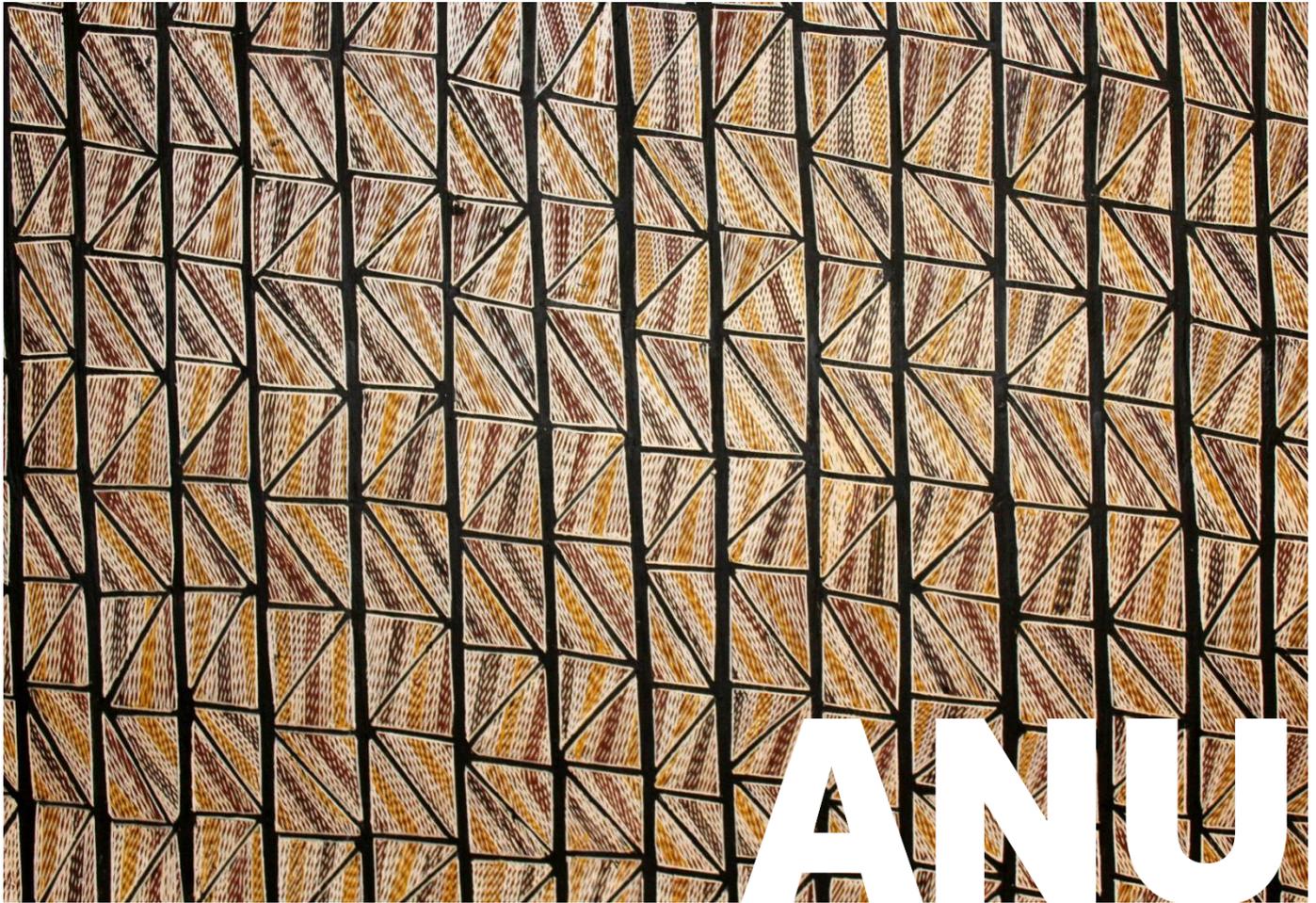




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CODESIGN IN THE INDIGENOUS POLICY DOMAIN: RISKS AND OPPORTUNITIES

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Centre for
Aboriginal Economic
Policy Research
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Codesign in the Indigenous policy domain: Risks and opportunities

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Abstract

In recent years, the requirement for First Nations participation through codesign has emerged as a key prerequisite of policy legitimacy in the Indigenous policy domain. In this Discussion Paper, the mainstream literature on codesign and collaborative governance is surveyed and considered, as a means of identifying the essential characteristics of effective codesign policy and program processes. The literature survey identifies two strands: one that asserts the merits and opportunities inherent in policy and program codesign, and a second that highlights the risks and challenges. Two nationally significant current and ongoing Indigenous policy development processes that have been described as codesign processes are then analysed and assessed. The paper concludes that codesign involves more than consultation, and ideally requires shared decision-making. Further, in relation to policy codesign processes, the literature and cases studies suggest the core design features that are required to ensure the processes contribute to creating public value and maintaining trust in democratic public policy institutions.

Keywords: Codesign, collaborative governance, deliberative democracy, shared decision-making, Indigenous policy development, public policy, policy design, Closing the Gap, Indigenous Voice.

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Acronyms

AEC	Australian Electoral Commission
ANU	Australian National University
APONT	Aboriginal Peak Organisations Northern Territory
APS	Australian Public Service
CAEPR	Centre for Aboriginal Economic Policy Research
COAG	Council of Australian Governments
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs (Australian Government)
NACCHO	National Aboriginal Community Controlled Health Organisation
NIAA	National Indigenous Australians Agency

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Introduction

The adequacy of consultation has been the essential benchmark criterion of the adequacy of policy engagement and development in the Indigenous policy domain over the past four decades, for both policymakers and Indigenous interests. Without adequate consultation, policy initiatives were widely considered illegitimate and third rate. Over time, particularly in relation to sensitive or contentious policy proposals, policymakers and governments invested ever increasing resources in consultation processes. Paradoxically, as the focus on consultation expanded, the expected returns to policymakers diminished, with increased levels of scepticism, distrust and outright antagonism emerging from the interest groups and communities consulted.¹ Examples of this dynamic include the Indigenous response to consultations related to the former Labor Government's Stronger Futures in the Northern Territory initiatives and Indigenous responses to the consultations regarding the current Australian Government's introduction and expansion of the Cashless Debit Card across a number of regions in remote Australia.² Hunt (2013) discusses the different expectations of Indigenous people and governments in relation to consultation.

Within the Indigenous policy domain in the last seven years (coinciding with the term of the current Australian Government), there has been a striking shift of focus away from justifying policy merely on the results of consultation. In its place, there has been an increasing and ultimately widespread focus on the concept of 'codesign'. This has emerged without fanfare, and with very little explanation from government or policymakers as to why they have made this shift. One explanation is that, in the minds of government policymakers, the shift to codesign may merely be a shift in terminology, and/or a minor change at the margin. Alternatively, the shift to codesign is arguably part of a wider ongoing shift within public administration in liberal democracies towards citizen-centric design in response to rising expectations of citizens.³ Whatever the explanation, a focus on codesign has become ubiquitous in the formal language used in relation to all major Indigenous policy initiatives. For example, the management plan issued by the Australian Government (2020) in relation to the COVID-19 pandemic includes the following principles:

Aboriginal and Torres Strait Islander people must be involved in assessing COVID-19 risk and responses in Aboriginal and Torres Strait Islander communities...

Clinical and public health responses to COVID-19 outbreaks in Aboriginal and Torres Strait Islander communities should be collaborative, but responses must ensure local community leaders and communities are central to the response.

¹ One potential indicator of trust in government is voter turnout. The Australian Electoral Commission (AEC) (*n.d.*) review of voter turnout for the 2016 election noted that mainstream voter turnout at 91% was the lowest in 90 years, and their analysis suggested that 'a decrease in elector confidence both in the electoral system and politics in general could be contributing to the decrease in voter turnout' (AEC, *n.d.*, p. 21). Indigenous voter turnout was estimated to be much lower than mainstream figures, dropping from 60% in 2013 to 52% in the 2016 election (AEC, *n.d.*, p. 15).

