships below) and be empowering. The UNDRIP encapsulates the rights that First Peoples should enjoy, and the wider human rights framework within which it has been framed draws attention to within-group rights.

The right to self-determination

The Australian Government indicated its support for the UNDRIP in 2009, and a rights-based approach to policy to align with these rights as well as other citizenship rights. But as is the case for several other countries, it sees the UNDRIP as 'non-binding' and 'aspirational' (Macklin, 2009) and as a 'framework to guide states' (Davis, 2012, p. 36): it does not recognise the full right to self-determination.

Article 3 states 'Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.' Thus First Peoples have the right to self-determination as peoples, but the Australian Government does not recognise First Nation peoples as political entities; the closest they get is recognition of native title holding groups, but this recognition only applies to their rights in land and waters, not governance of their people or sovereignty over their country (O'Faircealleagh, 2015).

Nevertheless, First Peoples are increasingly taking the initiative and asserting or exercising de facto jurisdiction and entering into intergovernmental-like negotiations and agreements with various levels of government (Vivien et al., 2017). Vivien et al. make the point that governments should not confuse First Nation polities with the community organisations these nation groups 'use as tools to interact with Australian governments, corporations and service entities' (2017, p. 222). They argue that confusion in understandings about the differences between 'government' by polities and 'management' by community organisations continues to hinder government relations with First Peoples, and First Peoples' abilities to develop legitimate and effective governance arrangements. How these polities and community organisations articulate with each other matters.

Different approaches in state and territory jurisdictions also reflect different understandings of self-determination. For example, Hunt (2017) has discussed different ways in which the New South Wales (NSW) government has approached Aboriginal self-determination, while the Victorian government has articulated a whole of government self-determination strategy (Victoria State Government, 2018, 2019) and embarked on a related treaty process. Vivian et al. (2017) argue that the Australian federation could accommodate overlapping or shared jurisdiction with First Peoples polities, though such issues of shared sovereignty are not the subject of this paper.

This makes it possible for governments to 'impose' what they understand by 'self-determination' on First Peoples along what should be a shared journey of change. There is a need for First Peoples to develop their own understandings about what 'self-determination' means, regionally and locally, at stages along this journey and to share these meanings in conversations with each other and with governments. One size does not fit all. Some community organisations may express their right to self-determination in terms of their desires to have greater control of how they carry out programs, and to be primarily accountable to their people, rather than to the requirements of their government funders. Others might see self-determination as the assertion of native title rights or sovereignty. Our understanding of self-determination in this paper refers, in the first instance, to what First Peoples themselves mean by it at local, regional and national levels. In our experience, this is almost inevitably related to greater Indigenous control and power in decision-making through First Peoples' representative groups, and the community organisations they use to advance interests and improve wellbeing (see, e.g., Behrendt & Vivian, 2010).

The excitement of self-determination in the 1970s and 1980s where Indigenous people in the Northern Territory, for example, were acting to move to outstations, and enjoying the early experience of self-determination and land rights policies has now faded (Bauman, 2001). Over the intervening years,

with increasing bureaucratisation and interminable but mostly ineffective consultations, people have become consultation fatigued, seeing little change for their investment. As a result, some may no longer even bother to engage in these almost ritual processes.

Free prior and informed consent

In addition to the right to self-determination, embedded in the UNDRIP is the principle of FPIC. According to the Australian Human Rights Commission (2020), FPIC entails the following elements:

i. Free means no force, coercion, intimidation, bullying and/or time pressure.

ii. Prior means that Indigenous peoples have been consulted before the activity begins.

iii. Informed means that Indigenous peoples are provided with all of the available information and are informed when either that information changes or when there is new information. It is the duty of those seeking consent to ensure those giving consent are fully informed. To satisfy this requirement, an interpreter may need to be provided to provide information in the relevant Indigenous language to fully understand the issue and the possible impact of the measure.

To satisfy this requirement of the principle, information should be provided that covers (at least) the following aspects:

• the nature, size, pace, reversibility and scope of any proposed project or activity

• the reason(s) or purpose of the project and/or activity

• the duration of the above

• the locality of areas that will be affected

• a preliminary assessment of the likely economic, social, cultural, and environmental impacts, including potential risks and fair and equitable benefit sharing in a context that respects the precautionary principle

• personnel likely to be involved in the execution of the proposed project (including Indigenous peoples, private sector staff, research institutions, government employees and others)

• procedures that the project may entail.

iv. Consent requires that the people seeking consent allow Indigenous peoples to say 'yes' or 'no' to decisions affecting them according to the decision-making process of their choice. To do this means Indigenous peoples must be consulted and participate in an honest and open process of negotiation that ensures:

• all parties are equal, neither having more power or strength

• Indigenous peoples are able to specify which representative institutions are entitled to express consent on behalf of the affected peoples or communities (Australian Human Rights Commission, 2020, p. 26).

A United Nations agency guide on FPIC also makes the important point that consent must be ongoing as processes evolve and conditions change, and can be withdrawn. Furthermore, it encourages the participation of those with diverse interests: women, youth, the elderly, and those with disabilities, for example (FAO, 2016, p.16).

The question of who gives consent and how it is achieved can be vexed. It is a matter of scaling up and scaling down and applying the principle of subsidiarity where those who are most impacted by decisions have a greater say (see below), as well as reflecting (sometimes contested) First Peoples protocols about who has the right to speak on particular matters relating to Country. Processes to reach consent among First Peoples matter. They take time and may need skilled facilitation and assisted negotiation.

Participation and empowerment

Participation seen as a right, as it is in Articles 3 and 5 of the UNDRIP, should enable people to participate meaningfully in defining and achieving their own development in line with their right to self-determination.[6] Participation is intended to lead to empowerment, but whether it does depends very much on the processes used. A common understanding of empowerment is that it is:

> *an intentional ongoing process centred in the local community, involving mutual respect, critical reflection, caring, and group participation, through which people lacking an equal share of valued resources gain greater access to and control over those resources*[7] (cited in Perkins & Zimmerman, 1995, p. 570).

Empowerment involves processes as well as outcomes, 'suggesting that actions, activities, or structures may be empowering, and that the outcome of such processes result in a level of being empowered' (Perkins & Zimmerman, 1995, p. 570). Thus, empowering processes will vary according to scale – for individuals it may involve effective and inclusive participation in community organisations; for organisations it may involve working in equitable coalitions or partnerships with governments and others.

International research on what is needed for empowerment also indicates that resources (material, human, social, including future rights-claims and information), agency (meaning the ability to make purposeful choices), formal and informal institutions (that shape people's abilities to exercise their rights), accountability of public officials to citizens (i.e., downward accountability rather than upward), and ultimately the attainment of appropriate outcomes, create empowerment (Kabeer, 1999; World Bank, 2001). Dudgeon et al. (2012) recognise that healing is also a key part of the process of empowerment for Indigenous people.

