



Engaging First Peoples: A Review of Government Engagement Methods for Developing Health Policy

Discussion Paper

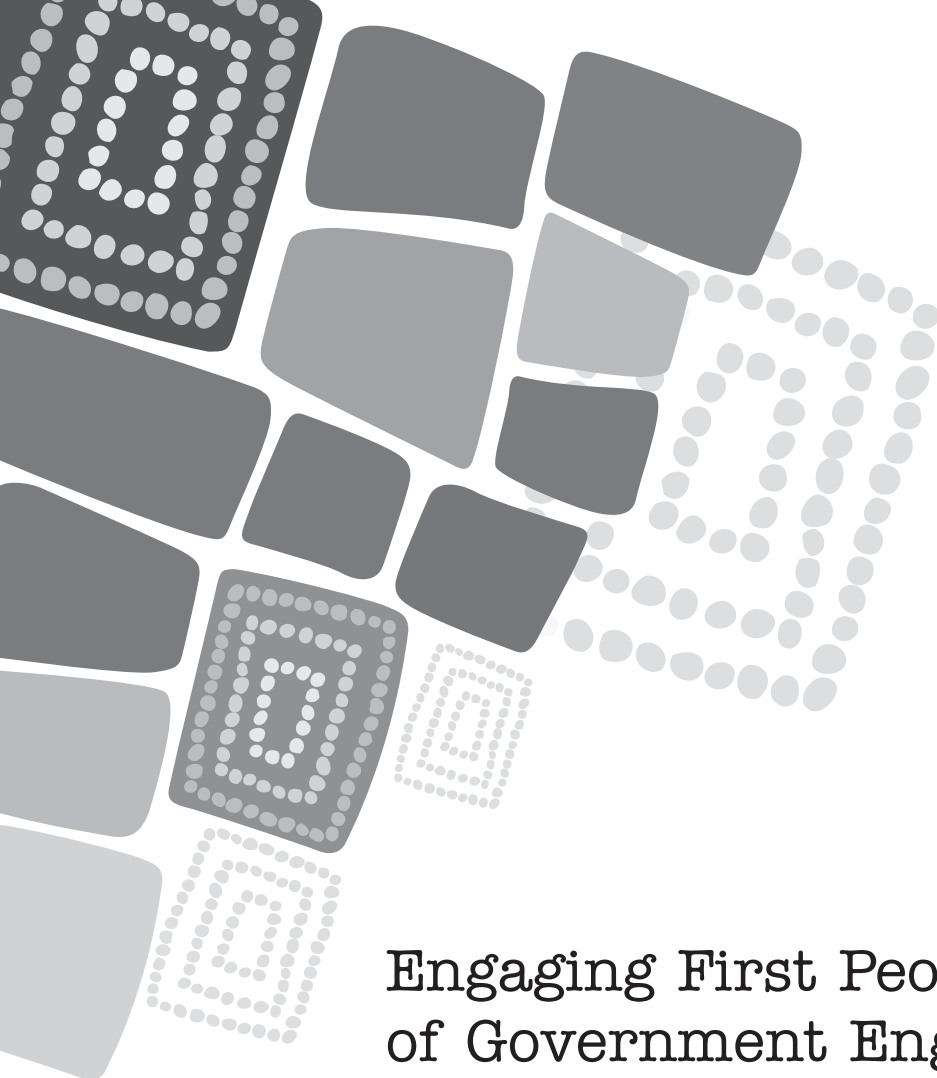
Alister Thorpe, Kerry Arabena, Patrick Sullivan,
Kate Silburn and Kevin Rowley



the
Lowitja
Institute

Australia's National Institute for Aboriginal and
Torres Strait Islander Health Research





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Abbreviations

AAO	Administrative Arrangements Order
ACCHOs	Aboriginal Community Controlled Health Organisations
AHMAC	Australian Health Ministers' Advisory Council
AHRC	Australian Human Rights Commission
ALCT	Aboriginal Land Council of Tasmania
ASIC	Australian Securities and Investment Commission
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSISJC	Aboriginal and Torres Strait Islander Social Justice Commission
CEO	Chief Executive Officer
COAG	Council of Australian Governments
DSS	Department of Social Services
FaHCSIA	(former Australia Government Department of) Families, Housing, Community Services and Indigenous Affairs
IAS	Indigenous Advisory Strategy
IAC	Indigenous Advisory Council
LINS	Local Indigenous Networks
NACCHO	National Aboriginal Community Controlled Health Organisation
NCAFP	National Congress of Australia's First Peoples
NFP	Not-for-Profit
NGO	Non-Government Organisation
NIRA	National Indigenous Reform Agreement
NSW	New South Wales

OATSIH	Office of Aboriginal and Torres Strait Islander Health
ORIC	Office of the Registrar of Indigenous Corporations
P&C	[Department of] Premier and Cabinet
PM&C	[Department of] Prime Minister and Cabinet
RAP	Reconciliation Action Plan
SA	South Australia
TAC	Tasmanian Aboriginal Centre Inc.
UN	United Nations
UPR	Universal Periodic Review
VACCHO	Victorian Aboriginal Community Controlled Health Organisation
WA	Western Australia
WGIP	Working Group on Indigenous Populations

Terminology

In this Discussion Paper the terms ‘Aboriginal’ and/or ‘Torres Strait Islander people’ or ‘First Peoples’ are used to identify the First Peoples of Australia and to refer to and recognise the two unique Indigenous populations in Australia. The term ‘Indigenous’ refers collectively to the First Peoples of Australia, New Zealand, North America and other countries around the globe. ‘Non-Indigenous’ is used to refer to those who do not identify as a member of the community of First Peoples of their respective countries.





Executive Summary

This second discussion paper commissioned by the Lowitja Institute follows on from the successful paper *Legally Invisible – How Australian Laws Impede Stewardship and Governance for Aboriginal and Torres Strait Islander Health* (Howse 2011). Researchers from the Universities of Melbourne, La Trobe and Notre Dame conducted an analysis of national, State and regionally constructed engagement policies and strategies in Aboriginal and Torres Strait Islander health and wellbeing to identify best practice examples and lessons learned. These learnings aim to support those working on the challenges of effective implementation of policies and programs within the Aboriginal and Torres Strait Islander health arena, and Indigenous affairs more generally. They have particular relevance for practitioners concerned with the difficulties of contributing to the achievement of equity in health and wellbeing for First Peoples in increasingly complex policy and community contexts.

This discussion paper addresses one important component of the Lowitja Institute commission by reviewing recent government and non-government organisation (NGO) policy documents and implementation strategies – dating from 2003 when the National Strategic Framework for Aboriginal and Torres Strait Islander Health was released – to examine:

- what constitutes ‘effective engagement’ and how it is defined within policy frameworks
- the extent to which the need for effective engagement between Aboriginal communities and organisations and government is acknowledged in policy documents as an essential component for successful policy development and implementation.

Hunt (2013a:3) described effective engagement as:

the sustained process that provides Indigenous people with the opportunity to participate actively in decision making from the earliest stage of defining the problem to be solved. Indigenous participation continues during the development of policies—and the programs and projects designed to implement them—and the evaluation of outcomes.

The research team also understood that effective engagement supports First Peoples in retaining and regaining control, which includes the ability to maintain identity and culture, to base community structures on custom and traditional law, and to have the capacity for local decision making and implementation. Effective engagement then facilitates external assistance to contribute to the future aspirations of Aboriginal and Torres Strait Islander peoples, rather than to define the processes of how Aboriginal and Torres Strait Islander peoples are included. In this process, Sam Jeffries, Chairman of the then Murdi Paaki Regional Council (now Assembly), stated the need for balance between self-determination and public sector performance:

... regional and community leaders are required to filter government interventions while re-building community capacity and leadership. Government assistance must be managed responsively to achieve material results. The process begins where the decisions are made.
(Jeffries 2004:19)

Striking a balance facilitates the ability to assess the impact of, and be accountable for, those outputs that either positively or negatively influence the wellbeing of First Peoples.

Drawing on Hunt's work, this paper further identifies if and how government engagement strategies propose to facilitate First Peoples' inclusion in and contribution to both their respective communities and that of the wider Australian society. The review made use of a framework for identifying principles and practices associated with effective engagement and included a range of national, State and NGO policies. At a national level, contrasting cases studies included A Framework for Engagement between Australian Government Agencies and the National Congress of Australia's First Peoples – grounded in the principles of the UN Declaration on the Rights of Indigenous Peoples (see 'The UN Declaration on the Rights of Indigenous People – A long road', p. 15) – and the Prime Minister's Indigenous Advisory Council, which appears to bypass many of the principles identified as constituting effective engagement. At a State level, the New South Wales (NSW) OCHRE Aboriginal Affairs Plan stands out for its evidence-based design, strategies for capacity strengthening and vision for community-directed, coordinated delivery of government services.

The complexity of the policy environment post the 2013 federal election was a considerable factor in the development of this review. At the time of writing we were in the midst of one of the largest Aboriginal policy reforms in this country's history. Despite declaring himself a 'Prime Minister for Aboriginal Affairs',¹ Tony Abbott's actions spoke louder than words in the context of Aboriginal and Torres Strait Islander engagement with government. Under Abbott's leadership a number of significant policy changes were made that have had a negative impact on 'effective engagement' with Australia's First Peoples. (We are yet to see if these policies will be significantly different under the leadership of Malcolm Turnbull, who replaced Abbott in September 2015.)

In July 2014, the Indigenous Advancement Strategy (IAS) was introduced to replace 'more than 150 individual programs and activities with five flexible, broad-based programs' (Department of the PM&C 2015) and relocated within the Department of the Prime Minister and Cabinet (PM&C). It could be argued that the development of both the IAS and the Indigenous Advisory Council (IAC) undermined existing government Indigenous engagement frameworks (with many subsequently being removed) and disregarded a number of the key, effective engagement axioms espoused by Hunt (2013a; 2013b). The increasing emphasis on mobilising resources and reducing duplication in Aboriginal and Torres Strait Islander program areas has largely meant that the focus of 'engagement' is within government bureaucracy and not within communities. This 'top-down' approach favours funding engagement by non-Indigenous providers and limits opportunities for self-determined localised engagement mechanisms.

The situation is further compounded by restrictions enforced on Indigenous organisations seeking funding through the IAS. Any Aboriginal or Torres Strait Islander bodies receiving grants of \$500,000 or more per annum through the IAS scheme must be incorporated under the Corporations (Aboriginal and Torres Strait Islander) Act 2006 through the Office for the Registrar of Indigenous Corporations (ORIC) legislation (Department of the PM&C 2015b) rather than under the Australian

1 On 10 August 2013, then Liberal Opposition Leader Tony Abbott announced that he hoped to be a 'Prime Minister for Aboriginal Affairs' if he was to be elected in the upcoming federal election. Available at: <http://www.liberal.org.au/latest-news/2013/08/10/tony-abbott-establishment-prime-ministers-indigenous-advisory-council>.

Securities and Investment Commission (ASIC). This effectively forces Aboriginal organisations to incorporate through ORIC or be denied the opportunity for funding. As the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) identified, there are additional authoritative powers under ORIC as opposed to ASIC including the power to

appoint a special administrator, appoint an examiner to look at the business to identify financial or governance issues, change the rule book/constitution, call a general meeting, convene meeting of 'interested persons', act for members 'in certain circumstances', give notices to Board/CEO to 'direct' compliance with the CATSI Act, remove directors from office, and apply to have the corporation 'wound up'. (VACCHO 2015:9)

VACCHO strongly voiced its concerns about the impact that enforcement of this legislation would have on Aboriginal Community Controlled Health Organisations (ACCHOs), regarding it as an act of discrimination and noting that the requirement 'undermines the basic principles of Community Control and removes the sovereign right of a Board' (VACCHO 2015:9). Chief Executive Officer (CEO) Jill Gallagher stated that

... this is a discriminatory process. It flies in the face of Government commitments to respect and promote the rights of Aboriginal and Torres Strait Islander people as it takes away the right to self-determination. We are not being treated as equals by the government. (VACCHO 2015:9)

These significant and largely punitive measures in the funding process potentially restrict funding opportunities and impact upon the autonomy, self-determination and community representation of First Peoples' organisations. Also consider that in March 2014 the Australian Government unsuccessfully attempted to repeal sections of the Racial Discrimination Act (Attorney General's Department 2014) due to strong criticism by community leaders that the changes 'watered down' sections of the Act (Aston 2014).

The cyclical nature of national and State political discourses has a considerable impact on the Indigenous Affairs 'portfolio' with policy platforms from all sides of government shifting on a spectrum from competency to paternalism. It is clear that this inconsistent and unpredictable nature is a barrier to effective engagement that should not be underestimated. A bi-partisan approach with more consistent practices would likely lead to better engagement with First Peoples' communities. As discussed by Arabena (2015) the importance of understanding the differences between Indigenous worldviews and the dominant Eurocentric worldviews in the development of engagement policies and frameworks is paramount. Australian governments would do better if they refrained from a Westernised political approach, and instead 'act outside of the dominant worldview found in Western societies and engage with the principles inherent in that of Aboriginal and Torres Strait Islander peoples' (Arabena 2015) to achieve effective engagement with Aboriginal and Torres Strait Islander communities. Arabena (2015) also points out that analysing Indigenous worldviews through a Western point of view risks further marginalisation and the rendering of Indigenous peoples' worldviews 'invisible'. Citing Hart, Arabena states:

This 'marginalization' or 'blinding' of worldviews continues to be one of the major tools of colonization, requiring Indigenous peoples to acquiesce to or fit within dominant peoples' ideals, and ignore their own perspectives. (2015:74)

Acknowledgment and respect of cultural diversity, Indigenous worldviews, self-determination and human rights need to form the basis of policy formation with Aboriginal and Torres Strait Islander peoples, as

policy [that] has been enacted by State and federal governments, often [has] significant and long lasting adverse consequences for Aboriginal and Torres Strait Islander communities and can continue to influence perceptions, behaviours and knowledge construction to this day. (Arabena 2015)

In this review, few policies met all of the criteria for effective engagement. Although many recognised the importance of involving community representatives in the development of programs, most policies did not go beyond ‘consultation’ to give Aboriginal and Torres Strait Islander peoples significant decision-making authority in the process. Similarly, accountability and responsibility for engagement outcomes are often left unclear, and appropriate resources for community capacity building rarely provided. Further investigation is required to understand how engagement frameworks are implemented in practice and to identify if government departments actually have the capacity and the skills required to implement them.