² Stronger Futures was the Labor Government's reframe of the Northern Territory National Emergency Response initiated in 2007. The Stronger Futures consultation process is described in Australian Government Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) (2011), and one of the more influential Indigenous responses which critiqued the consultations undertaken is included in Aboriginal Peak Organisations Northern Territory (APONT) (2011, pp. 12–14). In relation to the expansion of the cashless debit card, there are numerous accounts of Indigenous concerns about the inadequacy of consultations. For examples, see Klein & Razi (2017) and Martin (2019).

³ For example, the 2019 Review of the Australian Public Service (APS) argued: 'The APS needs to work meaningfully and effectively with people, communities, organisations and other governments, with an emphasis on codesign and collaboration, to achieve greater impact and more durable solutions' (Commonwealth of Australia, 2019, p. 23). In contrast, the more realist approach of the Productivity Commission (2017) made mention of codesign as one approach to services provision in its 2017 report on Human Services reform (p. 82), yet made no mention of it in the chapter on human services in remote Indigenous communities (Chapter 9), preferring to emphasise place-based service delivery rather than codesign.

These responses should be co-developed, and co-designed with Aboriginal and Torres Strait Islander people, enabling them to contribute and fully participate in shared decision-making.

Despite the shift in emphasis by governments, there has been limited rigorous commentary from governments and Indigenous interests respectively as to why codesign is seen as important and worth pursuing in Indigenous policy contexts. Perhaps the most comprehensive discussion is in the report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (Joint Select Committee) (2018, paras. 2.205–2.254). Intuitively, codesign aligns with the long-standing aspirations of Indigenous people for greater control over their lives, for community control of service delivery, for self-determination, for autonomy, and for greater recognition of their unceded sovereignty. Indeed, the shift towards codesign by governments may be an attempt to meet Indigenous interests half way while avoiding discussion of politically loaded concepts such as sovereignty. In his book *Aboriginal autonomy*, Coombs (1994, p. 21) identified a similar process in play in the period 1967 to 1994 whereby governments adopted various formulations to avoid discussion of the substantive issue of the aspiration for autonomy. On the face of it, a substantive commitment to policy codesign is akin to sharing sovereign powers over the relevant policy domain. I discuss this in greater detail below. Notwithstanding the potential opportunities, the paucity of rigorous commentary means there has been little attention paid to the risks of codesign for both governments and Indigenous interests.

While codesign in service delivery or the program level is perhaps more prevalent, I seek here to unpack the concept of codesign in the Indigenous policy context, focusing primarily on the issue of *policy codesign*. My purpose is to consider in a more methodical fashion the respective aspirations, expectations and understandings of policymakers on one hand and First Nations interests on the other. The rationale for limiting the focus of this paper to the design of policy derives from the potentially wider and more significant impact of policy (for better or for worse) both in terms of span of impact, and its ongoing impact by virtue of its contribution to changed institutional structures. The focus on policy codesign is not meant to signify that program codesign is unimportant. Indeed, it is conceivable that a process of organic adoption over time of codesign at the program level might ultimately be more significant and have a greater impact than policy codesign.

The paper begins with an overview of the literature on codesign in policy contexts.⁴ I follow this with a short consideration of codesign in the context of the Indigenous policy domain, and in particular, the relationship of codesign to other concepts in use. I then proceed to consider two of the most prominent national policy processes currently underway in the Indigenous policy domain in order to assess the nature of codesign in practice and to identify likely challenges and opportunities.

A brief review of the literature on codesign

Tracing the development of the concept of ‘codesign’ in the academic literature as it applies to public policymaking requires a focus on the actual processes involved, however they are described. Multiple streams of prior academic research and inquiry have merged to form the current intellectual foundations for codesign in public policy settings.

The term ‘codesign’ appears to have emerged from Scandinavian traditions of participatory design as well as fields related to architecture, and urban planning (Blomkamp, 2018, p. 731). Blomkamp distinguishes codesign from related concepts such as ‘community engagement’, ‘co-production’, ‘participatory democracy’ and ‘human-centred design’. She argues that the essential components of any codesign process for policy are a ‘design-led process’, the use of ‘participatory design principles’ and the use of ‘practical tools’ (Blomkamp, 2018, pp. 731–735). In focusing on these components, Blomkamp is implicitly emphasising that a focus on the design elements

⁴ Much of the literature spans both policy and program codesign.

of a policy is the essential or necessary condition for codesign, a more narrow focus than many other researchers adopt.

In their introduction to the recent edited volume, *Co-production and co-creation: Engaging citizens in public services*, Bransden et al. (2018, pp. 3–5) ‘focus on co-creation and co-production, roughly defined⁵ as a joint effort of citizens and public sector professionals in the initiation, planning, design and implementation of public services.’ The term ‘co-production’ derives from the work of economist Elinor Ostrom, which focused on the management of common-pool resources, whereas the term ‘co-creation’ has emerged from the world of commerce, and only recently been adopted in public sector contexts (Bransden & Honingh, 2018, p. 9).

There is also a substantial academic literature related to ‘deliberative democracy’ (Curato et al., 2017; Dryzek, 2010; Hartz-Karp et al., 2018; Pickering & Persson, 2019), ‘participatory democracy’ (Pateman, 2012) and ‘deliberative civic engagement’ (Nabatchi et al., 2012). This literature is clearly related to the practice of codesign and co-creation, but is not always entirely isomorphic with it.

Similarly, much has been written on ‘collaborative governance’. For example, Ansell and Gash (2007) reviewed 137 case studies of collaborative governance. The majority of these case studies related to activities at the program or project level, predominantly in the environmental and communal resource management sectors. Nevertheless, the diversity of collaborative activities examined was striking. Ansell and Gash (2007) defined ‘collaborative governance’ as:

A governing arrangement where one or more public agencies directly engage non-state stakeholders in a collective decision-making process that is formal, consensus oriented, and deliberative and that aims to make or implement public policy or manage public programs or assets (Ansell & Gash, 2007, p. 544).

The relevant academic literature encompasses multiple terms for the same or similar activities: codesign, co-production, co-creation, deliberative democracy, participatory democracy, collaborative governance to name just a subset of the terms used in this way. While it is clear that these activities can involve quite different processes, they are similar insofar as they seek to inject greater citizen involvement into the policymaking process.

Not only are there terminological challenges in establishing descriptive consistency around collaborative and citizen-centric activities in public policy contexts, but there are also similar, overlapping, but substantively different, policy approaches in the real world that derive from different philosophical objectives and/or that have different policy drivers or objectives. As Dudau et al. (2019, p. 1578) point out, these overlapping but different concepts are polysemic (i.e. capable of multiple meanings or interpretations) and are thus inherently difficult to define in the abstract. Or to put it another way, given that the contexts and loci of policy activity (geographically, ideologically, chronologically) are never identical, the quest for definitional and typological classification of collaborative activities in policy contexts will always be challenging and problematic.

For our purposes, ‘codesign’ can be considered a close equivalent of ‘collaborative governance’ as defined by Ansell and Gash (2007), of ‘participatory democracy’ as discussed by Pateman (2012) and of ‘co-production and co-creation’ as used by Bransden et al. (2018) noting that our primary focus is on policy and not program or project level initiatives. Each of these concepts share a common characteristic – shared decision-making. Accordingly, in this paper, these terms, and others like them such as ‘co-governance’, and ‘civic participation’, are assumed to be, or be equivalent to, different forms of codesign. Of fundamental importance for the

⁵ In a separate chapter, Bransden and Honingh (2018) consider a range of definitional issues, noting that even the terms co-production and co-creation are synonyms for other widely used terms such as collaborative governance, participation and civic engagement. They propose that ‘co-production’ concerns the design and implementation of a service, whereas ‘co-creation’ is about the initiation and/or strategic planning of a service. For my purposes, I use both terms interchangeably as generic synonyms for ‘codesign’ (Bransden & Honingh, 2018, p. 14).

argument in this paper is the proposition that codesign is more than mere consultation. It involves shared decision-making about the design and implementation of policy.

The underlying reasons for the widespread take up of substantive forms of collaborative governance across the world are unclear. Dudau et al. (2019, p. 1582) point to the broader societal shifts that underpin greater use, acceptance and indeed expectation of codesign in public policy formulation:

The move towards codesign was of course facilitated by a social turn ... towards crowd-sourcing solutions to social problems, as part of a wider decrease of trust in technical and professional expertise, traditionally the source of evidence for policy and service design.

