

Self-Determination: Background Concepts

Scoping paper 1 prepared for the Victorian
Department of Health and Human Services

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1. Introduction

In December 2015, the Victorian Government announced its commitment to working with the Aboriginal community of Victoria so that self-determination becomes the primary driver of Aboriginal affairs policy in Victoria.

As the Department of Health and Human Services undertakes strategic planning to most effectively promote Aboriginal wellbeing and health in Victoria, the concept of Aboriginal self-determination must be integral to that planning for three main reasons:

1. Because it is Victorian Government policy;
2. Because the Victorian Government has an obligation under international law to implement self-determination in its policies; and
3. Because Australian and international evidence demonstrates that self-determination is the only policy approach that has produced effective and sustainable outcomes for Indigenous peoples.

While the concept of self-determination is often thought about in the context of international law, its adoption into domestic law and practice offers many opportunities.

This paper looks at the definitions and concepts of self-determination under international law and then explores articulations of what that means in practice and how practical applications could be pursued. It then considers the work done around social and cultural determinants of health and what this might mean for the practical applications of the concept of self-determination.

2. Meanings of Self-Determination

Self-determination is the most fundamental of all human rights and is grounded in the idea that peoples are entitled to control their own destiny.¹ It has been described by the United Nations Human Rights Committee as the ‘essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights’.²

It emerged as a concept and right in international law in the post-World War II human rights framework. Indigenous peoples around the world have claimed this right and have used it as a vehicle for re-imagining their relationships with the country within which they live.

2.1 Self-Determination as a concept under International Law

Debates within the international arena during the early post-World War II period were concerned with restructuring Europe and developing a stable world order. Within these discussions came the development of a strong human rights framework that focused on individual rights.

A pivotal foundation of the post-World War II framework was the emergence of the right of self-determination. It was enshrined in a number of United Nations instruments including the:

- United Nations Charter;
- UN International Covenant on Civil and Political Rights (‘ICCPR’);
- UN International Covenant on Economic, Social and Cultural Rights (‘ICESCR’); and
- Declaration on the Rights of Indigenous Peoples.

¹ S James Anaya, *Indigenous Peoples in International Law* (2nd ed) (New York, Oxford University Press, 2004), 98.

² Human Rights Committee, *General Comment 12: Article 1*, 21st sess, UN Doc HRI/GEN/1/Rev.1 at 12 (1994).

Article 1 of both the ICCPR and ICESCR states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

The States Parties to the present Covenant ... shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

Self-determination was vested in 'peoples' and was applicable against a state. This formulation was an exception to the individual-rights focus of the human rights framework since it was one of the few areas where a right vested in a group. It gave 'peoples' a right exercisable against their state and was envisaged as only being applicable to 'peoples' within the territory of defeated European empires. However, other cultural or political groups started to claim a right to self-determination, including Indigenous peoples.

However, while the principle of self-determination was extended from European minorities to colonial situations, this decolonisation process was not applied across the board. It was generally deemed inapplicable to colonial situations where the colonised populations constituted a minority. International law developed what became known as the 'blue water thesis'³ that held that the decolonisation applied to population separated physically, that is, by water, from their colonising powers. This definition precluded from decolonisation procedures the enclaves of indigenous peoples living within the external boundaries of independent states. While state sovereignty over distant or external colonial territories was eroding, it remained over the enclaves of indigenous groups within states and worked to keep them outside the realm of international law.

³ The notion was adopted into General Assembly Resolution 1541 in Principles IV and V. See also Anaya, above n1, 43; Otuatye-Kodjoe, *The Principle of Self-Determination in International Law* (Nellen Press, 1977) 119; Gordon Bennett, *Aboriginal Rights and International Law* (Royal Anthropological Institute of Great Britain and Ireland, 1978) 12-13.

This saw the development of the notions of:

- external self-determination which refers to the status of a people within a state in relation to other states and their governments; and,
- internal self-determination which refers to the right of a people within a state to control its political, social, cultural and economic destiny without outside interference.⁴

Internal self-determination is relevant to the collective rights of Indigenous peoples where the concept is about finding space within a national government and legal system for the exercise of control over decision-making and protection of rights. What is clear is that the claim to self-determination in this context is about a renegotiation of government, legal and policy arrangements with the state; it is not about succession from the state.

