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EVALUATION AND REVIEW AS DRIVERS OF REFORM IN THE INDIGENOUS POLICY DOMAIN

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ANU

Series note

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Artist's statement

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

Krystal Hurst, Worimi Nation, Creative Director, Gillawarra Arts

Evaluation and review as drivers of reform in the Indigenous policy domain

M. C. Dillon

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Abstract

This Policy Insights Paper seeks to assess the influence of evaluation and review in influencing policy in the Indigenous affairs policy domain. The paper examines four high-level case studies of strategically significant policy issues within the Indigenous policy domain to assess the impact of evaluation in driving reform over time. Proponents of the greater use of evaluation argue that a major problem in the ongoing failure of governments to effectively address comparative Indigenous disadvantage relates to the poor or inadequate use of evaluation. The paper questions the dominant public discourse amongst Commonwealth policymakers on the nature of policy, arguing it is far from linear and mechanistic, and not fully represented by rationalist models. In turn, this makes evaluation of policy initiatives even more challenging. The paper concludes that while there are benefits to evaluation and review, the impact of politics and pervasive structural power imbalances in determining the architecture of strategic policy settings makes policy evaluation and review highly problematic as drivers of policy outcomes and thus as drivers of reform.

Keywords: Evaluation, review, policy, remote housing, income management, native title, political settlement.

Acronyms

ABS	Australian Bureau of Statistics
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
ALRC	Australian Law Reform Commission
ANU	Australian National University
ARHP	Aboriginal Rental Housing Program
ANAO	Australian National Audit Office
APONT	Aboriginal Peak Organisations of the Northern Territory
ARIA	Australian Remote Indigenous Accommodation
ATSIC	Aboriginal and Torres Strait Islander Commission
CAEPR	Centre for Aboriginal Economic Policy Research
CDEP	Community Development Employment Projects
CGC	Commonwealth Grants Commission
CHIP	Community Housing and Infrastructure Program
COAG	Council of Australian Governments
Cth	Commonwealth
DSS	Department of Social Security (Australian Government)
FaHCSIA	Department of Families, Housing, Community Services and Indigenous Affairs (Australian Government)
IA	Infrastructure Australia
ILUA	Indigenous Land Use Agreements
LNP	Liberal National Party
NIAA	National Indigenous Australians Agency (Australian Government)
NPARIH	National Partnership Agreement on Remote Indigenous Housing
NPRH	National Partnership Agreement on Remote Indigenous Housing

NT	Northern Territory
NTA	*Native Title Act 1993* (Cwth)
OEA	Office of Evaluation and Audit (ATSIC)
PM&C	Department of the Prime Minister and Cabinet (Australian Government)
PwC	PricewaterhouseCoopers
RCT	randomised controlled trial
RDA	*Racial Discrimination Act 1975* (Cwth)
SIHIP	Strategic Indigenous Housing and Infrastructure Program
SPRC	Social Policy Research Centre (UNSW)
UK	United Kingdom

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Foreword

As the recently appointed Director of the ANU's Centre for Aboriginal Economic Policy Research (CAEPR), I am keen to see the Centre continue to make a constructive and engaged contribution to the key policy issues facing the nation in relation to First Nations peoples.

Since it was established 30 years ago, the Centre has evolved into a powerhouse of policy-relevant research, and CAEPR researchers have made significant contributions to the Indigenous affairs policy domain in fields as diverse as land rights and native title, employment policy, demography, resource development agreements, community development, welfare and social policy, education, local government, public administration, and more. One of the Centre's strengths has been the diverse disciplinary backgrounds of its staff, including demographers, statisticians, anthropologists, economists, linguists, political scientists, geographers, sociologists and educationists.

A strong unifying element woven through CAEPR's output has been a commitment to policy relevance, seeking to facilitate and support the development of effective policies by governments relating to Indigenous affairs, and seeking to lay out a critical and constructive foundation and evidence base from which First Nations peoples and their organisations can engage with policymakers.

Notwithstanding the successes of the past, I am determined that CAEPR not rest on its laurels going forward.

In 2020, CAEPR is celebrating its 30th anniversary. One of ways in which we are marking this 30-year milestone is the establishment of a new Policy Insights: Special Series of publications, focused on assessing and taking stock of the past 30 years of Indigenous public policy in particular areas, and more importantly, making a rigorous and constructive contribution to the development of policy over the coming decades.

The present publication, authored by an experienced public policy specialist who has a long association with CAEPR, is the second in this series of special papers. It assesses the influence of evaluation and review in shaping policy in the Indigenous affairs domain over time. Proponents of evaluation argue that the poor or inadequate use of evaluation constitutes a major problem in the ongoing failure of governments to effectively address comparative Indigenous disadvantage. This paper argues that the source of failure is more fundamental. Policy formulation, contra the dominant discourse among policy-makers, is neither linear nor mechanistic, and the process cannot be fully represented by rationalist models. Both political considerations and pervasive structural power imbalances have a role in determining the architecture of strategic policy settings, which in turn renders problematic the roles of policy evaluation and review as drivers of policy outcomes and reform.

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Introduction

Over the last three decades, there has been a significant and at times very public increase in the salience of evaluation and review in the Indigenous policy domain, reflected in the extensive use of these tools to address policy challenges. The Aboriginal and Torres Strait Islander Commission (ATSIC), established in 1990, included as one of its key components a statutory Office of Evaluation and Audit (OEA).[1] Over the following decades, there has been a steady increase in the use of evaluations and reviews by the executive arm of government within the Indigenous policy domain. The ATSIC website in 2004 (National Library of Australia, 2019) records 13 evaluations by OEA between 1995 and 2004. Altman & Russell (2012) identify over 90 evaluations and monitoring reports relating to the 2007 Northern Territory National Emergency Response (NTER).[2] Accompanying this step-up in policy salience have been calls for even greater use of evaluation (Empowered Communities, 2015, p. 90; Hudson, 2016, p. 23, 2017).

In February 2017, the then Minister for Indigenous Affairs, the Hon. Nigel Scullion, announced that $10 million per annum over four years would be allocated to evaluation of Indigenous programs.[3] In June 2019, the ANAO published a performance audit which examined the effectiveness of the Government's design and implementation of the evaluation framework for the Indigenous Advancement Strategy, the largest and most comprehensive Indigenous funding program. The audit found:

> *The department's [PM&C] implementation and management of the IAS [Indigenous Advancement Strategy] evaluation framework is partially effective. Management oversight arrangements are developing, and evaluation advice provided to program area staff has been relevant and high quality. The department has not developed a reliable methodology for measuring outcomes of the framework and its evaluation procedures are still being developed (Australian National Audit Office (ANAO), 2019, para. 10).*

In April 2019 (perhaps anticipating the critical audit findings mentioned above), Treasurer Frydenberg tasked the Productivity Commission (2019, p. 1):

- *to develop a whole-of-government evaluation strategy, to be utilised by all Australian Government agencies, for policies and programs affecting Aboriginal and Torres Strait Islander people. As part of this strategy, the Commission has been asked to:*

- *establish a principles-based framework for the evaluation of policies and programs affecting Indigenous Australians*

- *identify priorities for evaluation*

- *set out its approach for reviewing agencies' conduct of evaluations against the strategy.*

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[1] The genesis of the OEA can be traced to the then Opposition allegations of corruption within Indigenous affairs during the extended gestation period of the ATSIC legislation. The OEA Director was appointed by the Minister in consultation with the Commission, and was required to report to the Minister and the Commission every three months in relation to audits and evaluations that had been requested by the Minister and/or the Commission (sections 75–8 of the *Aboriginal and Torres Strait Islander Commission Act 1989*).

[2] This trend has been replicated at least to an extent in the mainstream policy domain, reflecting in part the shift to program budgeting in the 1990s. Colebatch (2009, p. 54) notes the trend without ascribing a cause. This trend is paralleled by the increasing use of royal commissions to address intractable political challenges. See the discussion in Hayne (2019) in relation to this trend. If we were to include the inquiries and reports of parliamentary committees, the numbers would be even greater. Reports of parliamentary committees are arguably in a category of their own, given they sit within the legislative branch of government rather than the executive branch. Similarly, decisions of courts are *sui generis* given they sit in the judicial branch. All three branches of government have the potential capacity to influence and indeed shape policy even though the primary responsibility for policy formulation sits in the executive branch.

[3] This announcement was made on the same day that the ANAO released a highly critical performance audit of the Indigenous Advancement Strategy. The Budget measures tabled in the Portfolio Budget statements (PM&C, 2017a, p. 24) indicate that the measure was funded entirely from a redirection of Indigenous Advancement Strategy program funds. In addition, there was also provision for a $10 million Indigenous Research Fund. The total package was accompanied by an immediate cut of $10 million to the PM&C's 2016 administered appropriations, and a net cut of $2.89 million over the four out-years which was redirected to the augmented role of the Productivity Commission.

Additionally, the Treasurer requested the Commission 'review the performance of agencies against the strategy over time, focusing on potential improvements and on lessons that may have broader application for all governments'. To this end, he directed the Commission to develop a work plan of evaluations going forward (Productivity Commission, 2019, p. 45–46).

The Productivity Commission's Indigenous evaluation project is likely to lead to an even greater focus on evaluation across the Indigenous policy domain over the next 5–10 years. In these circumstances, there is merit in considering in greater detail the potential benefits, and costs, of evaluation and review in public policy contexts in general, and Indigenous policy contexts in particular. Further, there is also merit in assessing the extent to which evaluation (broadly defined) can contribute to and influence both the framing of policy issues and public policy formulation, decisions and outcomes. To be clear, the focus and framing of this paper is on policy, and particularly changes in policy, and not on the nature or technical quality of evaluation per se. In this framing, reviews and evaluations are just one of the tools used by policymakers to devise and drive policy adjustment which in turn influences or determines policy outcomes.[4]

As well as considering the academic literature related to evaluation and review, this policy insights paper draws (albeit indirectly) on my own experience as a senior bureaucrat at both national and territory level, as a statutory officeholder responsible for evaluation activities within the Indigenous portfolio, as a ministerial adviser to a number of Australian Government ministers for Indigenous affairs, as well as more recent research and writing activities in both academia and as the author of a blog dedicated to unravelling the intricacy of the Indigenous policy domain. My focus is not on the dynamics of Indigenous societies nor the particular aspirations of Indigenous citizens, but rather on the way in which mainstream institutions affect and impact the Indigenous policy domain and the opportunities of Indigenous citizens to achieve their aspirations. Those institutional frameworks are themselves the product of mainstream political and policy processes, and it those processes and the way that they shape Indigenous policy outcomes that are the primary subject of this study.

The nature of policy

Any serious discussion and analysis of evaluation in public policy contexts must engage, either explicitly or implicitly, with a concept of policy: what it is, what it means, how it is formed and how it is implemented. Amongst policy practitioners (policymakers),[5] there is a near unanimous, mutually reinforcing and paradigmatic mindset as to the nature of policy and the policy process. Shore & Wright (2011, p. 4) term this mindset 'authoritative instrumentalism'. Bovens et al. (2008) term this mindset 'rationalistic'. Colebatch (2009, pp. 41–45) discusses 'multiple accounts' of the nature of policy and policymaking: 'authoritative choice' which focuses on the point of decision, 'structured interaction' which focuses on who participates, and the social construction account of policy which focuses on how situations are regarded as normal or problematic and whose voices are heard in that context. Colebatch (2009, p. 44) notes that the dynamics of the policy process tend to privilege the 'authoritative choice' account over the others. This policymaker mindset tends to see policy as limited to the realm of policymakers, and the policy formulation cycle as a linear process which moves from the initial idea/issue or problem identification phase, to analysing the issue or problem, appraising the alternatives, deciding the best option, implementing the chosen option and evaluating the impact of the course of action taken usually over time, followed by possible revision of the policy option (Colebatch, 2000, p. 50; 2009, p. 48).

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[4] One implication of this focus is that this paper is primarily focused on the evaluation of strategic policy as opposed to more micro level programmatic activities of government. See the discussion in the concluding analysis related to the reasons governments may prefer to evaluate micro level policy and programs.

[5] The term 'policymakers' is used here to include politicians, bureaucrats and statutory officeholders and the like and refers to those individuals within government who participate in the processes of decision-making in relation to public policy. It is however a problematic term insofar as it implicitly assumes policy is 'made' from on high, and only comprises decisions of governments whereas interpretive models (discussed below) emphasise that the reactions of the subjects of those decisions are also influential in shaping policy.

In recent decades, numerous academic policy theorists have challenged this rational and linear model as not reflecting what actually takes place, and have instead proposed an 'interpretative' or 'anthropological' approach to understanding the nature of policy (Dryzek, 1982; Shore & Wright, 1997; Yanov, 2011). Colebatch (2009) articulates a more nuanced approach which posits that alternative accounts of policy are neither right nor wrong, but are essentially metaphors to assist in understanding (or interpreting) the complex nature of the policy process. In these conceptualisations of the policy process, policy is understood as 'a continuous process of contestation across political space' (Wright & Reinhold, 2011, p. 86). These analyses challenge 'top–down' formulations of policy impact to acknowledge the agency of the 'targets' of policy as much as that of the 'policymakers', or, 'the governed as well as the governors' (Shore & Wright, 2011, p. 12). Interpretive approaches allow for policy to be multi-dimensional, so as to incorporate an acknowledgment that policy is inherently value laden, and to include how it is imagined and how the 'targets' of policy respond and react to its operation, both upwards to policymakers and laterally towards others impacted. These approaches acknowledge that at its core, policy represents the attempt by governments to create an authoritative version of social and political order, involving the promulgation of societal narratives and values, the shaping of institutions, and the allocation of rights and responsibilities. It is in this structural sense (and not in terms of mere partisan contestation), that interpretive approaches conceive of policy as inherently *political* in nature.