Brandsen et al. (2018, pp. 3–5) place the recent efforts for greater involvement and participation in the design and implementation of policies as a response by governments to the emergence of an array of challenges in the delivery of public services. These include pressures to deliver more efficient and effective services and outcomes, and to counter emerging trust deficits in democracy and/or governments. They also note that technological and cultural changes have made co-production and co-creation easier to implement. Interestingly, neither of these studies makes the argument that the reason for the shift to collaborative forms of governance is that they work, or that they produce increased public value (however defined).⁶ I return to this issue below.

There are two broad (and inevitably intertwined) strands in the literature on policy codesign.

The advantages of codesign

The first strand emphasises the potential advantages and benefits of codesign in both normative and instrumental (positive) terms. Thus Ansell and Gash (2007, p. 547) contrast the potential benefits of collaborative governance (codesign) with managerialist patterns of policymaking where policymakers make unilateral decisions based on closed decision processes. MacArthur (2016, p. 634) lays out, not uncritically, both the instrumental and normative arguments in favour of greater participation. The instrumental argument rests on the presumption of potential improvements in policy effectiveness. The normative case claims that there are democratic deficits embedded within elite-dominated policy forums that collaborative governance approaches can neutralise. Or to turn this around, proponents of collaborative governance see it as a means of improving democratic outcomes by empowering less powerful or influential interests within the polity. Ansell et al. (2017) argue that codesign (their term is 'collaborative policymaking') offers a mechanism to address widespread implementation failure in public policy contests by improving the quality of policy design:

Multi-actor collaboration through joint deliberations will not only help to convey valuable knowledge about the nature and character of the [policy] problem and the kinds of solutions that will work on the ground. It will also spur the development of innovative policy solutions that can break policy deadlocks and build joint ownership for the realisation of these solutions (Ansell et al., 2017, p. 469).

A strength of their paper is that it addresses head-on the reality that policy design is an inherently political process, and is not merely technocratic. Given this reality, they see merit in the use of collaborative mechanisms to ensure, inter alia, that policy issues are considered from, and indeed incorporate, multiple perspectives. They also acknowledge that given that policy design is invariably shaped by political factors, collaboration ought not be equated with a search for unanimous consent, but should form the basis to establish common ground that leaves room for dissent and grievance (Ansell et al., 2017, pp. 473–475).

⁶ There is a considerable literature on the concept of public value, which I am not seeking to engage with in this paper. See Alford and O'Flynn (2009) for a review of competing perspectives and the most salient issues related to the concept of public value.

Dudau et al. (2019) conclude that ‘value co-creation’ is at the core of policy and service design, and that this is ‘negotiated and adjusted through interaction between multiple identities ... and relationships invoked in codesign, co-production, co-innovation and the co-evaluation of public services.’ (Dudau et al., 2019, p. 1590). Trischler et al. (2019, p. 1596) make a similar point. Other research, such as Dryzek (2010), Fung (2003, 2006), and Pateman (2012), can also be situated within the strand of research that emphasises the benefits of codesign in producing public value.

An important Australian example of research within this strand focused on Indigenous codesign in environmental management examines 21 case studies of environmental management and concludes that engagement involving Indigenous governed collaborations or Indigenous co-governance provide better prospects for the integration of Indigenous ecological knowledge and western science in the management of social-ecological systems (Hill et al., 2012). See also Dreise and Mazurski (2018) for an Australian-focused literature review and case study advocating codesign in relation to evaluation and research in Indigenous contexts.⁷

The risks in codesign

A second strand in the codesign literature points to and emphasises the challenges and risks inherent in the use of codesign processes in policy contexts.

In an early paper, focused on the co-management of natural resources, Singleton (2007) explores a number of scenarios that are tangential to, but of continuing relevance to effective codesign processes. She starts from basic regulatory theory, and considers the conditions under which resource co-management is likely to result either in successful collaboration amongst a number of private interests oversighted by a minimalist regulator, or ‘capture’ of the regulatory agency by private or special interests. She concludes that collaboration is enhanced in circumstances where there is an effective and independent judiciary, reinforcing regulatory autonomy, and strong accountability and transparency. Singleton’s research is focused not on the design of policy, but on its implementation in circumstances where government (the regulator) has devolved responsibility to local interests. What makes her research important is that it explicitly deals with circumstances where the ‘community interest’ is not homogenous, and in fact where there are multiple community interests. Yet in the vast majority of the literature on codesign, the implicit assumption is that the community interest is homogenous and can be easily determined and articulated. This is a particularly problematic assumption in the Australian Indigenous policy domain (Westbury & Dillon, 2019, pp. 35–36). Singleton’s policy conclusions regarding independent regulation and transparency are likely to have particular relevance and utility in codesign processes in the Indigenous policy domain. I return to this issue below.

Ansell and Gash (2007) provide a detailed assessment of key constraints on the effectiveness of co-design processes. They identify power imbalances between stakeholders, including the absence of effective organisational infrastructure (advocacy organisations) and skill and expertise deficits, as crucial factors in undermining effective collaboration. Similarly, they point out that the history of stakeholder interactions (whether positive or negative) will influence the incentives to participate and the potential for successful collaboration. So too does the institutional context within which collaborative decision-making is expected to take place influence outcomes. For example, they point out (2007, pp. 555–556) that the process must be open and inclusive and that ‘weak or non-inclusive representation ... threatens to undermine the legitimacy of collaborative outcomes’.

⁷ A series of Indigenous related articles published in a special issue of the Canadian journal *Anthropologica* in 2005 focused on co-management of resources. Co-management is arguably a direct forerunner of codesign. The volume explores the very same issues that span both strands in the codesign literature. See in particular Feit, 2005; Mulrennan & Scott, 2005; Nadasdy, 2005; Spaeder & Feit, 2005.

Trischler et al. (2019, p. 1596), point to previous research suggesting that ‘the effectiveness of codesign is dependent on its process, including which users are involved, and how their involvement is facilitated’. Duda et al. (2019) outline the case for scepticism regarding the utility of codesign. They begin by pointing to the polysemic nature of the ‘co-’ concept, and question the intuitively attractive and widespread assumption that codesign (and co-production and value co-creation) ‘necessarily leads to added value’ (2019, p. 1578), citing recent evidence (Steen et al., 2018) that challenges that assumption.

In perhaps the most direct challenge to the near ubiquitous unquestioning optimism surrounding codesign, Steen et al. (2018) outline the potential ‘dark side’ of codesign. The authors identify and discuss seven potential negative consequences that are worth summarising.

- *The deliberate rejection of responsibility.* ‘[Codesign can be] a cover for minimising governments’ responsibilities and accountability in a context of scarcity of financial resources in the public sector’ (Steen et al., 2018, p. 285).
- *Failing accountability.* Codesign may blur or remove clarity over responsibilities for outcomes.
- *Rising transaction costs.* ‘A wider objection against collaborative governance is that it comes with high transaction costs, including process costs related to information asymmetries between actors, information seeking and sharing; ... implementation costs ... and costs associated with participant behaviour’ (Steen et al., 2018, p. 286). Refer also to MacArthur (2016, pp. 631–632) who points to the challenges of poor design and limited local capacity in the establishment of models of greater community engagement.
- *Loss of democracy.* According to Bovaird (2007, p. 856) ‘the redistribution of power among stakeholders that comes along with co-production “calls into question the balance of representative democracy, participative democracy, and professional expertise”’ (Steen et al., 2018, p. 286). On the other hand, the authors note that traditional forms of public sector activity are usually not assessed against such high abstract democratic ideals.
- *Reinforced inequalities.* ‘...unequal power positions – in terms of formal position, knowledge, expertise, resources or ability to set the rules of the co-production game – will pose barriers for partnership and affect the collaboration. It may indeed allow stronger parties to exercise power over or increase the dependency of weaker parties’. Singleton (2007, p. 18) notes that formalising institutions of community management (a likely outcome of policy codesign processes) may harden existing inequalities or may create new ones. See also Young (2003).
- *Implicit demands.* Vulnerable community members may be pressured to participate in codesign in order to access services. See also MacArthur (2016, p. 632).
- *Co-destruction of public value.* If codesign processes do not meet expectations, trust in public policy and service delivery may fall rather than rise. Moreover, there are risks such as ‘the potential misuse or manipulation of user input by government officials for their own ends, for example by manufacturing support for their own policy agenda’ (Steen et al., 2018, pp. 289–290). Refer also to MacArthur (2016, p. 638) who identifies the possibility of merely symbolic as opposed to substantive commitment by policymakers to the codesign process.