Notwithstanding the commendable aspirations of many government policies for successful engagement with communities, the promise of ‘empowerment’ and ‘equity’ in government–community relationships is seldom reached. This is due to overly complex bureaucratic systems (with local, State, federal layers), mostly non-existent government accountability and evaluative mechanisms, and unclear methods and low bureaucratic skill levels for transforming policy into practice.

As a result of carrying out this review, the authors endorse five key actions for strengthening government engagement methods in developing health policy:

1. **Legally implement in Australia the Declaration on the Rights of Indigenous Peoples** by including it in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) and review how existing legislation, policies and programs conform with the Declaration (AHRC 2015a).
2. Resource and support Aboriginal and Torres Strait Islander communities to consider, explore and debate the opportunities for **negotiating a treaty** (or treaties) and **recognising sovereignty**.
3. Recognise and support Aboriginal and Torres Strait Islander representative bodies that **incorporate inclusive community membership and practise effective governance**.
4. Prior to engaging with Aboriginal and Torres Strait Islander peoples, **strengthen the coordination and implementation of engagement policies between various government departments at local, regional, State/Territory and national levels**.
5. Reinforce and develop measures for **accountability, responsibility and transparency of engagement policies and practices at all levels**.



Introduction

This second discussion paper for the Lowitja Institute on government engagement with First Peoples in Australia provides a review and policy analysis of national, State and regionally constructed engagement strategies. It complements a recent review of the conditions required if engagement between government and First Peoples is to be effective (Hunt 2013a). The learnings from both reviews will have particular relevance for practitioners concerned with the difficulties of contributing to the achievement of equity in health and wellbeing for First Peoples in increasingly complex policy and community contexts.

With this in mind, we have drawn on the work of Hunt and have used the principles and mechanisms identified in her documents in order to analyse the principles found in key government and some NGO engagement frameworks. The paper also gives an overview of the historical and political context of engagement policies in Australia and provides an analysis of engagement strategies put in place by government departments and agencies, both nationally and in various States. Finally, it aims to build on Hunt's work and identify how governments have proposed to implement engagement strategies at the State and local levels, if at all, and to consider the implications of that for First Peoples and other stakeholders.

Defining 'engagement' and 'effective engagement'

... It is a fundamental belief held by governments and other sectors that funding organisations is engaging communities. It isn't. They are providing administrative capacity to community organisations, they are not engaging community. In this arrangement it is the funded organisations that are engaging communities; not government... Community engagement requires government [to] engage with the people ourselves... it's a conversation between governments and their representatives and the people and our representatives on issues affecting us... not a funding arrangement between governments and the organisations that provide funded services... Governments wait for applications to come in through the door from community organisations; this is not enough. People need to have meaningful conversations with people in government, on issues affecting them. Effective engagement is a 'people to people' type of engagement; this is how local decisions get made. This is self determination...

Sam Jeffries, Chairperson, Murdi Paaki Regional Authority (Jeffries [2008]:4)

Engagement between individuals, organisations and societies occurs on a continuum from violent conflict, as in military engagement, to respectful co-existence of self-determining communities. The full range of engagement has occurred between Australia's First Peoples and settler society at various periods of our history since invasion and colonisation. For the purpose of this document, engagement encompasses the interactions of government with First Peoples, their community representatives and their organisations for the purpose of developing health policy and practice. Unfortunately, the discourse around the health of First Peoples has increasingly reverted to militarised language in recent years and this has been reflected in the methods of engagement pursued by government (Arabena 2011).

Characterising engagement

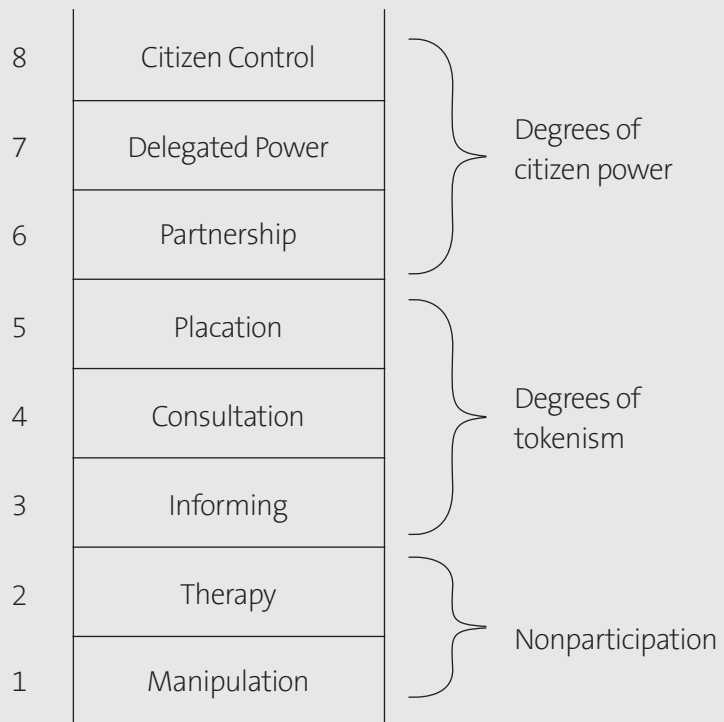
Arnstein (1969) perceived engagement as a 'ladder of citizen participation'. The lowest of the eight rungs of Arnstein's ladder were non-participatory forms of engagement – manipulation and therapy – and these were considered only marginally lower than tokenistic forms of engagement including the now almost ubiquitous 'consultation'. This form of tokenism, Arnstein claimed, 'allows the powerholders to claim that all sides were considered, but makes it possible for only some of

those sides to benefit' (Arnstein 1969). The opportunity for citizens to exert agency through making decisions about their own community occurs only when engagement takes the form described by the top three rungs of Arnstein's ladder, which are, in increasing order of citizen power, partnership, delegated power and citizen control.

In *When the People Speak*, Fishkin (2009) discusses mechanisms of citizen participation in deliberative democracy and highlights the characteristics that make up effective engagement in political decision making. He notes the importance to the quality of deliberation of:

- access to accurate information
- balance in considering relevant, competing positions
- the extent to which diverse positions are represented
- the conscientiousness with which participants weigh the arguments
- the extent to which equal consideration is given to arguments regardless of who offers them.

Democratic deliberation is thus a form of collective informed consent, notwithstanding that minority populations remain at risk of discrimination through the process – who is authorised to speak for First Peoples?



Commentators have defined the types of engagement possible from various perspectives, such as Arnstein's 'ladder of citizen participation' and Fishkin's treatise on deliberative democracy' (see Box 1). In reviewing engagement between governments and First Peoples in Australia, Hunt extended these ideas to encompass issues specific to the historical and contemporary context, and the social and cultural barriers to engagement (Hunt 2013a). The four principles of community engagement that she cites – integrity, inclusion, deliberation and influence – align with the qualities identified by Fishkin. Like Jeffries, Hunt describes effective engagement as the

sustained process that provides Indigenous people with the opportunity to actively participate in decision making from the earliest stage of defining the problem to be solved. Indigenous participation continues during the development of policies – and the programs and projects designed to implement them – and the evaluation of outcomes. (Hunt 2013a:3)

Hunt also describes the limitations of current engagement policy and practice in Australia and emphasises the importance of informed consent and a human rights approach in developing effective engagement practices:

Engagement is undertaken with an understanding of the historical, cultural and social complexity of specific local or regional Indigenous contexts and with a genuine attempt to share power in relationships that foster mutual trust. It requires adequate governance arrangements. It also requires capacity within both the Indigenous community and the governments (and/or others) involved to enable the Indigenous community to negotiate their aspirations and for governments (and/or others) to respond in a flexible and timely way. Engagement is most successful when the parties have agreed clear outcomes they want to achieve, are clear about roles and responsibilities and steps to discharge them, and jointly identify indicators of success and monitoring and evaluation processes that meet their respective needs. (Hunt 2013a:3)

Thus, engagement with First Peoples in Australia struggles to reach the higher rungs of Arnstein's ladder in the absence of an enforceable legal framework that recognises their sovereignty. Nevertheless, significant progress has been made as indicated by the history of health policy development in Victoria, which has moved from total control and decision making by governments, churches and other institutions to active participation by First Peoples from the 1980s. Citing Anderson, Fredericks et al. comment that 'for the first time, all stakeholders seemed to share some consensus about strategic directions in Aboriginal health' (2011:84).

While 'effective engagement' is supported as critical and pervasive in policy implementation, there are discrepancies in what it actually means, how it is experienced between governments and community members, as well as when and where such engagement is part of the policy implementation process. Nor is there consensus among all stakeholders about the process of determining the aims of, or the roles and responsibilities of, those who should be included in effective 'engagement'. For example, some community organisations might subscribe to the view that effective engagement is important for resourcing autonomous action and local decision making. Others might find it essential in sustaining their workforce over time or for ensuring equitable partnerships in all aspects of the policy design and implementation cycle.

A comprehensive paper published by health practitioners, *Engaging Indigenous Communities in North Queensland* (Chappell n.d.), outlined in-depth principles and highlighted success factors

for effective engagement. Although it focused on engagement in regional Queensland many of the lessons and features of this framework are likely to be transferrable. Levels of engagement were also analysed, with distinctions between engagement by government and engagement by communities. Government engagement was defined as operating across a spectrum from ‘informing’ (we will keep you informed) to ‘empowering’ (we will implement what you decide). Community levels of engagement ranged from ‘observing’ (it’s good to know what’s going on) to ‘leading’ (we will find our own solutions) (Chappell, n.d.:4).

The framework also advocated for shifting ‘from engagement to empowerment in three big steps’ by developing a community vision and direction, building community infrastructure and capacity to engage, and negotiating with government to meet community priorities. Established guiding principles for effective engagement with Indigenous communities were both verified and consistent with principles of other frameworks. They comprise:

- a shared vision
- mutual respect
- awareness
- shared responsibility
- building capacity
- improved coordination
- inclusiveness
- appropriate timeframe
- sustainability
- integrity

The importance of effective engagement

It is a long-held belief among health practitioners that the quality of interventions at a community level, and the consequent health and wellbeing of First Peoples, is in part dependent on effective engagement between governments, Aboriginal and Torres Strait Islander organisations and communities. This belief is now well documented, influential across all aspects of policy development and pervades policy documents, community advocacy and implementation strategies (e.g. FaHCSIA 2011). Commonly, effective engagement is used as a key criterion in reviews and evaluations of government and community services.

The intrinsic value of effective engagement between governments and First Peoples is evident in influential national positions, such as that held by the Aboriginal and Torres Strait Islander Social Justice Commission (ATSISJC) (AHRC 2014). The ATSISJC is concerned that there be accountability in how governments engage with communities. National representative agencies have also highlighted the importance of effective engagement. The Aboriginal and Torres Strait Islander Commission (ATSIC) during its time (1989–2005) was a strong advocate of establishing ways to ensure a more effective engagement that delivered self-determination. More recently, the Australian Government Coordinator-General for Remote Indigenous Services advocated that governments promote a more active role for communities in social reform through supporting local governance and listening to the local voice so as to maximise the effectiveness and efficiency of services (Office of the Coordinator General for Remote Indigenous Services 2013).

The value of effective engagement is also recognised in the ‘Empowered Communities’ initiative, which seeks to implement such a process (go to: empoweredcommunities.org.au). Similarly, in the first six months after their election in 2013, current Board members of the National Congress of Australia’s First Peoples (NCAFP) developed an ‘effective engagement’ strategy to facilitate the work

of government departments with communities. This strategy was consistent with the principles of effective engagement described above (NCAFP 2014).

Others contextualise effective engagement within broader issues affecting the future health and wellbeing of Aboriginal and Torres Strait Islander peoples. In his address to the National Press Club in Canberra in March 2014, Justin Mohamed, Chair of the National Aboriginal Community Controlled Health Organisation (NACCHO), stated that recent changes to how governments engage with communities will have adverse effects on the Aboriginal and Torres Strait Islander population. This will be particularly so for those relying on services provided by community controlled health services because of 'the four 'R' constraints – Resources, Recognition, Respect and Relationships'. In reference to relationships, Mohamed said:

In more recent times governments at various levels have started to realize that giving Aboriginal people more say and control in their own health and well being pays dividends. But these same governments haven't been able to let go enough and fully trust and respect that Aboriginal people do have the expertise, qualifications and the on the ground 'know how' to deliver. Instead we have experienced first hand a move to a model where mainstream or government organizations are given the driver's seat while Aboriginal organisations are too often in the back of the vehicle when partnerships or working relationships are formed. With all the good intentions in the world these new partnerships more often than not leave many of our organisations feeling like we have been involved only so the Aboriginal and Torres Strait Islander 'consultation' box can be ticked, rather than contribute as true and equal partners in the arrangement. (Mohamed 2014)

Hunt's review noted the value of the UN Declaration on the Rights of Indigenous Peoples (see p. 15) as an internationally developed framework for engagement based on the free prior and informed consent of Indigenous peoples. How this principle can be operationalised is beginning to emerge internationally, but the need to invest in capacity building for governance to enable effective engagement is clear. She also noted Australia's lack of a legal framework that enshrines the rights of First Peoples' and the need for governance capacity (Hunt 2013a). The manner in which these issues are addressed in Australia is discussed in subsequent sections through several case studies.



Methods

Researchers from the University of Melbourne, La Trobe University and the University of Notre Dame conducted a review of documented plans and strategies that have been used by governments and NGOs to engage First Peoples. The authors are from a diverse range of academic and cultural backgrounds and include Torres Strait Islander, Celtic–Anglo and Aboriginal Australians, with training in human ecology, anthropology, public policy, public health, epidemiology and health services research. The work took a trans–disciplinary approach and incorporated cross–cultural engagement as part of the method employed.

Criteria for the documents analysed in this discussion paper included:

- any policy, policy development or implementation, planning and reviews in the broad field of Australian First Peoples’ health (or explicitly including First Peoples’ health) or directly on the question of engagement between government and communities for First Peoples’ health (or explicitly including First Peoples’ health)
- publications between 2003 (thus including the National Strategic Framework for Aboriginal and Torres Strait Islander Health) and 2012 that appeared in peer–reviewed literature, or by governments or bodies/consultants commissioned by governments, or by First Peoples’ advocacy groups or organisations, in a publicly accessible form (including websites and grey literature).

Given the definition and importance of effective engagement noted above, and working from the perhaps at times generous assumption that policy development aims to strengthen the communities and cultures of First Peoples, the research team sought to identify where First Peoples:

- were empowered to participate fully in the design of public policy and programs
- were able to influence the distribution of funds
- contributed to the design of more responsive services.