While some First Peoples may be content to leave discussions and decision-making to those who have been chosen to represent them, others want to exercise their right to be involved in any decision-making which impacts them or their traditional countries. Others, struggling to live from day to day, simply do not have the capacity to participate. Land dispossession, child removals, forced dispersals across the country, stolen wages and other racist policies have contributed to poverty, poor health, disability and premature death, high rates of incarceration, and in some places, high rates of youth suicide. Families may be strong, but they are coping with all these effects simultaneously. While

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[6] See also Ife & Tesorioro (2006, p. 150) in relation to participation as an end in itself, or as a means to an end. A rights-based approach sees participation as an end in itself, which 'attempts to empower people to participate in their own development more meaningfully' (Table 6.1, p. 150).
[7] According to a Perkins and Zimmerman review (1995) this definition of empowerment by the Cornell Empowerment Group 1989 is referred to most commonly.

reference is made to the 'right to participate', in many instances it is the fundamental capacity to participate which is at issue in these grinding conditions.

The practicalities of participation can also be logistically difficult and expensive as those who should be involved may live at significant distances from each other. Often it is only those who are employed in decision-making roles or are elected leaders who are 'consulted'.

But in societies which are well known for the primacy of localism, is it only the representative leaders of Aboriginal organisations who should participate? This localism is,

> …manifested in the expression of autonomy, in many forms of social and political life, notions of cultural authority and identity, and more specifically in views concerning 'representative' boards in Aboriginal corporations…Values and interests are asserted at the small-scale, locally based or even individual levels…The principles underlying representative democratic institutions and incorporated organisational structures by which individuals or groups delegate the right to speak for their interests to 'representatives', do not necessarily operate within Aboriginal societies (Martin, 2021, pp. 3–4).

Families of polity are, at one scale, key political and jural entities (Sutton, 1998), but so too are community-controlled organisations and national alliances such as the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. This has many implications for what a 'place based' approach might look like and for partnerships.

Empowerment will require governments to change from service delivery and competitive tendering as a default approach, to block grant funding enabling greater First Peoples control. And community organisations will need to ensure that the views of as many Indigenous people as possible are heard, especially those most marginalised so that they realise their capacity to voice their aspirations and attain equality of agency and voice, through the participatory processes their community organisations adopt (Appadurai, 2004; Head, 2007; Hunt, 2013). It is also critical that government processes allow time for this to occur, and that Indigenous peoples take responsibility themselves rather than relying on governments. There are things that can be done that do not necessarily require funding and reliance on governments or community organisations but which require local Indigenous vision and willingness to involve others.

Shared decision-making

'Shared decision-making' is another term commonly mentioned in the Closing the Gap initiative. It is more than consultation. The challenge for governments and Indigenous people alike is to break with past engagement practices which have become engrained and expected. Changing business as usual will require rapid transformational shifts from the 'inform and consult' end of the International Association for Public Participation's (IAP2's) participation spectrum to 'collaborate and empower' (see IAP2 International Federation, 2014). However, the local, regional and national 'Voices' proposed are advisory only, hence likely to reflect the 'consult' or at best 'collaborate' points of the participation spectrum, a very weak form of shared decision-making. The mechanisms for shared decision-making are usually partnerships and co-design. But these lend themselves to 'business as usual' and responding to someone else's agenda and could not be said to be 'Indigenous led'. First Peoples, governments and others are implicated. In at least some instances, governments are seeking direction from First Peoples; but where this occurs, there are often inadequate implementation measures to make them happen and insufficient funding to sustain them.

Partnerships

Genuine partnerships involve a process of the co-production of meaning. They are a journey of growing human capabilities, ongoing negotiations, the building and maintaining of relationships and accounting for changes in aspirations over time (Bauman et al., 2013). The initial brokering of partnerships and the way in which negotiations take place are critical to future success (Bauman et al., 2013). They set what Appadurai calls 'the terms of recognition', establishing 'the conditions and restraints under which the poor negotiate the very norms that frame their social lives'. In turn, these arrangements impact their 'capacity to give voice [and] to debate directions for collective social life' (Appadurai, 2004, p. 66–68).

Ideally, the 'terms of recognition' of First Peoples rights and interests, including the right to self-determination, would provide the entrance point to negotiations with governments, as well as the basis of the planning processes that often accompany or immediately follow negotiations. With such rights, including the rights of First Peoples vis-à-vis each other, clearly recognised in partnership agreements, plans could then set out how rights are to be realised in practice. The actualisation of rights on the ground could also provide benchmarks for future monitoring and evaluation processes. Such a rights approach would enable greater First People's confidence and assist in balancing what is often an uneven playfield.

Partnerships are also about power and mutual responsibilities and accountabilities. Ultimately, the effectiveness of partnerships is dependent upon the political will of all parties and individuals to share power and engage with and listen to each other in activities on the ground (c.f. Haynes, 2009, p. 112–123). Some of the elements that might characterise genuine partnerships with First Peoples organisations would include:

- an acceptance of the principle that a local First People's organisation has the right to set the agenda and approach for its own work which is consistent with self-determination and FPIC

- working to accomplish mutually agreed goals and accepting *joint responsibility* and accountability for achieving them (assisting if things don't go to plan, and reconsidering the approach in an adaptive management style)

- long-term involvement and flexibility to adapt to circumstances, rather than short-term project engagement with tightly prescribed processes

- defined mutual roles and responsibilities of all partners

- agreed implementation plans and processes

- agreed measures of success and ways to evaluate their achievement

- trust, respect, integrity, accountability, and equality among partners (Bauman et al., 2013; Fowler, 2000).

But words like 'partnership' once implying serious relationships, 'used sparingly' and 'forged out of deep, long term commitments' have often been 'emptied of principles, values and relationships' (Kelly & Westoby, 2018, p. 8). The example of an organisation or government writing contracts and KPIs and providing funds for 'partners' to deliver, often described as a partnership, is a contractual relationship, and raises questions of equality and the distribution of power amongst those referred to as partners.

Personalities and inter-subjectivities play an important role. Public servants, staff and representatives of Aboriginal organisations and other First Peoples alike may not be temperamentally suited to working in partnerships. There may be histories of antagonism between First People, governments and others which make it confronting for them to enter into partnerships. The most elaborate administrative arrangements can be undermined by 'bad blood' in relationships; and, conversely, inadequate safeguards can be ameliorated by positive interpersonal relationships.

Changes to governments, government policies, legislation and staff which happen along the partnership journey can cause their demise overnight, despite the significant investment that First Peoples and governments may have made in them. The relationships – so integral to the success of partnerships – are lost. Working in partnerships requires a serious long-term commitment on the part of the individuals involved and adequate resources. Governments face the challenge of meeting existing operational funding requirements as well as the costs of implementing the new arrangements.

All of this makes for a complex terrain in which it is often difficult for individual actors to change deeply embedded but unworkable social and policy structures that constrain the realisation of rights, and dampen enthusiasm and aspirations (Haynes, 2009, p. 15–16). Moreover, all actors are subject to difficult, often countervailing, structural forces. Some of these forces tend to draw the actors together; others push them apart.