Steen et al. (2018, pp. 290–291) conclude that unquestioning optimism in relation to collaborative governance is dangerous. They acknowledge the potential benefits, but argue that assessing the potential downside forces us to pose more critical questions when looking into the practice of codesign, including who is included and excluded, who benefits and how power is distributed. These are the key questions at the core of politics in any society, and serve to remind us that codesign in public policy settings is by its very nature political in its genesis and its execution.

Empirical evidence

Given the dual streams in the literature, identifying both the potential benefits and downsides of collaborative governance/codesign, the obvious question raised relates to the empirical evidence base in the literature. Perhaps predictably, this evidence base is limited.

Jo and Nabatchi (2018, pp. 234–236) note that the empirical evidence base in support of the more general theorised benefits of co-production ‘is relatively weak’. And so too is the evidence base for the supposed empowerment effects of co-production on communities. Loeffler and Bovaird (2016, p. 1016) reach a similar conclusion. Pincock (2012, p. 156) too concludes that the evidence base in relation to the narrower impact of deliberative process on citizens’ capabilities is mixed and not well connected to the normative theories from which the hypothesis emanates. To generalise from a statement Pincock (2012, p. 156) makes, in relation to the empirical evidence surrounding collaborative governance, the sceptics remain unconvinced and advocates have trouble accounting for ‘where, when, why and how’ the positive benefits of collaboration can be realised.

A potential reason for these uncertain empirical outcomes in policy contexts is that collaborative processes, like most policy initiatives, have multiple objectives across multiple dimensions. Moreover, unlike traditional policymaking, the goals of the various codesigners may be different and they may assess the outcomes differently. Policy objectives are often not articulated formally, and are overlaid with multiple notional or putative rationales that in turn can be assessed from multiple disciplinary perspectives. Moreover, the collaborative processes are themselves designed and shaped in multiple and varied ways in a multitude of political and policy environments and contexts. It is not surprising that the evidence is mixed, and that the collaborative ‘moment’ engenders multiple responses and interpretations, even amongst informed observers. We can safely assert that the policy space of collaborative governance and codesign is deeply fragmented (Nabatchi, 2012, pp. 4–5) and is unlikely to produce uniform outcomes independent of the political, social, economic and cultural context that shaped its establishment and its ongoing operation. Or as Weiksner et al. (2012, p. 269) observe, commenting on the indeterminate empirical evidence relating to the benefits of collaborative governance approaches:

These mixed results, along with critics’ concerns ... suggest at least one sure conclusion: Not all deliberative processes are created equal in terms of their ability to generate specific outcomes.

As a result, in order to better understand the dynamics of collaborative approaches, it will be necessary to narrow the focus and consider or highlight more closely specific elements of collaborative approaches.

The design of codesign processes

One theme to emerge from the literature is that a key contributor to the efficacy of collaborative approaches aimed at shaping broader-based policy outcomes is the design of those collaborative processes themselves (Fung, 2006; Nabatchi, 2012; Pincock, 2012; Singleton, 2007). Key design issues identified in the literature as potentially significant include factors such as the inclusivity and representativeness of participants, demographic legitimacy of the process, and the deliberativeness of the process. Importantly, these design choices are not necessarily static and linear, but are usually made through iterative and integrative processes influenced by numerous other factors. Moreover, design choices are not merely matters of *process design*, but encompass *systems design*, that is, choices that shape the overall structure of ongoing collaboration (Weiksner et al., 2012, pp. 269–270). An important feature of policy design is that it creates the framework for ongoing engagement and negotiation between government and the relevant citizenry. That framework (or system) is a crucial driver of outcomes (for better or worse) from the codesigned policy.

In an important contribution, focused primarily on the democratic potential of participatory and deliberative governance approaches, Archon Fung (2003) lays out the diversity of design choices available under policy related collaborative processes, and explores the impact of these design choices on ten functional outcomes. This in effect establishes an analytic template that could inform comparative analysis of different case studies. In a subsequent contribution, Fung (2006) develops a framework that explores the variety of participation along three separate dimensions: who participates; how participants communicate; and the link between participative discussions and policy or public action. These three dimensions can be conceptualised as three axes, which in turn create an institutional design space ('the democracy cube') in which all participatory mechanisms are positioned. Fung then uses this framework to consider three democratic values (legitimacy, justice or political equality, and effectiveness). Particular collaborative mechanisms will not necessarily focus equally on each of these values. Fung's analytic framework thus allows policy analysts to assess and compare different collaborative approaches, revealing the democratic values most likely to be strengthened by the mechanism. Similarly, the framework is potentially of assistance to designers of collaborative policy approaches in giving priority to their primary objectives in terms of democratic values.

One important implication of Fung's analytic frameworks is to focus attention squarely on the policy outcomes sought by particular collaborative mechanisms. However, Fung's major contribution is not so much at the level of process design, but at the level of systems design. His vision is directed to expanding our understanding of the nature of democracy. In particular, he notes that participatory approaches are not alternatives to aggregative democracy (elections and representative institutions), but are complementary. As he states in his conclusion (Fung, 2006, p. 74):

Citizens can be the shock troops of democracy. Properly deployed, their local knowledge, wisdom, commitment, authority, even rectitude can address the wicked failures of legitimacy, justice and effectiveness in representative and bureaucratic institutions ... [the appeal of participative democracy] does not lie primarily in shifting sovereignty from politicians and other political professionals to a mass of deliberating citizens ... Instead, these cases mobilise citizens to address pressing deficits in more conventional, less participatory governance arrangements.

Fung presents this vision as predominantly both a normative aspiration, and through a range of case studies, an instrumental reality. He qualifies this both through careful choice of language and more explicitly by warning against 'naïve and untempered enthusiasm for public participation'. He states (Fung, 2006, p. 67):

There may indeed be contexts in which public empowerment is highly desirable, but there are certainly others in which a consultative role is more appropriate for members of the public than full 'citizen control'.

He goes on to identify three elements of institutional design that are important in understanding both the potential and the limits of participatory approaches: 'Who participates? How do they communicate and make decisions? What is the connection between their conclusions and opinions on one hand and public policy and action on the other?' (Fung, 2006, p. 67). His caveats notwithstanding, he makes a powerful case for exploring the potential of collaborative governance, albeit in shaping it to fit the particular design challenges and opportunities inherent in the context in which it is being considered or pursued. Fung's case might be characterised as pertaining to the supply of codesign opportunities. By the same token, it is also the case that there must be a substantive (as opposed to rhetorical) demand for codesign from the citizenry. See Hartz-Karp et al. (2018) for a discussion of these latter issues.

One further, and important, issue related to the parameters shaping the form and even existence of collaborative governance and codesign institutions relates to the political context in which collaborative governance mechanisms and approaches exist. As noted above, codesign in public policy settings is by its very

nature political in its genesis and its execution. This raises the obvious question, what are the explicitly political drivers that lead governments and policymakers to establish collaborative governance mechanisms? Most of the academic literature on collaboration is silent on this point, and merely either assesses the merits of the prospective adoption of collaborative approaches, or analyses the outcomes of existing collaborative mechanisms. However, there is a gap. How and why are codesign mechanisms designed? Who and why decides to establish a collaborative approach? The answer of course is to be found in the enormous literatures on policy development and formulation, political power, partisan politics and the like. Consideration of these topics is beyond the scope of this paper. Nevertheless, the ubiquity of politics suggests that it will be important in any discussion that seeks to understand the potential consequences and outcomes of particular collaborative governance approaches to look beyond description, and to seek to assess underlying motivations and drivers. This is certainly likely to be the case in assessing codesign in Indigenous policy contexts.

The philosopher Iris Marion Young (2003) explores and indeed extends the issues relating to the design of codesign processes and the associated political contexts at a more theoretical level in her constructed dialogue between a deliberative democrat and an activist. Hers is an important contribution, making the case for a number of propositions, *inter alia*:

- that deliberative processes whose proceedings are not public, accountable and inclusive are illegitimate
- formal inclusion in deliberative forums is not adequate where informal constraints to such inclusion exist
- most of the time, politics operates under constrained alternatives that are produced by and support structural inequalities which in turn leads to deliberative processes that 'presuppose constrained alternatives that cannot question existing institutional priorities and social structures' (Young, 2003, p. 115)
- the existence of systematically distorted communications within society where citizens 'are deeply influenced by premises and terms of discourse that make it difficult to think critically about ... social relations or alternative possibilities' (Young, 2003, p. 116) may lead to deliberations that are effectively, and unintentionally, closed or distorted.

