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## 4 Challenges in evaluating Indigenous policy

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#### Abstract

Conventional evaluation methodologies used by government fail to comprehensively understand the full range of factors that contribute to the successful delivery of services to Aboriginal and Torres Strait Islander clients. Consequently, there is a failure to understand how programs for Aboriginal and Torres Strait Islander communities can be delivered and evaluated in a framework of self-determination.

Evidence from Australia and internationally consistently shows that community empowerment and involvement are the precursors for long-term economic development. Accordingly, Indigenous social policy should be evaluated in the context of self-determination and empowerment for Aboriginal and Torres Strait Islander peoples.

To be reminded of this, we need go no further than the reports and recommendations of the Royal Commission into Aboriginal Deaths in Custody.

There is no clarity regarding the Aboriginal and Torres Strait Islander peoples' aspirations, how to define these aspirations as goals and targets, and how to design and deliver programs to achieve the goals. Most importantly, government, and therefore the multiple agencies of government, have failed to connect with the Aboriginal and Torres Strait Islander peoples.

The United Nations Declaration on the Rights of Indigenous Peoples is the foundation, if not the framework, on which goals, targets and evaluation should be built. The declaration, though adopted by governments, is a message from the Indigenous peoples of the world. The declaration calls for and requires significant change in the actions of government and a paradigm shift in the role of Indigenous people.

This redefines the responsibility of government as a provider of financial and technical resources: first, to enable communities to pursue their development

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objectives; and, second, to build their capacity through the technical skills and assistance needed to control and manage services and development.

My presentation addresses the need to adequately evaluate and respond to issues in the implementation of services and programs under the control of the peoples concerned.

## 4.1 Introduction<sup>2</sup>

I'd like to acknowledge the Ngunnawal people, the owners of the land on which we are meeting, for the honour of being able to meet and talk about our business here. I would also like to thank Auntie Agnes for her presentation this morning and her welcome to country.

This presentation has haunted me for a little while. A lot of things can be said about evaluation. How should I approach the topic? What outcome do we want to achieve by the end of the roundtable? Why are we doing this? What are we going to achieve from this?

I'd like to acknowledge the work of the Productivity Commission, as the secretariat for the Steering Committee for the Review of Government Service Provision, for producing the Overcoming Indigenous Disadvantage reports, and to recognise the enormous amount of data provided in those reports. As I have previously said to the Commission, I really think it is fantastic work. But the real challenge is: what to do with all this information? This is one of the questions that I will address in my presentation.

I have taken my cue from the title of this session — 'The challenges in evaluating social policy in general, and Indigenous policy in particular'. I am certainly one to start throwing out the challenges. I would like to thank Fred Chaney in his presentation for 'kicking open the door' to some of the key issues, and I hope to build on his comments in this presentation.

## 4.2 What is 'evaluation'?

I am going to start by asking: 'what is evaluation?' I do not think that there is an authoritative definition, so I will put forward the following as a working definition:

Evaluation is the application of scientific methods to assess the design, implementation, improvement or outcomes of a program. The purpose is to obtain objective knowledge

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<sup>2</sup> This is an edited transcript of the presentation given by Les Malezer at the Roundtable.

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and scientifically or quantitatively measure pre-determined and external concepts, with a focus on facts, as well as reach value-laden judgments of the programs, outcomes and worth.

I am going to address the three aspects of evaluation referred to in that definition:

- assess the design and implementation — apply scientific methods to assess the design, implementation, improvement or outcomes of a program
- obtain knowledge, measures and facts — attain objective knowledge, and scientifically or quantitatively measure predetermined and external concepts, with a focus on facts
- reach judgements of worth — reach value-laden judgements of a program's outcomes and worth.