We were also interested in the linkages between local decision making as an expression of community governance and the policy development and implementation infrastructure available through regional, State/Territory and national policy platforms. Considering these issues, other key frameworks developed by leaders in Australia’s First Peoples’ representative sector (NCAFP, the ACCHO sector including peak representative bodies), the not–for–profit (NFP) and human rights sector (Oxfam Australia’s Close the Gap Steering Committee for Indigenous Health Equality), and the National Health Leadership Forum (a coalition of 12 First Peoples’ health entities) were also reviewed to provide diverse perspectives in the ‘engagement’ landscape.

To this end, a protocol for analysing documents was developed that specified a set of questions that needed to be answered in relation to each document based on the research terms of reference (see Appendix 1). From this analysis, we were able to assess the extent to which policy works with communities to develop or advocate for models that facilitate the devolution of decision making and management to the local level.



Historical Development of Engagement Frameworks

Self-determination and the rise and fall of ATSIC

From 1989 to 2005, the Australian Government's commitment to engagement with Indigenous peoples was expressed through the Aboriginal and Torres Strait Islander Commission, particularly its Regional Councils. The concept of establishing an ATSIC arose from a policy framework based on self-determination that had been prevalent since 1972.

Attacks on the rights of First Peoples resumed with renewed vigour in the 1990s with the abandonment of self-determination as an underlying policy principle and its replacement with weaker ideas of 'self-empowerment' and 'self-management'. This was in response to hysteria aroused by false claims of 'dismemberment' of the Australian nation state and the opportunistic harnessing of this situation by the Coalition Liberal and National parties (Dodson & Pritchard 1998), leading to the eventual dissolution of ATSIC.

What is self-determination?

The United Nations Declaration on the Rights of Indigenous Peoples Articles 18 and 19 state that

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 (UN 2007).

It also states that

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (UN 2007).

The Australian Human Rights Commission (2003) defines self-determination as 'an "on going process of choice" to ensure that Indigenous communities are able to meet their social, cultural and economic needs...', and emphasises that

the loss of this right to live according to a set of common values and beliefs, and to have that right respected by others, is at the heart of the current disadvantage experienced by Indigenous Australians.

What is self-determination? cont.

In its report on Indigenous self-determination in relation to the Charter of Human Rights the Victorian Equal Opportunity and Human Rights Commission (2010) references Articles 3, 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples:

- Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.
- Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

The Victorian Equal Opportunity and Human Rights Commission reported that according to some Aboriginal people in Victoria:

The recognition of self-determination should protect the right for Indigenous people to live their chosen life as an 'Indigenous person' ...In defining the right to self-determination, not only must a clear and broader definition of cultural rights be further explored, but also a further acknowledgement must be made of the unique and inherent rights that Indigenous peoples hold as First Peoples (further to what already is stated in the Charter preamble). The advocacy and promotion of the right to self-determination for Indigenous people must be grounded in such a statement (2011:20).

National Indigenous engagement strategies and policies post-ATSIC

Following ATSIC's abolition in 2005, the Australian Government began to restructure its policy around the Council of Australian Governments' (COAG) program with the aim of closing the gap in Aboriginal and Torres Strait Islander disadvantage. This was expressed in COAG's National Integrated Strategy for Closing the Gap in Indigenous Disadvantage to meet targets identified in the National Indigenous Reform Agreement (NIRA) (COAG 2008:A-16).

The NIRA was most likely under construction during the Howard Coalition Government's 'practical reconciliation' period, although it echoes COAG concerns stretching back much further (see Sullivan 2013). The practical reconciliation policy was grounded in the judgment by government that the era of recognition of Aboriginal and Torres Strait Islander rights – signalled in 1967 with the passage of the constitutional referendum – had proved a distraction from the fundamental need to improve living conditions in Indigenous communities.

The National Integrated Strategy dealt with the need for engagement in two ways: it proposed a national Indigenous body to replace ATSIC; and it outlined the need for an engagement framework. A third development later influenced both these initiatives; namely, adoption by the United Nations (UN) of the Declaration on the Rights of Indigenous Peoples. This section on national perspectives on Indigenous engagement begins with developments from the National Integrated Strategy, then assesses them in light of the Declaration's requirement for free, prior and informed consent of First Peoples in programs that affect them.

The National Integrated Strategy for Closing the Gap in Indigenous Disadvantage (COAG 2008:A–16) laid the initial groundwork for current Australian Government engagement strategies. It also endorsed another policy document attached to the NIRA, the Service Delivery Principles of Priority, Indigenous engagement, Sustainability, Access, Integration and Accountability. Several of these six principles for delivering services to First Peoples' communities contained policy statements about appropriate ways of engaging First Peoples. The Indigenous Engagement Principle recognised that 'strong relationships/partnerships between government, community and service providers increase the capacity to achieve identified outcomes' (COAG 2008:D–75). According to this principle First Peoples are to be 'engaged and empowered' 'as appropriate'. This allowed room for government employees to decide when empowerment was appropriate, as long as they were committed to 'being transparent regarding the role and level of Indigenous engagement along a continuum from information sharing to decision-making' (COAG 2008:D–76).

At that stage of development of engagement policy, COAG believed that efficiency would be improved by strong relationships/partnerships, but that it was a matter for the government agency's judgment whether involving First Peoples in the design and delivery of programs was appropriate, or whether they should simply be informed about a particular program. By implication, government officials need to be clear when their consultations will only involve telling people what is going to happen and not give people the impression they are actually involved in any genuine decision making.

Other Service Delivery Principles also dealt with aspects of involving First Peoples in their own development. The Sustainability Principle required that attention be given to the orientation of service systems, 'including strategies that increase independence, empowerment and self-management' (COAG 2008:D–67), and to building capacity that included the 'independence and empowerment of Indigenous peoples, communities and organisations' (COAG 2008:D10–68). Under the Accountability Principle attention was to be paid to

supporting the capacity of the Indigenous service sector and communities to play a role in delivering services and influencing service delivery systems/organisations to ensure their responsiveness, access and appropriateness to Indigenous people (COAG 2008:D–69).

In endorsing the Service Delivery Principles of the National Integrated Strategy, the Australian Government stipulated that Indigenous engagement would be carried out through the post-ATSIC existing structures (State Governments' advisory bodies, Indigenous representative organisations, etc.), but that these would be improved at the national level:

...the Commonwealth will implement an Aboriginal and Torres Strait Islander Engagement Framework across its agencies from 2011. The Framework will improve how Australian Public Service agencies engage with Aboriginal and Torres Strait Islander people on the policies, programs and services that affect them, and will strive to embed effective engagement as an integral part of day-to-day business. (COAG 2008:A-29)

This commitment was initially met by the former Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) developing a set of engagement strategy documents, which together constitute its Engagement Framework.¹ The FaHCSIA Engagement Framework was presented in six brief 'information sheets', clearly aimed at departmental employees, and based in part on the approach taken by the NGO the International Association for Public Participation (IAP2 2015).

The documents made it clear that engagement is a process of building relationships and is not synonymous with facilitation or consultation, which are more concrete activities. They also outlined best practice protocols for talking with First Peoples and encouraged public servants to be clear about whether their purpose in engaging with particular groups is to inform, consult, involve, collaborate or empower. Only the last of these involves control by First Peoples, with empowerment specified as part of the 'spectrum' among the other approaches, not an end point to achieving self-determination or localised decision making.

Establishment of the National Congress of Australia's First Peoples

The National Integrated Strategy also identified the need for a national representative organisation for Australia's First Peoples. The Human Rights and Equal Opportunity Commission's Social Justice Commissioner took the initiative in establishing this, undertaking extensive national consultations on the appropriate form and roles of such an independent national representative body. The outcome of this process saw the establishment of the NCAFP or 'Congress', which was incorporated in 2010.

One of the first tasks of the Congress was to negotiate an engagement framework for its own relationship with Commonwealth public service agencies. This became A Framework for Engagement between Australian Government Agencies and the National Congress of Australia's First Peoples (NCAFP 2012). Endorsed by Congress Executive, the agreement was signed by the CEO of NCAFP and the 10 members of the Secretaries' Group on Indigenous Affairs² in September 2012 (NCAFP 2012). However, this framework does not bind governments and their departments to ways of engaging First Peoples, nor does the NCAFP monitor and report on how governments have responded to this specific set of principles.

1 FaHCSIA's functions were split between the new Department of Social Services and the Department of the PM&C following a change of government in September 2013. The Engagement Framework is no longer available online.

2 The Secretaries' Group on Indigenous Issues is part of the Australian Government's new governance and advisory structure for Indigenous Affairs. The group provides advice and support to the Ministerial Taskforce on Indigenous Affairs. It is composed of heads of government departments administering the government's Indigenous programs, is chaired by the Secretary of the Department of the PM&C and meets once a month. The group will also lead coordination across government agencies and prepare a public annual report examining the outcomes of Indigenous programs. For more go to: <http://www.atns.net.au/agreement.asp?EntityID=2566>.

The UN Declaration on the Rights of Indigenous People – A long road

- 1982** Establishment of the UN Working Group on Indigenous Populations (OHCHR n.d).
- 1985** The WGIP began work on a draft declaration on the rights of Indigenous peoples. (OHCHR n.d)
- 2007** UN adopts the Declaration on the Rights of Indigenous Peoples – Australia votes against adoption.
- 2007** UN Expert Mechanism on the Rights of Indigenous Peoples replaces the WGIP.
- 2007** Australia repeals the Racial Discrimination Act to implement the Northern Territory National Emergency Response (AHRC 2011).
- 2009** Rudd Government endorses the Declaration on the Rights of Indigenous People.
- 2011** Australia participates in first Universal Periodic Review on Human Rights.
- 2012** Parliamentary Joint Committee finds the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 non-compliant with Article 19 of the Declaration (free, prior and informed consent from Indigenous peoples on issues that affect them).

UN Declaration on the Rights of Indigenous Peoples

Towards the end of the Howard Government's tenure (in 2007) the United Nations adopted the Declaration on the Rights of Indigenous Peoples (UN 2007). Australia was one of only four nations to vote against its adoption (along with the other white settler majority nations Canada, New Zealand and the United States). The Declaration was painstakingly negotiated over more than 20 years from 1985 with representation from Indigenous peoples, states and experts at the UN's Working Group on Indigenous Populations (WGIP) annual meetings, and elaborated in various other UN committees and forums in the later period of its development.

Australia was represented at the WGIP and in the other forums and its vote at the General Assembly in 2007 signalled dissent from the consensus developed over that period. When the subsequent Rudd Labor Government decided to endorse the Declaration in 2009, this reversal must be seen as a decision taken in full knowledge of the issues underlying its negotiation. It is worthwhile, then, to consider how well Australia has implemented the articles of the Declaration in the past five years.

The former Department of FaHCSIA, previously the lead agency in developing and implementing the NIRA, gave no indication in any of the policies and programs described on its website that it had integrated the Declaration into its normal business. In two places where the Department could have been expected to reference the Declaration (at least as a set of principles), it failed to do so. Those were under its Reconciliation Action Plan or RAP (Department of Social Services 2015), which has carried over to the new Department of Social Services, and in its

The UN Declaration on the Rights of Indigenous People – A long road cont.

- 2012** Australia responds to UN Expert Mechanism on the Rights of Indigenous Peoples Questionnaire for Universal Periodic Review on Human Rights.
- 2013** Australia second annual response to UN Expert Mechanism on the Rights of Indigenous Peoples Questionnaire for Universal Periodic Review on Human Rights.
- 2013** Australia releases statement with First Nations representatives at UN Permanent Forum on Indigenous Issues discussing how to embed the DRIP into Government policy development, program implementation and service delivery.
- 2014** Western Australian Premier Colin Barnett announces plans to close more than 100 remote Indigenous communities.
- 2015** Australia due to undergo second Universal Periodical Review on Human Rights in November.

instructions to contracted service providers on how to deal with Indigenous clients, the Toolkit for Indigenous Service Provision.

³Neither of these documents referred to the Declaration or to any of its articles nor, indeed, to the rights of First Peoples in general.

Similarly, the former Department of Education, Employment and Workplace Relations, another Federal Government department with significant responsibility for Indigenous development, had no mention of either the Declaration or rights in general in its RAP. By contrast, the Department of Health and Ageing's (now the Department of Health) Office for Aboriginal and Torres Strait Islander Health (OATSIH) National Plan (Australian Government 2013) is prefaced with reference to the Declaration.

This lack of integration of the Declaration into Australian government policy frameworks cannot reasonably be attributed to institutional inertia alone. There are other indications that Australia remains deeply ambivalent towards the Declaration despite formally endorsing it. This ambivalence is relevant to the Australian Government's engagement strategy since it centres on the right of First Peoples to 'free, prior and informed consent' as embodied in Article 19 of the Declaration:

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (UN 2007:8).

³ No longer extant.

Proposed closure of remote communities

In 2014 Western Australian Premier Colin Barnett announced plans to close more than 100 remote Indigenous communities that resulted in widespread criticism from Indigenous community leaders and set off protests across the country. The decision was prompted by the proposed withdrawal of Federal Government funding to essential services and infrastructure in remote communities. As outlined by ANTaR (2015) below these decisions were made without appropriate engagement with the impacted Indigenous communities:

In September 2014 the Federal Government announced that it would no longer fund essential municipal services including supply of power, water, and management of infrastructure in remote Aboriginal communities in Queensland, Victoria, NSW, Western Australia, and Tasmania, despite having done so for decades.

The South Australian government refused to sign an agreement, and the Western Australian government signed an agreement with the Federal Government for funding of \$90 million which would fund services until June 2016.

The WA government announced that it would not pick up the bill beyond that time and would instead close between 100 and 150 of the 274 remote Aboriginal communities in the State.

The decisions by both the Federal and the State Governments occurred without any consultation with Aboriginal people in the affected communities. (ANTaR 2015)

The WA Government has since moderated its approach and promised further consultation with Aboriginal communities on the issues. On 7 May 2015, WA Premier Barnett announced major reforms to how services were to be provided to Aboriginal communities, stating that

we will identify communities that are working well and will continue to invest in services that are effective and provide the best chance of positive outcomes... it is not the Government's intention to force people off their land or to prevent them having access to country... (Government of WA 2015).

A clear consultative process with Aboriginal community members and leaders was outlined in August 2015 to be carried out 'on-the-ground', with Strategic Regional Advisory Councils to be set up in the Kimberley and Pilbara (Department of Aboriginal Affairs 2015).

This clause has proved to be a stumbling block to Australia's implementation of the Declaration, recent moves to forcibly close remote communities being one example raised at the UN Permanent Forum on Indigenous Issues in 2015 (UNAA 2015).