In essence, Young's argument points to the fundamental tension between participation in deliberative governance processes that have the potential to reinforce existing structural inequalities, and activities that reach beyond deliberation (such as protest and non-violent actions) aimed at removing unjust institutions and laws. She argues that both activities are necessary, and infers that neither is sufficient in itself, and that 'the best democratic theory and practice will affirm them both while recognising the tension between them' (Young, 2003, p. 119).

If Young's analysis is accepted, it raises the prospect that collaborative governance and codesign may be effective in driving incremental reform (within accepted political norms) but may actually increase the risk that desirable reforms and step-changes⁸ are thwarted since they require the parties to the deliberative or codesign process to agree on a change outside current accepted political norms. In other words, the use of collaborative governance approaches as a tool of public policy development may reinforce the pre-existing preference of policymakers to prefer incremental change over step-change⁹, and indeed, act as a disincentive to step-changes that are the essential precondition of substantive structural reforms.

⁸ 'Step-change' refers to policy change that is more than mere incrementalism or gradual adjustment to policy settings.

⁹ See Lindblom (1959) on incremental policymaking. See Atkinson (2011) for a more recent analysis of developments in relation to the ubiquity of incrementalist policymaking.

Summing up so far, this review of the literature, as it speaks to codesign of policy, is necessarily high level and broad ranging. The literature suggests a series of issues that require consideration in any attempt to assess the effectiveness and indeed legitimacy of codesign processes in real world public policy settings. These include:

- the independence and representativeness of the citizen-centric interests
- the degree to which the issues under consideration are explicitly or implicitly constrained
- the levels of transparency and accountability for the outcomes of the processes
- the existence of (and potential adjustment for) systemic power imbalances between the co-designing parties
- the nature and effectiveness of decision-making processes within the citizen-centric groups, and then within the codesigning group.

Moreover, because codesign of policy is inherently political, it is also imperative that arrangements are in place to ensure levels of trust in government are not put at risk, and indeed are sustained.

Codesign in the context of Indigenous policy domain

The Indigenous policy domain comprises complex terrain (Dreise & Mazurski, 2018, p. 5). It extends beyond Indigenous specific policies and programs at the national level to encompass the policies, programs and actions of state, territory and local governments across the nation. Importantly, it also encompasses the effects of mainstream policies and programs at each of these levels to the extent that they affect Indigenous citizens. Moreover, this policy terrain is also shaped by the actions and priorities of Indigenous interests (individuals, corporations, and communities) which reflects Indigenous heterogeneity and thus can vary both spatially and temporally.¹⁰

Further elements related to the concept of collaborative governance and codesign in the Indigenous policy domain are the diverse and in many respects competing narratives that seek to describe and in some cases explain the political relationship of Indigenous peoples to the Australian nation over time. These include concepts such as invasion, dispossession, settler colonialism, paternalism, assimilation, self-determination, self-management, self-government, the rule of law, accountability, structural racism, citizenship and unceded sovereignty.¹¹ The history, meaning and political significance of these concepts, both in the past and the present, shape (in different ways) the latent views of both policymakers and Indigenous interests in their approaches to issues of collaboration and codesign. Such views are unlikely to be openly or fully articulated, and to the extent that they are not, will add further potential complexity to efforts to bring effective codesign and collaborative governance processes into existence. To mention just one example related to levels of mutual trust, the focus over the past two decades on outsourcing and privatising program delivery has seen a major shift in Indigenous specific funding from community organisations to private sector and NGO service delivery organisations (Moran, et al., 2014). This has weakened community capabilities, and community trust in governments at all levels.¹² These sub-optimal trust levels are the foundations that collaboration and codesign processes are now being built upon, and point to the importance of trust enhancing policy innovations such as the Uluru Statement's proposal for a Makarrata Commission (Uluru Statement from the Heart, 2017).

Given this endemic complexity, there are clearly multiple opportunities for codesign and other participatory and collaborative governance initiatives to emerge and create public value, and indeed there have been multiple

¹⁰ See Chapter 1 of Westbury & Dillon (2019, pp. 1–19) for an extended discussion of these issues.

¹¹ The variability in the use of and emphasis on some of these concepts over others arises, at least in part, from the different experiences of colonisation in different places, with resulting differences in local governance arrangements.

¹² See also footnote 1 above.

examples in localised settings of such initiatives over the past few decades. Examples that spring to mind include the previous Council of Australian Governments (COAG) trials aimed at leveraging whole of government coordination along with community partnerships in eight trial communities across the nation (Jarvie & Stewart, 2011), and regional agreements such as the Groote Eylandt Regional Partnership Agreement that operated in two phases from 2008 to 2013 (Agreements, Treaties, and Negotiated Settlements Project, *n.d.*). However, these examples and others like them have invariably been geographically limited, ad hoc and time-limited experiments, and did not signal an across the board policy shift by governments.

A particularly important, yet potentially fraught issue for effective codesign in Indigenous policy contexts relates to the representativeness of First Nations interests. The inherent complexity of Indigenous social circumstances point to potential challenges in ensuring a representative Indigenous voice is heard in any codesign process. Resolving questions of how First Nations are legitimately represented is not an issue that can be determined outside of Indigenous peoples' own contemporary decision-making structures.¹³ Further complexity arises when government officials involved in policy codesign negotiations are themselves Indigenous.¹⁴

Bearing all this complexity in mind, it is not intended in this paper to conduct a comprehensive enumeration or assessment of previous examples of codesign; rather, I seek to highlight, and assess key elements of two significant policy initiatives currently underway in the Indigenous policy domain. The assessment is contingent, because the initiatives are currently being implemented, and thus are subject to change. The analysis has not sought to lay out fully the context in which each of the initiatives emerged and their implementation is not always as transparent as would be ideal for a detailed assessment.

The selected initiatives have been chosen because they involve significant policy formulation issues rather than service delivery or programs. While they happen to be Commonwealth initiatives, the states and territories are also engaged in policy related codesign initiatives.¹⁵ The two selected case studies are:

- the development and ongoing implementation of the COAG Partnership Agreement on Closing the Gap
- the codesign process for a national Indigenous Voice.

Current Indigenous-related codesign policy processes

Closing the Gap

Following sustained advocacy by a community-based campaign under the rubric 'Close the Gap', in 2008, the newly elected Rudd Labor Government instigated, and COAG endorsed, the Closing the Gap strategy. The strategy was formalised under the COAG National Indigenous Reform Agreement (NIRA). The strategy set out a series of targets designed to reduce the inequality between Indigenous Australians and mainstream citizens across a range of social indicators. The NIRA acted as a policy carapace over a series of National Partnership Agreements on different policy sectors. Ten years on it is clear that the strategy has not closed the gap

¹³ See the discussion in the Final Report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples (2018, paras. 2.244—2.249), and in particular the comments of Professor Tom Calma and also Professor Megan Davis which emphasise the importance of legitimacy of Indigenous codesigners in the eyes of First Nations communities.

¹⁴ See Ganter (2016), Lahn (2018), and Althaus & O'Faircheallaigh (2019) on the challenges facing Indigenous public servants.

¹⁵ Other significant policy codesign initiatives currently being implemented at a state and territory level include the legislated Victorian Treaty process, the Western Australian Aboriginal Empowerment Strategy, and the New South Wales Government's OCHRE Plan (Dreise & Mazurski, 2018). Additionally, at the level of program codesign, in the Northern Territory, the Local Decision Making initiative of the Northern Territory Government is re-arranging the shape and structure of service delivery to local communities.

(Commonwealth of Australia, 2020a; Schultz, 2019) and this has driven a desire on the part of both governments and First Nations to devise a better approach.

The following overview is taken from the National Indigenous Australians Agency (NIAA) Closing the Gap website (NIAA, 2020a) and the National Aboriginal Community Controlled Health Organisation (NACCHO) webpage devoted to the National Coalition of Aboriginal and Torres Strait Islander Peak Organisations (henceforth Coalition of Peaks) on Closing the Gap (NACCHO, 2020).