Some countries, including Australia, have continued to resist using the term *self-determination* to articulate Indigenous peoples' rights, arguing that it implies secession and challenges to territorial integrity, despite numerous attempts to dispel this misconception. This is reflected in Australia's initial opposition to the United Nations Declaration on the Rights of Indigenous Peoples, which was predicated on concerns that included apprehension that Indigenous rights to self-determination would potentially impair the 'territorial and political integrity of a State with a system of democratic representative government.'⁵

However, Indigenous people continued to assert a right to self-determination. James Anaya, former Special Rapporteur on the rights of Indigenous peoples, describes the right of self-determination as it relates to Indigenous peoples as encompassing a range of collective human rights. These include non-discrimination; cultural integrity; control over land and

⁴ Rosalyn Higgins, 'Postmodern Tribalism and the Right to Secession: Comments' in Catherine Brölmann et al (eds) *Peoples and Minorities in International Law* (Kluwer Academic Press, 1993) 32.

⁵ Robert Hill, Australian Ambassador to the United Nations cited in Sarah Joseph, 'The Howard Government's Record of Engagement with the International Human Rights System' (2008) 27 *Australian Yearbook of International Law* 45, 47-48.

resources; social welfare and development; and self-government.⁶ Other elements include the right to freedom of speech, to peaceful assembly, to freedom of association, to vote and to take part in the conduct of public affairs directly or through chosen representatives.

2.2 The Declaration on the Rights of Indigenous Peoples

The key clarification on the rights of Indigenous Peoples under international law is the Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly on 13 September 2007.

Australia did not sign when it was first adopted by the international community but subsequently gave qualified support to implementing the standards, emphasising that the Declaration is 'non-binding and does not affect existing Australian law' and that it 'cannot be used to impair Australia's territorial integrity or political unity'.⁷

Articles 3, 4 and 5 of the Declaration relate to the right to self-determination:

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

This is further clarified by Article 46 of the Declaration:

Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

⁶ Anaya, above n1, 129ff.

⁷ Jenny Macklin, Minister for Families, Housing, Community Services and Indigenous Affairs, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples' (Statement, 3 April 2009) <<http://jennymacklin.fahcsia.gov.au/statements/2009/04>>.

These collective rights go beyond the individual, the family or the community organisation but are held by Indigenous peoples or nations. The term 'Indigenous peoples' is not defined by the Declaration but scope of rights contained in the Declaration is directed at self-identified decision making entities which operate through their own institutions to achieve their political, economic, social, and cultural goals (articles 18 & 19). The Declaration also outlines the responsibilities of countries (called States in the Declaration) to engage with Indigenous peoples and to ensure that Indigenous peoples can attain those rights.

Some of the particular collective rights of Indigenous peoples and of country (State) responsibilities associated with the right to self-determination are listed below:

Rights of Indigenous peoples	
Article 3	The right to self-determination, where Indigenous peoples have the right to determine their political status and pursue their economic, social and cultural development.
Article 4	The right to autonomy or self-government in matters relating to their internal and local affairs.
Article 5	The right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions. The right to participate fully in the political, economic, social and economic life of the country.
Article 7	The right to live in freedom, peace and security as distinct peoples.
Article 8	The right to be free from forced assimilation and from destruction of culture.
Article 9	The right to be an Indigenous community or nation in accordance with the community's or nation's traditions and customs.
Article 10	The right to not be forcibly removed from their lands or territories. Relocation should only take place with free, prior and informed consent and after agreement on compensation and the possibility of return.
Article 11	The right to practise and revitalise their cultural traditions and customs. This includes the right to protect past, present and future manifestations.
Article 12	The right to practise, develop and teach their spiritual and religious traditions, customs and ceremonies; and the right to use and protect religious and cultural sites and ceremonial objects.
Article 13	The right to revitalise, use, develop and teach their histories, languages, oral traditions, philosophies, writing systems and literatures.
Article 14	The right to establish and control their own educational systems and to provide culturally appropriate education.
Article 18	The right to participate in decision-making relating to matters that affect their rights through representatives that they have chosen. The right to maintain and develop their own decision-making institutions.
Article 20	The right to maintain and develop their political, economic and social systems. The right to enjoy their traditional and other economic activities and means of subsistence and development.
Article 21	The right to improve their economic and social conditions, including in education, employment, vocational training, housing, sanitation, health and social security.