Interpretive models of policy thus extend beyond rationalist 'authoritative instrumentalist' models (rather than replacing them entirely). They arguably reflect the unpredictable nature of most policy processes, and provide one explanation for the unintended consequences and implementation failures that feature ubiquitously in rationalist accounts of public policy.

The interpretive model of policy has a strong resonance with the literature on political settlements and the state (Hickey, 2012, 2013; Khan, 2017; World Bank, 2017). The concept of a nation's extant political settlement emerged from the international development literature as a means of understanding the political dynamics of developing nations. The core concept is the notion that in every nation political power resides within a dominant coalition of interests (broadly synonymous with political and economic elites) that effectively shapes the nation's institutional framework, and in turn ensures that the institutional framework directs political and economic benefits to the members of the dominant coalition, and away from interest groups that are not members. In liberal democracies, the dominant coalition includes, but extends beyond, elected representatives of political parties, with the result that partisan politics can be seen as one form of competition within the dominant coalition. Political settlements are potentially unstable, as members vie for relative influence within the coalition, and as potential entrants vie for access. The literature posits that a dominant coalition will emerge that includes the smallest number of members required to maintain stable dominance within each nation. In our 2019 Policy Insights paper, Neil Westbury and I utilised the political settlements approach to seek to explain the ongoing economic and social exclusion of Indigenous interests within Australia's first world political and economic system (Westbury & Dillon, 2019).[6]

Both the interpretative and the political settlement approaches can be differentiated from models of policy based on 'authoritative instrumentalism' insofar as they explicitly acknowledge and reflect the existence of political power and competition between interest groups in shaping the institutions of governance in modern societies. Political settlement models go further in seeking to explain the ways in which configurations of power in society emerge and are maintained.

Once policy and policy processes are defined in more interpretive ways, our understanding of the role, purpose, and impact of evaluation is transformed fundamentally. In particular, evaluation itself must move beyond assuming 'authoritative instrumentalism' and devise ways to understand how 'top–down' policies are

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[6] See Westbury & Dillon (2019, pp. 5–8) for a more detailed discussion of the political settlement literature and approach in an Indigenous policy context.

transformed, subverted or made irrelevant when 'bottom-up' lenses and indeed different cultural logics are applied. Moreover, the very utility of policy evaluation can be questioned if the methodological approaches adopted assume a rationalist model of policy decision-making when the actual behaviour of policymakers is not congruent with those assumptions (Palumbo & Nachmias, 1983). Bovens et al. (2008) make a similar but more nuanced argument pointing to the existence of two competing traditions in policy evaluation. On one hand, they identify a rationalistic tradition that assumes evaluation can be politically and morally neutral. On the other hand, they identify the 'argumentative tradition' that promotes debate about underlying policy assumptions and interests and thus aims to overcome the problem that facts cannot be separated from values.

Bovens et al. (2008) essentially argue that both approaches are problematic and in tension. Rationalistic policy evaluation 'assumes the existence of an exogenously produced, i.e. given, set of clear and consistent policy goals…' and also assumes that 'intersubjective agreement on which indicators can be identified to measure the achievement of these goals' (Bovens et al., 2008, p. 325). However, while argumentative models recognise the value-laden and political dimension of analytic assessments of policy outcomes, they do not lead us to 'more carefully crafted political judgments' (Bovens et al., 2008, p. 328). The result is that evaluators run the risk of either being 'deemed irrelevant by key players in the political arena' or being unwitting 'hired guns in the politics of blaming'. Their solution is to argue for evaluators to be 'reflective policy analysts' who are willing to 'reflect continuously upon and reassess their own lenses for looking at the world' and who strive to provide inputs into the political process of argumentation, debate, and manoeuvring that characterises strategic policy formulation and reform. They acknowledge that this is unlikely to be supported by 'the political world of policy' and thus requires considerable political astuteness. They conclude: 'Finding ways to deal creatively with the twin requirements of scholarly detachment and political realism is what the art and craft of policy evaluation is all about' (Bovens et al., 2008, p. 332).

Reflective policy analysis and political astuteness are valuable attributes for actors in any policy context, including policy evaluation. However, the role of 'structure' is as important, and arguably more important than the role of 'agency' in policy settings.[7] I return to this in the concluding section below.

Evaluation or review?

For the purpose of this paper, no distinction is made between evaluations and reviews, since both processes are designed to identify options and pathways for policy development and reform. Nor is any distinction made between ex ante and ex post evaluations/reviews, since in reality most evaluations and reviews involve elements of both.[8] There are clear methodological differences between evaluations and reviews, with evaluations generally adopting a stronger focus on quantitative analysis of program-relevant data and a focus on measuring change against a baseline, whereas reviews usually use more qualitative analysis and research methods. Nevertheless, they can be conceptualised as opposite ends of a single spectrum. The way policy issues are framed by policymakers is often a crucial factor in decisions regarding the use of evaluation or review as a means of policy assessment and research. For example, framing a policy area in terms of outcomes will usually suit a more quantitative form of analysis, whereas framing the same policy area in terms of process will generally suit qualitative assessments. Similarly, while programs are more susceptible to quantitative

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[7] There is a substantial literature in sociology and philosophy that deals with the relationship between structure and agency, which I do not propose to consider in detail. The literature suggests that structure and agency are inseparable and that neither functions as a sufficient cause of social, and hence policy, outcomes. See Little (2011, 2012) for an accessible entry point to these ideas and key publications. See Freeman (2019) for a recent paper that emphasises the role of agency over structure, but which nevertheless acknowledges the role of structure in shaping policy. See also Colebatch (2009, p. 17) who notes that the two dimensions are 'inextricably linked' and in tension with one another.
[8] But see Bovens et al., (2008) for a discussion that distinguishes between ex ante and ex post evaluations.

evaluation, policy is likely to require an element of qualitative review. Of course, the distinction between policy and programs is itself often unclear and ambiguous[9].

Over the past three decades, the notion of evidence-based policy has gained greater prominence and traction in policymaking circles. The Indigenous policy domain has not been immune from this development, leading key policymakers to argue that greater reliance on high quality evaluations is required if governments are to successfully address complex policy challenges. These views (which reflect a rationalist model of the policy process) can be seen as part of an emerging focus in mainstream public policy contexts on institutional learning. The systemic nature of our social and political institutional fabric and the concomitant ramification that failures often have wide-scale impacts drives this focus on the importance of institutional learning (Shergold, 2015; Stewart & Jarvie, 2015; Bray et al., 2019; Luetjens & 't Hart, 2019).

In the Indigenous policy domain, there have been numerous reports and speeches by public sector leaders advocating greater use of evaluation as the solution to what is seen as ongoing policy failure. Thus the Department of Finance and Deregulation's *Strategic Review of Indigenous Expenditure* (Australian Government Department of Finance and Deregulation, 2010, p. 14) 'stressed the need for a more rigorous approach to program evaluation at a whole of government level'.

In August 2016, the then Secretary of the Department of the Prime Minister and Cabinet (PM&C), Martin Parkinson (2016) argued:

> *A high proportion of what we fund has, at best, a weak evidence base of how it affects Indigenous peoples. We must gather evidence which shows we are improving the lives of Indigenous Australians. And if that evidence tells us otherwise, we must change our approach.*

In November 2016, the then Chair of the Productivity Commission, Peter Harris (2016, p. iii) wrote:

> *There is a pressing need for more and better evaluation of Indigenous policies and programs nationally if we are to see improvements in outcomes for Aboriginal and Torres Strait Islander Australians. We need to understand better which policies and programs work better than others and why.*

In December 2016 in a speech titled 'Public policy and what's missing in action?', the then Deputy Chair of the Productivity Commission, Karen Chester, argued that:

> *While there is extensive reporting on the extent of Indigenous disadvantage, there is a lack of evidence about what works (and what does not) in bridging outcome gaps. And while evaluating the impacts of policies on Indigenous outcomes can be challenging, the challenges should not be seen as insurmountable.... Stop looking for silver bullets and policy sound bites. And just get back to the dirt under the fingernail work of building evidence-based policy and building a much stronger evaluation culture (we need to know more about what works and why).*

These views, emanating from the most senior policymaking levels of the Australian public sector, are clearly in the rationalist mode. They have an attractive internal logic, implicitly assume that Government policies and programs have straightforward objectives and that if only we find appropriate or effective policy incentives, Indigenous behaviours will change in ways that lead to improved socioeconomic outcomes. Both these assumptions are problematic and contestable, particularly in cross-cultural contexts and certainly are not necessarily the case in the context of the Indigenous policy domain where arguably the implicit and underlying

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[9] While programs generally involve government expenditures, the rules governing the allocation of those expenditures constitute policy. Both policy and programs involve expertise or human capital in the formulation and implementation. They are perhaps best considered as two sides of a single coin.

political assumptions of policymakers and Indigenous interests are diametrically opposed.[10] Moreover, they also implicitly assume that policymakers assess and analyse policy options and seek to identify alternatives against a standard (such as the most effective outcomes), a process Palumbo and Nachmias (1983, p. 72) term the 'synoptic' paradigm, a synonym for comprehensive rationality. Of course, notwithstanding their rhetoric, the policymakers cited above would also know and understand that the synoptic paradigm is very much an ideal that is rarely attained in the cut and thrust of policy formulation in Canberra.

Moreover, the implicit assumption that evaluation or review is the only way to obtain evidence of what works ('what works' is itself an ambiguous and contestable concept) ignores the substantial amount of information and knowledge which flows from the direct involvement of policymakers in policy and program implementation, and the direct feedback to policymakers derived from engagement and communication with citizens. So too will front-line bureaucrats and stakeholder interests learn from their direct involvement in the implementation of policy.

Counterintuitively, the raised profile of calls for 'evidence-based policy' has developed in tandem with the failure of governments to make substantive inroads in addressing deep-seated Indigenous disadvantage. It seems clear that the ongoing failure to close the gap (which concerns relative disparity), or eliminate deep-seated disadvantage, has underpinned the calls for greater use of evaluations. These calls implicitly frame the failure to close the gap or eliminate disadvantage as arising from the absence of evaluation in particular and the application of evidence-based policy approaches in general, and in doing so, implicitly place alternative explanations (and thus alternative policy approaches) outside the 'acceptable' or 'desirable' policy frame.

This in turn leads us to ask a fundamental question: has the use of evaluation and review influenced policy outcomes either in particular policy areas or across the board in the Indigenous policy domain? Seeking to answer this question is far from straightforward.

The primary (albeit often implicit) argument in favour of the use of evaluations is based on an assumption, consistent with the rationalist assumption of 'authoritative instrumentalism' outlined above, that governments (either explicitly or implicitly) devise policies and programs with a small number of clear objectives. In turn, these objectives are themselves based on an explicit program logic (i.e. a theoretical hypothesis regarding the likely reaction of program recipients to changed incentives as a result of the program). The results of the evaluation of the policy or program can then feed into further decisions regarding the design or structure of the policy or program to adjust the relevant incentives thus leading to the desired changes in behaviour amongst program clients. At a conceptual level, this may require randomised controlled trials (RCTs) of alternative policies, which in turn requires the controlled parameters to be correctly specified to minimise the likelihood of both type I and type II errors.[11]

In the real world, rationalist assumptions do not necessarily apply. Policy objectives are rarely articulated clearly, or are articulated in multiple ways, and are often not explicitly agreed even within government let alone beyond. Rationalist assumptions often overlook structural constraints and the impacts of historical legacies. In practice, program life cycles operate differently (Clark & Craft, 2019). Very few programs or policies have an explicit or rigorous program logic in place either at the beginning or during the operation of the program.[12] Whereas with small-scale programs it may be possible to ascertain a notional set of program objectives, with

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[10] If accepted, this point raises interesting questions regarding the stance and perspectives of Indigenous policymakers; a matter beyond the scope of this present paper.

[11] I am indebted to one of my referees for this point. As the referee observed: 'What has been most successful may not be evaluated and what is evaluated might not be abandoned even if a failure'. There is an extensive literature on RCTs: Ames & Wilson (2016) provides a good Australian overview. However, it invariably requires quite narrow specification of the relevant parameters, is expensive, and is context specific, which makes it of most use in relation to specific programs and initiatives rather than broader policy settings (Gruen, 2017, 2018).