A genuine partnership discourse, constructed jointly, could be a new form of social capital where meanings are produced through doing things together amicably and co-operatively, and in which partners share responsibility for outcomes. Agency in an intercultural field 'is exercised by all social actors according to their interests and power' (Hill, 2011, p. 82). There may always be a certain amount of 'us' and 'them'; after all, each group is likely to come to the table with quite different histories and cultures – often influenced by structural and historical power imbalances. Yet those involved are also multi-positioned individuals (including First People and governments) who, at least at times, may share more values across the 'partner divide' than within it.

Partnerships, however, are not the answer to everything: the push for partnerships can be overwhelming for governments and First Peoples alike, adding to the complexities of the system/s being negotiated. Too many poorly brokered and misnamed partnerships become a governance issue, placing further demands on First Peoples' communities and potentially weakening the links between an organisation's constituency and its leadership. If partnerships are not brokered effectively, they can foster imposed priorities unrelated to the identities, visions, needs and values of First Peoples. The primary accountability of First Peoples organisations is to their members or constituency, and care must be taken not to undermine this relationship. Inter-agency cooperation will be essential to effective engagement between governments and Indigenous communities, so that all are not overburdened, particularly First People's communities who are repeatedly called upon to make complex decisions which have intergenerational implications in time pressured situations.

Partnerships which are 'co-designed' need to put First Peoples in the driver's seat and allow governments and First Peoples to make and admit their mistakes. Most importantly, the terms of partnerships should be clearly understood by all. Some may be ongoing. Others require mutually agreed exit strategies so they do not continue in one (weakened) form or another without transferral of responsibilities and evaluation of what has been achieved.

Co-design

Many of the issues discussed above regarding partnerships also apply to 'co-design' including the use of the term as a misnomer. 'Co-design' can be claimed for what may just be information provision or consultation processes (Bradford et al., 2018) or a government department predetermining the solution it wants (Haviland et al., forthcoming).

As the Wiyi Yani U Thangani report notes, co-design is the new approach but First Peoples women consulted for that report say they are not seeing much evidence of it, and 'they are worried that this term is already being widely misapplied and in danger of becoming a meaningless buzzword' (AHRC, 2020, p. 84). As women from Kempsey quoted in the Report said,

> They call it co-design and it's not co-design. They come out and say this is a program that we have, and we will run this program, and we just need your input to it and we will call it co-design. That is not co-design. Co-design is about going back to the drawing board (AHRC, 2020, p. 84).

There is limited literature which documents and analyses processes of co-design relating to First People's plans and programs in Australia. Where it exists, it is mainly focused on co-designing specific programs or research (Carr et al., 2021; Lavrencic et al., 2021; Parsons et al., 2016; Peters et al., 2018). Dillon (2021) however reviews the literature on policy co-design and assesses the Closing the Gap and Voice policies as co-designed approaches. He usefully sets out some criteria for credible and lasting policy processes, which include: 'ensuring that the Indigenous interlocutors are seen as legitimate representatives by the wider Indigenous community; that the terms of the negotiation are open and not closed; that potential conflicts of interests are avoided and that transparency regarding the process is maximised' (Dillon, 2021, p. 23). For Indigenous players he outlines other challenges, notably the power imbalance they face in negotiations, and 'how to ensure that the heterogeneity of Indigenous voices and experience are reflected in the process', as well as maintaining continuity over time and 'managing the trade-offs between incremental change and structural reform' (Dillon, 2021, p. 43). Thomassin et al. (2020) also make the point that it is important to ensure that 'co-design processes do not work to simply uphold the legitimacy of settler colonial systems and the power relations that underlie them' (p. 12).

Other issues are highlighted in a literature review of co-design studies relating to First Peoples' water infrastructure in Canada (Bradford et al., 2018). These studies reveal that the nature of participation in co-design processes can vary considerably. Successful co-design involves Indigenous leadership or Indigenous people in key design roles; an emphasis on relationship and trust-building; recognition of Indigenous knowledges, worldviews and paradigms; the unpacking of key concepts; being inclusive of a diversity of Indigenous people who hold different knowledge; open and clear communication including the use of Indigenous languages; allowing plenty of time; having adequate budget; being humble and able to let go of control; and, in water projects, a dedicated role for a social scientist/ethnographer. Above all, co-design processes must account for the complexity of interests in the 'places' in which they are embedded. Ideally, and noting earlier comments in this paper, 'co-design' might be better reconfigured in terms of 'facilitated Indigenous-led' design.

Place-based

While 'place based' approaches acknowledge differing priorities and challenges across urban, regional and remote Australia, it is important to recognise that Indigenous 'communities' are not internally homogenous places. They encompass many different communities of interest, some of whose networks extend well beyond a specific place or even region. These may include extended family

networks, organisations with different histories and mandates, and people from different language, native title, landholding, or traditional owner groups.

'Place' is a whole system and successful partnerships demand their 'fit' with local circumstances in 'place-based approaches'. Staff of government departments, companies and others working with First Peoples organisations and communities need to develop a deep understanding of the communities they work with and the systems in which they are embedded: their histories, complex land tenure systems, social and cultural compositions; past and present disputes and grievances that affect interactions; and various community controlled corporations and service delivery agencies (including those based outside a particular 'place'). The priorities the community articulates, how they expect to be engaged, and who makes decisions about what have to be identified and integrated into any decision-making processes.

All who are engaging will need to reach agreed understandings of the complexity of interests including: the cultural and spiritual significance of places which lie at the heart of Indigenous culture; the underlying systemic issues communities face; the effectiveness of the range of available options; and how each option might impact the various place-based and government interests. This will require significant time, effort and commitment to build and maintain a wide cross-section of dynamic relationships.

Yet time for government staff to be so embedded and knowledgeable is rare these days. Less time spent on reporting and upwards accountability processes may be necessary to allow time for genuinely shared and effective decision-making at the local and regional levels and, for governments, to develop deeper understandings of the communities with whom they are engaging. Essentially government's role must be to support Indigenous peoples to solve their own problems and issues, through responsive engagement. In doing this, some latent local capacity will be unleashed.

But the processes needed to develop properly authorised and legitimate, representative, decision-making structures for service delivery at regional or local levels in Indigenous communities are often vexed. Some may feel excluded and others place themselves front and centre and in control. Issues of representation, including who makes decisions, and appropriate protocols for the range of interest groups, among other considerations, are far from straightforward. This is particularly the case as the disruptive impact of settler legislation and programs may have contributed to division and conflict within regional communities (Hunt et al., 2008).

'Places' as systems are messy, parts of horizontal and vertical systems and overlapping jurisdictions. Scale becomes a critical factor in place-based approaches in identifying the relevant community of interest. Kelly and Westoby (2018) describe community as 'a mezzanine floor between the small and the large' that can be scaled up or down according to what public action is necessary and 'depending for its existence on the reality and vitality of people's connections with one another, to their place, and what they do or do not do together' (p. 9). Communities 'break down large systems into parts, large enough but small enough to enable people to participate and direct parts of their public lives that they would otherwise be powerless to exercise' (p. 11).