Article 22	The right to determine and develop priorities for exercising their right to development. The right to develop health, housing and other economic and social programs and administer them (as far as possible) through their own institutions.
Article 23	The right to maintain and strengthen their distinctive spiritual relationship with their traditional Country, or lands that they occupy and use.
Articles 24, 28, 29 and 32	The right to lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired, including the right to develop priorities and strategies for use of that land. The right to conserve and protect the environment and the productive capacity of their lands, territories and resources. The right to restitution for or compensation for such lands that have been taken, occupied, used or damaged without their free, prior and informed consent.
Article 30	The right to maintain, control, protect and develop their cultural heritage, traditional knowledge, and their sciences, technologies and cultures. The right to maintain, control, protect and develop their intellectual property.
Article 33	The right to determine their own identity and membership according to their customs and traditions. The right to determine the structure of their institutions and membership according to their own procedures.
Article 35	The right to determine the responsibility of individuals to their communities.
Article 39	The right to access financial and technical assistance to enjoy the rights included within the Declaration.

Responsibilities of countries (States) to support Indigenous peoples	
Article 19	The responsibility to consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions so as to obtain their free, prior and informed consent before adopting legislative or administrative measures that affect them.
Article 32	The responsibility to consult and cooperate in good faith with Indigenous peoples concerned through their own representative institutions so as to obtain their free, prior and informed consent before approving any project that affects Indigenous lands, territories or resources.
Article 38	The responsibility to take appropriate measures, in consultation and cooperation with Indigenous peoples, to achieve the purposes of the Declaration.
Articles 8, 11, 12, 13, 14, 15, 16, 17, 20, 21, 22, 32	<p>The responsibility to protect specific rights included in the Declaration and provide redress or compensation where necessary. These include rights related to:</p> <ul style="list-style-type: none"> • Integrity as distinct peoples, cultural values and protection from assimilation or destruction of culture; • Indigenous peoples' cultural, intellectual, religious and spiritual property; • Repatriation of ceremonial objects and human remains; • Indigenous peoples' histories, languages, oral traditions, philosophies etc; • Culturally appropriate education, including in language, where possible; • Dignity and diversity of cultures, traditions, histories, and aspirations; • Culturally diverse media; • Protection from economic exploitation, especially for children; • Compensation for dispossession from Country; • Improved economic and social conditions, with emphasis on the needs of Indigenous elders, women, youth, children and persons with disabilities; • Protection against violence and discrimination; • Control lands, territories and resources; • Fair and just redress for adverse environmental, economic, social, cultural or spiritual impact on Indigenous lands, territories or resources.

3. Self-determination in practice

3.1 Indigenous self-determination as defined by Indigenous people

Despite policies of dispossession, marginalisation, assimilation or integration, and practices of legal discrimination and social prejudice, even indifference, Indigenous peoples throughout the world have maintained their identity as distinct peoples with a desire for autonomy.⁸

Before invasion, there were approximately five hundred Aboriginal nations with established law and political systems.⁹ Aboriginal and Torres Strait Islander people frequently assert that, before invasion, Indigenous peoples were self-governing and exercised sovereignty over their lands and waters. Aboriginal and Torres Strait Islander people assert that they have not ceded their lands or sovereignty, and that sovereignty remains vested in these lands and waters.¹⁰

Colonisation may have impacted on Indigenous peoples' capacity to be self-determining, and may have reduced the scope of jurisdiction that they are now able to exercise effectively, but it has not extinguished their resolve to determine their own futures. Indigenous peoples in Australia strive to control their own futures so that they 'may retain their indigenous values and traditions, ways of life, and their languages and cultures, and to do so in a contemporary

⁸ P G McHugh, *Aboriginal Societies and the Common Law. A History of Sovereignty, Status, and Self-Determination* (Oxford University Press, 2004) 62-63; Alexander Reilly, 'A Constitutional Framework for Indigenous Governance' (2006) 28 *Sydney Law Review* 403; Martin Papillon, 'Adapting Federalism: Indigenous Governance in Canada and the United States' (2012) 42(2) *Publius: The Journal of Federalism* 289; Will Kymlicka, 'American Multiculturalism and the 'Nations Within' in Duncan Ivison, Paul Patton and Will Sanders (eds) *Political Theory and the Rights of Indigenous Peoples* (Cambridge University Press, 2000) 216; James Tully, 'The Struggles of Indigenous Peoples for and of Freedom' in Duncan Ivison, Paul Patton and Will Sanders (eds) *Political Theory and the Rights of Indigenous Peoples* (Cambridge University Press, 2000) 36; David C. Hawkes, 'Indigenous peoples: self-government and intergovernmental relations' (2001) 53(167) *International Social Science Journal* 153.