[12] The absence of an *explicit* program logic often facilitates the use of a narrow or incomplete *implicit* program logic. See Dillon (2019b) for an example related to dental health of remote children. Of course, narrow program logics suggest a focus by policymakers on just ameliorating problems or merely signalling action rather than a focus on substantively addressing issues (see discussion below).

larger policies and programs – that are more likely to drive strategic level change in outcomes – there are invariably multiple drivers for their establishment, including political or budget policy objectives that often hide behind a more simplistic (and electorally attractive) policy narrative or objective. Even where policymakers formulate program objectives, they are inevitably partial rather than holistic. Either explicitly or implicitly, programs presume a constrained hypothesis that is then executed within a larger 'ecology' or system of social and economic relations. Consequently, in strategically significant policies or programs, causality is invariably complex and uncertain, and feedback loops and unintended consequences are ubiquitous. In these circumstances, ascertaining linkages between program design and outcomes on the ground is fraught at best.[13]

It is also the case that policymaking is inherently incremental and ongoing (Lindblom, 1959), driven by interest group advocacy and lobbying, external community concerns, media coverage and at times the idiosyncratic or ideological whim of key policymakers (whether in the bureaucracy or the parliament). In terms of political settlement analysis, the interest groups that comprise the nation's dominant coalition are engaged in a perpetual process of competition and negotiation both within the dominant coalition, and with potential new entrants. In turn, this drives continuous policy adjustments reflecting changes within the dominant coalition, and consistent with the incrementalist model proposed by Lindblom. In a world of policy incrementalism, assessing the impact and influence of a particular evaluation or set of evaluations on a policy or program under constant adjustment is challenging.[14]

A further issue complicates any assessment of the efficacy of evaluation and review in influencing policy outcomes. Implementation failure is widely recognised as a risk to the success of policies and programs (May, 2015). It is also a serious risk for the conduct of evaluations. Evaluation and review effectiveness can be compromised in a number of ways: poor evaluation design, poor planning, poor access to data and information, poor data analysis, and poor policy analysis (e.g. focusing on process rather than outcomes). A particularly significant risk is poor evaluation governance, including a lack of substantive and intellectual independence of evaluators and reviewers from program managers and policymakers. Moreover, given the cross-cultural reality of the Indigenous policy domain, there is also a risk that the process of evaluation will itself impact the actions and decisions of the subjects of the evaluation.

Moreover, major policies and programs invariably operate within a partisan political framework,[15] where the policies are the currency of political debate and conflict. Robust policy evaluations inevitably come into conflict with the sharply defined political imperatives to frame policies and programs to advance partisan political objectives and to avoid any admission of failure that might create political embarrassment for Ministers or the Government. In such an environment, the incentives facing policymakers to avoid the possibility of negative media stories, especially those that derive from government-sponsored evaluations, are overwhelming.[16]

Merely listing the challenges that confront effective evaluation suggests that success (in terms of influencing policy) will be rare in the absence of a comprehensive and robust evaluation governance framework that minimises to the extent possible the multiple risks identified in the four paragraphs above. Such a governance framework would need to address the whole policy and program development process rather than just the evaluation and review element. This would facilitate effective evaluation and review by ensuring programs and policies are well designed and costed, objectives are identified up front, are substantive and not nominal, that policy and program implementation is undertaken in a transparent manner and relevant program performance

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[13] Referred to in the academic literature as the 'attribution problem' (Altman & Russell, 2012, p. 11).

[14] Incremental policy adjustment does not always lead to incremental change in outcomes. Given that policy is invariably part of a larger system, there will be times when consequences are substantially more or less than intended. Refer to the discussion below of the introduction of the new income management for an example. This point reinforces the challenge of evaluation of policies subject to ongoing incremental adjustment.

[15] Partisan politics can be conceptualised as a sub-set of the more structural (or deeper level) politics that surround the ongoing maintenance of the extant political settlement.

[16] Bray et al. (2019) acknowledge the potential role of partisan politics in creating bureaucratic cultures not attuned to rigorous evaluation.

data is made public on an ongoing basis. Of course, it would also lay out the key principles to guide evaluation and review activities. Currently, such an evaluation governance framework does not exist at the national level for the Indigenous policy domain.[17]

The discussion above suggests that a provisional answer to the question posed above would be 'no'; that is, evaluations and reviews as currently designed, undertaken and promulgated do not influence policy, and if one were to adopt a rationalist approach to the conceptualisation of policy, we could go further and conclude that evaluation and review will not guarantee better policy and program outcomes. There are two reasons which are general in nature and apply to virtually all policy sectors or domains. First, policy formulation is overwhelmingly 'political' (in both senses discussed above) and thus not usually susceptible to influence by rational policy analysis alone. Second, the challenges to effective evaluation of policy and programs outlined above are formidable. Notwithstanding these theoretical conclusions, a more definitive answer related to the Indigenous policy domain requires the examination and consideration of the evaluations undertaken in at least some of the key policy areas across that domain. This is the subject of the following section.

Evaluation and review of strategically significant policy areas in the Indigenous policy domain

Over the past three decades, there have been scores of evaluations and reviews relating to Indigenous affairs.[18] It is beyond the scope of this paper to review and assess even a small selection of these evaluations and reviews. Rather, this paper focuses on a small number of significant policies and the recent evaluations and reviews of those areas, particularly those evaluations and reviews with a broader and overarching focus. Despite variable profiles in national policy discussions, each of these policies is of ongoing significance and has implications and ramifications extending beyond a single jurisdiction.

The four case studies chosen are:

- accessing mainstream programs

- remote housing policy

- the NTER and compulsory income management

- native title policy.

The rationale for this paper's focus on strategically important policies and programs reflects the fundamental normative assumption that evaluations are tools for policymakers (as well as alternative windows into the policy domain for citizens and voters). Given the near unanimous consensus, among both policymakers and the broader community, that outcomes across the Indigenous policy domain are sub-optimal, it follows that the focus ought to be on policies and programs that have the potential to make a difference across the board. There is a different policy conversation to be had regarding innovation, small initiatives, randomised control trials, and strategies for monitoring and assessing smaller community-led initiatives. While these different levels of analysis are not entirely unrelated, the exigencies of driving major nationwide policy reform are of an entirely different character and scale, and thus require focused attention. Moreover, there is a very real risk that if the tools

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[17] It is worth noting that the Australian Government has foreshadowed a greater role for the states and territories in the Closing the Gap process, and to the extent that this eventuates, there will be a concomitant need for a national evaluation governance framework which encompasses those jurisdictions if effective evaluation of the Closing the Gap initiatives is to occur. Given the exigencies of federal relations in Australia, this appears to be a highly unlikely development.

[18] Altman & Russell (2012) identify 98 evaluations, monitoring reports and reviews relating to the NT Intervention alone in the period 2007–2012. Monitoring reports are not included in the definition of evaluation and review used here as they are essentially directed to efficiency and process. Nevertheless, the boundary between evaluation and monitoring is blurred.

(evaluation and review) are fetishised and made the primary focus of attention in public policy discourse, it will distract attention from the major national policy challenges in the Indigenous domain.[19]

Case study one: Accessing mainstream programs

In 1999, the then Minister for Finance, John Fahey, requested the Commonwealth Grants Commission (CGC) to undertake an inquiry into:

> *(i) the relative needs of groups of Indigenous Australians in … each geographic region, State and Territory; (ii) derive indexes of relative need that could be used to determine distributions of resources across these functional areas, geographic regions, States and Territories based on its assessments of relative need; and (iii) compare such distributions with the current distributional patterns (CGC, 2001, p. xii).*

The focus on relative need *within* the Indigenous population is significant in both policy and ultimately political terms. It reflected an attempt to drive better outcomes without allocating additional resources, a theme which recurs regularly within Indigenous affairs policymaking circles in the following decades.

The subsequent report (CGC, 2001) was both comprehensive and analytically sophisticated. Indeed, the inquiry and its associated report was arguably of a different order to most evaluations and reviews, assessing the entire span of Indigenous expenditure from first principles.[20] The CGC made over 40 findings across the breadth of the Indigenous policy domain. Moving beyond their terms of reference, the CGC (2001, p. xiv) confirmed that: 'the social, economic and cultural circumstances of Indigenous Australians differ greatly between urban, rural and remote locations'. The CGC (2001, p. xiv) also identified that: ' In all regions, and across all functional areas examined in our Inquiry, Indigenous people experience entrenched levels of disadvantage compared to non-Indigenous people.'

Perhaps of most policy significance, the CGC (2001, p. xv) identified for the first time within official policy circles 'that mainstream services do not meet the needs of Indigenous people to the same extent as they meet the needs of non-Indigenous people'. Moreover, the CGC (2001, p. xvi) determined that:

> *Indigenous people in all regions have high needs relative to the non-Indigenous population. An important question is whether new methods of distribution should be applied to existing programs and funds. Any change in methods of distributing existing resources means that some regions would lose funding and others would gain. Large redistributions risk losing the benefits of investments made over long periods of time, including those in developing organisational capacity and people. The real costs of redistribution may be high.*

In terms of actions required to improve the allocation of public funds to meet Indigenous need, the CGC identified several policy principles (CGC 2001, pp. xvii–iii):

> *There are important principles and key areas for action that should guide efforts to promote a better alignment of funding with needs. These include:*
>
> i.   *the full and effective participation of Indigenous people in decisions affecting funding distribution and service delivery*

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[19] For discussion of 'audit fetishism', see Sullivan (2011, p. 80). Altman and Russell (2012, pp. 7, 18) cite Sullivan in this context, and extend the terminology to 'evaluation fetishism'.
[20] I am indebted to Will Sanders for this point.

ii.   *a focus on outcomes*

iii.   *ensuring a long-term perspective to the design and implementation of programs and services, thus providing a secure context for setting goals*

iv.   *ensuring genuine collaborative processes with the involvement of government and non-government funders and service deliverers, to maximise opportunities for pooling of funds, as well as multi-jurisdictional and cross-functional approaches to service delivery*

v.   *recognition of the critical importance of effective access to mainstream programs and services, and clear actions to identify and address barriers to access*

vi.   *improving the collection and availability of data to support informed decision making, monitoring of achievements and program evaluation, and*

vii.   *recognising the importance of capacity building within Indigenous communities.*

According to Altman (2004, p. 41), the Government responded positively:

> *The government response provided by a new minister [the Hon. Phillip Ruddock] in June 2002 was very supportive of the Inquiry's major findings and articulated ten principles to be followed in addressing disadvantage. These included: better design of mainstream services to meet Indigenous need in culturally and locationally appropriate ways; ensuring coordination of service delivery within and between governments; equitable provision of services on the basis of need with a clear focus on achieving measurable outcomes; and better data collection including using an Indigenous identifier in major mainstream administrative data sets.*

Assessing the impact of the CGC Inquiry

Notwithstanding the Government's formal endorsement of the CGC review findings and recommendations, its substantive policy response fell short. In reality, none of the five principles identified by Altman in the text quoted above were implemented. Moreover, they continue as unmet challenges for contemporary policymakers. As Altman noted (2004, p. 42):

> *Unable or unwilling to address the main finding of the CGC's Indigenous Funding Inquiry that Indigenous-specific programs are required to cover for mainstream service providers, the government nonetheless resorted to blaming ATSIC for lack of progress in closing the gaps between 1996 and 2001.*[21]

As we will see below, not only were the insights of the CGC set aside in relation to ATSIC, they were also overlooked and ignored over the course of the following decades, including in relation to the NTER, welfare reform policy and remote housing policy. The reasons that this was the case are not to be found in the documentary record. There was no formal decision not to implement Minister Ruddock's positive response. Rather, it seems likely that in this case, the ideals espoused in the Government's response succumbed to the overwhelming diversionary pressure and momentum of the Commonwealth's administrative machinery in terms of policy and budget decision-making, cabinet processes, financial management rules and processes and portfolio and departmental boundaries. In short, this appears to be a classic case of implementation failure (Hill & Hupe, 2014; May, 2015).

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[21] ATSIC operated between 1990 and 2004. Both Altman (2004) and the CGC (2001) observed that ATSIC was only ever responsible for a minor proportion of the program expenditure directed towards Indigenous citizens.

Case study two: Evaluating remote housing policy

Recently Infrastructure Australia (IA) released a comprehensive audit of Australia's infrastructure needs (IA, 2019). For the first time, social infrastructure, including social housing, was included in the audit. The section on social housing included a revealing table/graph (IA, 2019, p. 455). Headed '*Homelessness is increasing in major cities and decreasing in outer regional and remote areas*', the table presented graphic data indicating that homelessness[22] in very remote Australia had decreased by 225 per 10 000 persons between 2006 and 2016. In contrast, the rate in major cities had increased by 11 per 10 000 persons over the same period. While factually correct, this heading is also potentially misleading. On closer examination, the data disclose huge discrepancies in overcrowding between urban and very remote Australia, with major city rates increasing from 35.4 to 45.5 per 10 000 persons, while very remote rates declined from 819 to 594 per 10 000 persons. The report noted (IA, 2019, p. 455) that the high rates of homelessness in remote areas 'can be linked to challenges in providing adequate housing for these communities'. Apart from being almost comically tautological, the report failed to mention that the significant reductions in homelessness in very remote areas were synchronous with the significant investments by the Australian Government under the former National Partnership Agreement on Remote Indigenous Housing (NPARIH).