In 2009, the Australian Government established the Parliamentary Joint Committee on Human Rights, administered by the Senate, to examine all legislation before Parliament for its relationship

to Australia's obligation under international human rights standards. Although the committee came into existence before Australia's endorsement of the Declaration, and it is not one of the seven instruments that it is required to ensure are observed, it has subsequently taken the Declaration into account. The committee has stated that 'it provides some useful elaboration on how human rights standards under the international treaties apply to the particular situation of Indigenous peoples' (PJCHR 2012:2). In its first report, the committee had little difficulty in finding the Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012 compliant with Article 19 of the Declaration, which requires free, prior and informed consent from Indigenous peoples on issues that affect them.

However, when considering the Stronger Futures in the Northern Territory Act 2012, though affirming its previous view of the Declaration as a whole, the committee stated:

... while an obligation to consult with Indigenous peoples in relation to actions which may affect them does appear to be accepted as part of customary international law, the status of the important provisions of the Declaration that require 'free prior and informed consent' rather than consultation is debated, with many governments (including Australia) and scholars of the view that the requirement of prior consent in all cases of laws, policies or actions affecting Indigenous peoples does not yet represent settled international law. (PJCHR 2013:16)

Clearly, the Parliamentary Joint Committee on Human Rights is unresolved on how much of the Declaration it is prepared to accept as settled international human rights law.

The Australian Government, nevertheless, has expressed its intention to implement the Declaration into domestic law in Australia. It did this most recently in May 2013 when it issued a joint statement with First Peoples' representatives at the United Nations Permanent Forum on Indigenous Issues. Specifically referring to the Parliamentary Joint Committee on Human Rights and to the formal policies of government agencies, the statement read:

We are working with the Australian Human Rights Commission and the National Congress of Australia's First Peoples to increase awareness of, and encourage dialogue about, the Declaration in policy development, program implementation and service delivery as a way to embed the Declaration in how business is done. (AHRC 2013)

The UN Human Rights Council has established an Expert Mechanism to oversee the implementation of the Declaration among member states. In 2011, the Council asked it to undertake a questionnaire on the issue. Australia responded in 2012 and again in 2013, which is likely to become an annual 'state of the nation' report, and in both cases encouraged the Expert Mechanism to understand that its Closing the Gap policy is an 'in principle' implementation of the Declaration. Australia's response also makes much of its current programs, including the Stronger Futures policy in the Northern Territory that continues the compulsory income management introduced by 2007's Northern Territory National Emergency Response (aka the Intervention).

It is worth noting that in 2012 the Australian Government told the Expert Mechanism, in response to Question Two on legal and policy measures, that 'the Government has established the National Congress of Australia's First Peoples' (2012:3). This is somewhat misleading. Although the

government has supported it, Congress is an independently established corporation. Using slightly different wording, the assertion was repeated in 2013 (PJHCR 2013:2).

Responding to Question Three concerning whether federal agencies take the Declaration into account (particularly the right to participate in decision making) when devising laws and policies, the Australian Government referred to its Indigenous Engagement Framework in the context of its Indigenous Coordination Centres and Regional Operation Centres (which used to be FaHCSIA front-line offices in communities). This framework has been previously mentioned in relation to the National Indigenous Reform Agreement that first introduced it as COAG policy. It is at best ambivalent about free, prior and informed consent, and in parts denies the need even for consultation. The Operational Engagement Framework, on the other hand, which has been signed by Congress and senior heads of agencies beyond FaHCSIA, is grounded in the Declaration. However, it appears that this is not the framework referred to in Australia's reply to the Expert Mechanism in 2013.

There is a small but potentially significant change between 2012 and 2013 in the Australian Government's response to Question Five on challenges in implementing the Declaration. In 2012, the Australian Government responded:

The Australian Government's overarching approach to addressing Indigenous disadvantage is through the Closing the Gap strategy which includes an emphasis on mutual respect between Indigenous and non-Indigenous Australians. The principles of the Declaration are consistent with the Government's approach to Closing the Gap.

A lack of definitional consensus, including in international law, on key terms including self-determination, sovereignty and 'free, prior and informed consent' may inhibit agreement on how the Declaration can practically operate to close the gap on Indigenous disadvantage.

Domestically, under the Australian Constitution, State and Territory governments are afforded powers which may limit the ability of the federal government to legislate on relevant matters.
(Australian Government 2012:5)

In 2013, the second paragraph was dropped (Australian Government 2013:12). An optimistic reading of this change would be that it represents a significant shift away from a view that the Declaration is an impediment to implementing its Closing the Gap targets and away from its failure to recognise free, prior and informed consent as established international law. This is encouraging, but the final paragraph remains of concern. It implies that the Australian Government cannot use its treaty powers in relation to articles of the Declaration, which in turn raises the question of its view of the Declaration as an international instrument of human rights.

The Closing the Gap targets, and the mechanisms to support their implementation through COAG, have been introduced without apparent input by Australia's First Peoples. In the Northern Territory this has been done coercively. Without acknowledging the diversity of local priorities across Indigenous Australia, the targets can appear as limited formal indicators of material changes, disregarding wider approaches to the wellbeing, cultural requirements and rights of First People. Thus, the purpose of engagement is subverted.

First Peoples' disadvantage and culture – the latter usually by unstated assumptions and biases, but sometimes by overt racism – have been characterised as a national emergency. While this brings welcome attention to the problem, at the same time it has tended to remove it from the hands of First Peoples themselves, thereby undermining effective engagement as defined above. The danger is that the planning and implementation of Indigenous policy are being targeted towards the concerns of non-Indigenous, metropolitan Australia, while represented to the world community as politically responsible and fulfilling Australia's obligation to international human rights standards. However, our Parliament's domestic response to the implementation of the Declaration – particularly to the right to free, prior and informed consent – has brought into question Australia's international reputation in human rights, at the same time as the NCAFP used the Declaration in the development and delivery of its own framework for engaging communities (National Congress of Australia's First Peoples 2013:7).

Australia underwent a second cycle of the Universal Periodic Review (UPR) on 9 November 2015 (AHRC 2015). The UPR process 'provides the opportunity for each State to declare what actions they have taken to improve the human rights situations in their countries and to fulfil their human rights obligations'. It is carried out in stages that include reports from the government, the Australian Human Rights Commission (AHRC) and the NGO sector, as well as a compilation of the human rights situation in Australia from the UN. This is followed by an appearance before the UPR Working Group, who will prepare a report with recommendations that the Australian Government must respond to before processes for implementation and follow-up are outlined (Office of the High Commissioner for Human Rights 2015).

In its 2015(a) UPR submission, the AHRC reported on Australia's progress in implementing recommendations from its first UPR. Significantly, only 10 per cent of the accepted 145 UPR recommendations from 2011 have been fully implemented (2015a). The report acknowledges that the Declaration has yet to be fully incorporated into Australian law, policy and practice, and recommends a national strategy to:

- include the UN Declaration on the Rights of Indigenous Peoples in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)
- review how existing legislation, policies and programs conform to the Declaration (AHRC 2015a).

The AHRC also highlights the reduction in funding to Aboriginal legal services and to the NCAFP, and calls on the Australian Government to provide adequate funding for both to help 'build a representative Indigenous voice at the national level and for Indigenous legal aid' (2015a).

On 10 December 2014 the National Congress of Australia's First Peoples released a statement announcing its intention to present to the Human Rights Council, as part of the UPR, 'with evidence that Australia aggressively acts to deliberately abuse the rights of the Indigenous Peoples of Australia' (NCAFP 2014). The NCAFP (2014) states that Australia has continued to ignore previous UPR recommendations and has not followed up on its pledge to acknowledge Congress as a National Aboriginal and Torres Strait Islander representative body. This accusation is in direct contrast to Australian Government claims of support to Congress mentioned earlier in this paper. The statement declares that Australia has reneged on its commitment to support the Declaration and to consult with First Peoples through their own representative bodies (NCAFP 2014). Congress

is dismayed that the Australian Government still does not acknowledge the Declaration as a binding legal instrument and openly expresses its frustration with the Government's refusal to engage properly with it on developing plans and strategies that support the implementation of the Declaration (NCAFP 2014). Finally, the NCAFP (2014) suggests that the Australian Government implement the actions from the WCIP Outcome Document and strongly urges the adoption of an Aboriginal and Torres Strait Islander self-determination policy.

The inconsistency in reporting on human rights issues and progress for implementation of the Declaration suggests a clear lack of communication and partnership between the Australian Government and First Peoples' representatives. It is also apparent that, since signing up to the Declaration on the Rights of Indigenous Peoples, many of the Government's policy actions have failed to consider sufficiently, or to take seriously, the rights clearly set out in the Articles.

National strategies for building cultural competency in health and public services

The Australian Health Ministers' Advisory Council (AHMAC), which provides advice and support to the COAG Health Council, consists of senior health bureaucrats from all States and Territories (COAG 2015). In 2004, AHMAC's Standing Committee on Aboriginal and Torres Strait Islander Health Working Party released its Cultural Respect Framework for Aboriginal and Torres Strait Islander Health. The framework, to be implemented from 2004–09, aimed to support jurisdictions to implement 'particular mechanisms to strengthen relationships between the health care system and Aboriginal and Torres Strait Islander peoples' (AHMAC 2004:3). The main objective of the framework – to strengthen the 'cultural competency' of mainstream health services – had engagement and strong relationships as a core principle. However, this was more focused on Aboriginal and Torres Strait Islander health professionals than on engagement with Indigenous communities. Core principles of the framework included supporting the community controlled health sector in its role, community decision making and a partnership with the First Peoples' health sector.

Subsequent to the AHMAC Framework, and as a mechanism to build the capacity of the Australian Public Service to engage with First Peoples' communities, FaHCSIA released its Engaging Today, Building Tomorrow: A Framework for Engaging with Aboriginal and Torres Strait Islander Australians (FaHCSIA 2011). The 2011 framework specified six 'core principles' important for supporting engagement activity associated with being respectful, informed, ethical, outcomes focused, sustainable and responsive. The key aims of the document were to ensure that all programs and policies developed by the Australian Government considered the needs of First Peoples, and that program and service implementation were made more sustainable through effective engagement.

The Prime Minister's Indigenous Advisory Council

On 25 September 2013, the Prime Minister announced a new approach to consulting on Indigenous affairs, further adding to the complex layers of engagement methods, policies and frameworks between governments and Indigenous communities at local, State and Territory and federal levels. The PM's Indigenous Advisory Council was created with the mandate to 'provide

advice to the Government on Indigenous affairs, and [to] focus on practical changes to improve the lives of Aboriginal and Torres Strait Islander people' (Department of the Prime Minister and Cabinet 2013). Since this reform, it has become very difficult to find any reference to the Indigenous Engagement Framework developed by the now defunct FaHCSIA, nor is it clear if the IAC adds to the former framework or replaces it.

Indigenous Advisory Council Terms of Reference

Purpose

The Prime Minister's Indigenous Advisory Council (the 'Council') will provide advice to the Government on Indigenous affairs and will focus on practical changes to improve the lives of Aboriginal and Torres Strait Islander people.

Role

1. The Council will provide ongoing advice to the Government on emerging policy and implementation issues related to Indigenous affairs including, but not limited to:
 - improving school attendance and educational attainment
 - creating lasting employment opportunities in the real economy
 - reviewing land ownership and other drivers of economic development
 - preserving Aboriginal and Torres Strait Islander cultures
 - building reconciliation and creating a new partnership between black and white Australians
 - empowering Aboriginal and Torres Strait Islander communities, including through more flexible and outcome-focused program design and delivery
 - building the capacity of communities, service providers and governments
 - promoting better evaluation to inform government decision-making
 - supporting greater shared responsibility and reducing dependence on government within Aboriginal and Torres Strait Islander communities
 - achieving constitutional recognition of Aboriginal and Torres Strait Islander people.
2. The Council will engage with Aboriginal and Torres Strait Islander communities, including existing Indigenous advocacy bodies, to ensure that the Government has access to a diversity of views. The Council will also engage with other individuals and organisations, as relevant to the Government's agenda.
3. The Government may request the Council to provide advice on specific policy and program effectiveness, to help ensure that Indigenous programs achieve real, positive change in the lives of Aboriginal people.
4. The Council will report annually to the Government on its activities, via letter to the Prime Minister.

Membership

1. The Council will have up to 12 members, including a Chair and Deputy Chair. Members will be both Indigenous and non-Indigenous.
2. The Chair will be a part-time paid position. Other members will be paid sitting fees and costs related to meeting attendance.
3. Membership will be for a term of up to three years, subject to an annual review of membership by the Prime Minister, following consultation with the Minister for Indigenous Affairs.
4. Members will have a strong understanding of Indigenous culture and bring a diversity of expertise in economic development and business acumen, employment, education, youth participation, service delivery and health.
5. The membership will include representation from both the private, public and civil society sectors and be drawn from across Australia, with at least one representative from a remote area.
6. New members will be appointed by the Prime Minister following consultation with the Minister for Indigenous Affairs.

Meetings

1. The Council will meet three times annually with the Prime Minister and relevant senior ministers. One meeting will be held in Canberra, with the location of other meetings to be determined by the Council to support a shared understanding of the issues impacting upon Indigenous communities around Australia.
2. The deliberation of the Council will be confidential, but the Council may choose to issue a statement after its meetings.
3. In addition to minister-level meetings, the Council may decide to meet up to an additional three times per year.
4. The Chair of the Council will have monthly meetings with the Prime Minister, the Minister for Indigenous Affairs and the Parliamentary Secretary to the Prime Minister.
5. The quorum for Council meetings will be at least six members, including the Chair or Deputy Chair.
6. The Council may also convene working groups as necessary, to consider particular issues in depth and report back to the full Council. These working groups may consult external experts in the field to inform their deliberations. Unless otherwise agreed by Government, working groups will meet on a non-remunerated basis.

Secretariat

1. The Council will be supported by a secretariat from the Department of the Prime Minister and Cabinet. (Department of the PM&C n.d.)

National and State–level engagement frameworks

Federal, State and Territory government departments are located within, or affected by, the broad national context described in the previous section. While there is much work to be done to ensure alignment with Australia’s commitments under the UN Declaration, many of these departments have developed frameworks that articulate their commitment to, and support for, the engagement of First Peoples in policy and program development functions within their jurisdiction. Although a full analysis of these documents is beyond the scope of this review, a small number were analysed to provide a snap–shot of some of the thinking that has gone into their development. The extent to which these frameworks are implemented (and whether departments actually have the capacity/skills to implement them), or have even influenced policy and program development processes, is clearly an issue for further investigation. This analysis includes the principles articulated, mechanisms and strategies for engagement, and processes around accountability and responsibility for engagement.