⁹ Michael Dodson, 'Sovereignty' (2002) 4 *Balayi: Culture, Law and Colonialism* 13, 1.

¹⁰ Kevin Gilbert, 'Aboriginal Sovereign Position: Summary and Definitions' (1994) 13(1) *Social Alternatives* 13; Noel Pearson, 'Reconciliation: To Be or not to Be? Separate Aboriginal Nationhood or Aboriginal Self-determination and Self-government within the Australian Nation?' (1993) 3(61) *Aboriginal Law Bulletin* 14 <<http://www.austlii.edu.au/au/au/journals/AboriginalLawB/1993/>>; Paul Coe, 'The Struggle for Aboriginal Sovereignty' (1994) 13(1) *Social Alternatives* 10; Sean Brennan, Brenda Gunn & George Williams, 'Sovereignty' and its Relevance to Treaty-Making Between Indigenous Peoples and Australian Governments' (2004) 26 *Sydney Law Review* 307, 313; Larissa Behrendt, *Achieving Social Justice. Indigenous Rights and Australia's Future*. (Federation Press, 2003) 95; Aileen Moreton-Robinson, 'Writing off Indigenous sovereignty: The discourse of security and patriarchal white sovereignty' in Aileen Moreton-Robinson (ed), *Sovereign Subjects: Indigenous Sovereignty Matters* (Allen & Unwin, 2007) 86, 87; Expert Panel on Constitutional Recognition of Indigenous Australians, *Recognising Aboriginal and Torres Strait Islander Peoples in the Constitution: Report of the Expert Panel* (2012) 205.

context.’¹¹ Indigenous peoples assert their right to self-determination in order to regain control over their lands and their social, economic and cultural future.¹²

Incorporating these elements, the National Aboriginal Community Controlled Health Organisation defines self-determination as:

The ability of Aboriginal people to determine their own political, economic, social and cultural development as an essential approach to overcoming Indigenous disadvantage.¹³

3.2 Self-determination and the Aboriginal and Torres Strait Islander Commission

In 1990, the Hawke Government established a policy of ‘self-determination’. A key aspect of this was the establishment of the Aboriginal and Torres Strait Islander Commission (ATSIC), a national representative structure that was attached to a government bureaucracy.

The Howard Government abolished the agency in 2005. As a result of its abolition, a specious argument developed in the discourse around Indigenous disadvantage that asserted that ‘self-determination has failed’. This claim emerged in the wake of the disestablishment of the national representative structure in the Aboriginal and Torres Strait Islander Commission (ATSIC). The political rhetoric implied that there was a government policy called ‘self-determination’ and one of its key initiatives had been the establishment of ATSIC, and since ATSIC was a failure, self-determination was a failure.

However, it is not clear that ATSIC was ‘a failure’ and had several policy successes. In the area of program delivery, ATSIC established the Community Development Employment Program (CDEP) – the only employment program to have successfully addressed developing community capacity in areas where there are no jobs.¹⁴ Likewise, the Community Housing

¹¹ Hawkes, above n8, 156.

¹² Papillon, above n8, 292

¹³ NACCHO, cited by Aboriginal Health and Medical Research Council, New South Wales.

<http://www.ahmrc.org.au/index.php?option=com_content&view=article&id=35&Itemid=37>

¹⁴ For a summary of the success of CDEP see Jon Altman, ‘Neo-Paternalism and the Destruction of CDEP’ (Topical Issue No 14/2007, CAEPR, ANU, 2007) <<http://caepr.anu.edu.au/Publications/topical/2007TI14.php>>. He notes that CDEP has employed 36,000 Indigenous people and had over 200 Indigenous organisations as participants.

Infrastructure Program (CHIP) was assessed by the Australian National Audit Office as effective in delivering major housing and infrastructure projects to Indigenous Communities.¹⁵ These policy successes within ATSIC would highlight the positive outcomes when Indigenous people are engaged with the design of policies going into their communities.