Comprehensive assessments of Indigenous housing disadvantage emerged in the early 1990s as ATSIC and its regional councils focused on the serious levels of housing need across urban, regional and remote Australia. The Centre for Aboriginal Economic Policy Research (CAEPR) at the Australian National University (ANU) published the first national assessment of Indigenous housing need (Jones, 1994) which confirmed the proportionately large number of Indigenous Australians living in overcrowded and poorly maintained housing.[23] Key policy-relevant insights from this research included that in relation to housing, Indigenous people in urban areas were disadvantaged compared to non-Indigenous citizens, but regional and remote Indigenous citizens confronted greater housing disadvantage including extreme levels of overcrowding. Second, that in the inter-censal period 1986–1991, there was no overall reduction in the backlog of Indigenous housing need (Jones, 1994, p. 164).

In 2006, the Department of Families, Community Services and Indigenous Affairs commissioned PricewaterhouseCoopers (PwC) to undertake a review of the Community Housing and Infrastructure Program (CHIP), at that time the major Australian Government program supporting Indigenous housing (PwC, 2007). CHIP was supplemented by a component of the Commonwealth State Housing Program, the Aboriginal Rental Housing Program (ARHP). In 2005–06, the CHIP allocation was $289 million and ARHP was $93 million (Knapp, 2008, p. 53). Thus, the Australian Government was providing around $382 million per annum for Indigenous housing nationally.

The PwC review presaged a significant shift in focus towards remote housing need. While its scope was not geographically constrained, its overall conclusion was quite explicit (2007, p. 16):

> *The housing needs of Indigenous Australians in remote areas have not been well served and the interests and expectations of taxpayers have not been met. CHIP in its current form contributes to policy confusion, complex administration and poor outcomes and accountability of government funded housing, infrastructure and municipal services. The Community Housing and Infrastructure Programme should be abolished.*

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[22] A person is defined as being Homeless by the Australian Institute of Health and Welfare (AIHW) (the source for the IA data) if they are living in either non-conventional accommodation or 'sleeping rough', or in short term or emergency accommodation due to the absence of other options (AIHW), 2018). In very remote Australia, homelessness is closely related to overcrowding in social housing.
[23] For example, the 1991 Census data showed that while Indigenous families represented just 1.4% of all families in Australia, they accounted for 22% of the 21 102 families assessed as homeless, 20 times the non-Indigenous rate. In addition, the proportions of Indigenous families in housing stress (13%) and other adults in housing need (52%) were four times those of the non-Indigenous population (Jones, 1994, p. 158).

The review recommended a new strategic approach that amounted to a radical reconceptualisation of the Australian Government role in relation to Indigenous housing. The recommendations (PwC, 2007, pp. 23–26) included:

- *proposing a shift to mainstream public housing provision in all jurisdictions except the NT (rec. 3)*

- *the transfer of community housing to public housing where possible (rec. 4)*

- *a three-year blitz on repairs and maintenance of existing stock to increase the quantity and quality of available housing (rec. 2)*

- *introducing mobility assistance to assist people to move to new public housing 'in more sustainable locations' (rec. 6)*

- *providing assistance to increase individual home ownership (rec. 7)*

- *developing arrangements for the delivery of essential service infrastructure … that are consistent with other Australian … arrangements. This may require additional financial assistance being provided or other options such as Special Purpose payments through the Grants Commission process (rec. 32).*

The response to the report was rapid. The PwC review was finalised in February 2007. The May 2007 Budget abolished CHIP, and established a new program, Australian Remote Indigenous Accommodation (ARIA) which was allocated $1.6 billion over four years (or $400 million per annum) for remote housing, with one-half ($800 million) allocated to the Northern Territory (NT).[24] The objectives of the reforms included (Knapp, 2008, pp. 54–55º:

- *to move from a community housing model to a public housing model*

- *to reform land tenure arrangements so as to encourage home ownership*

- *to address homelessness and overcrowding in remote communities and significantly reduce the backlog of housing need in remote communities*

- *to improve tenancy and property management so as to increase the durability and quality of housing.*

These policy changes represented only a proportion of the more wide-ranging policy agenda[25] outlined in the PwC review, but nevertheless represented a radical transformation of the remote housing policy landscape. Like any major policy shift, implementation followed more slowly. Within months, the remote housing policy changes were augmented by the immense policy transformation and turbulence of the NTER (see below). While housing policy reform was not technically a part of the NTER, on the ground it was largely perceived as such by the Indigenous communities that were affected.

In November 2007, the election of a Labor Government led to major reforms to Commonwealth–state financial relations. This led to a Council of Australian Governments (COAG) endorsed overarching National Indigenous

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[24] The NT allocation of ARIA was named the Strategic Indigenous Housing and Infrastructure Program (SIHIP). In the following years, SIHIP was the subject of much more media focus than ARIA, with the result that the use of the ARIA nomenclature fell into disuse.
[25] This broader agenda was effectively neoliberal in terms of its overarching objectives.

Reform Agreement,[26] and under that a series of specific National Partnership Agreements. The 2008 NPARIH allocated $5.6 billion over 10 years (or $560 million per annum). The 2008 funding decisions thus represented an extra $178 million per annum over the 2005–06 national funding levels, but because the pre-2007 funding was predominantly directed to urban and regional funding, the impact in remote Australia was effectively a threefold or fourfold increase in housing investment levels.

NPARIH was delivered by the states and territories in accordance with a series of negotiated Implementation Plans. These plans required Australian Government agreement, and thus gave the Australian Government a strong say in relation to the overarching policy framework that guided implementation and delivery. In the NT, for a range of reasons,[27] the Australian Government came to hold the housing leases in many communities (but not all), and it then entered into management agreements with the NT Government to manage the housing assets on these leases. Thus the Australian Government had even stronger influence over housing implementation in the NT, albeit at the cost of assuming greater contingent liabilities.[28]

Consistent with the requirement that COAG agreements were to be reviewed every five years, there were two major reviews of NPARIH: a midpoint review finalised in 2013, and a final review in 2017. In addition, following political criticism of the roll-out of the program in the NT where the bulk of NPARIH expenditure in its early years was allocated, there were a number of NT specific reviews: including a 2009 Strategic Indigenous Housing and Infrastructure Program (SIHIP) review of performance,[29] and an Australian National Audit Office (ANAO) review of implementation (ANAO, 2012).

In 2016, the Government replaced NPARIH with the National Partnership on Remote Housing (NPRH), committing the unexpended balance of NPARIH funds totalling $776.4 million over two years (National Indigenous Australians Agency (NIAA), 2019a).

The 2013 midpoint review was undertaken by departmental officials and oversighted by a steering committee with Australian Government and state representation. It made findings, but no recommendations. Its overarching finding stated (Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA), 2013 p.7):

> *Governments are on track to deliver the outcomes of the National Partnership Agreement on Remote Indigenous Housing (NPARIH) by 2018. Halfway through the Partnership, at the end of 2012, targets for capital works and Indigenous employment have been exceeded. Data from the 2011 ABS [Australian Bureau of Statistics] Census indicate that inroads are being made into reducing severe overcrowding in locations where there has been NPARIH investment. Comprehensive property and tenancy management reforms are underway in all jurisdictions, and are largely on track to meet the agreed 2015 full implementation target.*

The review also listed a range of strategic risks and challenges for governments, including changing demographics, ageing infrastructure, and the potentially limited prospects for future economic activity in remote communities. In particular, the review identified the need to 'embed the systemic reform of property and tenancy management currently being implemented…' so as to extend and sustain asset lifespans and to improve the quality of service provision to tenants (FaHCSIA, 2013, pp. 65–66).

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[26] An archived version of the National Indigenous Reform Agreement is available at
www.federalfinancialrelations.gov.au/content/npa/health/_archive/indigenous-reform/national-agreement_sept_12.pdf
[27] These reasons included the compulsory leasing of prescribed communities under the NTER; the refusal of the NT land councils to accept housing leases from the NT Government due to long-held and deep-seated suspicions of the NT Government by the land councils; and a policy decision by the Australian Government to expedite progress in housing construction by taking leases directly when confronted by concerns from the NT Government about contingent liabilities involved should they hold leases themselves.
[28] See below for a discussion of the Australian Government's dilemma arising from these contingent liabilities when it attempted to cut funding to the NT for remote housing.
[29] In the NT, SIHIP was the predecessor program to NPARIH.

An external panel[30] guided by a consultative committee of Commonwealth and state officials undertook the 2017 Remote Housing Review (PM&C, 2017b). The Secretariat was provided by PM&C.

The review made 12 recommendations. Set out below are six of the more significant recommendations (as numbered in the report) (PM&C, 2017b, p. 4):

> 1. A recurrent program must be funded to maintain existing houses, preserve functionality and increase the life of housing assets.

> 2. Investment for an additional 5500 houses by 2028 is needed to continue efforts on Closing the Gap on Indigenous Disadvantage.[31]

> 3. The costs of a remote Indigenous housing program should be equally shared (50:50) between the Commonwealth and the jurisdictions.

> 4. A regional governance structure should be established to facilitate better administration of the program.

> 5. A higher level of transparency is required: a sound performance framework and information processes that are relevant to individuals and communities, and derivative of the information that is needed for regional governance of the program.

> 7. A minimum five-year rolling plan for the program should be established.

Following the expiry of NPARIH/NPRH in June 2018, the Australian Government has not formally laid out its remote housing policy, nor has it formally responded to the 2017 review. As of August 2019, the NIAA website (NIAA, 2019a) reports that the 2018–19 Budget committed $550 million over five years to support remote housing in the NT, matched by equivalent contributions from the NT Government. With Western Australia and South Australia, the Commonwealth negotiated extremely modest one-off transition payments. No arrangement appears to have been negotiated with Queensland (Mares, 2019). The Commonwealth had unilaterally, and unsuccessfully,[32] demanded that the states and NT match any Commonwealth contribution. The single exception was the NT, where the new Labor Government had previously committed, in a pre-election pledge, to funding remote housing at $100 million per annum for 10 years. In the NT, as mentioned above, the Australian Government had directly taken on leases in many communities under NPARIH at the insistence of Indigenous interests, and as a consequence the Australian Government would have been left with the responsibilities of tenancy and property management had it decided not to continue funding.

The end result is that the Commonwealth's national program of remote housing investment that extends back 50 years to 1968 has effectively been substantially dismantled. As the 2017 review indicates, in the first 40 years, Commonwealth investment cumulatively totalled $3.57 billion. In the 10 years of NPARIH/NPRH, it totalled $5.48 billion. Looking forward 10 years, the Commonwealth has only committed $0.55 billion.[33]

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[30] The chair of the panel was a consultant with policy consultancy firm Nous and a former senior bureaucrat. Nous also provided a number of background research reports to the Review. The two other members were Indigenous community leaders.
[31] The review report itself notes that this figure requires remodelling once the 2016 Census figures are available (PM&C, 2017b, p. 24). At a more fundamental level, the Executive Summary of the Review acknowledges that the additional requirement is 'required to reduce levels of overcrowding in remote areas to acceptable levels' (PM&C, 2017b, p. 2). In the body of the report, it is made clear that the modelling is based on continuing levels of overcrowding that are 10 percentage points higher than the rate in urban and regional Australia. Moreover, in addition, the modelling does not include levels of need in remote homelands (PM&C, 2017b, pp. 24–25).
[32] The demand was 'unsuccessful' insofar as the states failed to match pre-existing Commonwealth investment levels. It seems more likely however that the demand was in fact a ploy to cover a prior decision to withdraw funding by the Commonwealth, and thus in this narrative, the demand must be considered 'successful' insofar as no state was able at short notice to find the matching dollars to require the Commonwealth to continue funding.
[33] NPARIH was a 10-year program based on published forward estimates.

Assessing the remote housing reviews

The PwC review in 2007 appears to be the most closely aligned with actual policy outcomes. It pushed for a wide-ranging shift away from Indigenous specific housing provision in urban and regional settings (in favour of mainstream social housing provision). In turn, this led to a policy shift towards remote housing provision, justified by the extremely high levels of need in remote communities. That the PwC review was pursuing an agenda of mainstream provision across all geographic regions is demonstrated by the fact that it recommended that only the NT should be funded going forward. The response of the then Liberal National Party (LNP) Government was to increase remote housing funding for the NT only, perhaps reflecting a realisation that the NT did not have the financial capacity to address the substantial levels of outstanding need (along with a concomitant assumption that the states did have such a capacity). The fact that the NTER followed within a month of these decisions,[34] which in turn was followed by a change of government in November 2007, meant that the more extreme implicit ideological directions of the PwC review were not continued. [35]

At a more detailed level, the PwC review was extremely insightful in bringing together for the first time an accessible overarching analysis of the Indigenous housing policy space. The review provided a wealth of data on all aspects of social housing provision, the links to infrastructure (under) provision, and the effectiveness of program implementation. While the review documented substantial outstanding need in remote regions, it avoided recommending additional investment, preferring to recommend accessing mainstream service delivery, and the transfer of housing assets from community housing to public housing management. The deeply ambiguous quotation from an anonymous 'Australian Indigenous leader' inside the front cover of the report in many ways summed up the problematic and opaque nature of the review's approach:

> *No Government can justify keeping on building houses in the middle of nowhere where there is no school, no healthcare, no law and order, unreliable power and water, no jobs … and no hope for another generation of our young people.*

While the PwC review aligns closely with the policy directions pursued by the Howard Government in its latter years, the lack of independence and the close connections between the review team and the Government raise doubts as to the direction of causality: did the review influence policy, or did it merely reflect a pre-existing ideological predisposition within the Government?