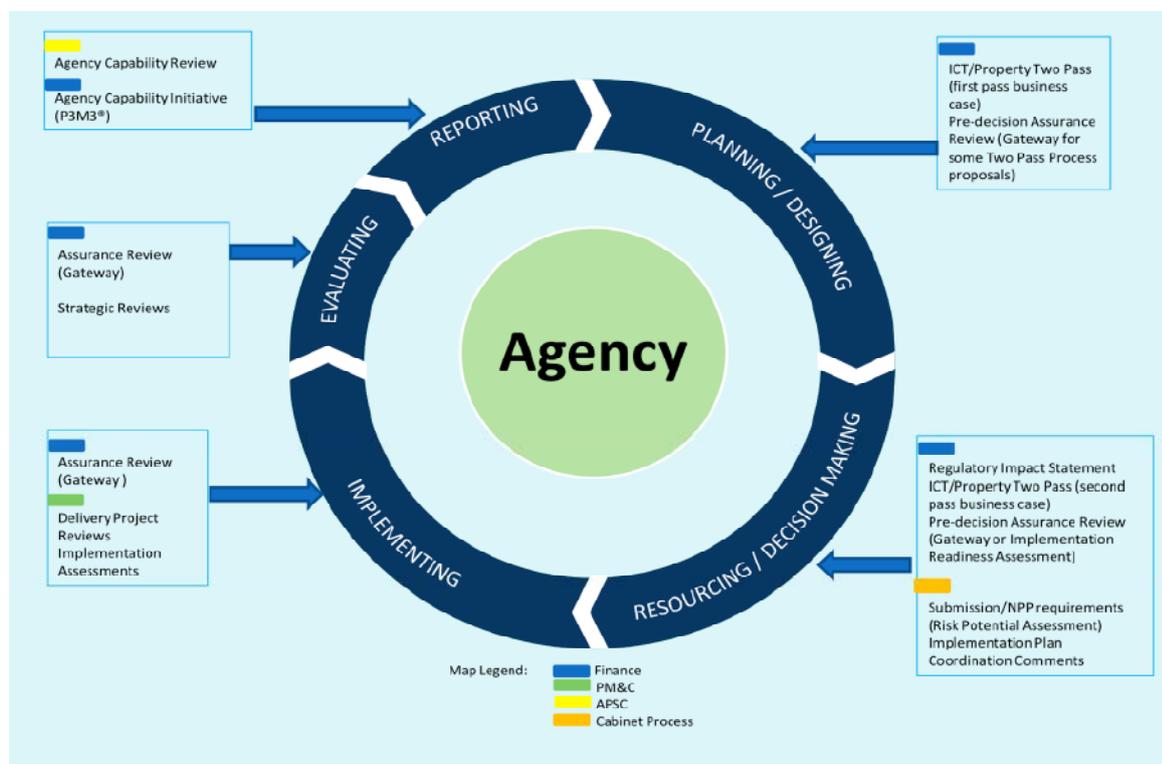
I'll be focusing particularly on the third point, value-laden judgments, because that is what evaluations are really about: who is doing the evaluation, and why are they doing it?

## **Assess the design and implementation**

### *Evaluation processes for governments*

Let me put this in the context of what governments are concerned about. Figure 4.1 is reproduced from a recently released Department of Finance and Deregulation report *Centrally Commissioned Processes and Reviews for the Australian Government – High Level Overview* (2012), which illustrates the procedures that agencies use in relation to delivering programs and services. It shows a circular process, starting with planning and designing, then moving clockwise to resourcing and decisionmaking, implementing, evaluating, and, finally, reporting. It can be seen that evaluation is not only about how things have been done, but also how things should be done and how they contribute to planning and design, and so on.

Figure 4.1 Procedures for the state



Source: Department of Finance and Deregulation 2012, *Centrally Commissioned Processes and Reviews for the Australian Government – High Level Overview*, p. 5.

The figure illustrates from *government's* point of view what each process does, and which parts of government will be engaged in each process. But where is the Indigenous point of view? What issues does evaluation raise for Indigenous peoples? What evaluative procedures might Indigenous peoples use?

### *Evaluation processes for Indigenous peoples*

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007. The declaration highlights the individual and collective rights of Indigenous peoples, including rights to self-determination, governance and development. It also ‘emphasizes the rights of indigenous peoples to maintain and strengthen their own institutions, cultures and traditions, and to pursue their development in keeping with their own needs and aspirations’. It ‘prohibits discrimination against indigenous peoples’, and ‘promotes their full and effective participation in all matters that concern them and their right to remain distinct and to pursue their own visions of economic and social development’ (UN 2007).