The problem with the assertion that ‘self-determination failed because ATSIC failed’ is that it assumes that the establishment of a government bureaucracy, albeit with an elected arm, to assist with government policy and the administration of government money, is an embodiment of self-determination. Many would argue that this is not a form of self-determination but rather the integration of a representative body into the bureaucracy. In many instances, the concept was equated with ‘self-management’ rather than ‘self-determination’.

However, the rhetoric that ‘self-determination had failed’ became popular and was adopted by both sides of the political spectrum. Alongside this mantra emerged the symbiotic proposition that Indigenous Australians are not capable of looking after their own affairs and require intervention and policies aimed at behavioural change. This is not only a contentious proposition, it also runs counter to the large amount of evidence that shows that Indigenous involvement in Indigenous policy making, design of programs and service delivery is the most effective way to achieve positive outcomes and to improve socio-economic indicators.

3.3 Indigenous Involvement in Policy Making – The Evidence

There is strong evidence linking Indigenous self-determination to improved outcomes for Indigenous communities. In particular, the link between Indigenous involvement in the development of policy and the delivery of services can be seen in the Aboriginal Community Controlled Health Services (ACCHS) sector. It has been shown that they have reduced barriers to access and improves health outcomes for Aboriginal people.

Primary health care data comparing the health outcomes for Indigenous people in the ACCHSs with those in mainstream services shows that they consistently improve performance in key

¹⁵ Australian National Audit Office, *National Aboriginal Health Strategy—Delivery of Housing and Infrastructure to Aboriginal and Torres Strait Islander Communities* (1999).
<https://www.anao.gov.au/sites/g/files/net616/f/anao_report_1998-99_39.pdf>.

performance on best practice indicators and have superior performance to mainstream general practice. Care delivered in ACCHSs for prevention and chronic disease management appears to be equal to if not better than that delivered by general practices.¹⁶

One example is illustrative of why this involvement leads to improved outcomes even in the face of restricted funding.

The Inala Indigenous Health Service in south-west Brisbane performed extensive market research to determine the factors keeping Aboriginal patients from utilising the mainstream health service. The results showed that several simple measures were highly effective in engaging the local community, such as employing an Indigenous receptionist and making the waiting room more culturally appropriate through local art or broadcasting an Aboriginal radio station. In the five years following implementation of these strategies, the number of Indigenous patients at Inala ballooned from 12 to 899, and an average of four consultations per patient per year was attained, compared to the national Indigenous average of fewer than two. A follow-up survey attributed patient satisfaction to the presence of Indigenous staff and a focus on Indigenous health.¹⁷

It is worth noting that the Aboriginal Community Controlled Health Care sector was built on the principle of self determination and grants local people the power to achieve their own goals in the areas of primary clinical care, community support, special needs programs and advocacy.¹⁸

There are clear reasons why Indigenous involvement in policy-making, program design and service delivery provide improved outcomes:

- Indigenous people understand the issues of concern and priority in their local areas and regions;
- Involvement of Indigenous people in policy, services and programs ensures 'buy-in' from the local community and ensures culturally appropriate solutions;
- Inclusion of Indigenous people in policy development, service delivery and programs builds community capacity and social capital;
- Involvement of Indigenous people is more likely to create culturally sensitive spaces

¹⁶ Kathryn S Panaretto, Mark Wenitong, Selwyn Button and Ian T Ring, 'Aboriginal community controlled health services: leading the way in primary care' (2014) 200(11) *Medical Journal of Australia* 649.

¹⁷ Hayman NE, White NE, Spurling GK, 'Improving Indigenous patients' access to mainstream health services: the Inala experience' (2009) 190(10) *Medical Journal of Australia* 604.

¹⁸ Michael Weightman, 'The Role of Aboriginal Community Controlled Health Services in Indigenous Health', (2013) 4(1) *Australian Medical Student Journal* 49, 49.

and improve the cultural competency of non-Indigenous staff improving Indigenous engagement;

- Indigenous people are able to use their networks informally to engage people in programs and services who may not otherwise participate; and
- Indigenous people can use their community networks to work across agencies in communities.