The 2013 FaHCSIA midpoint review was in many respects analytically descriptive and focused on implementation and process. It was undertaken within the bureaucracy and thus lacked formal independence from government. In effect, it confirmed that the program was on track rather than identifying expanded or new policy reforms. In looking forward, the review identified the major strategic challenge would be 'to ensure the long-term sustainability of the massive, potentially once in a lifetime investment in housing and related infrastructure that has been made possible through NPARIH funding.' The review went on to argue that while maintaining momentum on capital investment, 'governments need to shift the strategic focus to property and tenancy management' (FaHCSIA, 2013, p. 66). This comment thus reinforced a concern expressed in the PwC review six years earlier which had recommended both a three-year repair and maintenance 'blitz', and the use of 'mainstream' consumer protection regulation to 'ensure proper landlord and tenant arrangements are enforced to benefit both parties' (PwC, 2007, pp. 23, 26). The importance of property and tenancy management relates to the fact that the extremely short social housing asset lifespans in remote Australia are a direct function of the effectiveness and quantum of investments in property and tenancy management, along with high levels of overcrowding.

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[34] One under-appreciated consequence of the NTER is that it consumed all the available policy oxygen within the Indigenous affairs portfolio for months, if not years, thus making policy development in other areas almost impossible.
[35] It is significant that Grahame Morris, former Chief of Staff to Prime Minister Howard who was still in office during the period the review was undertaken, led the PwC review team.

Notwithstanding the midpoint review singling out property and tenancy management as the major strategic challenge going forward, the LNP Government that came to office in 2013 cut $95 million from the property and tenancy management allocations within NPARIH (Dillon, 2017b). Given the centrality of this recommendation in the review's analysis, the subsequent decision to cut property and tenancy funding demonstrates that the midpoint review had virtually no influence on subsequent policy decisions.

Similarly, the 2017 PM&C review appears to have been largely ignored in terms of subsequent policy development. While it was nominally undertaken by an external panel, its secretariat was provided by the Minister's Department, and the Minister met a number of times with the review team, although officials advised that he issued no 'instructions' to the review panel (Taylor, 2017).[36] The only major recommendation to be taken up by the Australian Government (while virtually all others appear to have been ignored) was the call for cost sharing between the Australian Government and the states and territories. This recommendation was not argued in the body of the review, and its only justification was set out in its entirety in a short paragraph asserting (incorrectly[37]) that financial risks were not shared and in three sparse and problematic paragraphs reproduced in full below (PM&C, 2017b, p. 76):

> *Under the Strategy the Commonwealth was the sole funder of the program which meant jurisdictions lacked skin in the game and the Commonwealth reacted to protect its interest by introducing a series of processes that had unintended consequences.*

> *A genuine financial partnership between the Commonwealth and jurisdictions would focus the attention of both levels of government to the delivery of outcomes, not outputs. Shared responsibility for funding would establish a partnership that works toward shared goals.*

> *If responsibility for funding is shared, then both levels of government have incentives to run an efficient program.*

This recommendation and its scant justification ignores the fact that the program was negotiated and implemented under a COAG-endorsed and carefully negotiated national partnership agreement, and that it was a contribution to a larger social housing system in remote regions. In particular, it ignores the existence and embedded investment in the complex and comparatively expensive program delivery structures administered by each state and the NT, as well as the policy reality that the Australian Government is the dominant funder of mainstream social housing and subsidised rental housing across the nation. The consequence of the Australian Government unilaterally insisting on matched funding has been that the other recommendations of the 2017 review regarding outstanding need, the funding of a recurrent program (which will place at risk all previous Australian Government investment), higher transparency, shared information between stakeholders at all levels, and so on were all effectively set aside. Detailed assessment of the processes leading up to the Australian Government's decision not to renew and maintain the NPARIH funding commitments strongly suggests that in fact the remote housing program was the victim of a deliberate budget decision to reduce out-year financial commitments.[38] The PM&C (2017) Remote Housing Review, which in many respects was deeply flawed and inconsistent,[39] ultimately counted for nought in shaping the next phase of remote housing policy. What did count in facilitating this non-decision was the absence of a national peak body for Indigenous housing programs, combined with the Australian Government's determined focus on reducing the budget deficit. Nevertheless, the

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[36] Any experienced bureaucrat will confirm that this answer does not mean that the Minister did not seek to influence the review panel or the secretariat supporting the review.
[37] Paragraph 7.1.2 page 65: 'Financial risks were not shared', which asserted that 'No funding commitments were required of the states under the Strategy'. This statement ignored both the ongoing costs of asset management that fell to the states and territory, as well as the considerable collateral costs of essential services provision.
[38] Refer to Dillon (2017b–f) and Dillon (2018b– i) for a comprehensive account of the Australian Government's public statements and decisions on remote housing following the 2017 review.
[39] See Dillon (2017d) for a detailed critique. See also footnote 27 above.

review's inadequate and under-estimated modelling on outstanding housing need in remote Australia appears to have taken on a life of its own, being cited as authoritative by Infrastructure Australia in its 2019 Australian Infrastructure Audit (IA, 2019, p. 458). Here is a case where evaluation did not influence policy, but was itself used by policymakers to disguise the impact of policy; a policy that will exacerbate, not ameliorate, Indigenous disadvantage.

Case study three: The Northern Territory National Emergency Response (NTER) and income management

Perhaps the most ambitious and contentious public policy initiative in Indigenous affairs in the last two decades was the 2007 Northern Territory Intervention, more formally known as the NTER.[40] The trigger for the Australian Government's decision was the release in June 2007 of a review report commissioned by the NT Government (Anderson & Wild, 2007) to consider the complex issues surrounding sexual abuse of Aboriginal children in the NT. The NT review report was wide-ranging, its recommendations far-reaching and comprehensive, and importantly, infused with a collaborative and consultative tenor. In contrast, the Commonwealth response was unilateral, draconian and punitive.

The NTER was announced on 21 June 2007, and comprised five legislative measures, seven broad policy/program measures and 36 sub-measures. The NTER was not only one of the most significant broad-scale policy initiatives by any government in the Indigenous affairs policy domain, but it was also one of the most rapid and intense large-scale policy development and implementation exercises ever initiated by the Australian Government.[41] Within weeks of the NTER announcement, legislation was drafted and introduced, and hundreds of Australian Defence Force, police and Australian Public Service personnel were mobilised for service in the NT. Notwithstanding the reference to a 'national' response in its formal title, the NTER's geographic remit was limited to the Northern Territory, a focus facilitated by the Australian Government's greater constitutional powers in relation to territories, by the fact that the Australian Government administers the *Aboriginal Land Rights (Northern Territory) Act 1976*, as well as by the Australian government's funding responsibility for NT outstations from 1978 to 2007.[42]

Altman and Russell (2012) argue persuasively that the Intervention was undertaken without the development or articulation of a policy and program logic. Instead, it was promulgated by the then LNP Government within a framed political discourse focused on community failure and problematic culture and which represented remote communities as unsafe for children and dysfunctional. This framing was modified by the subsequent Labor Government to align with the Closing the Gap egalitarian project, although most of the NTER measures continued in place.

In June 2008, the then Labor Government appointed a Review Board comprising Peter Yu (Chair), Marcia Ella Duncan and Bill Gray to conduct a review of the NTER, assisted by an expert group comprising 11 individuals with a diverse array of backgrounds in the NT.[43] The Review Board report (Yu et al., 2008) was finalised in October 2008.

In what was perhaps its most significant and salient assessment, the Review Board (Yu et al., 2008, p. 9) noted the widespread adverse reaction across the Aboriginal community in the NT:

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[40] The acronym NTER has been widely used, omitting the N for 'national'. The inclusion of the word 'national' in the Government's formal title for the initiatives reflects the political imperative to justify Australian Government intervention rather than relying on the NT Government. See Brennan (2009, pp. 969–970) for a discussion of the constitutional law implications of the use/non-use of the term 'national'.

[41] Other major policy shifts of similar wide-ranging significance were the creation of the Department of Aboriginal Affairs in 1972, and the creation of ATSIC in 1990.

[42] This limited geographic focus thus avoided the major Commonwealth–state conflict that would have emerged had the Australian Government attempted to focus the policy on all of remote or northern Australia.

[43] Refer to Appendix 2 of the Review Board report for details on the membership of the Board and expert group.

In many communities, there is a deep belief that the measures introduced by the Australian Government under the NTER were a collective imposition based on race.

There is a strong sense of injustice that Aboriginal people and their culture have been seen as exclusively responsible for problems within their communities that have arisen from decades of cumulative neglect by governments …

Support for the positive potential of the NTER measures has been dampened by the manner in which they were imposed.

The Review recommended a process of re-engagement to 're-set the relationship with Aboriginal communities' and to ensure government actions respect Australia's human rights obligations and conform with the *Racial Discrimination Act 1975* (RDA).

Other important findings and recommendations (Yu et al., 2008: pp. 12–15) related to

- income management where the review called for a shift away from compulsory income management to voluntary and more targeted approaches

- the refinement of the NTER's alcohol prohibitions through the use of (negotiated) Alcohol Management Plans

- a strengthening of the police presence across remote NT communities including through the standardisation of policing levels

- strengthened child protection measures

- the payment of rent and just terms compensation for the compulsory acquisition of five-year leases over community townships

- a range of funding reforms

- the establishment of negotiated regional partnership agreements as a conduit for service delivery

- the establishment of an 'authoritative data base as a single integrated information system that enables regular measurement of outcomes of all government agency programs and services that target Aboriginal communities in the Northern Territory'.

The response to this report by the Australian Government over the following decade was mixed. Both the Labor Government, in office until September 2013, and the subsequent LNP Government sought to reset relationships with Indigenous community, albeit with limited success. Labor introduced amending legislation to remove any doubt that the RDA had been set aside by the NTER,[44] authorised the removal of the extensive and shame-inducing signage related to pornography and alcohol that had contributed to community consternation and initiated the administrative processes required to pay just terms compensation to the owners of compulsorily acquired five-year leases.[45] Labor also moved to implement the recommendations on police, child protection and alcohol, although this required both negotiation with the NT Government and consultations with individual communities, so movement was quite slow. Progress on other recommendations was less apparent: the recommendations on changes to funding arrangements were not progressed, and the recommendations

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[44] This possibility, which was widely canvassed by opponents of the NTER, arises from the fact that the key components of the NTER were legislated and subsequent Australian Government legislation supercedes earlier legislation to the extent of any inconsistency. Labor sought to clarify that there had been no inconsistency by legislatively confirming that relevant initiatives were 'special measures' allowed by the RDA and the International covenants to which Australia has signed up.

[45] The Commonwealth's commitment to pay just terms had been qualified by the problematic framing of the relevant provisions of the NTER legislation, and the somewhat inconclusive result in the High Court decision in *Wurridjal v Commonwealth*. While the High Court was clear in overturning the prior High Court precedent in the unanimous 1969 *Teori Tau* case, which had absolved the Australian Government from the requirement to pay just terms in a Territory, the parameters of the decision, for example in relation to sacred sites and permits, were left in some doubt. See Brennan (2009).

relating to regional partnership arrangements were only initiated on Groote Eylandt (and this fell away after four or five years).

Most significantly, the Labor Government did not unequivocally support the Review's recommendations on compulsory income management. Income management (also known as welfare quarantining) had become the most contentious element in the NTER,[46] and since only a minority of community members were in mainstream employment, it affected virtually the entire cohort of working-age adults in NT prescribed communities, a population of almost 16 000 people. In 2010, the Labor Government initiated a number of changes to income management, so called New Income Management, which expanded options for those on the scheme to apply for exemptions. These included increases in the scope of individual case management to assess vulnerability and to provide financial literacy support, and the creation of a second voluntary stream.

As the Review noted (Yu et al., 2008, p. 20), the income management measure was:

> *synonymous with the NTER and is the most widely recognised measure. It has given rise to a range of often competing views about its impact and value for those who have been directly affected by it….*

> *Income management has had a direct and profound impact on the lives of over 13 300 individuals who were subject to the scheme on 30 June 2008… The blanket imposition of compulsory income management has resulted in widespread disillusionment, resentment and anger…*

Notwithstanding this assessment, the Labor Government continued to resist strong public pressure from an array of advocacy groups over the subsequent five years to abolish compulsory income management. The reasons were complex, and involved a combination of factors. The Government's principled support for vulnerable women (and children) who were often strong supporters of income management was reinforced by the reality that the NTER prohibition on alcohol in prescribed communities was not entirely effective. Additionally, the continued influence of Noel Pearson's advocacy for welfare reform,[47] and a pragmatic appreciation that (at least up to the 2010 election) the Senate was likely to block any attempt to move away from compulsory income management in remote NT communities constrained the Government's options.[48] The Labor Government's continued support for income management led to the widespread belief that it had continued the Intervention (Altman & Russell 2012, p. 4; Maddison 2008, p. 46) notwithstanding its efforts to incrementally adjust many of the measures and to recast its significant new funding commitments as 'Stronger Futures'.[49] Following the accession of the LNP Government at the 2013 election, the new Government continued the policy of compulsory income management.