Principles for engagement

Hunt (2013a; 2013b) identified key factors that, if implemented effectively, should lead to success in engagement between First Peoples and governments. Embedded within many of these factors are principles that Hunt summarised as integrity, inclusion, deliberation and influence. In practice, these principles are expressed in various practices such as a commitment to self–determination, empowerment, sustaining relationships over time, and building trust. In this section, some of the core principles expressed in government and several non–government frameworks for engagement are described and analysed.

Although many of the principles are similar across engagement strategy documents there are variations, with some paying more attention to embedding principles associated with the complexities of working with diverse First Peoples’ communities, to history and traditional ownership of land, and to understanding the pressures placed on First Peoples’ organisations and communities. Specific examples of the principles embedded in a small number of national and State/Territory level policy documents are summarised in Table 1 (see p.55) and discussed here.

National frameworks

NCAFP’s A Framework for Engagement between Australian Government Agencies and the National Congress of Australia’s First Peoples

The NCAFP’s Framework for Engagement (NCAFP 2012) is guided by principles about: empowerment; effective engagement; a spirit of cooperation, partnership and shared responsibility; long–term planning and investment; recognition of complexity and a requirement for flexibility and innovation; consistency with cultural values of caring for the wellbeing of individuals, families, communities and Country; respect for cultural diversity; clarity of responsibility; accountability; and respect for existing leadership and governance arrangements. These are described more fully in the previous section of this review.

Congress's Framework for Engagement appears more robust than both the engagement policies expressed in the NIRA Service Delivery Principles and the FaHCSIA Engagement Framework. Grounded in the United Nations Declaration on the Rights of Indigenous Peoples, it ensures a role for Congress in policy development, legislation, program reviews and evaluations, changes affecting Congress or the framework itself, announcement of policies, review or introduction of COAG's National Partnership Agreements⁴, and other matters as appropriate (NCAFP 2012:3). It does not override existing consultation and advisory arrangements, and sets out specific Protocols for Engagement that improve upon the vagueness of the earlier Service Delivery Principles and more robustly express the rights of Australia's First Peoples (see Table 1, p. 55).

PM's Indigenous Advisory Council

This council is made up of both Indigenous and non-Indigenous people and has the ability to directly engage with the Prime Minister through the Department of the PM&C. In its advisory capacity, this group has the power to influence significant decisions made around Aboriginal and Torres Strait Islander policies and programs. Although 'not a representative body' (Australian Government 2014:2) the council has been given authority to provide advice to government on issues as diverse as school attendance and education, employment, land ownership and economic development, preserving First Peoples' culture, capacity building of communities, building reconciliation, and empowerment of First Peoples' communities.

Members of the IAC are personally appointed by the Prime Minister, following consultation with the Minister for Indigenous Affairs, with criteria for selection including the need for 'a strong understanding of Indigenous culture'. The Prime Minister will engage with this group on a semi-regular basis through meetings and working groups as necessary. The first meeting of the group was held on 5 December 2013, with a further eight having been held at the time of writing. Detailed information about the role and accountability of the IAC is scarce, with the council only required to report back annually to the Prime Minister via letter. How the IAC reports to the public and to Aboriginal and Torres Strait Islander communities is unclear.

Although some features of successful engagement with First Peoples' communities may be apparent, the IAC as a mechanism is limited when compared with processes outlined in other engagement frameworks. Within its terms of reference, there are none alluding to self-determination or community control and little acknowledgment of community decision-making processes. Mutual respect and reciprocity, cooperation and partnership are not identified, and the emphasis on engagement is seemingly a top-down approach. The establishment of the IAC could also be seen to reduce representation by First Peoples on significant issues such as health, education and employment. When the terms of reference and workings of the IAC are evaluated against the principles for engagement referred to by both governments and communities, it is lacking in several areas. It should be noted that only the IAC terms of reference were used for this comparison and further information about the council's engagement practices may be available that could provide a more detailed analysis.

4 The six National Partnership Agreements included in the Closing the Gap policy are: Indigenous Early Childhood Development; Remote Service Delivery; Indigenous Economic Participation; Remote Indigenous Housing; Indigenous Health Outcomes; and Remote Indigenous Public Internet Access. For more details go to: <http://www.healthinfonet.ecu.edu.au/closing-the-gap/key-facts/what-are-the-national-partnership-agreements-and-how-do-they-fit-in>.

Department of the PM&C National Compact: Working Together

Although not specifically focusing on engagement between Aboriginal and Torres Strait Islander communities and government, the National Compact was developed to articulate how government and not-for-profit organisations would work together ‘in new ways based on partnership and respect’ to strengthen collaboration and ‘improve social, cultural, civic, economic and environmental outcomes’ (Department of the PM&C 2011). While the work was general, in that it focused on the NFP sector, it included a principle of commitment to ‘enduring engagement with marginalised and disadvantaged Australians, in particular, Aboriginal and Torres Strait Islander peoples and their communities’ (Department of the PM&C 2011:7). It also outlined ‘aspirations for engagement and consultation’, which included that organisations would: develop and implement codes of engagement together; find ways for people who are vulnerable and excluded to have a direct, strong voice in policy and planning processes, protect the freedom of NFP organisations to contribute to public debate without impacting on their funding status; and work in real partnership with Aboriginal and Torres Strait Islander and multicultural organisations. However, clear roles and mechanisms for engagement were not apparent. The related Draft Code of Best Practice for Engagement with the Not-for-Profit Sector – Engaging Today for a Better Tomorrow also outlined principles around mutuality, transparency, equity, continuity, targeting, authenticity, efficiency and capacity, timeliness, accessibility, consistency and flexibility (Law Council of Australia 2013).

State frameworks

Victorian Government Aboriginal Inclusion Framework

The principles of the Victorian Government’s current Aboriginal Inclusion Framework include: cultural respect; consultation with Aboriginal communities; a holistic approach; the health of First Peoples as a core responsibility for all; working in partnership; localised decision making; building the capacity of health services and communities; accountability; and evidence-based decision making (DoH Victoria 2013).⁵

The current Victorian framework follows a previous Victorian Government framework – Building Better Partnerships: Working with Aboriginal Communities and Organisations – which defined seven guiding principles for effective communication that incorporate themes of respect, honesty and integrity. Principles are also grouped around the provision of adequate, clear information and ensuring that follow-up and feedback is given back to communities about any outcomes and next steps (DHS Victoria 2006). First Peoples’ organisations and communities were also acknowledged as being important in building relationships. Interestingly, several issues impacting significantly on the capacity of organisations to engage with government were recognised. These include the heavy demand placed on these organisations to engage, the significant organisational capacity required for engagement, and the tensions and pressure arising for First Peoples’ organisations in having accountabilities both to their communities and to government (DHS Victoria 2006).

⁵ Both policies fit under the Department of Premier and Cabinet’s Aboriginal Affairs policy framework and both are available online at: <http://www.dpc.vic.gov.au/index.php/aboriginal-affairs/aboriginal-affairs-policy>.

NSW Government's OCHRE Aboriginal Affairs Plan

The vision for the OCHRE Aboriginal Affairs Plan for NSW is to support local decision making as a means to the Aboriginal community having greater control of the delivery and coordination of government services (Aboriginal Affairs 2015). It seeks to overcome the current poor engagement between government and communities, the lack of coordination across government departments, the failure to address local community priorities and the lack of evaluation of the effectiveness of service delivery. The principles of the plan are sound and largely consistent with those identified by Hunt as promoting effective engagement (see Table 1, p.55).

South Australian (SA) Government's Cultural Inclusion Framework

The SA Government released a Cultural Inclusion Framework endorsed by the SA Aboriginal Elders Executive Committee that includes a guide, a cultural competency self-assessment instrument and a cultural inclusion checklist to assist government agencies to provide Aboriginal people with services that are more culturally inclusive and accessible (Department of P&C SA 2006). This is an aspirational framework mandated by the SA Government and outlines underlying principles that ensure recognition of Aboriginal diversity and client choice in the delivery of services (Department of P&C SA 2006).

Consulting Citizens – Engaging with Aboriginal Western Australia (WA)

The WA Government's Consulting Citizens – Engaging with Aboriginal Western Australia (Department of Indigenous Affairs 2005) outlines a set of principles in a 'Statement of Commitment'. These principles cover a range of issues including rights as Traditional Owners, equity, historical influences, governance and capacity building. There are also principles specifically related to effective engagement, including: recognition and understanding of the individual aspirations and unique circumstances of Aboriginal peoples and communities in the different regions of WA; the need to build trust and cooperation between government and Aboriginal peoples; mutual respect and reciprocity; effective communication; informed consent; and the sustainability of relationships.

This policy also recognises the importance of developing relationships over time and having a genuine commitment to engage. It was acknowledged that engagement is not always easy and that commitment to engagement should be reflected throughout organisations from the senior leadership down. Respecting cultural security was also identified as an important principle for effective community engagement with Aboriginal communities. It is unclear whether implementation of these principles remains WA Government policy.

Queensland Government's Mina Mir Lo Ailan Mun

The Mina Mir Lo Ailan Mun is a practical communication guide aimed specifically at government officials seeking to engage with Torres Strait Islander communities. Principles for engaging with these communities are consistent with those outlined in other government engagement policies, and include key themes such as flexible timelines, transparency and honesty, development of realistic objectives, engaging with appropriate community members, and sharing of information for decision making (DATSIPD 2000).

The Tasmanian Aboriginal Community: A Guide to Engagement

This guide to engagement with Tasmanian Aboriginal people was developed as part of a series to improve the coordination and consistency of Tasmanian Government agencies' community engagement practices (Department of P&C Tasmania n.d.). It outlines several core principles for engagement including: managing expectations; allowing for flexibility; cultural understanding; recognising diversity; being aware of consultation fatigue; and providing opportunities for Aboriginal people's involvement in the decision-making process (Department of P&C Tasmania n.d.) Additionally, the overarching Tasmanian engagement framework endorses 10 principles for engagement – accountability, trust, clear and open communication, flexibility, an honest and upfront approach, the ability to listen, mutual respect and responsibility, a non-judgmental attitude, transparency, and understanding the community (Department of P&C Tasmania 2014).

Non-government policies

Oxfam's Close the Gap Partnership position paper

In 2010, Oxfam released a partnership position paper in response to the Australian Government's new approach to 'work[ing] with Indigenous communities' to close the disadvantage gap. The Close the Gap Steering Committee for Indigenous Health Equality believed that, despite government willingness to engage, 'policy decisions are still being made without proper negotiation with Aboriginal and Torres Strait Islander Peoples' (Close the Gap Steering Committee for Indigenous Health Equality 2010:5). With this in mind the committee identified the principles of partnership and analysed existing partnership structures at national, State/Territory and regional/local levels.

The set of principles was comparable with other frameworks: partnership, for example, was seen as an 'ongoing process of negotiation rather than just one-off consultation' with clearly defined roles an imperative. The paper also identified the importance of recognising the impact of power imbalances and the need for building the capacity and capabilities of both government and Aboriginal and Torres Strait Islander communities to engage effectively. Having Aboriginal and Torres Strait Islander communities influence all stages of the decision-making process was also seen as vital for strong partnerships. The committee discussed the next steps required to turn these principles into practice, including the possibility of establishing 'partnership accountability, and monitoring and evaluation frameworks' (Close the Gap Steering Committee for Indigenous Health Equality 2010:14). However, it isn't clear how far this work has progressed since the paper's release.

Engagement mechanisms

In practice, Hunt's identified principles for engagement can be thematically grouped as being about:

1. **Power and decision making**

These include statements about empowerment, self-determination, community control, informed consent, respect for Indigenous decision making, location of decision making (e.g., localised decision making), shared responsibility, power sharing, mutual respect and reciprocity, cooperation and partnership.

2. **Cultural understanding and respect**

These include statements about understanding, recognition and respect of culture, social and cultural contexts, existing community leadership and governance structures, community identify, community processes, cultural values and cultural knowledge, diversity between (and within) communities, rights and responsibilities and the importance of taking a holistic approach.

3. **Responsibility and accountability**

Generally the principle here is about responsibility and accountability for action and about transparency.

4. **The practice of engagement**

This includes commitments to building and sustaining relationships, building trust, acting with integrity, building relationships over time (or appropriate timeframes), democratic processes, inclusiveness, having adequate and sustained resources, clear communication, flexibility and innovation.

5. **Capacity development**

This includes a commitment to building on the strengths of Aboriginal and Torres Strait Islander peoples and communities and enabling skill development and other opportunities through participatory practice.

Some of the engagement frameworks include information about methods and mechanisms for engaging with Aboriginal communities (see Table 2, p.58). These mechanisms specify how community engagement should be carried out by government agencies. As might be expected, a majority of policies acknowledge the use of established First Peoples' representative bodies and/or accepted leadership groups as key components of government engagement processes with community. However, in some cases other tools have also been highlighted.

A number of examples of these are described below, with examples of mechanisms specified in these policies then outlined in more detail:

- Formal partnerships and partnership structures
- Advisory groups (committees, boards, expert groups)
- Consultation fora, such as workshops, roundtables and 'consultation'
- Formal written agreements, for example, MOUs or management plans
- Engagement with individual workers (for example, community liaison officers, agency staff).

Australian Government initiatives

Building engagement into government policy and planning processes was a key objective of the FaHCSIA Engaging Today, Building Tomorrow framework.⁶ Mechanisms for community engagement were also highlighted in six key ‘areas for action’:

1. submissions to government
2. avenues for engagement
3. project planning
4. funding agreements, program guidelines and contracts
5. Reconciliation Action Plans
6. engagement coordination.

Particular avenues suggested for Australian Public Service agencies to engage with Aboriginal and Torres Strait Islander peoples included advisory bodies, representative bodies, academia, and specific mention of the National Congress of Australia’s First Peoples. Additional details about engagement coordination are also stated, with Regional Operation Centres and Indigenous Coordination Centres being central components. The Executive Coordination Forum on Indigenous Affairs was tasked with overseeing a review of this framework, but the results of a review or evaluation have yet to be published.

National Compact

The National Compact did not detail specific mechanisms for engaging with Aboriginal NFPs or with Aboriginal communities, but outlined ‘aspirations for achieving better results’, some of which could be read as mechanisms to support engagement. These include: improving the focus on achieving outcomes; better coordination of policy, programs and services to improve outcomes; sharing relevant information and data to help plan and evaluate efforts; improving funding and procurement arrangements; and achieving more transparent and accountable decision making and program delivery (Department of the PM&C 2011). The Draft Code of Best Practice for Engagement with the Not-for-Profit Sector, however, identified specific mechanisms around preparing for consultations, timing, engaging with diverse stakeholders, methods of consultation, information sharing and confidentiality, feedback on policy decisions and evaluation (Law Council of Australia 2013:9–16).