In December 2016, COAG agreed to refresh the strategy given that four of the seven targets were due to expire in 2018, the tenth anniversary of the strategy. From November 2017 to April 2018, the Commonwealth Government convened 18 national roundtable consultation meetings, involving over 1000 participants. A COAG Discussion Paper was released in December 2017 inviting submissions. In February 2018, a Special Gathering of some 64 participants selected by Commonwealth, state and territory governments was convened, and a sub-group of ten of these participants selected to ensure representation from each jurisdiction met with COAG. The Special Gathering issued a formal Statement which called for greater Indigenous involvement in the process of the refresh:

We demand from government a community led, strength based strategy that enables us to move beyond surviving to thriving. The best progress over the last ten years has been in areas where the Aboriginal and Torres Strait Islander community has led the design and implementation of programs from the beginning. We call on Governments to partner with Aboriginal and Torres Strait Islander peoples to understand how to enact these principles in the implementation of initiatives to improve outcomes (Closing the Gap Refresh, 2018).

In October 2018, 14 Aboriginal and Torres Strait Islander community-controlled peak organisations wrote to the Prime Minister, and state and territory First Ministers, proposing a formal partnership to address the Closing the Gap refresh¹⁶. In retrospect, it is apparent that this was a turning point in the process.¹⁷

At its December 2018 meeting, COAG agreed to establish a partnership with Aboriginal and Torres Strait Islander people to finalise the refresh process by mid-2019, and issued a series of draft targets. The Communique issued noted, inter alia:

*Today, COAG issued a statement outlining a **strengths based framework**, which prioritises intergenerational change and the aspirations and priorities of Aboriginal and Torres Strait Islander peoples across all Australian communities [emphasis added]*

*Governments and Aboriginal and Torres Strait Islander representatives **will share ownership of, and responsibility for, a jointly agreed framework and targets** and ongoing monitoring of the Closing the Gap agenda [emphasis added].*

¹⁶ The membership of the Coalition of Peaks spans peak bodies for Indigenous community controlled organisations at national, state and territory levels across the policy areas of health, disability, legal services, media, native title, healing, children and housing. See <https://coalitionofpeaks.org.au/our-members/> for a full list of the 50 plus current members.

¹⁷ It is not clear why the Commonwealth was prepared to change course. It may not be irrelevant that a federal election was called four months later, on April 11, 2019.

The NIAA Closing the Gapsite web (2020a) notes:

Throughout the Refresh process there has been clear demonstration that effective programs and services need to be designed, developed and implemented in partnership with Aboriginal and Torres Strait Islander peoples.

Collaboration, transparency and accountability must be at the centre of the way business is done with Aboriginal and Torres Strait Islander peoples.

In March 2019, COAG formally endorsed the Partnership Agreement that establishes a Joint Council comprised of the Commonwealth, state and territory governments, the Australian Local Government Association, and the National Coalition of Aboriginal and Torres Strait Islander Peak Organisations (COAG, 2019). COAG also agreed that *subject to formal endorsement by COAG*, the Joint Council would finalise the refreshed Closing the Gap targets, review the National Indigenous Reform Agreement, and develop an independent, Aboriginal and Torres Strait Islander led, framework for the comprehensive evaluation and review of progress on the Closing the Gap both nationally and within each jurisdiction. A core element of the Partnership Agreement was a commitment to shared decision-making between governments and Indigenous interests (COAG, 2019, cl. 14).

From September to December 2019, the Coalition of Peaks in partnership with governments led over 70 engagements with Indigenous community representatives regarding the next phase of the Closing the Gap refresh process. A subsequent review of that process found the consultations to be effective in communicating understanding of the processes underway (Two Point Co., 2020).

On January 23, 2020 the Prime Minister met with a group of senior representatives of the Coalition of Peaks to discuss three Priority Reforms agreed in principle by the Joint Council in August 2019. The three reforms are listed in the meeting Communique posted on the Coalition's web page (NACCHO, 2020). They provide for shared decision-making at all levels, building the Indigenous community controlled sector, and ensuring all mainstream agencies undertake structural transformation to contribute to closing the gap. If implemented effectively, these will clearly be significant and substantive reforms.

This appears to be the first formal mention from a Government source of a National Agreement to deal with the agreed Priority Reforms, although the co-chair of the Joint Council, Pat Turner (2019) did make mention of the Coalition's focus on priority reforms and contrasted it with the Government's focus on targets in a speech to the 2019 Garma Festival. In particular, she emphasised the most significant potential sticking point:

Of most concern is that no government has so far been prepared to put new funding on the table. We need new funding from all Governments to support the new Agreement and support the reform priorities in particular.

A Joint Council meeting on July 3, 2020 finalised the negotiations over a new closing the gap framework. On July 24, 2020 the new National Agreement on Closing the Gap came into force. The parties to the agreement were the Commonwealth, state and territory governments, the Australian Local Government Association, and the Coalition of Peaks. The agreement included 16 new and revised targets, and formal and explicit commitment to four Priority Reforms for joint national action.¹⁸

¹⁸ See clause 81 of the National Agreement on Closing the Gap for the Priority Reforms (Australian Governments & Coalition of Peaks, 2020). The fourth Priority Reform relates to increasing the number of regional data projects to facilitate community decision-making.

Commentary

It is too early to make more than a provisional assessment of the codesign process undertaken in relation to the Closing the Gap refresh (Dillon 2020a). Nevertheless, it is already clear that it represents a major turning point in policy development processes in the Indigenous policy domain. While it began as a standard consultation process, utilising appointed interlocutors, the step change occurred with the December 2018 COAG decision to engage with the Coalition of Peaks and to formalise that engagement with a COAG endorsed partnership agreement which was based on shared decision-making principles.

The Coalition of Peaks is substantially independent of government, although many (if not most) of its constituent members are reliant on Government funding, generally through processes where the minister is the formal approver. The codesign process was reasonably transparent, with relevant material available on the COAG, NIAA, and NACCHO websites. However, substantive discussions within the Joint Council are under Chatham House rules, and a review of the operation of the NIRA over the period 2008 to date, undertaken by a working group of Joint Council officials was kept confidential by the Commonwealth during the negotiations.¹⁹ Similarly, the draft Closing the Gap targets which are at the core of the refresh negotiations were prepared and published in December 2018 prior to the Partnership Agreement, and thereafter remained confidential to the parties until they were leaked to the press just prior to the finalisation of the National Agreement.²⁰

The constrained transparency around the refresh process has meant that there was minimal media coverage of the process, and virtually no detailed external critical analysis of the process since the initial publication of the draft targets. One exception was a post on my Indigenous policy blog (Dillon 2018) which sought to identify risks and opportunities arising from the codesign process for Indigenous interests in particular, and to suggest some potential conceptual enhancements to the design of the targets.

The Coalition of Peaks have, through sheer persistence, made great strides in getting Indigenous interests to the policy negotiation table. The most important outcomes (which may take decades to fully emerge) will be the success or otherwise of the Closing the Gap framework in addressing deep-seated disadvantage across the whole cohort of First Nations citizens. In turn, this will be a function of the degree to which systemic and structural transformation of mainstream institutions is substantively implemented and sustained. Much will depend on the quality of the implementation plans yet to be jointly drawn up at state and territory levels, and the degree of substantive commitment to implementing the Priority Reforms by governments. Sustaining the collaboration and shared decision-making through the implementation phase (which will inevitably involve codesign issues) will be crucial. So too will adequate (i.e. increased) financial allocations directed to addressing the new targets be crucial. All in all, to the extent that governments merely give these issues lip service, the refreshed Closing the Gap framework may well operate to reinforce existing exclusionary institutional frameworks.

The design process for a national Indigenous Voice

The proposal for an Indigenous Voice to Parliament emerged from the decade-long national debate over the constitutional recognition of Indigenous Australians. In 2017, a diverse assembly of Indigenous representatives endorsed and promulgated the *Uluru Statement from the Heart* that laid out proposals for such a Voice, as well as for a Makarrata Commission to oversight a process of truth telling (Uluru Statement from the Heart, 2017; Westbury & Dillon, 2019, pp. 64–69). Following an Inquiry and Report from the Joint Select Committee (2018),

¹⁹ The author lodged a Freedom of Information request with NIAA for this document in August 2019 (Dillon, 2019). It was refused in its entirety, and was subsequently released in full in November 2020 (Dillon, 2020c).