Since welfare quarantining was first initiated in the NT in 2007, it has undergone progressive incremental development and expansion in other jurisdictions. Its original blanket coverage in the NT has been fine-tuned to take on a more targeted focus on vulnerable welfare recipients, and its geographic footprint has been extended. In a number of locations outside the NT, the proportion of welfare payments that are quarantined has been increased to 80% (Department of Social Security (DSS), 2019a). This bipartisan support in Canberra for welfare quarantining has persisted for over 10 years. Apart from the Yu Review, there have been seven major evaluations of income management nationally (DSS, 2019b). Each of these focused on particular components

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[46] While the abolition of the Community Development Employment Projects (CDEP) was also highly contentious in the NT, it was a national program and not formally part of the NTER. Along with major housing and local government reforms also rolling out, the perception on the ground in the NT was that these policy changes were all part of the NTER.
[47] During this period Pearson wrote an influential regular column in *The Australian*.
[48] The 2007 election resulted in a Senate where the LNP had 37 votes, ALP 32, Greens 5, Family First and Xenophon 1 each.
[49] Of course, this widespread scepticism was understandable given that Labor had supported, without amendment, the legislation to implement the Intervention. The decision to do so was clearly directed at defusing the potential for Labor to be characterised on weak on child protection in the lead up to the 2007 federal election.

of income management. Researchers from the Social Policy Research Centre (SPRC) and the ANU (Bray et al., 2014) undertook the most comprehensive independent evaluation.

While acknowledging the existence of diverse perspectives on the utility of income management by income-managed welfare recipients, the ANU evaluation was unable to find conclusive evidence that income management had a significant systemic positive impact on individuals whose wellbeing was adversely affected by a range of issues (Bray et al., 2014, pp. 316–317). Nor were there any positive findings in relation to financial management or capability (Bray et al., 2014, p. 318).[50] In a revealing epilogue to the evaluation, the authors included a commentary on the response to their findings amongst communities. They note that – contrary to the rhetorical salience that income management has acquired in public discourse around the NTER and Indigenous policy generally – the views of communities and peak bodies did not see income management as being 'the key to obtaining change'. There were many other issues that communities consulted considered more important to improving outcomes, including employment and the reinstatement of the Community Development Employment Projects (CDEP) program, overcrowded housing, and difficulties in finalising alcohol management plans (Bray et al., 2014, p. 326). Altman (2016), writing as an informed academic rather than an evaluator, reached a similar conclusion.

The publication of the SPRC/ANU income management evaluation was largely overshadowed in policy terms by the new LNP Government's decision immediately upon coming to office to commission a review by prominent businessman Andrew Forrest into Indigenous employment and training. The terms of reference (Forrest, 2014, pp. 224–225) were quite broad and required Forrest to report to the Prime Minister, which in itself was unusual, and suggested a broader underlying political agenda was in play.[51] Forrest took his report well beyond its formal terms of reference to recommend an extension of income management through what he termed a 'healthy welfare card'. This card was to be based on a cashless debit card system linked to the banking system, and which included constraints on unhealthy expenditures. This recommendation (Forrest 2014, chapter 2) formed the basis of the Government's next phase of welfare income management, the 'cashless debit card' (DSS 2019c).

Assessing the NTER and income management evaluations

To sum up, the response by governments to the major evaluation reviews relating to the NTER and its most salient measure, income management, were mixed. In relation to the NTER review, the Labor Government sought to take on board the overarching recommendations (Yu et al., 2008, p. 12) that Governments recognise:

- 'the unacceptably high level of disadvantage and dislocation being experienced by Aboriginal Australians living in remote communities'

- the requirement to 'reset their relationship with Aboriginal people'

- the need to respect human rights obligations and conform with the RDA.

The Labor Government sought to implement each of these three high-level recommendations, significantly increasing financial investment in remote communities, amending the NTER legislation to make clear it was a 'special measure' and thus not inconsistent with the RDA, and to make greater efforts to work in partnership with Aboriginal interests. In this last area, however, its unpreparedness to reverse course on welfare reform and

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[50] Space constraints preclude a detailed summary of the nuanced findings of this review. Refer to chapters 13, 14 and 15 for a comprehensive account of the evaluation's findings.
[51] The close involvement of the Hon. Alan Tudge in the review reinforces this point. Tudge had previously been the Deputy Director of the Cape York Institute, where he worked with Noel Pearson. The fact that the Forrest-inspired Aboriginal Employment Covenant and the associated entity, Generation One, part of the Forrest controlled Minderoo Foundation, were recipients of Commonwealth funding raises further questions regarding the independence of the review, and suggest that Forrest may have had a conflict of interest.

compulsory income management,[52] and to a lesser extent the decision not to seek to reverse the former Government's policy to abolish CDEP meant that the relationship with Indigenous interests, particularly the members of the influential Aboriginal Peak Organisations of the Northern Territory (APONT), was never effectively re-set.

The new LNP Government effectively ignored the methodologically sophisticated and entirely independent 2014 income management evaluation, a response facilitated by the absence of specific recommendations in the evaluation and the tactic of commissioning a new review by businessman Andrew Forrest. Instead, the Government focused on expanding and sharpening income management policy by rolling out its cashless debit card initiative (albeit in a small number of geographic locations) in accordance with the thrust of the eponymous Forrest review.[53]

All in all, two of the three evaluations and reviews referred to above appear to have had minimal influence and impact on policy outcomes. The Forrest review did influence policy outcomes insofar as it was both the instrument by which the previous evaluations and reviews were set aside, and laid out the roadmap for the introduction of the cashless debit card, albeit in a small number of locations. It proposed a comprehensive suite of recommendations argued with white-hot zeal and commitment, and targeted at substantive policy change. However, the reviewer, Andrew Forrest, a highly influential player in Australian politics due to his wealth and business interests, appears to have been pursuing an ideologically charged agenda around employment and welfare reform, one that aligned very closely with the Government's pre-existing policy rhetoric (Klein, 2014). This raises questions regarding whether Forrest was himself using the review to advocate for policies he wished to see implemented,[54] and thus the direction of causality in any assessment of the relationship between his review and subsequent policy decisions. For these reasons, the Forrest review can be interpreted as an exercise in policy advocacy rather than as an evaluation or review of existing policy. In a coda to this narrative of intertwined policy development and evaluation, the Australian Government had committed to evaluating the implementation of the cashless debit card initiative. A subsequent performance audit (ANAO, 2018) delivered a scathing assessment of the contracted evaluations and the convoluted and tendentious use of evaluation results by DSS. Notwithstanding this assessment, the Government has recently announced a substantial expansion of the cashless debit card initiative across remote Australia (Klein, 2019). At the time of writing, the necessary legislation to expand the scheme has not passed the Parliament.

Case study four: Evaluating native title policy

The native title system is one of most significant policy areas in the Indigenous policy domain with around 50% of the Australian land mass held under native title and statutory land rights tenure,[55] and outstanding native title claims extant over a further 20–30%. Indeed, the impact and significance of native title spills into a range of significant mainstream policy sectors including land administration in the states and territories, resource development, and environmental management. Native title policy thus spans a range of nationally significant

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[52] The attempt in 2010 to fine-tune the implementation of income management in the NT (the so-called 'New Income Management') did not go far enough to shift what had become entrenched anti-Intervention views among substantial proportion of Indigenous citizens in the NT and beyond.

[53] There has been an increasing trend towards the use of trials and pilots in the Indigenous policy space over the last two decades. While tangential to the focus of this Policy Insights Paper, it provides a further example of the desire of governments to focus on signalling policy commitment rather than substantively addressing policy challenges.

[54] One minor but telling point worth noting is the way in which Forrest badged the review in highly personal and self-referential terms, including the references to his own personal narrative, and a propensity to quote himself. The title of the published report was 'The Forrest Review: Creating Parity', and the header for every second page included the words 'The Forrest Review'. The terms of reference merely requested a 'review of Indigenous training and employment programs' (Forrest, 2014, p. 224). The fact that the terms of reference require Forrest to report to the Prime Minister and not to the portfolio Minister suggests that the genesis of the review emanated in discussions between Forrest and the then Prime Minister.

[55] Around 37% is held under native title tenure, split between exclusive and non-exclusive title, and a further 12% under statutory land rights tenures.

policy domains. Moreover, it is both legally and conceptually complex, and 27 years on from the High Court *Mabo* decision, it is still in legal flux.[56]

A key policy issue for the Australian Government revolves around the adequacy, appropriateness and interpretation of the provisions of the *Native Title Act 1993* (NTA) relating to 'connection' to territory/land, a primary criterion native title that claimants must prove to establish the existence of native title. The concept also comes into play when governments are considering negotiating or settlement of native title claims outside expensive litigation, so-called 'consent determinations'.[57]

In 2008, in a speech at the University of Adelaide, then Federal Court Judge Robert French (2008, paras. 28–29) proposed several reforms to the statutory framework of the NTA. In particular, he proposed the introduction of a provision relating to 'connection' (that is, the requirement in the NTA that native title claimants must prove continuous connection to the areas claimed from the date of the assertion of British sovereignty to the present):

> *It may be possible to lighten some of the burden of making a case for a determination, whether in litigation or mediation, by a change to the law so that some elements of the burden of proof are lifted from applicants.*
>
> *A presumption may be applied in a variety of ways in favour of native title applicants. It could be applied to presume continuity of the relevant society and the acknowledgement of its traditional laws and observance of its customs from sovereignty to the present time …*

While he did not elaborate at length on the policy drivers behind his proposal, he had clearly formed the view over a decade of direct experience in native title jurisprudence, including as inaugural President of the National Native Title Tribunal, that the statutory framework was not working to deliver just outcomes in all cases. His views on this issue would have gained salience with policymakers upon his appointment, two months later, as Chief Justice of the High Court.

In 2011, the Australian Government Attorney General's Department commissioned a review by researchers in the Native Title Unit of the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) 'to conduct research and analysis and make recommendations to inform the development of a Commonwealth policy on the assessment of native title "connection" in consent determinations' (Strelein et al., 2014, p. 5).

The review made over 40 detailed recommendations (Strelein et al., 2014, pp. 6–13). These included proposing that the Australian Government establish and publish a policy framework outlining its approach to handling settlement negotiations; suggesting six broad principles the Australian Government should adopt to facilitate these negotiations; and proposing that the Australian Government should take a greater leadership role in the native title system to engender greater flexibility with respect to connection in consent determinations. Its final recommendation proposed that the Australian Government should consider amendments to the NTA that take into account the barriers posed by the current legislation to the achievement of the key policy priorities. In particular, the amendments could usefully confirm that consent determinations made pursuant to s. 87 require a lower standard of evidence than for litigated determinations. As well, the amendments could also address some of the aspects of the law around s. 223 of the NTA which continue to cause problems, such as the proof of continuity back to sovereignty, or the significance of physical occupancy in relation to s. 223(1)(b).

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[56] *Mabo v Queensland (No. 2)*. See Dillon (2017a) and Dillon (2018a) for overviews of the native title policy domain.
[57] Refer to ALRC (2015, pp. 19–22) for a succinct discussion of these issues and in particular the potential impediments that have emerged for claimants arising from the courts' interpretation of s. 223.

There appears to have been no formal response to these recommendations and no indication on the Attorney General's Department website that any of the AIATSIS research recommendations have been taken up. Instead, the Australian Government commissioned a new review.

In 2013, in the lead up to a federal election, then Attorney General Mark Dreyfus QC gave the Australian Law Reform Commission (ALRC) terms of reference for an inquiry into the NTA, in particular the connection requirements relating to the recognition and scope and of native title rights. While focusing squarely on policy issues relating to connection, the terms of reference also required the ALRC to have regard to 'the capacity of native title to support Indigenous economic development and generate sustainable long-term benefits for Indigenous Australians'. This latter issue was the focus of the COAG review exercise (see below). The ALRC reported in 2015, and noted that the 'Inquiry marks the first major review of the law governing "connection" in native title claims since the introduction of the Act' (ALRC, 2015, p. 11).

The ALRC made a series of specific recommendations relating to the connection issue (2015, p. 19):

First, the ALRC recommends that there be explicit acknowledgment in the Native Title Act that traditional laws and customs under which native title rights and interests are possessed may adapt, evolve or otherwise develop.

Second, the ALRC recommends that the definition of native title be amended to clarify that it is not necessary to establish either that:

- *the acknowledgment of traditional laws and the observance of traditional customs have continued substantially uninterrupted since sovereignty; or*

- *traditional laws and customs have been acknowledged and observed by each generation since sovereignty. The ALRC observes that the generation by generation requirement is particularly stringent. The test for connection in s. 223(1)(b) remains 'substantially maintained'.*

Third, the ALRC recommends that the definition of native title be amended to clarify that it is not necessary to establish that a society, united in and by its acknowledgment and observance of traditional laws and customs, has continued in existence since prior to sovereignty.

Finally, the ALRC recommends that the definition of native title clarifies that rights and interests may be possessed by a native title claim group where they have been transmitted or transferred between groups, or otherwise acquired in accordance with traditional laws and customs.