⁶ This framework is no longer used to underpin engagement between all levels of government and Aboriginal and Torres Strait Islander communities. Developed in 2011, the framework created an understanding of the importance for all governments in Australia to engage more effectively with Aboriginal and Torres Strait Islander people. The framework was based on the premise that constructive engagement makes a valuable contribution to the development of good social policy and the achievement of positive outcomes – both for government and Aboriginal and Torres Strait Islander Australians.

The Compact in Action Report informed a number of initiatives that could create an important infrastructure for supporting engagement with NGOs (Department of the PM&C 2013). These included the establishment by the Australian Government of:

- an Office of the NFP sector, within the Department of Prime Minister and Cabinet, which was to be responsible for reforms across government and for convening an Interdepartmental Committee on NFP Reform to progress government action
- the NFP Sector Reform Council
- ‘Compact Advocates’ who were to be senior officials in each Australian Government department whose role would be to ‘champion the compact and make sure its principles were observed’⁷
- the Australian Charities and NFPs Commission (a one-stop regulator)
- work to promote and publicise the value and contribution of the NFP sector
- an Australian Bureau of Statistics initiative on a NFP ‘Institutions Satellite Account’ (which would include data on the significance of the NFP sector and its contribution to the Australian economy)
- a database of good practice examples of government working with the NFP sector
- the Freedom to Advocate Act 2013
- a Code of Best Practice for Engagement with the NFP Sector (see above)
- an Access and Equity Inquiry
- a ‘Civil Society Engagement Framework’.

A further initiative to make government data more accessible, and to release government information publicly, was also initiated (Department of the PM&C 2013).⁸

PM’s Indigenous Advisory Council

The IAC has also been given the task of engaging with Aboriginal and Torres Strait Islander communities and advocacy bodies: how this is meant to happen is not clearly stated. This type of engagement mechanism potentially undermines the authority of First Peoples’ representative bodies (set up to act as advocates in their specific sectors, with membership structures and decades of experience in community engagement). Establishing a structure like this contradicts many of the indicators for successful engagement and does not adhere to engagement principles described in both government and First Peoples policies and summarised in this document.

7 The Compacts appear to be a past initiative. Since the transition from the Department of the PM&C to the Department of Social Services (DSS), the National Compact is not foundational to any current agreements, engagement strategies or implementation strategies.

8 As a result of machinery of government changes that were reflected in the Administrative Arrangements Order (AAO) of 18 September 2013, 3 October 2013 and 12 December 2013 (the AAO changes), the Department transferred responsibility for the National Compact, Philanthropy and Volunteering function to the DSS (Department of the PM&C 2014:143).

State Government initiatives

Victorian Aboriginal Affairs Framework

The Victorian Aboriginal Affairs Framework specified a structured set of mechanisms for engagement with communities and/or Aboriginal organisations in the ongoing implementation of policy, including at different levels and for different purposes (State Government Victoria 2013). Mechanisms include:

- State-wide and regional partnership and engagement structures (such as Traditional Owners Groups, Regional Closing the Gap Health Committees, Local Aboriginal Education Consultative Groups, the Aboriginal Justice Forum, Regional and Local Aboriginal Justice Advisory Committees)
- Local Indigenous Networks (LINS), of which there are 39 across Victoria (with more than 1600 Aboriginal participants)
- Ministerial roundtables (3 per year)
- sub-regional forums.

Consulting Citizens – Engaging with Aboriginal Western Australia

This policy describes a process for engagement that included: setting realistic goals (and being clear about the organisation's charter, prepared to explain roles and limitations, and open about capacity to meet expectations engendered through consultation); ensuring mutual agreement of goals; action planning; understanding the region; seeking and listening to advice about who and how to consult; recognising and utilising existing networks and skills; and seeking advice from Aboriginal organisations. There is also a section on the importance of awareness and respect for cultural protocols (Department of Indigenous Affairs 2005).

SA Cultural Inclusion Framework

The South Australian Government's Cultural Inclusion Framework concentrated on cultural competence for government agencies delivering services to Aboriginal clients. A Cultural Inclusion Checklist was developed for agencies to use for self-assessment. It was recommended that agencies use the results to develop action plans for 'Aboriginal stakeholder consultation strategies', but guidance on how to implement these strategies was limited.

One key aspect of the framework underlined 'culturally inclusive governance' as a mechanism for having Aboriginal representation in consultation processes. How Aboriginal people and communities can participate in governance was discussed along with strategies for feeding back information to Indigenous communities. Annual reporting of governance actions, and how Aboriginal participation was incorporated, are recommended methods of enabling the evaluation of outcomes and measuring progress (Department of P&C SA 2006).

NSW OCHRE Plan

The OCHRE Plan identifies a four-phase process, with each phase representing increasing levels of responsibility and accountability for the community management of government resources:

- Establishment and Start Up – including the formation of regional alliances of community representatives and the development of an evaluation framework
- Advisory Delegation – in which Accords about decision making and capacity strengthening are developed between government and the regional alliance
- Planning Delegation – in which the regional alliance becomes a Board of Management, works with a single Senior Officer of government, and priorities and actions are negotiated. The Senior Officer manages pooled government funds to address the outcomes of Accords
- Implementation Delegation – in which Boards of Management manage some government resources, are in charge of some government staff and are accountable and responsible for services.

The process is supported by a Capacity Strengthening policy that outlines the settings in which capacity strengthening may be required – for individuals, community, organisations and government – and examples of strategies and activities that may be used (Aboriginal Affairs 2014). It is further supported by Good Governance Guidelines, government field officers and resources for both community and government (Aboriginal Affairs n.d.).

Queensland Mina Mir Lo Ailan Mun

Mina Mir Lo Ailan Mun was developed by the Department of Aboriginal and Torres Strait Islander Policy and Development as a guide for communication and engagement with Torres Strait Islander people. Aimed at government officials, the document gave practical advice about how to engage and interact with communities in the Torres Strait. It also provided clear strategies for consultation including flexible, open and transparent discussion, sharing of information and identifying appropriate key community members. Listening was acknowledged as being important in communication when engaging with Torres Strait Islander people. Local, regional and community organisations were also recognised as important mechanisms for engagement, with the Island Coordinating Council a key advisor to governments (DATSIPD 2000).

The Tasmanian Aboriginal Community: A Guide to Engagement

This guide underlines the Tasmanian Government's close relationship with Aboriginal organisations, including the Tasmanian Aboriginal Centre Inc. (TAC) and the Aboriginal Land Council of Tasmania (ALCT). The role of the Office of Aboriginal Affairs in implementing the Overarching Bilateral Indigenous Plan for Tasmania (sitting under the NIRA) is also emphasised (Department of P&C Tasmania n.d.).

The Tasmanian Government Framework for Community Engagement (2014) refers to the engagement continuum – inform, consult, involve, collaborate and empower – and outlines a number of appropriate engagement methods for each engagement ‘type’, including:

- Briefings, focus groups, social media strategies and telephone trees are identified as methods to inform and consult.
- Online forums, mediation and negotiation and nominal group techniques are suggested tools for the next level of engagement to consult and involve.
- Citizen committees or public advisory committees are representative groups from a particular community appointed to provide comments and advice on an issue at a higher level of engagement to involve and collaborate.
- Citizen juries that involve the wider community in the decision-making process, and local enabling groups that can be set up to develop strategic directions for projects, are advocated as methods that empower community members with the highest degree of influence in the engagement process (Department of P&C Tasmania 2014).

NGO initiatives

The National Congress of Australia’s First Peoples Engagement Framework highlighted the National Indigenous Reform Agreement, signed by the Australian Government in 2008 as a key document, thereby recognising the importance of a national representative body as a primary engagement mechanism. Congress’s Framework for Engagement established that FaCHSIA would commit to having First Peoples’ input into national policy by supporting a mechanism for Congress to engage with the Working Group on Indigenous Populations on an annual basis. Government agencies were to engage Congress in relation to policy issues and reviews likely to have a major influence on First Peoples. Guidelines were also drawn up around the sharing and provision of information, and recommendations made for appropriate information sharing to enable effective engagement.

The Close the Gap Steering Committee for Indigenous Health Equality: Partnership Position Paper (Oxfam Australia 2010) discussed opportunities for developing engagement mechanisms at national, State/Territory, and regional and local levels. The committee also advocated for the development of a national framework agreement and structure ‘that affords representatives of Aboriginal and Torres Strait Islander Peoples input and influence in a shared decision-making process; a structure in which policy outcomes are developed through negotiation’ (Oxfam Australia 2010:6). Nationally, Indigenous peak bodies such as NACCHO, the Australian Indigenous Doctors’ Association and Indigenous Allied Health Australia were endorsed as likely bodies for engagement in such a partnership. These partnerships were the prelude to the National Health Leadership Forum, auspiced by the NCAFP and an amalgam of 12 First Peoples’ health organisations that became united around a vision for health and wellbeing for the first time.

Structures for engagement at the State and Territory level were less clear, and it was suggested that a more consistent and coordinated approach was needed with the possible involvement of national peak bodies and the Aboriginal community controlled sector. The Close the Gap steering committee advocated for a diversity of approaches at the local level – including partnerships between regional

ACCHOs, local hospitals, community health centres, general practices and others – and noted that engagement mechanisms needed to be more clearly defined. A set of steps for moving forward were proposed that included defining structures, policies and processes for genuine partnership, identifying partners at national, State and local levels, and pinpointing and agreeing on outcomes, benefits and principles of partnerships (Oxfam Australia 2010:14). This steering committee also questioned government over-use of ‘expert advisory groups’ in the development of Indigenous partnerships and suggested that while

... engagement with such groups is an important part of any approach to overcoming Indigenous disadvantage, advisory groups and ‘providing information’ do not constitute genuine partnership. Of particular concern is that much of the current national policy on Indigenous health and wellbeing is being developed in-house. (Oxfam Australia 2010:9)

Accountability and responsibility for outcomes

A principle around accountability for the engagement process was identified in a number of policies. Some frameworks did attempt to clarify evaluation and review mechanisms, but information about responsibility and accountability for government engagement practices and processes was limited. Critically, this makes it extremely difficult to decipher ‘who’ is accountable or responsible for the different aspects of engagement frameworks. However, there were some instances of roles being more clearly articulated. For example, the Engaging Today, Building Tomorrow framework, which is no longer current, identified areas for action for Australian Public Service staff around engagement with Aboriginal communities (Department of the PM&C 2011).

Importantly, non-government agencies, such as the NCAFP, have outlined explicit roles and responsibilities both for government and Aboriginal communities in engagement processes. Hunt (2013a,b) also recommends a number of strategies – shared responsibility, shared realistic objectives, collaborative formulation of criteria and indicators, assessment of process as well as outcomes – for introducing accountability as part of effective engagement practices. The NCAFP Engagement Framework (2012) is clear both about its role and that of the Australian Government in relation to engagement, with Australian Government agencies expected to:

- acknowledge their responsibility to engage and consult effectively with First Peoples through representatives freely chosen by the people themselves
- accept their responsibility to establish formal arrangements with First Peoples, recognising their governance, including institutions and procedures
- recognise Congress as an elected, independent representative body and a primary source of advice on matters affecting First Peoples
- engage with First Peoples and their organisations on matters that directly affect their development
- commit to involving First Peoples and organisations as partners in government decision-making and accountability processes
- demonstrate their commitment to open, equal and collaborative engagement.

The role of the Congress is to:

- provide a representative voice and promote recognition of the status and rights of Australia's First Peoples
- exercise its independence at all times
- seek input from its members to advise government and promote examples of successful policy, services and programs
- actively develop partnerships to secure a strong economic, social, cultural and political future for Australia's First Peoples and the nation as a whole
- endeavour to provide a unified voice for its members
- • support the empowerment of First Peoples to build and maintain their own governance structures and exercise their right to self-determination
- advocate and support the voices of existing First Peoples' advisory groups, representative bodies and expert organisations and support these groups to continue to represent their own interests.

In addition, the NCAFP Engagement Framework also includes a section around resolving concerns and conflicts:

Engagement is to occur in good faith including conflict resolution. When a dispute arises both parties are responsible for reasonable management of the conflict and ensuring a speedy resolution. Where a concern cannot be satisfactorily resolved the parties will determine an appropriate course of action which may include the appointment of an independent, appropriately qualified person to review the issue and make recommendations. (NCAFP 2012)

A note on topic-specific national and State and Territory level policies

In previous sections we provide a snapshot of some of the efforts by Australian governments – at both the national and State/Territory levels – to support the principle of engagement with First Peoples through the development of frameworks and guidance around the topic of engagement per se. Engagement is also supported in policies developed either by national or State/Territory governments that focus on specific topics (such as health or education) of relevance to Australia's First Peoples. Although outside the scope of this review, a few notes about engagement, as included in these policies, are discussed below.

The stated purpose for engaging First Peoples' organisations and/or communities in topic-specific policies is generally to ensure that related policies, programs or services are developed in ways that best meet community need and that, in the longer term, outcomes for Aboriginal and Torres Strait Islander peoples will be improved. In addition, there are often objectives relating to the strengthening of communities and culture and ensuring the participation of First Peoples in Australian society.

There appears to be three ways that engagement principles are incorporated in these topic-specific policy documents. The first way specifies engagement as a practice. The second includes engagement as associated with the topic of the policy (such as health) so that engagement is a mechanism through which the policy topic is achieved. The third favours engagement being incorporated into broad statements in which engagement is included in a process to deliver results or outcomes, rather than considering engagement as a specific relationship-building principle.

There are two key issues about the type of engagement involving Aboriginal and Torres Strait Islander peoples in topic specific policy document. The first is concerned if First Peoples have been engaged in developing the policy itself, and the second is whether the policy stipulates a commitment to, and mechanisms for, engagement during its implementation. In some cases, both types of engagement are apparent, while in others engagement is generally expected during implementation and/or at the service delivery (rather than policy development) phase.



Discussion

In Australia, the legal doctrine of *terra nullius* has only recently been overturned in the courts and the Constitution is yet to recognise the First Peoples of this continent. Opportunities for expression of self-determination and control of engagement processes and outcomes are inevitably limited by the absence of a legally binding agreement between the government and the sovereign First Peoples. The lack of such an agreement allows incontestable, unilateral action by government. An example of this is the suspension of the Racial Discrimination Act 1975 (Cth) as it applies to First Peoples to allow the imposition of income management and other coercive activities associated with the Australian Government's Northern Territory National Emergency Response and its successor policies and programs.

By contrast, the New Zealand Department of Health explicitly cites the Treaty of Waitangi as the basis for Maori healthy policy development, on the principles of partnership, protection and participation. Significantly, 'participation' is defined as 'Involving Māori at all levels of the sector, in decision-making, planning, development and delivery of health and disability services' (New Zealand Ministry of Health 2012).