Subsidiarity involves those who are most impacted by a decision having the greatest say, as decision-making groups can be scaled up and down. The principle of 'subsidiarity' should inform all decision-making processes. Indigenous people often employ this principle as a matter of course, when for example, they refuse to make a decision, insisting that others should be making it. The early mapping of diverse party interests is central to identifying relevant communities of interest and to effective

decision-making. Interest groups can be layered, negotiable, hierarchical, multi-directional, unbounded and networked.

This section of our paper has been necessary to give clarity to how we understand the key concepts that are fundamental to participatory development and the possibility of First Peoples exercising their FPIC. The next section explores participatory development and its application in Australian First Peoples' communities.

Nothing new under the sun: Participatory development practice

The participatory development processes we are advocating that give some guidance about *how* things might be done, are not a panacea for making the Herculean changes that are needed for First Peoples and governments on the (self-determining) journey of self-determination. Kelly and Westoby (2018) have referred to a 'rich tradition of practice, both oral and written' (2018, p. 4), and long discussed the need for a community of development practitioners. Some may think that participatory development is 'soft thinking' and a yearning for the good old days. But its engagement aims of 'building relationships, gathering resources, making decisions about, and carrying through tasks, from which participants will grow and add to their collective wellbeing' (p. 11) are essential and relevant today. Central to this is a shared understanding of the concepts of community, communities of interest, the principle of subsidiarity as discussed earlier, and how they relate to FPIC.

Kelly and Westoby (2018) distinguish between 'growth' and 'people-centred' development noting that neither is 'a replacement for the other'. Growth-centred development, by itself, leaves 'poverty' and 'people development' to 'whatever "trickles" down' (p. 14). People-centred development, consisting of both service delivery and participatory development, focuses on development 'for and by the people' and on 'quality of life' (p. 14). Action plans are 'defined by people living in the realities of a particular context', who have 'the right and responsibility to make decisions and to take action…' (p. 14). People-centred developers realise that services can work well for those who are able and resourced, but often do little for the poorest and most marginalised (pp. 13–14).

> *A participatory development program is designed to…begin where the people are wherever that may be, working with what they have, no matter how big or small, and honouring their ideas that shape the possible pathways in change (Kelly & Westoby, 2018, p. 16).*

Methodology of participatory development

There is an air of mystery around participatory development methodology. Partly this is related to the extent that individual skills and subjectivities can determine its success. But there are frameworks set out by Kelly and Westoby (2018) that they label as principles, situational/recurring situations, technical, practice, and method, which ultimately, when linked together, arrive at a complex map of an organised whole, 'that shape the purpose and process of the work' (p. 19). While participatory development is context-specific, there is a body of expertise and methodologies that underpin the approach in any setting. Kelly and Westoby describe the participatory development approach as: 'methodological but not mechanist; systematic but not dogmatic; intentional but not inflexible; rhythmical but not habitual' [and] 'procedural but not predetermined' (Kelly & Westoby, 2018, p. 24).

Participatory development is about theory and practice informing each other to arrive at a participatory development praxis. Kelly and Westoby describe several methodological crafts which they refer to in

layered terms as 'micro', 'mezzo', 'macro' and 'meta' (Kelly & Westoby, 2018, p. 59). The micro method involves working alongside people, in dialogue and building purposeful and helpful relationships (p. 59). The mezzo method moves from 'alongside' to 'together', moving the participatory process of change from the private concern of individuals into shared decision-making and taking 'mutually beneficial action' at whatever scale is appropriate (p. 89). The macro method is a tapestry of relationships in 'every part of the organization', helping to build 'supportive organizational relationships, culture and structures; and authorizing the work and worker mandate (p. 121). The meta method requires 'thinking paradoxically and holding contradictions' and building 'constructive links' with 'the structures of wider social and global institutions' combining the local and the global, to the 'glocal' (p. 147).

Awareness of the linkage between mezzo and macros levels allows for the scaling up and down of 'communities of interest' in the principle of subsidiarity. Matters may be better handled at a macro level when requiring a more informed overview rather than at mezzo levels and so on (Kelly & Westoby, 2018, p. 124).

Participatory work in First People's communities also has to be trauma-informed. Healing is a fundamental part of holistic Indigenous development strategic thinking. This means locating the impact on extended family relationships and networks at the heart of decision-making processes and considering that while some individuals and families may be thriving and prosperous, others have been more deeply affected by past policies of the settler state. The slow, careful work of rebuilding intra- and inter-community relationships and dealing with lateral violence (including Truth Telling amongst Indigenous peoples themselves) are essential parts of what is required for Indigenous development to occur.

Participatory decision-making processes

Participatory development methodology can also enlist other participatory decision-making processes sometimes called 'alternative dispute resolution' (ADR). These might include facilitation, mediation, negotiation, dialogue, consensus building, and Deep Democracy[8] approaches which aim to promote ongoing good faith and dialogue between and amongst all parties and facilitate participants to arrive at their own solutions (Bishop, 2009a, 2009b, 2015, 2019; Women Mediators across the Commonwealth, 2021). These processes, several of which are referred to as 'interest-based', should be designed in collaboration with parties and tailored to their needs and interests. This may involve the incorporation of the local expertise of those sometimes referred to in communities as 'peacemakers' or 'those who sit in many camps' (Bauman, 2006).

And both participatory development and ADR processes are best managed by independent third parties who employ a set of specialised micro-communication skills beyond mere information gathering in aiming for FPIC (Bauman, 2006; Bauman & Pope, 2008; Co, 2011). This is especially the case when there is uncertainty and disputes about how to proceed, and when there are many parties with complex and contentious issues and a history of distrust (Susskind et al., 1999). It is also necessary to support discussions and decisions about what empowerment and self-determination and the array of other terms discussed in this paper mean to particular First Peoples groups and what they want to prioritise. Complex issues arise which require comprehensive reality checking and identification of the various positions and interests held by parties.

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[8] https://www.linkedin.com/company/deep-democracy-the-lewis-method/about/; https://gaiaeducation.medium.com/from-conflict-to-community-a-deep-democracy-and-process-work-approach-497aced029f; https://www.amazon.com.au/Deep-Democracy-Open-Forums-Organizations-ebook/dp/B001VNC8Z0

Principled interest-based decision-making processes often employ problem-solving processes that identify the full range of emotional, substantive, and procedural rights and interests of parties (Bauman & Williams, 2004),[9] promote trust and long-term relationships, solidify group relationships, and build lasting solutions based on mutual interests (Moore, 2003). Skilled third parties can ensure that all parties understand the issues and are informed, without being gatekeepers. They can assist parties in learning how to explore the implications of their interests and to negotiate with each other, cultivating, exploring, and appraising possible options and solutions and reality checking them.

Independent third-party facilitators can act as circuit-breakers without being seen as having an interest in particular solutions or outcomes. They are also better placed to address any negative impacts that individual personalities, pre-existing relationships, and personal power can have on outcomes, to assist parties in negotiating in good faith and to identify when bad faith is apparent. Procedural experts can ensure that 'less threatening' dialogues or 'conversations to improve understanding' take place without parties feeling they need to arrive at a decision (Carpenter, 1999, p. 68; Susskind, 1999).