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I would like to focus particularly on articles 18 to 21 and Article 23 of the declaration:

Article 18 is about representation and decisionmaking:

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19 is about governments consulting and cooperating with Indigenous peoples in good faith:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions [*that is, the indigenous peoples' representative institutions*], in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

Article 20 is about recognition of Indigenous people's own institutions:

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

Article 21 addresses disadvantage and special measures:

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.
2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of the economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

Article 23 relates to the importance of Indigenous self-management and control over programs and services:

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

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In looking at those articles (and some may be more important than others in particular circumstances), they basically come back to the fundamental principles that:

- Indigenous peoples have the right to determine their needs and the best way of addressing their needs
- Indigenous peoples have the right to exercise prior informed consent on any programs that may affect them
- Indigenous peoples have the right to good faith relationships with government.

### **Obtain knowledge, measures and facts**

The second point in my definition of evaluation is about obtaining knowledge, measures and facts. The purpose is to obtain objective knowledge, and scientifically or quantitatively measure predetermined and external concepts, with a focus on facts.

This is very much what the Productivity Commission does. The Overcoming Indigenous Disadvantage reports produced every two years provide valuable and detailed data about what is happening with Aboriginal people and Aboriginal communities. As I've said before, the Productivity Commission and governments should be praised for their work in generating statistical and qualitative information.

However, stakeholders have no role in assessing the information or capacity to do so. Aboriginal and Torres Strait Islander peoples, who should be the beneficiaries of such knowledge, measures and facts, have no way in which to study the gap between the Indigenous and non-Indigenous peoples of Australia. Consequently, Aboriginal and Torres Strait Islander peoples do not have the capacity to participate in the design of service delivery.

A number of problems limit the ability of Aboriginal peoples to use the knowledge, measures and facts to their advantage. For example, programs to overcome Indigenous disadvantage cross over governments and agencies, making it difficult for Indigenous people to engage. This distribution across governments and across multiple agencies inevitably results in confusion over who has responsibilities, what are their obligations, and how those obligations are being handled or met.

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## Reaching judgments of worth

The third point in my definition of evaluation is about reaching judgments of worth. The purpose of evaluation is to reach value judgments about programs and their outcomes.

The principle of self-determination requires Aboriginal and Torres Strait Islander peoples to have effective governance over laws, policies and programs that relate directly to their wellbeing. However, the Closing the Gap – Overcoming Indigenous Disadvantage framework does not necessarily cater to the political, social, cultural and economic development of the Aboriginal and Torres Strait Islander peoples, because it is focused on overcoming disadvantage and is not couched in terms of promoting development within communities.

Governments are too focused on making judgements based on their own values and interests; that is, the Closing the Gap – Overcoming Indigenous Disadvantage framework reflects the government's value judgments about the wellbeing and aspirations of the Aboriginal and Torres Strait Islander peoples, not those of Indigenous people themselves.

This issue concerned me during one of today's opening presentations, which dealt with the issue of child abuse and the need for children to be protected by the system. I am not denying that there are problems and dysfunctional communities. However, the people who are making assessments about whether children are in danger, whether children should be removed, and where they should be moved to and so on, are making value judgements. My concern with discussions I've had with child protection agencies is that these value judgements come from the non-Indigenous community and are not necessarily reflective of the views of the Aboriginal and Torres Strait Islander peoples. This issue came up recently in reports of a dramatic increase in the number of Aboriginal children being placed away from Aboriginal families and communities.

This is just one example where value judgments that affect Indigenous peoples are not the value judgments of Aboriginal and Torres Strait Islander communities and peoples themselves. For instance, Aboriginal peoples may be interested in and require things such as:

- political development (governance and leadership)
- property rights (the ownership of land and resources)
- cultural security (the exercise of their responsibilities in relation to their territories)
- heritage protection (languages and Indigenous knowledge)

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- economic growth (lands and resources)
  - social cohesion (positive reinforcement of identity, supportive families and communities, and local decisionmaking).

Those aspirations may not necessarily be the same things that governments value when they talk about overcoming disadvantage and inequality.

### 4.3 Special measures

Article 21 of the Declaration on the Rights of Indigenous Peoples says:

States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

The International Convention on the Elimination of All Forms of Racial Discrimination (UN 1965) clarifies that special measures taken to overcome disadvantages experienced by racial groups are not acts of racial discrimination providing they do not continue after disadvantage is addressed (Article 1.4).