In the absence of a treaty, recognition of sovereignty or constitutional recognition of the contribution of First Peoples to the Australian nation, the policy environment for Aboriginal and Torres Strait Islander affairs at both the national and State/Territory level continues to be subject to significant unilateral change by governments over short periods of time. Such a situation is often the antithesis of the engagement principles discussed here – as evidenced yet again by the rearrangement of government instrumentalities post the election of the Abbott Coalition Government in 2013. Adding further complexity is the fact that each government department, at each level of government, is concerned with its own departmental capacity for effective engagement (e.g. health, education, correctional services) rather than focusing on frameworks that coordinate, integrate and implement policy across departments and governments prior to engaging with Aboriginal and Torres Strait Islander organisations and sectors. Similarly, the institutional mechanisms and funding for engagement between government and First Peoples' communities can change rapidly, both in purpose and design, and are grounded in the evident uncertainty that characterises the operational environment of Aboriginal and Torres Strait Islander organisations.

Thus, the context in which to consider effective engagement is one where:

- the nature and impact of governments' own governance and the impact of that upon engagement policy and practice is unclear
- facts are uncertain
- values are often in dispute
- decision-making stakes are high
- there is a sense of urgency that decisions be made.

Aboriginal and Torres Strait Islander Affairs as an institutional system in Australia remains a vital negotiated space with many versions of individual rights and responsibilities, community rights and demands for participative democracy on the one hand, and complexity, multiple legitimate interpretations of the future of individuals, communities and representative organisations on the other. In a challenging environment, State and federal government frameworks for engagement with Aboriginal and Torres Strait Islander peoples are sometimes uncoordinated and inconsistent, thereby creating further uncertainty and complexities.

Significant questions remain: how can all these policy initiatives be coordinated, integrated and implemented in any cohesive way by governments? Is that even possible? And at what point in these processes does effective engagement become seriously built into actual implementation practice.

Engagement and policy complexity at the State and Territory level

This review has demonstrated that the policy picture and, consequently, the mechanisms for engagement at the State and Territory level are complicated. Often State/Territory level policies will be linked to, or be influenced by, those at the national level – such as the National Indigenous Reform Agreement under COAG and the National Partnership Agreement on Closing the Gap in Indigenous Health Outcomes. In addition, some States and Territories have overarching Indigenous policy frameworks, to which topic-specific policies such as health or family services will be linked. Conversely, there may be State/Territory-wide policies on specific topics (such as health) that will influence a range of other health-related policy. State/Territory government reconciliation action plans might also be relevant.

As an example, the Victorian Aboriginal Affairs Framework aimed to provide a blueprint for a whole-of-government approach to ‘Closing the Gap’ through improving the quality of life for Aboriginal and Torres Strait Islander people in Victoria. This included a strengthening of culture, enhancing economic participation and prosperity, and improving services and programs (Victorian Government 2013). It references the earlier Victorian Government Aboriginal Inclusion Framework, now superseded by the Cultural Inclusion Framework, which sets out the inclusion of First Peoples in the broader reform agenda including work under COAG⁹ (Secretaries’ Group on Aboriginal Affairs 2011). The latest framework also describes the key strategies in six focus areas (which therefore incorporate the topic-specific policies of different government departments) and the key partners (including First Peoples communities and organisations) in each of these areas.

This complex array of frameworks and guidelines raises a set of issues about how the engagement of First Peoples with government policy development systems flows on to, or influences, policy development elsewhere in the system. If First Peoples’ communities and/or community controlled organisations are to be meaningfully engaged in the process of developing policies at different levels, and the effort of all parties is to be maximised, some work might need to be done around

⁹ This includes the National Indigenous Reform Agreement, the National Urban and Regional Service Delivery Strategy for Indigenous Australians, and the Overarching Bilateral Indigenous Plan.

creating a systematic mechanism and process of engagement so as to optimise the value gained from the resources allocated and effort invested.

For example, Engaging Indigenous Communities in North Queensland (Chappell n.d.) described a significant structure for government–community engagement in Far North Queensland. It identified ‘negotiation tables’ and ‘community plans’ as consultation methods that align with COAG’s 2004 National Framework of Principles for Government Service Delivery to Indigenous Australians.¹⁰ A community engagement program planning process and program logic was developed to support effective engagement. Key success factors for initiatives could be measured around effective capacity building, a sound organisational base, and a focus on the place where programs can be delivered. Management of the engagement process was clearly outlined with all stakeholders responsible for follow–up, information sharing, ensuring actions are aligned with plans and objectives, network and capacity building, community participation and monitoring of progress. An engagement checklist was also created as a tool to assess the health of engagement practices and processes. In the context of research, the complexity of engagement, the need for flexibility and the risk of further disempowerment for First Peoples have been noted (Adams & Faulkhead 2012).

To an outside observer, this form of democracy can appear as a chaotic canvas for cultural, philosophical, religious, political and intellectual opinions. From within, it is experienced as a working system in which everyone struggles as best they can. It is also experienced by First Peoples as an uneven playing field in which ultimate and prevailing power and funding control remain in the hands of governments. Achieving the quality of constructive engagement at the interface, where governments and governance meets, relies in part on the uniquely human qualities of fellow sympathy, respect, adaptability and meeting expectations. This can only occur through meaningful, equitable partnerships guided by the principles identified as making up effective engagement, including the sharing of power in decision making and control over policy implementation.

It is in this space that governments and communities, through an engagement process, negotiate between freedom and control. Parties engaged in partnerships are, therefore, responsible for implementing the principles and values contained in international law, and acting as a safeguard against conflicts of interest between individuals, both within communities and in the wider society. At this interface, what is hoped for is cooperation. More often than not, however, it is routine for decisions to be made by representatives rather than directly by citizens and through formal governments rather than collective governance involving all members of all parties.

Of the case studies presented in this review, the NSW OCHRE plan stands out in terms of acknowledging that ‘few Aboriginal communities have enough say in government decision–making or control over local service delivery’ (Aboriginal Affairs 2015:5). OCHRE has also been successful in designing a system of local decision making that is supported by capacity strengthening and effective governance for the devolution of decision making about government service provision. In addition, it appears to be consistent with the conclusions from a Harvard study

¹⁰ More on this Framework is available at: http://www.health.gov.au/internet/publications/publishing.nsf/Content/oatsih_implementationplan2007–2013~appendix3.

into sustainable economic development in Native American communities, which concluded that self-determination and good governance were the key factors supporting development (Cornell & Jorgensen 2007). However, it falls short of a best practice US model that includes Tribal control of policing, justice and other statutory functions (Cornell & Kalt 2010). Finally, the evaluation strategies built into the local decision-making processes of OCHRE may allow conclusions about the plan's effectiveness in the longer term.

Outcomes of engagement and the need for further research

This review has not been able to draw on hard data to conclude whether these engagement policies, guidelines, strategies and mechanisms have actually achieved their goals or not. Unfortunately, in a time of strong scrutiny of Indigenous accountability, there appears to be a parlous lack of publicly accessible hard data from which to assess government accountability in respect to its own stated objectives. The aim of this review, therefore, is to examine both what governments and other agencies state their engagement roles and responsibilities to be, and the apparent degree of alignment of their implementation strategies with those objectives, and then to assess that against a set of identified 'principles' or standards of engagement.

Hunt (2013a) pinpoints areas for further investigation as to how Australian governments engage with Aboriginal and Torres Strait Islander communities, including:

- successful engagement arrangements in urban areas and the Torres Strait Islands
- models of engagement for national or other levels of policy development and the role of Indigenous peak bodies in engagement strategies
- recent innovations by various jurisdictions (States and Territories) in relation to engagement models and approaches
- research on successful approaches to program/project level engagement across a range of sectors
- how free, prior and informed consent has been put into practice in governmental engagement processes and its impact.



Conclusion

Firstly, it is essential to understand the broader human rights context for government engagement with the First Peoples of Australia. The failure of past Australian governments to implement fully the recommendations of the 2011 Universal Periodic Review, and their initial resistance (to sign), and current hesitation to implement, the United Nations Declaration on the Rights of Indigenous Peoples into Australian law, policy and practice, are significant barriers to equitable and fair partnerships when negotiating with Aboriginal and Torres Strait Islander communities. This is clearly illustrated by the lack of any formal treaties or recognition of sovereignty for Aboriginal and Torres Strait Islander peoples in Australia.

The current Indigenous policy reform agenda has added to the complexities around Aboriginal and Torres Strait Islander engagement with government. Under the former Abbott Coalition Government significant policy changes occurred that do not fully comprehend the principles of 'effective engagement' with First Peoples' communities. At least Prime Minister Turnbull has appointed Aboriginal leader the Hon. Ken Wyatt AM, MP to his Ministry as Assistant Minister for Health. Turnbull has also been lobbied by the Indigenous Advisory Council and the National Congress of Australia's First Peoples to keep a focus on Aboriginal Affairs, address gaps in the Indigenous Advancement Strategy funding stream, and reinstate the locus of control for Aboriginal affairs with Aboriginal and Torres Strait Islander peoples (Henderson 2015).

This lobbying is taking place because existing structures for engagement with Aboriginal people have largely been disregarded in the policy reform process. More than 50 per cent of funds were redirected through a realignment of funding priorities and strategies to the IAS, with funding cuts to many Aboriginal-led programs and services taking effect in the 2015/16 financial year. The Australian Government's aggressive fixation on 'mobilisation of resources' and 'reduction of duplication', decreasing and centralising Aboriginal Affairs programs, and the unconvincing IAS and IAC mechanisms have worked to hinder First Peoples' trust in government engagement processes.

Interestingly, they have not applied the same criteria for reform and rationalising to their own departments. The multiple layers of government that are tasked with engaging Aboriginal and Torres Strait Islander communities – from local, regional, State and Territory, to national – and the different policy and program frameworks for different sectors (i.e. health, justice, education) create an overly complex environment that makes coordination and implementation of effective engagement practices extremely difficult.

Nevertheless, there are characteristics of effective engagement that are consistently identified and could inform a future agenda – including in Fishkin's discussion of deliberative democracy, Arnstein's ladder of participation, and Hunt's review of engagement between Australian governments and First Peoples. These characteristics define the transformation from partnerships that 'manage' relationships, to those that 'revolutionise' them.

In effective engagement processes, governments are not in control of Aboriginal and Torres Strait Islander individuals or communities. Rather, they act as facilitators that enable First Peoples to engage with the wider society, to manage or revolutionise relationships with others, balancing tensions in complexities originating from freedom and control, privacy and transparency, independence and cooperation. Effective engagement does not impede the practices of Aboriginal

and Torres Strait Islander peoples both to value and commit to a future that contributes to their own community health and wellbeing, and that of the wider Australian community.

This review has informed the proposition that the need for effective engagement with Aboriginal and Torres Strait Islander communities is not taken seriously enough by Australian governments to disrupt their ‘business as usual’ approach, with its reliance on the established bureaucratic methods of consultation and multi-party committees. Nor have they committed to an organised inquiry as to what methods of engagement might work for all parties in various purposes and settings. Instead, empowerment that should be attributed to participation in effective engagement is incidental to the achievement of government-funded outcomes through an administratively driven process of coordination.

At the same time, there are examples of effective engagement in practice. However, the knowledge gained from these experiences is not generally gathered or shared so that effective methods could be more widely used. The authors also recognise the responsibility of government agencies to be more accountable for the policies and frameworks they espouse around engagement with Indigenous peoples. Accountability mechanisms were particularly inconspicuous in most of the policies analysed, with those that did have them providing no clear information about how they are implemented or monitored. The urgent development of comprehensive ‘systems’ for the appraisal of government engagement activities should be considered so as to provide clear indicators and measures for effective, appropriate and successful engagement with Aboriginal and Torres Strait Islander communities.

After reviewing government policies, strategies and mechanisms for engagement with Aboriginal and Torres Strait Islander people, communities and representative bodies, and in consideration of relevant previous reports, the authors endorse five key actions for strengthening government engagement methods for developing health policy:

- 1 **Legally implement in Australia the Declaration on the Rights of Indigenous Peoples** by including it in the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth) and review how existing legislation, policies and programs conform with the Declaration (AHRC 2015a).
- 2 Resource and support Aboriginal and Torres Strait Islander communities to consider, explore and debate the opportunities for **negotiating a treaty** (or treaties) and **recognising sovereignty**.
- 3 Recognise and support Aboriginal and Torres Strait Islander representative bodies that **incorporate inclusive community membership and practise effective governance**.
- 4 Prior to engaging with Aboriginal and Torres Strait Islander peoples, **strengthen the coordination and implementation of engagement policies between various government departments at local, regional, State/Territory and national levels**.
- 5 Reinforce and develop measures for **accountability, responsibility and transparency of engagement policies and practices at all levels**.

This review has identified few policies that meet all the criteria for the principles and practice of effective engagement. Although almost all of the policies we reviewed acknowledged the importance of including community representatives in program development, far fewer went beyond the level of ‘consultation’ to provide meaningful levels of decision-making power for First Peoples. In addition, the resources for capacity building were often lacking and accountability sometimes unclear.

Furthermore, this review of government and community relationships shows that effective engagement between the two, while desirable, rarely delivers on the ‘equity for all’ or on ‘empowerment’ promises germane to many of the policy assertions or resultant agreements.



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Appendices

Appendix 1: Policy Analysis Protocol

Document Type	1. High-level agreements and frameworks 2. Specific policies on engagement with Aboriginal communities 3. Other policies
Author	‘Owner’ of the document (e.g. government document, NACCHO document)
Topic	Broad area of focus
Jurisdiction	National, State-wide, regional or local
Aboriginal and Torres Strait Islander specific engagement	Is engagement proposed with Aboriginal and Torres Strait Islander communities?
Purpose of engagement	What are they hoping to achieve through the engagement process?
Type of engagement	Partnership, consultation, collaboration, advisory committee
Key stakeholders	Key parties to be engaged
Engagement mechanisms	How is engagement carried out? Are there roles outlined for each party? Are there complaints mechanisms?
Engagement principles	Are there core principles for engagement identified? Is the proposed engagement evidence based?
Accountability and responsibility for engagement outcomes	Are there resources committed to engagement? Are they proposing to do things differently as a result of engagement? Who holds primary responsibility for ensuring the engagement is done well? Who holds primary responsibility for the change required as a result of engagement?