Many of the skills lie in knowing when and how to intervene without alienating parties, how to move towards agreed outcomes that account for shared interests, how to map and identify underlying communities of interest, how to shift parties from being positional, and how to identify what other process expertise group members might require, including dispute management.

Approaching engagement in a framework of self-determination, consensus-building, and participatory development to identify clear, comprehensive and implementable pathways is essential. Engagements are staged processes, where consensus-building activities are facilitated within all parties and across them, sometimes in parallel as new information becomes available. They are not one-off decisions. They should aim to do no harm, and locate place, wellbeing, empowerment, community relationships, and group cohesion at their heart. Even if a decision or agreement is not reached, a skilled process can have welcome unexpected outcomes, such as building relationships or decisions to act together in a community project (Innes, 1999).

Operationalising free prior and informed consent

Of critical importance to FPIC is answering the question 'whose consent?' and 'how consent is to be verified and evaluated?' in the first instance.

Identifying the 'fit' of partnerships with local circumstances is a complex negotiation, and requires skilful management, because it involves a range of stakeholders and in particular, identifying the appropriate community/ies of interest to provide FPIC. Through these initial negotiation processes, the 'terms of engagement' should be tailored to specific local subjects and families, contexts, scales, histories, geography and community needs, but also formalised in flexible institutions that provide for the possibilities of change. Ideally, the aspirations of First Peoples and governments and their understandings and expectations of each other's roles and responsibilities would be carefully future-mapped as milestones over the short and long term in anticipation of a staged progression. The negotiation must be honest, fair, equitable, transparent and inclusive, and reflect and accommodate

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[9] Substantive interests include the content of native title and other matters being negotiated, including legal rights, policy frameworks, and connection. Procedural interests are concerned with how parties talk about things, whether parties are being given a fair go, whether they have had the opportunity to put forward their own point of view, and whether they have confidence in information, protocols, and the effectiveness of meetings. Emotional interests are concerned with how parties feel about what is being negotiated and about themselves as parties during and after the negotiations. These interests are often represented in interest-based negotiation models by what is known as the Satisfaction Triangle developed by CDR Associates, Boulder, Colorado, http://www.mediate.org/

not only First Peoples' views and interests, but also those of governments and their departments, the broader community and a range of other stakeholders.

FPIC also means that parties have a choice and agree on the need for and acceptability of any independent third party (Bauman, 2006) and that they provide informed consent to enter the decision-making process itself, understanding what such a process will entail. Indigenous groups identifying the need for a third-party process manager is not a sign of dependence. It is a sign of effective governance as it recognises when powerful parties may be invested in outcomes and influence them unduly, and the need to level the playing field.

Procedural experts can remain alert to, and monitor issues of, procedural fairness – such as conflicts of interest, whether technical information has been understood and differing technical opinions evaluated, whether parties are really saying what they think, and whether others are really listening. Too often, Indigenous parties and governments are thrust together in an untimely fashion, ill-prepared, ill-informed, with conflicting interests both within and between them, and required to make decisions in a rush.

There is a need to hear the voices of the marginalised. Too often, it is only the views of a handful of people who dominate decision-making processes (Martin 2021). A third-party facilitator can enable a range of voices and opinions, as the foundation of consensus building, often through processes outside of large meetings. Part of the problem, as Mayer points out, is the stress under which we place people in striving for consensus in the face of deep structural issues, underlying social inequities, and systemic problems (Mayer, 2004).

FPIC processes should build enduring effective and appropriate governance processes, including building the negotiation and consensus decision-making capacity of Indigenous parties so they can control their own processes into the future. Decisions made without attention to FPIC, including to the 'right people' to make a decision, risk only a temporary unity, which may disappear on the cusp of decision-making or during the implementation of a decision. Decisions which are made by a slim majority, often lead to conflict as those 'who lost the vote' do not accept the decision

Participatory development with First Peoples in Australia

Two First People's organisations among others have led work on participatory development in Australian First People's communities in recent years and documented their experiences and learnings: the Central Land Council (CLC) and Community First Development (CFD). In both cases, skilled facilitators working within clear community development frameworks play important roles.

The CLC's community development work began in 2005 and has now spread across the Central Australia as traditional owners negotiate new agreements (or renegotiate old ones) for use of their land and seek to build community development funding into them. As agreements are negotiated, the staff of the Community Development Unit work with the Aboriginal landowners to create lasting community benefits with varying portions of the monies they acquire. Internationally established community development principles including empowerment, community participation, capacity building and good governance underpin the CLC approach. Staff facilitate participatory planning with local people to identify their priority aspirations and issues and develop appropriate initiatives or solutions which, after careful feasibility and planning processes, are implemented (CLC, 2009).

> *The CLC's CD [Community Development] Program is inherently strengths-based; it starts with Aboriginal people's own financial resources; draws on their knowledge and involvement to*

design appropriate solutions to issues they face; and utilises and enhances local Aboriginal
governance structures for decision-making, and to oversee project implementation. It also
draws as far as possible on local resources, infrastructure, facilities and networks of support
(Hunt & Campbell, 2015, pp. 235–236).

In all the projects facilitated by the staff of the CLC, control over decision-making rests with the traditional owners. Governance and participatory planning processes are supported by the staff to help strengthen the traditional owners' capacities to make well-informed and well thought through decisions. Clearly, as people get more experience at making important decisions about their own resources, their governance capacities strengthen and their sense of ownership and control of the developments increase (Hunt & Campbell, 2015).

Assessing the factors that have contributed to the success of the approach, Hunt and Campbell attribute it to leadership by the trusted and capable CLC organisation, including constituents and staff willing to advocate for change; the development and ongoing refinement of governance structures suited to each project and location; good fit planning processes that are adapted over time; effective facilitation by capable outsiders acting as change agents who facilitate planning and decision-making; and a commitment to action, reflection and learning (Hunt & Campbell, 2016, pp. 3–4). Inspired by the CLC's work, the Northern Land Council subsequently adopted a similar approach, with its community planning and development program now operating in eight locations in the Top End of the Northern Territory.[10]

Community First Development's work across Australia began 20 years ago in response to requests for assistance. Originally established as *Indigenous Community Volunteers* to link skilled volunteers with First People's communities and organisations, it has evolved a strong community development approach. It supports community development projects in approximately 100–150 locations at any time, with a large proportion focusing around strengthening governance in communities and improving economic outcomes (ACIL Allen, 2021). CFD has a framework for community development, about which it says the following:

Our approach to community development is based on a strong foundation of ethics which
underpins the framework. These include rights, respect and recognition, negotiation,
consultation, agreement and mutual understanding, participation, collaboration and partnership.
We work to a model where communities have control and ownership over the development
activities they are working on. As communities hold the decision-making power, they can – with
tools and support from us – design and carry out development projects that align with their
aspirations and directly meet their needs (CFD, 2021, p. 18).