These recommendations responded to the core element in the terms of reference provided to the ALRC and did not include a number of tangential recommendations that also relate to the issue of 'connection'.[58]

A third major review of Indigenous land policy (including native title) emerged from COAG. At the COAG meeting on 10 October 2014, First Ministers initiated 'an urgent investigation into Indigenous land administration and use' to be undertaken by a Senior Officers Working Group (2015) of state and federal bureaucrats, assisted by an Expert Panel of Indigenous representatives.

The Working Group made a series of recommendations relating to native title. They summarised their report in the following terms:

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[58] This summary is taken from the Inquiry's Executive Summary. The more detailed discussion of issues related to connection is set out in chapters 5 and 6 of the ALRC report.

This report sets out a cohesive policy direction for governments to support Indigenous peoples' use of their rights in land and waters for economic development. The Investigation identified five key areas where governments should focus their efforts:

- *gaining efficiencies and improving effectiveness in the process of recognising rights*

- *supporting bankable interests in land*

- *improving the process for doing business on Indigenous land and land subject to native title*

- *investing in the building blocks of land administration*

- *building capable and accountable land holding and representative bodies.*

While the Working Group had access to the ALRC report, they made no attempt to address the connection-related recommendations which were at the centre of the ALRC Inquiry. Instead, they limited their focus to a number of less significant and more technical issues related to court processes and the like. Thus, the Working Group's recommendation relating to more effective claims processes stated:

Recommendation 1. All governments commit to gaining efficiencies and improving the effectiveness of claims processes under the Native Title Act 1993 *(Cth) and statutory land rights regimes, including taking the following actions:*

a. The Commonwealth, state and territory governments establish – where they do not already occur – meetings with the Federal Court, National Native Title Tribunal and other parties with a key role in the resolution of native title claims, to achieve better coordination within the native title system.

b. The Commonwealth, in consultation with states, territories and relevant stakeholders, implement amendments to the Native Title Act 1993 *(Cth) outlined in Table 1, and give further consideration to possible amendments outlined in Table 2, to support efficient and effective claims resolution processes.*

Neither Table 1 nor Table 2 referred to the connection recommendations of the ALRC.

The Working Group recommendations were considered by COAG on 11 December 2015. First Ministers agreed:

To better enable Indigenous land owners and native title holders to use rights in land for economic development, jurisdictions will implement the recommendations of this report subject to their unique circumstances and resource constraints.

While COAG's decision sounds positive and suggests support for Indigenous economic development, it involves no concrete commitments and no timeframes for action.

In November 2017, the Australian Government released an 'Options Paper' (Attorney General's Department 2017) responding to the recommendations of the ALRC and the COAG Working Group, and subsequently published an Exposure Draft of the legislation and invited comments thereon, before it introduced the Native Title Legislation Amendment Bill 2019. That Bill lapsed at the May 2019 election, and was re-introduced in October 2019. According to the Minister's Second Reading speech (Porter, 2019), the Bill's objectives included:

- *supporting the capacity of native title holders through greater flexibility around internal decision-making*

- *streamlining claims resolution and agreement-making processes*

- *allowing historical extinguishment to be disregarded over areas of national, state or territory parks with the agreement of the parties*

- *increasing the transparency and accountability of particular native title corporations, known as prescribed bodies corporate or registered native title bodies corporate, to native title holders*

- *improving pathways for dispute resolution following a determination of native title.*

The Minister went on to explain (Porter, 2019):

> *The Bill will also as a matter of urgency confirm the validity of agreements made under s. 31 of the NTA in light of the full Federal Court of Australia's decision in* McGlade. *Section 31 agreements are a particular kind of native title agreement which relate to the grant of mining and exploration rights over land which may be subject to native title, and the compulsory acquisition of native title rights.*

In the four years since the ALRC report was handed down, the only substantive amendments to the NTA were designed to facilitate agreement making (for example in relation to the Adani coal mine) by removing a requirement for unanimity in establishing Indigenous Land Use Agreements (ILUAs). These amendments arose as a result of a full bench of the Federal Court decision in *McGlade*[59] dealing with the Noongar native title agreement across the southwest of Western Australia, rather than from any consideration of the ALRC report. The applicants in *McGlade* successfully challenged the validity of four of the six ILUAs that comprise the Noongar agreement. The Court held that the NTA required that each applicant or native title claimant must sign an ILUA in order for it to be effective, in the process overturning the previous precedent set by the Court's 2010 decision in *Bygrave.*[60]

Assessing the native title reviews

In the period from 2011 to the present (2020), three significant formal review processes covering the native title policy domain were commissioned or agreed by the Commonwealth.[61] The Commonwealth responded to these processes with an elaborate consultation process, including an options paper inviting submissions, an exposure draft of an amendment Bill that also invited submissions, and the subsequent introduction of a Bill in February 2019 and again in October 2019.[62] The options paper did not include any discussion of Justice French's 2008 proposals nor the ALRC connection recommendations. The subsequent proposed amendment Bill did not address these issues either.[63] The failure to substantively address and respond to the views of academics and other interested technical specialists points to a larger and more systemic development in policy processes in Australia; namely the marginalisation of experts in favour of government responsiveness to sectional interest group advocacy. Notwithstanding a series of sequential reviews, the Australian Government has failed to take any policy decisions to pursue the reform agenda outlined in all three reviews, particularly on the issue of

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[59] *McGlade v Registrar National Native Title Tribunal* [2017] FCAFC 10 (*McGlade*).
[60] *QGC Pty Ltd v Bygrave and Others (No 2)* [2010] FCA 1019 (*Bygrave*).
[61] A fourth review of native title organisations was also undertaken, initiated by PM&C. This was largely focused on the funding pressures on Native Title Representative Bodies and Prescribed Bodies Corporate, the formal land holding entities established under the NTA. Neither set of entities has received a major funding boost as a result of the review. A number of other lesser reviews were also undertaken, for example, into the incorporation issues administered by the Office of the Registrar of Indigenous Corporations, which oversees Prescribed Bodies Corporate.
[62] The reason for the reintroduction was that the Bill lapsed when Parliament was prorogued prior to the May 2019 election. While submissions are invited, the evidence that they are taken seriously (particularly if they are contrary to governments' preferred policy approaches) is sparse.
[63] This is a broader issue with consultation processes undertaken by governments and various review agencies such as the Productivity Commission. While they provide opportunities for interested parties to make submissions, there is often no follow up and generally no 'audit trail' of the response to particular submissions (Jon Altman, *pers. comm.*).

'connection' identified by Justice French as a major shortcoming in the native title regime. Indeed, one might persuasively argue that the Government has clearly decided to do nothing, albeit without announcing that decision.[64] Instead of influencing policy, the three reviews have become the means by which the impetus for policy reform was delayed, deferred, and ultimately circumvented.

Concluding analysis and discussion: The influence of evaluation on Indigenous policy

The analysis of the influence of evaluation and review in the four selected Indigenous policy domains suggests that evaluation has an extremely poor record of substantive impact on macro or strategic policy. The analysis reveals that in most cases, evaluations and reviews have had minimal influence on policy outcomes, and thus in driving policy change and reform. Often, evaluations were used as a means of diverting attention from the more significant policy challenges and justifying further inaction. Invariably, inaction benefits those interests that have been most instrumental in shaping the status quo; and while each circumstance is different, in general it is Indigenous interests pushing for reform and more generalised sectional interests resisting reform and advocating for retention of the status quo, or in some cases the winding back of previous reform. Policy inertia is a means of resisting pressure for reform without overtly antagonising Indigenous interests.

In the cases where it is possible to discern an alignment between evaluation findings and subsequent policy change, the lack of independence of the evaluations and reviews has allowed policymakers to use the evaluations to justify policy agendas that pre-dated the evaluations. This conclusion, while important, has a significant caveat: the selected case studies relate to major strategic issues (chosen for their potential to influence broad-scale change in social, cultural and economic outcomes), and not the more detailed and technical levels of policy administration and development.[65] Nevertheless, the case studies broadly support the conclusion that evaluation and review are not core influencers of policy outcomes and thus are not the panacea to persistent and refractory policy failure in addressing deep-seated Indigenous disadvantage. Indeed, a cogent argument might be made that evaluation has had a regressive impact insofar as it has assisted in reducing pressure on governments to undertake substantive and broadly beneficial reforms.

These empirical conclusions align with a wide array of more theoretical analyses of these issues. Altman & Russell (2012) is the most detailed and comprehensive meta-analysis of evaluation relating the Indigenous policy domain in recent times. Having scoped out their research, the authors (2012, p. 8) refined their own objectives, noting that 'attempting a systematic review of unsystematic policy development and review processes would be counterproductive'. Their most incisive insight, derived in part from an anthropological frame of analysis,[66] is that evaluation is not so much a tool for measuring success or failure, but instead is one of the tools used by policymakers to manage and control the policy process itself. They go on to undertake an analysis that focuses on the political purposes of policy (and thus evaluation),[67] arguing that what appears to be ubiquitous 'evaluation fetishism' is in fact designed to disguise the ideological content of policy, particularly policies that target particular groups such as racial minorities. In the process, they point to the widespread existence of 'attribution problems' and the absence of rigorous 'contribution analysis' and point to the deep

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[64] The 2015 White Paper on Northern Australia discussed native title, primarily in terms of it being an impediment to economic development. Even so, the Government has made no progress in advancing its preferred policy agenda. See Dillon (2019c); Altman & Markham (2019) for critical assessments of both the content and effectiveness of the implementation of the White Paper's land related policy agenda.

[65] Evaluations of smaller and more focused programs and policy domains are less likely to confront the political constraints outlined above, and by definition are dealing with a narrower range of policy outcomes. They are thus more likely to identify useful and productive recommendations for change, which may well be implemented. However, evaluations of small programs, no matter how effective and influential, are unlikely to drive the fundamental changes in policy required to drive a significant step up in policy outcomes and address deep-seated disadvantage.

[66] This aligns with the 'interpretive' approach to policy and evaluation discussed earlier.

[67] The observation in Bovens, et al. (2008, p. 321) that 'It is only a slight exaggeration to say, paraphrasing Clausewitz, that policy evaluation is nothing but the continuation of politics by other means' serves to reinforce the point made here by Altman & Russell (2012).

desire of government to control evaluations, generally by limiting real independence (Altman & Russell, 2012, pp. 11–12).

In relation to evaluation and the Indigenous policy domain, Altman & Russell (2012) argue that evaluation serves to naturalise the dominant policy narrative, largely by rendering 'a deeply entrenched development problem into a hyper-technical monitoring exercise'. They conclude by pointing to the 'cross-cultural tensions inherent in defining … goals and evaluating … outcomes' in the Indigenous policy domain. Finally, they argue that what they term 'evaluation fetishism' is as much about mainstream Australia as Indigenous Australians and that evaluation is used 'as a means of persuading and comforting [mainstream Australia] that something productive is being done … to address acute problems in remote Indigenous Australia (Altman & Russell, 2012, pp. 17–18).

This analysis is well made, and points to the likelihood that in relation to evaluation generally, but particularly in the sharply ideological Indigenous policy domain,[68] whichever evaluation frameworks are established will be vulnerable to undermining and expedient interference as political imperatives come to the fore. Moreover, inappropriate political interference can be either explicit or implicit.[69] For example, there is a tendency towards what Francis Markham (*pers. comm.*) described as 'the tyranny of the tweak', where evaluation methodologies are focused on adjusting the minor technical details of a policy or program, thus effectively diverting attention from the larger and more significant potential changes that may be required. To frame it another way, one of the functional attractions of evaluation (embedded within such a system) is its capacity to both provide the appearance of action and movement without impacting the underlying configurations of power that has shaped the policy space in the past and continues to do so in the present.

The vulnerability of evaluation to inappropriate political influence and the largely invisible ways it can be exercised are deeply structural constraints not easily changed or eliminated, which are directly related to the institutional design of the extant policymaking and political institutions. Checketts (2016) provides an anthropological lens into the complexity and 'pulse' of the Indigenous policy world that reinforces the existence of these structural constraints. In her words (Checketts, 2016, p. 201), the ongoing production of different forms of policy knowledge by parliamentarians, bureaucrats and service delivery agents combine to produce:

> … a mismatch between policy knowledge (what is needed to improve Indigenous livelihoods), policy practice (the actions and activities taken by parliamentarians and bureaucrats within different spaces and contexts in the policy world) and policy impact (how Indigenous Australians are affected or remain unaffected, engage or are unable to engage, with policy).

Of course, these types of structural constraints are not limited to the Indigenous policy domain, nor to Australia. In 2013, the National Audit Office in the United Kingdom (UK) concluded that coverage of evaluation evidence is not comprehensive, notwithstanding government policy guidance that all policies, programs and projects should be subject to 'proportionate evaluation'. Moreover, the quality of the evaluation work undertaken was uneven and variable. Further, and of most relevance to the issue under discussion here, the evidence for the use of evaluation evidence in policy development was 'limited', and the 'impact assessments' of policy proposals under consideration 'rarely include relevant learning from evaluation evidence' (National Audit Office, 2013, pp. 7–8).