The International Convention also identifies ‘concrete measures’, as distinct from ‘special measures’. Concrete measures are measures taken to ensure the full enjoyment of human rights (Article 2.2). For example, Aboriginal land rights legislation is not a special measure, it is actually a concrete measure. Aboriginal cultural heritage protection is not a special measure, it is a concrete measure.

Australia is being held more accountable for what it calls ‘special measures’. I’d like to expose the distinction between actions taken as special measures, and actions taken as concrete measures.

The International Convention requires that state parties shall provide special measures and concrete measures ‘to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms’ (Article 2.2).

The UN Committee for the Elimination of Racial Discrimination calls in particular upon state parties to:

- (a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State’s cultural identity and to promote its preservation;

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- (b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;
  - (c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;
  - (d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;
  - (e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages. (CERD 1997, General Recommendation 23, 4(a) to (e)).

I hear from time to time the comment from government agencies that the International Convention on the Elimination of All Forms of Racial Discrimination and the Declaration on the Rights of Indigenous Peoples (and therefore the rights of Indigenous peoples) are aspirational, and have no legal effect in Australia.

## 4.4 Conclusion

In returning to the first point in my definition of evaluation — assessing design, implementation, improvement or outcomes — the Closing the Gap – Overcoming Indigenous Disadvantage framework forms a large part of assessment. The Overcoming Indigenous Disadvantage framework includes the six COAG targets and some additional headline indicators, including for participation in secondary education, and for disability and chronic disease, household and individual incomes, substantiated child abuse or neglect, family and community violence, and imprisonment and juvenile detention.

These are important indicators, endorsed by Australian governments. But they do not address other important needs of the Aboriginal and Torres Strait Islander peoples. For example, they do not address the legacies of historical injustice, such as stolen wages, the stolen generation, stolen territories, the need for development, and the pursuit of culture and identity by Aboriginal and Torres Strait Islander peoples. Consequently, there is a disregard for the essential needs of self-determination through governance, decisionmaking, law and Indigenous peoples' own institutions.

Twenty years ago, the Royal Commission into Aboriginal Deaths in Custody stated that:

... the key to overcoming the deaths in custody lay in the recognition of Aboriginal people as a distinct people, the Indigenous people of Australia, who were cruelly

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dispossessed of the land until recent times, denied respect as human beings and the opportunity to re-establish themselves on an equal basis. As with Indigenous peoples in other countries, it is a matter of great difficulty to work out ways in which within the framework of the large society they can retain their identity as a people and exercise significant degree of control over their lives and futures. (Royal Commission 1991)

This was the message 20 years ago delivered in a comprehensive and extensive report, focused particularly on imprisonment and deaths in custody, but emphasising at the same time that there has to be respect for Aboriginal and Torres Strait Islander peoples who have particular rights which have been historically denied.

I will conclude with comments from an international report on Indigenous peoples' experience and perspectives. Whilst it refers to Cambodia and Cameroon specifically, they were part of a broader report put together by the United Nations Interagency Support Group reporting on indicators for Indigenous peoples (UN Economic and Social Council 2006).

The report concluded that Indigenous peoples' perception of poverty are not static, but change according to their level of integration into mainstream society and the market economy, and in response to specific problems of lack of access to land and resources that Indigenous communities have traditionally owned or used. The report found that the following factors contributed to Indigenous poverty:

- lack of land and resource rights
- lack of recognition of the collective rights of Indigenous peoples
- level of access to services (for example, education and health)
- food security
- cultural poverty (with particular reference to the erosion of traditional decisionmaking)
- lack of knowledge and information.

In conclusion, it is a good thing to have these data and these statistics made more freely available. But what is crucially important is how that information is being used, who is processing it, and how it influences the design of programs and service delivery.

I fear that the Aboriginal and Torres Strait Islander peoples are completely left out of the process. We can see that there is a process inside government, but the proper engagement of Indigenous communities is being totally overlooked or conveniently avoided. It is not just a case of finding new programs and finding another experimental way of addressing a problem. It is actually admitting to ourselves that

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we have severe problems here if communities are not fully involved in their own development.

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