Its framework provides many examples of projects which have been undertaken and which have contributed considerable value to First Nation communities (CFD, 2021), according to an ACIL Allen, 2021 assessment (ACIL Allen, 2021).[11]

Finally, we highlight the work of Donna Murray and Debra Evans, two Wiradjuri women who recognised the problems of constantly responding to settler agendas and systems of funding, and have worked in a culturally-led process to strengthen Wiradjuri peoples' self-determination:

We came to realise that our aspirations could not be realised by attempting community
development through a service-delivery model alone, for at its centre is a fundamentally deficit

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[10] https://www.nlc.org.au/building-the-bush/planning-and-community-development
[11] See also the Stories of Change on CFD's website: https://www.communityfirstdevelopment.org.au/approach

view of Wiradjuri – emphasising what was absent, weak, deficient, poorly managed, and so on. Our mistake had been to attempt to strengthen our communities through alien corporate structures and governance arrangements in ways that prioritised external government policy and programs over our own cultural, social, economic, and political aspirations. We had become lost in an overly bureaucratised, corporate compliance system. What was missing was 'self-governance' as defined, designed, and implemented by our communities.

Instead, we needed to think more holistically about the nation and communities in a way that was long term, focused on culture first – not last, and based on the strengths of our ways of working together as Indigenous people. Wiradjuri elders had known this all along (Murray & Evans, 2021, pp. 170–171).

We highlight these examples to show that there is experience of strengthening empowerment, participation and self-determination in Australian First People's communities – experience to build on. Undoubtedly there are more local examples which have not been documented, including through caring for country activities, the community-controlled health sector and other First People's initiatives. Many examples are recognised through the Indigenous Governance Awards.[12]

The messiness of governance for participatory development

Both CLC and CFD place a great emphasis on strengthening community governance for this sort of development. Murray and Evans also emphasise that culturally-led governance is required. Returning to considering the Voice proposal and the Closing the Gap agreement, it is clear that policy making is viewed primarily within a relationship between governments and some form of Indigenous collectivity. Not highlighted are the complex governance arrangements which need to be managed, not only among and within governments, but within First People's communities themselves. Who exactly will government share decision-making with at local or regional levels? Should there be a difference between a body which exercises a political voice and one engaged by government in service delivery? Are Closing the Gap processes engaging directly with the service delivery organisations relevant to the targets and/or to regional and local coordinating bodies where they exist? What role might the yet-to-be established Regional or Local Voices play? How will the right players be involved at regional and local levels according to decisions to be made? How will these organisations in turn engage with their constituents? Will shared decision-making be meaningful and advance the aims of self-determination?

These questions are critical because the Uluru Statement (Davis, 2018) communicated powerfully what its authors called 'the torment of our powerlessness'. It is important to consider how terms such as 'empowerment', 'self-determination' and 'partnership' in the 2020 Closing the Gap agreement can come to life in the place-based partnerships proposed. Today, a more complex and diverse organisational landscape exists than when ATSIC departed, with an increasing number of Indigenous corporations regulated by the Office of the Registrar of Indigenous Corporations (ORIC) under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSI Act) and other legislation, each delivering services and/or representing constituents in a wide range of sectors.[13]

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[12] https://indigenousgovernance.org.au/awards/
[13] Some 2780 corporations were registered with ORIC in 2015–16, compared to 2585 in 2004–05 (see ORIC Top 500 Reports 2015–16 and 2007–08 respectively). More PBCs are established with each native title claim resolved. Many other corporations are registered in state/territory jurisdictions or as companies under the Australian Securities and Investments Commission (ASIC).

In recent years there has been only limited support for Indigenous regional governance building to manage this 'messiness' in a small number of locations. Earlier regional structures established as part of ATSIC have mostly disappeared (the Torres Strait Regional Authority is a notable exception). State and territory regional governance arrangements keep changing. There are examples of initiatives attempting to address regional governance issues. These include the Empowered Communities Project operating in eight locations across Australia and subsequent developments in Ceduna and Yarrabah.[14] In NSW there are also now nine Local Decision-Making sites[15] dealing with service delivery issues relating to NSW government's programs. The Northern Territory Government is exploring a similar approach[16] and Victoria has some limited regional governance arrangements for specific purposes (e.g., under the *Traditional Owner Settlement Act 2010* (Vic)[17] and the *Aboriginal Heritage Act 2006* (Vic)[18]).

However, in many other localities and regions, regional governance is not supported adequately or functioning effectively. Under the *Native Title Act 1993* (Cth)*,* Registered Native Title Bodies Corporate (RNTBCs), also referred to as Prescribed Bodies Corporate (PBCs), must be incorporated under the CATSI Act following a determination by the Federal Court. By 2018, there were 197 RNTBCs – 134 small, 55 medium, and 8 large ones (Burbidge et al., 2021). Most (though not all) of these PBCs are poorly and insecurely resourced and their capacities to govern according to the requirements of the CATSI Act are limited (Department of the Prime Minister and Cabinet & Attorney-General's Department, 2019). Their role in service delivery is ill-defined, as that is usually seen as the responsibility of governments and other local community organisations, yet they clearly have a role in regional governance. On the other hand, a growing number of First People's corporations are also multi-million dollar enterprises with considerable capacity (ORIC, 2017).[19]

First Peoples corporations are engaging with a bewildering array of government departments and statutory bodies at different levels (federal, state/territory and often several local governments within the areas where they operate. The overlapping jurisdictions and silos between departments, and even sections within departments, can mean that communities are managing a stream of uncoordinated visits by government officials; responding to requests for meetings at short notice or no notice at all; trying to understand the range of programs that might be available and how to access them; and generally responding to external agendas and pressures (Egan, 2015, p. 1; Shanks, 2009). For example, a report on Lajamanu in the Northern Territory (Chapman et al., 2014), a town of over 600, 586 of whom are First People, found that 282 agencies visited the town every year, an average of around 24 per month (85 in October 2010 alone). Half the adult population was involved with the various advisory committees that a range of Departments and non-government organisations had established to help meet their objectives. The effort taken up in this 'consulting' was not achieving optimal outcomes:

> *Warlpiri do not appear to feel collectively empowered by this number of consultative governing structures. Nor is it clear that such a large number of governance mechanisms does anything to deliver more efficient services or improved socioeconomic outcomes on the ground. Rather, they appear to reproduce the institutional fragmentation of departmental silos down into the community* (Chapman et al., 2014, p. 52).

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[14] https://www.niaa.gov.au/indigenous-affairs/empowered-communities
[15] https://www.aboriginalaffairs.nsw.gov.au/working-differently/local-decision-making/aboriginal-regional-alliances/
[16] https://ldm.nt.gov.au/
[17] https://www.justice.vic.gov.au/your-rights/native-title/traditional-owner-settlement-act-2010
[18] https://www.aboriginalheritagecouncil.vic.gov.au/victorias-registered-aboriginal-parties
[19] There were over 100 ORIC registered corporations in 2015–16 with incomes of $5 million or above (ORIC, 2017, pp. 25–26). Other large First People's organisations may be registered with ASIC, or under jurisdictional association legislation.