Appendix 2: NCAFP Engagement Framework

Principles for engagement

- Empowerment, self-determination and self-management by First Peoples.
- Full and effective engagement of First Peoples in decisions that affect them including in the negotiation and formulation of legislation, policies and programs.
- A spirit of cooperation, partnership and shared responsibility.
- Recognition of the importance of long-term planning and investment.
- An understanding that issues affecting First Peoples are complex and contextual and that flexibility and innovation are required.
- Recognition of the need to develop legislation, policies and programs in a manner consistent with First Peoples' social obligations and cultural values of caring for the wellbeing of individuals, families, communities and Country.
- An approach that respects the cultural diversity of First Nations and distinguishes between their differing goals and priorities.
- Clarity of responsibility for service delivery and increased effectiveness across Government leading to better policy and program outcomes.
- Accountability and high performance standards and effective monitoring by all parties.
- Respect for the existing leadership and governance arrangements of First Peoples while taking action where necessary to strengthen leadership, governance and capacity.

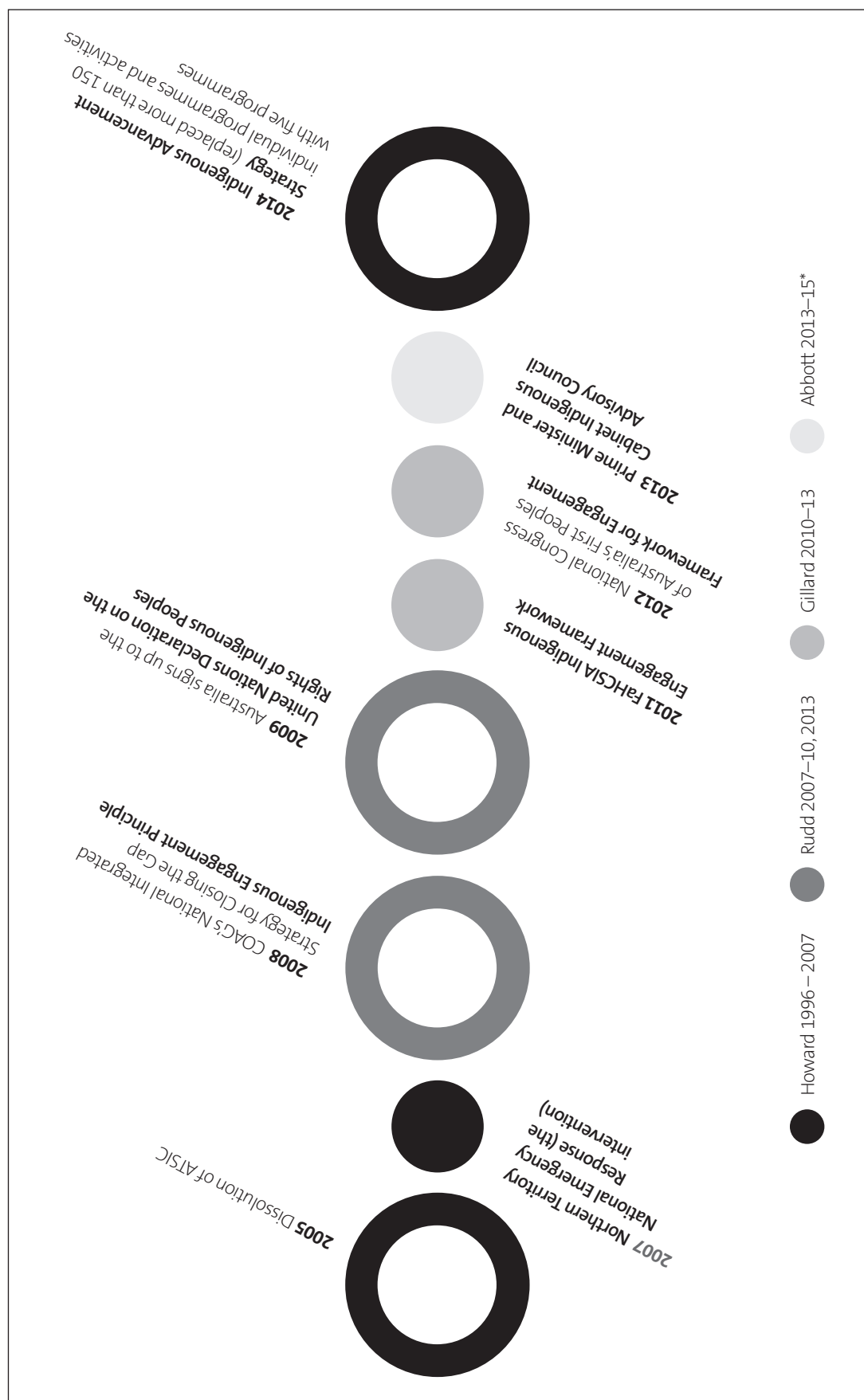
Protocols for engagement

Congress and government agencies commit to the following protocols that will enable effective, constructive and mutually beneficial engagement:

- Early Notice: To enable consultation to occur at an early stage, Congress will be included at the earliest opportunity in the development of initiatives that are likely to have an impact on First Peoples.
- Appropriate Delegation/Authority: All parties commit to provide representatives with appropriate delegation and sufficient seniority and authority to speak for their stakeholders appropriate to the issue.
- Sharing and provision of information: Parties will share appropriate and relevant information, data and research materials at an early stage to enable effective and meaningful consultation and dialogue and throughout each stage of policy development. [Information sharing by Australian Government representatives will involve judgement within existing legal provisions and disclosure policy. At a minimum, it is expected that consultations will involve access to information that is publicly available or would be available under Freedom of Information. Access would not, therefore, be available to personal information, information that would disclose Cabinet deliberations, information that is commercial-in-confidence or has been provided in confidence by a State or Territory government.]

- Confidentiality: Parties will respect the confidentiality of negotiations, discussions and information provided.
- Agreed Timeframes: Parties will aim to provide sufficient time for reflection, discussion and development of responses.
- Feedback: Feedback will be evidence based and will include concrete outcomes or recommendations as appropriate to improve policies and service delivery. Parties will advise each other if their recommendations are rejected and the basis for such rejections.
- Public Announcements: Parties will undertake to inform each other in advance and at the earliest opportunity about major announcements or actions.
- Monitoring and Review: Parties will monitor and share their views on the effectiveness of the engagement framework to enable improvements to be made as required. Actions agreed to by Government and Congress will be documented. Congress and Government agencies will undertake a joint review within 12 months on the effectiveness of the framework and provide advice to the Secretaries Group on Indigenous Affairs. Congress will include a report on the implementation of the framework in its annual report to members.
- Costs: Parties will be responsible for their own costs. Consideration will be given to appropriately resourcing the Congress if requests exceed Congress capacity, for example, where requests are beyond the scope of the current workplan or involve major initiatives that require additional resources.
- Resolving concerns: Engagement is to occur in good faith including conflict resolution. When a dispute arises both parties are responsible for reasonable management of the conflict and ensuring a speedy resolution. Where a concern cannot be satisfactorily resolved the parties will determine an appropriate course of action which may include the appointment of an independent, appropriately qualified person to review the issue and make recommendations (NCAFP 2012).

Appendix 3: National policy frameworks/decisions impacting on government engagement with First Peoples



Appendix 4: Engagement principles and mechanisms

Table 1: Engagement principles cited in selected policies

	Integrity	Inclusion	Deliberation	Influence
NCAFP Framework for Engagement, 2012 – current (NCAFP 2012)	Empowerment, self-determination, and self-management. Spirit of co-operation, partnership and shared responsibility. Clarity about responsibility. Monitoring and accountability.	Policies and programs consistent with First Peoples' values. Respect for cultural diversity.	Long-term planning and investment. Understanding context and complexity. Respect for and strengthening of First Peoples' leadership, governance and capacity.	Full and effective engagement in decision making.
PM's Indigenous Advisory Council Terms of Reference, 2013 – current (DPMC 2013)	Shared responsibility and reduced dependence on government. Preserving First Peoples' cultures.	Council will engage communities to access diverse views.	Empowering First Peoples' communities. Council reports annually to government. Building capacity of communities, service providers and government.	
National Compact (DPMC 2011)	Targets NFP organisations			
Vic. Govt Aboriginal Inclusion Framework, 2013 – current (DoH Victoria 2013)	Accountability	Cultural respect	First People's health as a responsibility for all. Holistic approach. Capacity building. Evidenced-based decision making.	Working in partnership; Localised decision making.

Integrity		Inclusion	Deliberation	Influence
WA Consulting Citizens – Engaging with Aboriginal Western Australia, 2005 – (Dept Indig. Affairs, 2005)	Legislative protection of First Peoples' rights.	Recognition of traditional rights and responsibilities of First Peoples;	Capacity building.	
	Equity of citizenship rights. Addressing past displacement.	Recognising diversity; Inclusiveness.	Regional and local approaches. Democratic processes and structures. Building trust and co-operation. Mutual respect and reciprocity. Effective communication. Informed consent. Sustainability of relationships.	
SA Government Cultural Inclusion Framework	Sharing of responsibility Mandated by Government Accountability is a key element	Aboriginal cultural diversity is recognised Cultural inclusivity as an agency core value.	Recognises that client choice is paramount.	
NSW Government OCHRE Plan	Based on free, prior and informed consent. Recognises First Peoples' relationships with Country/place; the need for healing, cultural boundaries and legitimacy.	Community members and leaders understand their own needs and can develop solutions. Promotes participation of community members.	Responsibility, accountability and transparency in decision making. Setting local priorities through formal agreements.	Vision for more community control over delivery and coordination of government services.
Queensland Government Mina Mir Lo Ailan Mun	Be open, equitable and flexible. Always be open, honest and sincere. Never make any promises you cannot deliver.	Listening (without interrupting). Questioning (impolite to ask too many questions). Appropriate language. Determine who are the appropriate people to engage. Be conscious of the dissimilarities between the two cultures' ways of viewing the world.	Provide sufficient information to make consultation meaningful. Determine what types of consultation are appropriate. Try not to refuse proposals outright.	

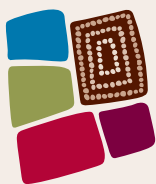
<p>The Tasmanian Aboriginal community: A Guide to Engagement</p>	<p>Expectations – trust and understanding will only be fostered with Aboriginal people through engagement that clearly communicates the purpose and proposed outcomes of the project.</p> <p>Flexibility – it is important to realise that project activities may take longer than you have planned.</p> <p>Understanding – familiarise yourself with the history of local Aboriginal issues and the current issues of importance to the community.</p>	<p>Diversity – Tasmania's Aboriginal community, is geographically, politically and socially diverse.</p>	<p>Decision-making – policies and programs designed for Aboriginal people require early input from the Aboriginal community</p> <p>Consultation fatigue –Aboriginal people can be over-consulted, particularly where projects are disjointed or project responsibilities are re-allocated.</p>
<p>Oxfam Close The Gap Steering Committee</p>	<p>Partnership does not involve one party independently deciding on a course of action and presenting it to the other for ratification.</p> <p>Requires clarity of roles.</p> <p>Respect and mutual understanding between all partners.</p>	<p>An approach that relies only on advisory boards and 'closed door' decision making is antithetical to genuine partnership.</p> <p>Partnership is only possible if both sides have the necessary capacity and capabilities.</p>	<p>Partnership must be an ongoing process of negotiation rather than just one-off consultation, and the partners and their roles clearly defined.</p> <p>Process of review and evaluation.</p> <p>Partnership for Indigenous health equality must allow Aboriginal and Torres Strait Islander communities to have an influence at all stages of the process.</p>

Table 2: Engagement mechanisms for selected policies and frameworks

	Power and decision making	Cultural understanding and respect	Responsibility and accountability	The practice of engagement	Capacity development
PM's Indigenous Advisory Council, 2013 – current (DPMC 2013)		Engagement with First Peoples incl. existing advocacy bodies.	Annual letter to Prime Minister.	Membership criteria for IAC specified.	Not specified.
National Compact			Reporting through CTG mechanisms, to Parliament, via Health Performance Framework etc.	Funding for National Aboriginal and Torres Strait Islander Health Equality Council, The Lowitja Institute, NCAFP.	
Victorian Aboriginal Affairs Framework, 2013–18 (State Government Victoria 2013)	State-wide and regional partnership and engagement structures. LINS, of which there are 39 across Victoria (with more than 1600 Aboriginal participants). Ministerial Roundtables (3 per year). Sub-regional forums	Engagement with Traditional Owners Groups.			
WA Consulting Citizens – Engaging with Aboriginal Western Australia, 2005 – current (Dept Indigenous Affairs 2005)	Mutual agreement of goals. Govt to seek advice from Aboriginal organisations.	Understanding the region. Seek and listen to advice about who and how to consult. Awareness and respect for cultural protocols.	Clarity about Charter, roles and limitations, capacity.	Action planning. Use of existing networks. Guidance for establishing relationships.	

SA Govt Cultural Inclusion Framework	Culturally inclusive governance.	Cultural inclusion checklist.	Feedback strategies. Annual report on governance strategies.	Action plan for stakeholder consultation strategies.
NSW Government OCHRE Strategy	Power sharing arrangements. Development of agreed goals.	Allows community to determine local governance processes to some degree.	Evaluation processes built in.	<p>Staged process of governance development and engagement.</p> <p>Accords developed between community orgs and government.</p> <p>Assessments of constraints to capacity strengthening.</p> <p>Establishments of common understandings of community and government processes.</p> <p>Capacity strengthening for individuals, families, organisations and government.</p>
Queensland Govt Mina Mir Lo Ailan Mun (DATSIPD 2000)		<p>Identified communication techniques and set of cultural communication cues.</p> <p>Always seek co-operation from the Community Council before going to a community.</p> <p>Familiarise yourself with behavioural protocols and respect religious protocols.</p> <p>Avoid intruding on significant cultural events.</p>	<p>Be committed to the process and prepared to devote time and resources to it.</p> <p>Continually monitor and evaluate the consultation process in order to improve methods and communication.</p>	Strategies for consultation specified.

Power and decision making		Cultural understanding and respect	Responsibility and accountability	The practice of engagement	Capacity development
The Tasmanian Aboriginal Community: A Guide to Engagement	The Office of Aboriginal Affairs oversees the implementation of the Overarching Bilateral Indigenous Plan for Tasmania. The plan sits under the National Indigenous Reform Agreement established to frame the task of 'Closing the Gap' in Indigenous disadvantage.	The Tasmanian Government works closely with the Aboriginal community through organisations such as the TAC and the ALCT.			
	Oxfam Close The Gap Steering Committee (Oxfam Australia 2010)	Advocates for national, state/territory and Regional/Local partnership structures.	Establishment of accountability, and monitoring and evaluation frameworks.		Recognises the need for building the capacity and capabilities of Government and Aboriginal and Torres Strait Islander communities.



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