²⁰ Dillon (2020a) discusses the Minister's unilateral adjustment of particular targets following the leak.

which reported in November 2018, and recommended a codesign process to design a Voice,²¹ the Commonwealth Government announced on October 30, 2019 that it was initiating a codesign process to establish an Indigenous Voice to government (Wyatt, 2019c).

This was followed on November 8, 2019 with the announcement of the membership of the 'Voice Co-Design Senior Advisory Group', and on January 15, 2020 and March 4, 2020 the establishment of the 'National Co-design Group' and the 'Local and Regional Co-design Group' respectively. The senior Advisory group is co-chaired by Professors Tom Calma and Marcia Langton, both highly experienced Indigenous leaders. The other two groups are each co-chaired by a senior Indigenous appointee along with a senior NIAA official. The NIAA Indigenous voice webpage lists the appointments (NIAA, 2020b), the chairs of each group, and outlines a two-stage process of the development of models for a Voice by the three codesign groups, followed by a national consultation process, before the provision of advice to government.

In total, the Minister appointed 54 individuals to these three groups. Members appear to have been appointed in their individual capacity, although most have one or more affiliations to organisations active in the Indigenous domain. Of the 54 appointees, at least seven are non-Indigenous appointees.²²

Of course, this codesign process did not emerge in a vacuum. The utility of having available a formal advisory mechanism involving Indigenous representatives has been recognised by Australian governments since the 1970s, and a variety of institutional configurations have been adopted and discarded by governments over that period (Commonwealth of Australia, 2020b, Chapter 4). In parallel, the years from 2007 and to the present have seen a convoluted public discussion, based on a series of inquiries and reports, initially over the terms of a proposed amendment to the Constitution to recognise formally the place of Indigenous Australians within the nation, and later over the merits of such a proposal. For detailed accounts of these debates and references to key documents, see the report of the Referendum Council (2017), Lino (2018), and Westbury and Dillon (2019).

Faced with the political reality that opposition from conservative state or territory governments would effectively negate the likelihood of a successful referendum, Indigenous interests sought to find a formula that conservatives could support. This ultimately led to the proposals in the Uluru Statement of 2017 that included a constitutionally enshrined Voice to Parliament (Referendum Council, 2017). However, to the consternation of Indigenous interests, the Turnbull and Morrison Governments, faced with the potential of an internal revolt by conservative elements within the government, refused to countenance even this scaled back proposal.²³ Following the return of the Government at the May 2019 election, and the appointment of Ken Wyatt as Minister for Indigenous Australians, the Government devised a revised strategy on constitutional recognition, albeit one that was not laid out in its entirety in any one speech or document.

The revised strategy had two elements. First, the Government proposed, as outlined above, a complex codesign process to establish a legislated Indigenous Voice to government. This proposed Voice would be legislated, but not constitutionally entrenched (Wyatt, 2019d). It would also provide advice to government (i.e. the Executive), rather than just to the Parliament. Second, the Government has indicated that it is open to progressing a referendum on constitutional recognition of Indigenous Australians at some point in the future, but has yet to lay out a roadmap or pathway to first of all determining the detail of the potential constitutional

²¹ The Joint Select Committee (2018, para. 2.314) recommended: 'In order to achieve a design for The Voice that best suits the needs and aspirations of Aboriginal and Torres Strait Islander peoples, the Committee recommends that the Australian Government initiate a process of co-design with Aboriginal and Torres Strait Islander peoples'.

²² The Indigeneity of appointees is not listed in the media releases announcing the appointments. Appendix A of the Interim Report (Commonwealth of Australia, 2020b, p. 161) provides more detail.

²³ See the discussion of these issues in Markham & Sanders, 2020, pp. 1–5.

amendment, or a timeline for taking it to a referendum.²⁴ While this position has been publicly articulated by both the Minister and Prime Minister, from time to time indications of internal dissension within the Government, over both the proposal to legislate the 'Voice to government' and the recognition of Indigenous Australians in the Constitution, have entered the public domain. See for example Tillett (2019) and Scarr (2020). Consistent with this strategy, the terms of reference for the three codesign groups established by Minister Wyatt are explicit in identifying issues that are out of scope. These include recommendations on constitutional recognition and a potential referendum question, on the establishment of a Makarrata Commission (as recommended by the Uluru Statement), and on agreement making, treaty and truth-telling.

Commentary

On January 9, 2021, Minister Wyatt released the Interim Report (Commonwealth of Australia, 2020b) prepared by the various Advisory groups established in late 2019, and launched a four-month national consultation process (Wyatt, 2019c). The Interim Report outlines the broad architecture of a proposed national Indigenous Voice, to be supplemented by a series of local and regional Indigenous Voices. A relatively small number of key design choices are left open with alternatives laid out. The intention is that these will be finalised once a national consultation process has been completed in mid-2021.

Turning to the structure of the policy codesign process, there are a number of issues worth considering.

First, the use of appointed experts or representatives in their individual capacities to provide advice to governments is both common and widely accepted. However, as pointed out in the literature surveyed above (Young, 2003; Trischler et al., 2019, p. 1596) it does not meet the usually accepted benchmarks for participatory collaboration or codesign insofar as government appointees are not generally considered legitimate representatives.²⁵ Second, the use of terms of reference to set parameters around advisory structures is again standard practice and widely accepted, but it is not consistent with true collaboration for a government to seek to constrain or limit the issues that might be raised. Third, the terms of reference stipulate not only that discussions are confidential, but require that any public discussion about the process is subject to an unpublished media protocol and code of conduct. This effectively precluded ongoing and unconstrained dialogue with both First Nations citizens and communities, and mainstream Australia, while the architecture of the Indigenous Voice was being developed. In effect, the appointment of over 40 of the most prominent Indigenous people had the effect of dampening more public discussion on these issues as the key design elements were being developed.

At a more strategic level, the design of the current process appears excessively convoluted. Arguably it creates the appearance of broad collaboration and policy momentum while actual decision-making remains firmly in the hands of the Government. Moreover, the process adopted inevitably slowed down the policy development process, and thus avoided both an uncontrolled public debate and the concomitant political tensions that would likely ensue within the Government.

There is also a substantial paradox inherent in the Government's policy approach to devising an Indigenous Voice. While ostensibly committed to legislating a codesigned Voice, it has simultaneously allowed, without any

²⁴ On January 29, 2020, Minister Wyatt indicated that the Morrison Government intended to hold a referendum on constitutional recognition by mid-2021 (Taylor, 2020), but after a backlash within the Government (Scarr, 2020), he backtracked, stating 'What I would hope is that we hold it before an election is [sic] it still has to go through Cabinet. It still requires the support of my party' (Wyatt, 2020).

²⁵ Without any apparent sense of irony, the Interim Report notes that 'any [Voice] model with a majority of Australian Government appointed members would not support self-determination and would not be acceptable to Aboriginal and Torres Strait Islander peoples' (p. 39). It also cites the Joint Select Committee on Constitutional Recognition's 2018 report recommendation for members of the Indigenous Voice to be chosen by Indigenous people (p. 102). The report includes an option of up to two Ministerial appointees on the national Indigenous Voice (p. 39), but this may have been included as a straw man to be removed at a later date.

public announcement, and without any institutional replacement, the Prime Minister's Indigenous Advisory Council to lapse (Dillon, 2020b).²⁶

There are two substantive policy issues thrown up by this pre-emptively constrained codesign process. First, the Government's decision to not to seek to entrench an Indigenous Voice in the Constitution. Second, the decision to extend the focus from designing a Voice to provide advice to Parliament to designing a Voice that also provides advice to governments (Wyatt, 2019a, 2019b, 2019c). The Interim Report recommends that the National Indigenous Voice advise both Parliament and the Executive (Commonwealth of Australia, 2002b, pp. 50–54, p. 154). What is as yet unclear is whether the Government will be prepared to accept a National Indigenous Voice advising the Parliament. An Indigenous Voice to the Executive as well as the Parliament would diffuse the political pressure for constitutional reform. To the extent that such an Indigenous Voice is primarily focused on the Executive arm as well as (or instead of) the Parliament, it would be more susceptible to government pressure via legislative and budgetary constraints. There is a case for strengthened advocacy by Indigenous interests directed to the Executive arms of government, but there is also a cogent argument for a supplementary, and constitutionally entrenched, institutional mechanism to ensure parliamentary oversight of the Executive in relation to Indigenous policy is strengthened (Westbury & Dillon, 2019, pp. 70–77). This was the core insight of the proposals in the Uluru Statement.²⁷

Finally, it is worth considering whether the overall architecture of the 'process of codesign to determine options to improve local and regional decision-making and a national voice' (Commonwealth of Australia, 2020b, p. 175) in fact meets the accepted criteria for a codesign process. The terms of reference make clear that the Minister was and is closely involved in the Advisory Groups' considerations; departmental officials co-chair two of the advisory groups; and the terms of reference for each group list issues that are out of scope (Commonwealth of Australia, 2020b, pp. 175–183). Perhaps most significantly, the final advice of the Advisory Groups will be considered and decided solely by Cabinet, and is subject to a full or partial veto. This policy architecture does not amount to 'shared decision-making' nor to a negotiation, but is more akin to 'managed consultation'.