McGrath (2016) similarly recorded the enormous amount of time and energy that members of one registered native title corporation expended on primarily outward-facing native title obligations. Business as usual often involves ill-prepared and poorly designed and planned ineffective meetings and the 'consultations' that play a fundamental role in Aboriginal political systems. Engagement characterised by 'fly in fly out' visits and predetermined outcomes for which agreement is sought fails the shared decision-making test. It risks exacerbating conflict, re-traumatising people, and ensuring that solutions are imposed rather than owned, and therefore, not sustainable. Meetings can also provide a platform for distortion and instability as individuals publicly compete for influence and status. Pressure to make decisions in these meetings can be intense, and decisions in such contexts are rarely binding. Research has repeatedly shown 'big meetings' to be ineffective decision-making strategies (Bauman & Pope, 2008; Martin, 2021).

These are challenging issues for the governance of governments and the governance of Indigenous First Peoples and communities. On the government side, the delegation of decision-making to regional levels will assist, but transforming bureaucracies to be responsive to place-based priorities may not be easy (Jordan et al., 2020). Will regional government staff have the policy frameworks, time, central support, skills and expertise to work intensively with regional First Peoples groups to help them determine and address their collective priorities in an inclusive way? Will governments at all levels coordinate effectively to be responsive in a timely way to Indigenous-led proposals? On the Indigenous side, how are the various interests and organisations to develop legitimate and inclusive arrangements among themselves to interact with governments unless they can access skilled facilitation to assist in complex decision-making processes that address conflicts or differences among them?

Back to the drawing board of change

As the Kempsey women in the AHRC report articulated, Indigenous people and governments need to 'go back to the drawing board' and share deeper analyses of the issues to allow new solutions and ways of doing business to emerge. This means going beyond how 'co-design' in 'place-based work' is currently being approached.

In the first instance, 'going back to the drawing board' means understanding the impacts that 'business as usual' has had on Indigenous communities and governments. This includes the repeated changes to government policies, structures and staff that leave Indigenous people floundering to keep up and to understand the latest idea that governments have for them. It also means long-term support for successful local community initiatives rather than their having to struggle to find funding each year and being closed down.

There has, on the one hand, been too much change and, on the other, not enough change of the right kind that works through processes that deal with the underlying causes of problems – and not just their symptoms – to enable holistic, relational types of development to emerge. The many changes in public policy have failed to address 'the fundamental human interaction that is required to change such a deep seated reality' (Kelly & Westoby, 2018, p. 17). Rather, government responses have generally been to increase competition, call for tenders, tighten regulatory standards of service delivery, and impose forms of legal and bureaucratic governance. These alone do not define practice or ensure success. Rather it is the *meanings in practice* of the terms which are enlisted by both First Peoples and governments which define success.

Ideally, negotiations about ways forward in First Peoples' policy implementation would be managed by third-party independent facilitators with specialised communication skills in processes that account for

not only substantive outcomes, but also the 'how' of engagement, the building of relationships and the power differentiations between and among all parties. Skilled facilitators would ensure that issues are explored thoroughly and understood and that the implications of decisions are reality-checked, including inter-generational and implementation issues, in healing and trauma-informed approaches. In a rights framework of self-determination, it would be the facilitator's duty to ensure that decisions are made with the FPIC required in the UNDRIP and that the 'terms of engagement', including rights between and among First Peoples themselves, are front and centre. But where are these facilitators, and how do they develop the skills needed for this important work? While there are some highly skilled Indigenous and other practitioners, many more are needed.

The missing piece of infrastructure: An indigenous participatory development and engagement institute

The demand for skilled participatory development practitioners, community facilitators and mediators has been identified for many years. The AIATSIS Indigenous Mediation and Facilitation Project (IFaMP) (Bauman, 2006) recommended the establishment of a well-supported national network of regionally-based Indigenous facilitators and mediators. It recommended Indigenous customised training programs in a developmental approach which would cover various specialised skills and build on each other, completion of which would provide serious qualifications in process work and integrated approaches, rather than the piecemeal training that is currently generally available. Initial government support for the idea waned by 2009, although the then National Alternative Dispute Resolution Advisory Council (NADRAC) made a number of recommendations to the Attorney General (NADRAC, 2009; Bishop, 2019). These included development of a nationally coordinated Indigenous Dispute Management and Decision-Making Service with considerable detail about how it should look. Nothing has eventuated from these recommendations. In the meantime, important Indigenous local mediation and law and justice programs and services such as those at Yuendemu, Gunbalanya, Willowra, Ali Currung, Bathurst Island, and Lajamanu (Bishop, 2019) have struggled to find funding from one year to the next from all governments, despite their demonstrated value.[20] And a 2015 AIATSIS National Governance Forum, which brought Indigenous governance expert practitioners from across Australia, reinforced the need:

> In considering the expertise and knowledge required to create useful practical resources and training and to deliver them effectively, the Survey and Forum identified skills sets including experience, understanding of the diverse range of Indigenous governance contexts, learning styles, communication preferences, and cultural institutions and specialised intercultural communication skills. The relatively small number of trainers, researchers and facilitators with these skills was noted as a challenge (Bauman et al., 2015, p. xvii).

Participatory development and dispute management skills are urgently needed in the Closing the Gap policy commitment to shared decision-making, in the development of the regional and local Voices,[21] in the brokering of partnerships, in interagency co-operation and in Indigenous decision-making. The skills and capacities to be developed cross four key interrelated domains: communication; mediation and facilitation; understanding systems and holistic approaches; and participatory development. The demand for such skills and people with the practical wisdom and experience in all these areas outstrips the supply and the demand is increasing exponentially.

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[20] This is despite an evaluation of the the Yuendumu Mediation and Justice Committee which showed that every $1.00 spent returned $4.30 in benefits (Daly et al., 2014) and an evaluation of the Queensland Government's Mornington Island Restorative Justice Project which showed success rates of around 95% in its early stages (Brunton, 2014).
[21] Whether the national Voice is to Government or Parliament.

The success of decision-making processes including co-design also depends upon the capacity of those who are negotiating: whether they be representatives of Indigenous organisations, development corporations or government representatives.

To achieve participatory development which would genuinely enable First People(s) to give FPIC, there is an urgent need for a national First Peoples participatory development and engagement institute, with regionally and locally networked particularly indigenous practitioners. This must be adequately financially resourced over the long term with skilled staff to work in a First Peoples owned and led approach across various sectors, and able to call upon experts in a range of sectors as needed. In particular, the need is for Indigenous practitioners, for which there is a huge demand but a scarce supply.

Envisaged in the concept of a national participatory development institute is the development of the capacities of Indigenous parties, governments, and private stakeholders alike in:

- understanding the value of participatory processes, and implementing rights-based approaches, knowing what is required to obtain FPIC and the importance of impartiality, recognising the constraints that all parties are under and the value of systems thinking

- co-design and Indigenous-led place-based processes, including establishing ways in which Indigenous people prefer to do business that match local needs and secure equal partnerships with government representatives and other parties; and ensuring all parties are able to negotiate effectively and that agreements contribute to strategic pathways for Indigenous community cohesion, are fair, and represent the interests of all parties

- planning and implementing workable community strategies and solutions including:

- option generating, reality checking, identifying by whom and how particular tasks are to be carried forward, how decisions should be made about particular issues, and strategies for conflict management

- evaluating, monitoring, renegotiating, modifying, or adapting strategies and solutions as required, identifying and exploring the causes and potential solutions to problems and responding in meaningful and sustainable ways to changing government and corporate requirements and agendas

- developing strategies and capacities to engage, manage and utilise relevant technical expertise, and

- ensuring decision-making and dispute management processes are embedded in good governance structures (see also Bauman, 2006).