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[68] The ideological contours of the Indigenous policy domain are reflected in the deeply held and conflicted views within Australian society in relation to foundational issues such as the nature of Australian sovereignty, the extent of racism in Australian society, the causes of welfare dependence amongst many Indigenous citizens, the reasons for mass incarceration of Indigenous Australians, and the importance of Indigenous culture and language in education curricula. These issues are characterised by multiple cleavages including in terms of partisan political support, education levels, ethnic backgrounds, and income levels. See Maddison (2012) for a discussion of ideology in the Indigenous policy domain.

[69] The reference to 'inappropriate political interference' in evaluation and review processes that are ostensibly independent is not meant to infer that there is not a legitimate role for political agency, for example in deciding when to initiate a review or evaluation, in determining terms of reference, and in deciding how to respond to the review or evaluation once finalised. Of course, the use of the term 'inappropriate' is value laden and implicitly assumes that an unregulated and undemocratic politics is undesirable.

A particular issue in relation to the issue of evaluation in the Indigenous policy domain is the large and increasing impact of mainstream policy and programs on Indigenous citizens and communities (Dillon 2019a; Dreise et al., 2019). Mainstream impacts can be either inclusive or exclusionary, thus necessitating careful evaluation design if evaluations are to identify policy opportunities to address Indigenous needs and aspirations. One implication of this insight is that evaluations of mainstream programs, if they are to influence Indigenous outcomes, will need to include elements and processes that explicitly incorporate Indigenous input and perspectives. Moreover, obtaining such Indigenous perspectives and including a focus on Indigenous impact within evaluations will require the identification of Indigenous citizens within relevant data sets.[70] Implementing these changes would represent a wholesale revolution in the processes and focus of mainstream policy and program evaluation and review in the public sector in Australia.

This paper has, in effect, asked two fundamental questions regarding the role of evaluation in the Indigenous policy domain:

- why has the more extensive use of evaluation in the Indigenous policy domain not led to improved policy outcomes?

- what explains the continuing support for evaluation amongst policymakers despite this poor record?

The short answers that emerge from an analysis of the case studies are that the complex array of constraints, challenges and disincentives that determine the shape and scope of policy agendas, and which often transcend partisan political interests, have effectively appropriated the processes of public sector evaluation, largely to divert attention from the structural (as opposed to partisan) political nature of the decision-making processes involved in policy formulation. Evaluations thus become an element of the political process itself (Bovens et al., 2008, p. 321), and thus contribute to the creation of an aura of technical neutrality and comprehensive rationality around policy formulation (Shore & Wright, 1997, pp. 8–9).[71] Overwhelmingly in Indigenous policy contexts, evaluations and reviews are utilised to justify and defend decisions that are shaped by, and reinforce, the dominant discourse within the Australian polity, which is itself strongly shaped by the views and agendas of the dominant interest groups in the nation.

The implication of course is that optimal policy outcomes (defined as outcomes designed to advance the public interest rather than particular sectoral or partisan interests)[72] are not prioritised, with concomitant opportunity costs for both the nation and Indigenous interests. The upscaling of the quantum and profile of evaluation over the past three decades in Indigenous affairs has not influenced policy outcomes, and thus not led to improved policy outcomes, because contrary to the implicit assumptions of influential evaluation proponents (including those policymakers cited earlier in this paper), most evaluations are neither independent and transparent nor analytically sophisticated enough to recommend an effective policy reform agenda.[73] Even when evaluations do meet these criteria, where they fail to align with the dominant discourse (shaped by underlying or structural political interests), they are sidelined or shelved, and/or eventually overtaken by yet another review. Where a subsequent review is designed to shift the political and policy agenda beyond the findings of the previous review

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[70] It is worth noting that Indigeneity is not a homogenous category, and there may be a need for data sets to measure different types of heterogeneity within the Indigenous population.

[71] In making this point, they are adopting Foucault's concept of 'political technologies' by which power operates to conceal its own operation (Dreyfus & Rabinow, 1982, p. 196).

[72] There is clearly scope for considerable overlap between sectoral and public interests, thus complicating the distinction. The mechanism available in democratic society to ensure that the public interest is advanced resides in the robustness and quality of the governance and regulatory structures and institutions established around policy decision processes.

[73] It is worth noting that looking back three decades, the major evaluations and reviews in the Indigenous policy domain were generally focused on the larger questions, more comprehensive in scope, undertaken at arm's length from Ministers and the bureaucracy, and undertaken more collegially with affected interests, and as a result were indeed more influential. I am thinking of the 1984 Review of the Aboriginals Benefit Trust Account (Altman, 1984), the 1985 *Report of the Committee of Review of Aboriginal Employment Programs* (Miller, 1985), and the 1987 Parliamentary report *Return to country: The Aboriginal homelands movement in Australia* (Blanchard, 1987).

or evaluation, it is likely to be focused on issues of partial or tangential significance, or framed in a way that aligns with dominant values and discourse. Invariably, the policy outcome will be aligned to the deeper structural interests of the extant political settlement. We saw this dynamic in both the income management and native title policy case studies above.

Finally, looking forward rather than back, it is worth noting that there appears to be a shift emerging in the dominant narrative of the Australian Government around the nature of Indigenous policymaking (NIAA, 2019b). This emphasises the potential disadvantages of what has become known as deficit discourse in discussions of Indigenous policy (Brown, 2019; Fogarty et al., 2018a, 2018b), and the emergence of moves towards greater use of participatory and co-design processes, notably in the current Closing the Gap refresh process (Turner, 2019). Acknowledgment of the value of greater participation and co-design within policy formulation is consistent with the interpretive and reflective modes of policy analysis and policymaking discussed above. Without taking issue with the legitimacy and very real value of these policy perspectives, it is worth noting that their increased adoption and greater salience within the Indigenous policy domain will in turn throw up new challenges for Indigenous policy evaluation. These include tension between notions of independence and Indigenous control, between transparency and Indigenous data sovereignty, and most fundamentally, and perhaps most importantly, concerning whose conception of policy success (governments, the citizenry at large or Indigenous citizens) should be used in policy evaluations.

In particular, there is an emerging risk that governments will appropriate the new narratives of Indigenous participation and co-design to protect the extant political settlement (or in more mundane terms, the interests of economic and political elites, to the exclusion of Indigenous interests) and use them to cloak the enduring structural impact and influence of politics on Indigenous policy. In other words, unless core principles of Indigenous participation and use of co-design are embedded through institutional change, and the broad spectrum of innately heterogeneous Indigenous voices are engaged and heard, there will be a risk that governments will use an ostensible commitment to co-design processes in both policy and evaluation as a means of facilitating the deferral or avoidance of substantive policy reform.

Notwithstanding these very pessimistic conclusions regarding the potential influence of evaluation in driving strategic policy reform, there remain significant potential advantages in undertaking evaluation. Accepting that evaluations and reviews are likely to be part of the policy process itself, it remains the case that policy formulation and development necessarily involves policymakers (and potentially other policy actors, stakeholders and engaged citizens) asking questions, either explicitly or implicitly. Evaluations and reviews offer a mechanism to assist policymakers in moving beyond the ubiquity of reliance on anecdote.[74] In particular, high quality evaluations and reviews synthesise and publish key data from a variety of sources, including administrative sources, with the result that they provide policymakers and the public with much greater insight into the shape and nature of the policy domain under examination. In the event that they canvass alternative policy options or approaches, they have the potential to expand the window of opportunity for a particular policy domain into the future, even where an alternative may not be palatable or feasible in the present.

Evaluations and reviews thus have the capacity to focus the gaze of policymakers and citizens on existing policy issues (which can only be positive in a democracy)[75] and to feed into shaping and framing medium-term policy debate and discussion. They also have the potential to influence more micro level and incremental policy change which, over extended periods, can add to significant policy change. Former senior public servant Peter Shergold (2015) has argued for a sharper use of these micro processes in contributing to what he terms

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[74] See ANAO (2018, para. 3.52) for an example where incorrect anecdotal advice was provided to a minister.
[75] Recent experience in Australian with Royal Commissions into the banking sector, aged care sector, and the disability care sector are all examples of this dynamic. Of course, the fact that we utilise royal commissions to focus policy attention on the issues in particular sectors suggests that more routine (and less independent) reviews and evaluations and indeed the day to day processes of our broader political system are not working as effectively as they should.

'adaptive government'. In particular, he argues that the implementation of major policy or program initiatives should be staged, and that the early pilots be rapidly evaluated prior to full-scale implementation (Shergold, 2015, p. 82). An alternative, and less rationalist, perspective would be that while 'adaptive government' can potentially contribute to incremental policy development, the evidence outlined above suggests that there is a real risk that it becomes another means of avoiding substantive reform and change. As a consequence, evaluations aimed at promoting micro reforms are themselves potentially counterproductive for substantive reform.

Nevertheless, whether focused on strategic or micro levels of activity, evaluation does facilitate wider discussion and debate, thus encouraging an 'argumentative' mindset and approach to policy assessment. However, as Bovens, et al. (2008, p. 330) point out, there is an important weakness in the argumentative approach:

> … it rightly points at the relevance of the socially and politically constructed nature of assessments about policy success and failure, but it does not offer clear, cogent, and widely accepted evaluation principles and tools for capturing this dimension of policy evaluation.

If evaluation is to be anything more than a mere theatrical prop within the politically driven policy process,[76] it will require robust institutional safeguards to protect it from both partisan political interference and the emergence of deeper structural political incentives which constrain notions of political and policy feasibility and thus have the potential to adversely shape evaluation processes and results. Potential safeguards might include the design and adoption of entrenched commitments to transparency and independence in the conduct of evaluations, and a shift to much greater openness in relation to governments' day-to-day operations (Dillon, 2019a). However, given the conclusion that policy evaluation and review in Australian public policy contexts is currently not influential in shaping policy, but has rather become a part of the political agenda of governments, it will be extremely challenging to devise institutional reforms that effectively insulate evaluation from the reach of explicit or implicit political influence. To give an example from the UK, British sociologist Sarah Moore has pointed to the limitations of the overt transparency policies adopted by the UK government, suggesting that they simultaneously direct attention to discrete events while disguising the structures and principles that in fact underpin policy decisions (Moore, 2018, p. 428). The suggestion in Bray et al. (2019, p. 26) that 'leadership and stewardship' directed to the 'guardianship of institutional capacity' is a necessary precondition to the establishment of a strong culture of evaluation amongst policymakers is undoubtedly correct. Unfortunately, it will not be sufficient.

Evaluation has the theoretical potential to make a positive contribution to effective policy reform that addresses deep-seated Indigenous disadvantage and meets Indigenous citizens' aspirations. However, fulfilling this potential will require robust strengthening of the core elements of high-quality evaluation and review, namely, independence and transparency, as well as an appreciation that policy is shaped and even determined by more than top-down decision-making by policymakers. It is multi-dimensional and its shape shifts depending on the position, stance and perspective of the observer. Disentangling these complexities requires interpretive modes of analysis, described by Colebatch (2009, pp. 41–45) as 'structured interaction' and 'social construction'; by Bacchi (2009) as 'issue and problem framing', and by Rhodes (2012) as 'genre blurring'.

Moreover, any reforms will need to be robust enough to resist the inevitable resistance from interests who benefit from the status quo. In particular, improved evaluation quality will require more sophisticated modes of analysis that reflect social and cultural realities, and their impact on the nature of policy in the Indigenous domain. Independence and transparency are crucial components of high-quality evaluations, and these will require upfront agreement on terms of reference, commitment to timely publication, removal of any intellectual property constraints, and ideally disclosure of the full costs of evaluations to facilitate value for money

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[76] Checketts (2016) argues that Senate Estimates processes have succumbed to a similar dynamic.

assessment. Bureaucratic leadership and stewardship is necessary, but it is not sufficient. To ensure effective evaluation that has the potential to positively influence policy, fundamental structural reforms are required.

The required reforms would go to the very nature of our political system, and are thus both much more ambitious in scope, and less likely to be implemented. To survive and be effective, they would necessarily involve fundamental reforms to strengthen the power of the Parliament vis a vis the Executive, to provide for full and immediate disclosure of political donations, to strengthen the independence of regulators and the judiciary (including independent appointment processes), and to strengthen the mechanisms directed to investigating and prosecuting corruption in the public sector. Additionally, the ongoing and substantive exclusion of Indigenous voices from policy formulation must be reversed (Westbury & Dillon, 2019). These potential reforms are presently prominent within public debate, but are unlikely to be implemented anytime soon. They would require governments to voluntarily give up a degree of control, and reduce their capacity for unilateral action. Perhaps more importantly, it would upset the delicate balance of the extant political settlement, creating new and uncertain dynamics within political and economic elites, and more threateningly, providing new leverage for those interests excluded by the political settlement. In these circumstances, the composition of a government would be placed at risk. Accordingly, the prospects for wider structural governance reform both generally and in the Indigenous policy domain, appear to be dismal. In these circumstances, evaluation and review will continue to be highly problematic processes within the Australian public policy domain.

Finally, it is worth noting that these fundamental reforms are not only preconditions for effective evaluation (i.e. evaluations that influence policy outcomes), but are also the preconditions for much more inclusive policy reform in the Indigenous policy domain more generally since evaluation is only one potential driver of policy. The influence of structural politics, and deep-seated imbalances in power, are the dominant drivers of policy outcomes in the Indigenous domain.

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