Conclusion

The two Indigenous policy case studies considered in this paper exemplify the opportunities and risks outlined in the international literature on collaborative governance, participatory democracy and codesign reviewed in the first section of the paper.

Taking the most important characteristics of effective codesign identified in the international literature as our starting point, we can restate the following issues as being of central importance to effective codesign in the Indigenous policy domain:

- the independence and representativeness of First Nations interests
- the degree to which the issues under consideration are explicitly or implicitly constrained by governments
- the levels of transparency and accountability for the outcomes of the processes

²⁶ The Interim Report sidesteps this issue, and any assessment of the Council's effectiveness, with the arguably misleading comment that the Advisory Council's membership and terms of reference are under review (pp. 127–128). The reality is that a decision has been taken to cease its operations since new members have not been appointed as of January 2020 when their terms expired. The Interim Report's timidity on this issue hints at the influence of the Government in the drafting of the Report.

²⁷ Moreover, the terms of Indigenous engagement with the Executive and with the Parliament may well differ. In particular, there is misalignment between governments' commitments to shared decision-making in the National Partnership on Closing the Gap, and the clear intention of the architects of the Uluru Statement not to impinge on Parliamentary prerogatives, and thus to ensure that the Voice is purely advisory in relation to Parliament.

- the acknowledgement within the codesign processes of structural power imbalances between governments and First Nations
- the nature and effectiveness of decision-making processes within First Nations interests
- the degree of assurance that negotiations will lead to policy decisions and outcomes consistent with negotiated outcomes.

Over and above these crucial technical issues, the ‘elephant in the room’ in every policy codesign process emerges from the inherently political nature of all significant policy design: what are the political constraints and aspirations of governments, and to what extent are First Nations interests prepared to countenance political compromise?²⁸ Further, since codesign and shared decision-making inevitably involve negotiation, the degree to which there are asymmetries in the political strength or power of the parties, and in the financial and intangible resources available to them to effectively prosecute their agendas and aspirations, will be crucial in shaping expected outcomes.

The case studies confirm that critical assessments of codesign processes both benefit from and require alternative lenses to fully appreciate what is at play. For example, we can view the process through a lens of improving policy outcomes, using criteria such as ‘public value’ and greater inclusion. A second lens views codesign processes as being ultimately political in nature. Finally, codesign can be viewed through a third lens of strategic risks, and in particular, the trade-offs between incremental change and the impetus for more fundamental structural change. Of course, different interests and actors will prefer to adopt and emphasise different lenses and perspectives.

The literature identified one of the issues with codesign as being a tendency towards polysemy or different actors having different interpretations of its core meaning. The case studies take this a step further and provide strong evidence that the Australian Government itself adopts different and arguably very loose interpretations of codesign to suit the circumstances it finds itself in. In particular, the approach being utilised to refresh the Closing the Gap framework comes closer to representing a serious attempt (in terms of the desirable characteristics of codesign outlined above) to include Indigenous interests in an unconstrained policymaking process. The reason is that it essentially involves negotiating with a broad scale, organically constituted, coalition of peak bodies who are themselves generally constituted by a wide range of members. In contrast, the Indigenous Voice case study does not align with best practice on policy codesign, but rather appears to be an effort to constrain policy formulation within parameters and timeframes that are politically acceptable to the Government. The reason is that it seeks to ensure policy opportunities and proposals are considered from within a narrow range of acceptable parameters, and utilises appointed interlocutors as intermediaries and negotiators.

For policymakers, the extensive literature on collaborative governance (only touched on in the review above) and the high-level analysis of the two case studies reinforces the importance of ensuring the design of any proposed policy codesign process is carefully considered to ensure it extends beyond a focus on short-term political objectives if the outcomes are to have any credibility and longevity. Key criteria include ensuring that Indigenous interlocutors are seen as legitimate representatives by the wider Indigenous community; that the terms of the negotiation are open and not closed; that potential conflicts of interest are avoided; and that transparency regarding the process is maximised.

²⁸ This is perhaps the most salient difference between policy and program codesign; program codesign is likely to have less intense political ramifications.

For Indigenous interests, the literature and case studies examined here raise similarly challenging issues, albeit of a different nature. Key issues include:

- how to participate in a codesign process that is located within a political context characterised by power asymmetries and thus an imbalance in negotiation strength
- how to ensure that the heterogeneity of Indigenous voices and experience are reflected in the process
- how to manage the trade-offs between incremental change and structural reform
- how to maintain organisational memory and consistency over time in processes of engagement and negotiation with governmental entities who are supported by phalanxes of bureaucratic resources to which these skills are second nature.

Finally, work on policy codesign under conditions of secrecy increases the risks of co-option, and points to the advantage of transparency in keeping governments accountable. These are key questions that demand careful and explicit consideration if Indigenous aspirations are to be achieved, and importantly sustained in significant policy codesign processes.

In our Policy Insights Paper on overcoming Indigenous exclusion (Westbury & Dillon, 2019, pp. 78–81), Neil Westbury and I reflect on the argument in the Uluru Statement for the recognition of the coexistence of Indigenous sovereignty with the sovereignty of the Crown. We argued that shared sovereignty is ubiquitous in modern societies, and that greater inclusion of Indigenous interests in policymaking and within our institutional frameworks should not be seen as some radical overturning of the absolute sovereignty of the Australian people. In effect, inclusive processes such as codesign are merely a means of sharing sovereignty within the Australian nation differently from the way it is currently shared.

At its core, codesign, implemented effectively, is itself part of the process of shared sovereignty.²⁹ On the assumption that codesign is not a mere rhetorical ploy by governments to shift the terms of policy discussion and assessment in the face of ongoing policy failure, then the growing acceptance and use of codesign in the Indigenous policy domain looks very much like just another of the ways in which sovereignty is shared and distributed within the Australian nation state so as to seek to add public value. How else can it be understood? It is thus quite ironic that a government that has been on the front foot in opposing the proposals advanced by the Uluru Statement has been prepared to champion the concept of codesign, and sometimes to pursue it in practice. Alternatively, if the assumption above does not hold, and codesign is a mere rhetorical ploy, then at its core it will not amount to a form of shared sovereignty, and its attraction as a potential mechanism to add public value and advance Indigenous aspirations falls away.

Looking forward, it will be incumbent on governments to demonstrate that they are serious in pursuing codesign, and this will require a sustained focus on demonstrating to First Nations citizens and indeed all Australians that the processes adopted are legitimate. A key element in doing this must be a commitment to substantive transparency.

²⁹ This is not to say that the Australian Government would acknowledge this to be the case. See Feit (2005) for an analogous argument from a Canadian perspective.

Indigenous interests too have a role (that encompasses and goes beyond self-interest) in keeping governments up to the mark in terms of the legitimacy of codesign processes. They should think hard about participating in codesign processes that are not demonstrably representative, that are not transparent, and that are fundamentally constrained in terms of the options that they might pursue.

The bottom line is that codesign of policy has significant potential, but it is very hard work for both governments and First Nations. If it is not well designed and well implemented, it runs the risk of destroying, rather than creating, public value and the institutional trust necessary for sustaining positive policy outcomes.

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