To enable the capacity to voice, there is a need to consider 'how' things are done (the procedural) as well as the 'what' (the substantive) in a myriad of decision-making processes and a messy governance arena. There is an urgent need to change the discourse around 'partnerships' and 'co-design' towards shared understandings of what a successful partnership looks like. Without this, partnerships, like management, can lead to the 'implicit silencing of alternative narratives' and 'ontologically privilege non-Indigenous ways of being-in-place' (Howitt & Suchet Pearson, 2006, p. 323–324).

One way of influencing the discourse of partnership is through 'a community of practice'.[22] This could allow for the exchange of ideas and experiences across local, regional, national boundaries, challenge hierarchical restrictions and be informed by all the reports and recommendations that have been made over the years. In the first instance, it might involve strategically directed and facilitated dialogues at the local, regional, state, and national levels between and among First People and the full array of government staff in a top-down meets bottom-up approach (see Bauman et al., 2012, p. 44–47). Such a community of practice should also be informed by the international rights context.

Investment in the development of such skills for both governments and the Indigenous community sector will be essential to the new 'Closing the Gap' way of working if it is to be successful: to support Indigenous communities to define their own priorities through appropriate local governance processes, and enable them to define their own monitoring systems to assess what progress is being made once agreed programs commence. A national Indigenous participatory development institute would, among other things, require an institutional base that could:

- build participatory development communities of practice including ways of approaching the definition and implementation of terms such as self-determination, place-based, co-design and partnership

- foster and support Indigenous local and regional networks of facilitators/practitioners

- provide participatory development services and training including facilitation, conflict resolution, mediation, dispute management, and participatory planning and evaluation of projects and programs

- facilitate effective co-ordination and decision-making between and amongst government agencies and Indigenous organisations

- provide training, resources and accreditation for practitioners and support skill and resource sharing among First Peoples about participatory Indigenous development approaches and lessons.

Such an institution could develop and deliver innovative education and awareness raising packages for Indigenous communities, policy makers and service deliverers in how to champion participatory processes; it could foster First People's healing and trauma informed approaches in partnership with relevant organisations such as the Healing Foundation. It could develop a national training curriculum and a range of training packages in participatory development processes for strategic and project planning and monitoring and evaluation processes; and facilitate exchange of experience and knowledge. It could set common standards, accreditation and vocational pathways, and develop specialist services such as in the areas of family, native title and housing and help First Peoples access the technical expertise they require. It could also support governance building (in collaboration with the Australian Indigenous Governance Institute) and ensure appropriate remuneration for Indigenous practitioners (Bauman, 2006).

To enable First Peoples to make significant progress on the things that matter to them, we believe such a national institute – adequately resourced over the long term – would make a key difference to the outcomes over the next 20–30 years. Its design would need to be led by First Peoples, and while

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[22] Some efforts have been made towards something like this in Central Australia but are conducted without adequate resourcing and are therefore infrequent and ad hoc.

its leadership would have to be by First Peoples, it should be free to draw on a range of expertise outside First Peoples' communities that can support the achievement of First Peoples' aspirations.

Conclusion

First Peoples have identified many of the changes they wish to see, often after arduous repeated consultations, and over many years. These have been documented in inquiries and royal commissions in countless reports and recommendations, and some are reflected in the Closing the Gap targets. Few have been implemented. Honouring the work that many First Peoples have already done and addressing this 'Unfinished Business' means truly taking notice of the real-world daily lived situations in which people find themselves and their histories and past policies.

Starting with the 'micro' issues that families, communities, or nation groups identify as place-based and central to improving wellbeing, and expanding gradually as people are ready to take next steps is part of the continuum of micro to meta methods discussed in this paper. In particular, place-based approaches that strengthen cultural identity such as language programs, recording local histories, working on land or sea country, cultural education or arts programs, can play a healing role while also often generating economic opportunities (e.g., Hemming & Rigney, 2008; Kanyirninpa Jukurrpa, 2020; McCalman et al., 2018).[23]

This paper argues that improving Indigenous outcomes starts with a recognition that self-determined development emerges from the deep cultural values and worldviews that First Peoples live daily. It is also embedded in Indigenous social, cultural and economic systems and in broader and interwoven non-Indigenous systems and structures. A missing piece of infrastructure in Australia is a commitment to Indigenous-led participatory engagement and development, including building the institutions and providing resources to support this in whatever form it might take. This would enable Indigenous people to set their own goals, based in their knowledge systems and their priorities, and to have the necessary resources to work holistically towards their hopes and desires.

As the AIATSIS national Governance Forum concluded in 2015:

> *Ultimately the evidence suggests that a developmental, participatory approach which is strength and place-based will lead to better outcomes, especially if governance solutions are the product of informed choice, and adapted to the range of interests of those who are participating as members of organisations. This work is incremental and takes time* (Bauman et al., 2015, p. 118).

The kinds of participatory engagement processes we are suggesting, including FPIC, should be 'evolutionary' in the sense that they increasingly incorporate Indigenous peoples into the governance and decision-making structures that affect their lives. FPIC should characterise all the stages of decision-making processes as conditions change, including changes of governments and policies, setting the stage for new negotiations (Bauman et al., 2015, p. 5). FPIC thus has a critical role to play in strengthening governance and peace building. While the UNDRIP may be seen to be 'aspirational' and the Australian Government appears to be reluctant to embrace its full meaning, FPIC has the potential to be transformative for all parties and their relationships with each other.

As we have noted, participatory processes are not a cure-all. There are limitations to the kinds of participatory decision-making processes identified in this paper, not least the power differentials to be found among and between First Peoples parties and other parties and those implicit in structures and

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[23] In NSW, Healing is a key part of the OCHRE plan, so is an important exception (NSW Aboriginal Affairs, 2013).

systems. There are also concerns about the negotiation of rights with governments when these rights may be seen by First Peoples as non-negotiable. Nevertheless, at least some rights are negotiable among Indigenous parties – including levels of inclusiveness in a decision-making group.

While co-designed policies and programs may be seen to offer only limited scope for First Peoples' perspectives and approaches (Rowse, 2021), the engagement processes themselves can be genuinely transformative (Brigg et al., 2018) when informed and skilful. Skilled participatory development and consensus building processes can strategically challenge behaviours and attitudes for the collective good, encourage self-reflexivity, recognise signs of changes in attitudes, and make timely strategic interventions.

There is no quick fix in dealing with the problems that First Peoples face. These are often embedded in intergenerational trauma and the poor governance of the parties involved. The processes required are long term and emergent. 'Business as usual' is clearly not working and there seems to be little to lose. The gap to be closed is between the parallel discourses of governments and First Peoples. Participatory development and engagement processes led by skilled practitioners could make an important contribution to closing it.

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