Evidence from the United States shows similar positive outcomes in health and wellbeing when Indigenous communities manage health care. Community control makes service providers more accountable to community members, increases the likelihood that service offerings will be tailored to the community's particular health priorities, and improves patient satisfaction and health outcomes.¹⁹ US Native Nations also report that the self-government approach reduces regulation, increases financial flexibility, allows the consolidation and redesign of programs, and increases access to new programs and funds.²⁰

One particular nation telling a remarkable story of improved health and wellbeing from community control is that of the Mississippi Choctaw Nation.²¹ In the 1960s, the members of the Mississippi Band of Choctaw Indians subsisted in miserable economic and health conditions. Nearly all tribal housing was substandard; 90 per cent of tribal members lived in units with no plumbing and 30 per cent had no electricity. Life expectancy was less than 50 years of age, and the infant mortality rate was among the highest in the United States. Poverty and ill-health went hand in hand.

With substandard living and health conditions and dependent on federal programs and spending that seemed to offer little prospect of improvement, the Choctaw government pushed to take over more and more management control of reservation health and has achieved remarkable improvements in health care capacity and outcomes. By 1999, the health centre had seven full time physicians and over 240 employees, as well as an 18-bed inpatient

¹⁹ Harvard Project on American Indian Economic Development, *The State of the Native Nations: Conditions under US Policies of Self-determination* (Oxford University Press, 2008) 225.

²⁰ Ibid 226.

²¹ Ibid 226-227.

acute care unit, a 24-hour emergency medical services department, outpatient and dental clinics, a mental health centre, a diabetes clinic, a disability clinic, a women's wellness centre, and a variety of preventative programs. The immunization rate for children was raised from 70 per cent in 1990 to 95 per cent in 1999. And in a stunning testament to the results that are possible, the average citizen's life span, which had been 44 years of age before the drive to self-determination began, was raised to 68 years of age by 1999.²²

3.4 Nation Building – A concept of Indigenous governance

There is robust, consistent Australian and international evidence that effective and legitimate Indigenous governance, that is culturally specific, is a crucial factor in the realisation of self-determination goals for Indigenous nations.

A core finding of the Harvard Project on American Indian Economic Development is that the exercise of Indigenous self-determination and self-governance are critical foundations for improving socioeconomic conditions. The notion that capable tribal governance has a direct, positive impact on tribal communities, and on measures of socioeconomic success or failure, is well documented, as is the corollary, that poor tribal governance undermines the building of sustainable and workable tribal economies.²³ This was so whether the tribes had large resources or a lack of resources. Cornell and Kalt assert that they cannot find in the United States 'a single case of sustained economic development in which an entity other than the Native nation is making the major decisions about development strategy, resource use or internal organisation.'²⁴

The research findings emphasise the primacy of ***stable political governance***, demonstrating that it is a more crucial factor than availability of natural resources, market proximity or

²² Ibid 227.

²³ Stephen Cornell and Joseph P Kalt, 'Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations' in Stephen Cornell and Joseph P Kalt (eds), *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development* (American Indian Studies Centre, University of California, 1992).

²⁴ Stephen Cornell and Joseph P Kalt, 'Two Approaches to the Development of Native Nations: One Works, the Other Doesn't' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (The University of Arizona Press, 2007) 3, 22.

educational attainment of the community, although these factors contribute to the ability to harness opportunity.

In general, Indigenous nations progress towards their self-defined economic and community development goals when they exercise genuine decision-making control over their internal affairs and resources (described in Australia as exercising ‘political jurisdiction’);²⁵ have mechanisms of self-governance such that things get done predictably and reliably; are accountable to internal and external stakeholders; have cultural legitimacy within the community they serve; base their actions on long-term systemic strategies; and have public spirited leadership engaged in creating stable political institutions.²⁶ Relevantly, Indigenous self-determination is not only a necessary precursor for economic prosperity but contributes to effective service delivery in health, education, natural resource management etc.²⁷

Despite different legal, political, constitutional and social histories and distinctly different contemporary challenges, there is striking similarity between research findings on the significance of Indigenous self-governance from Australia and the United States. For example, in Australia, the Indigenous Community Governance Project (ICG Project)²⁸ concluded that ‘when Indigenous governance is based on genuine decision-making powers, practical capacity and legitimate leadership at the local level, it provides a critical foundation for ongoing socioeconomic development and resilience’.²⁹

²⁵ Michael Dodson and Diane Smith, ‘Governance for sustainable development: Strategic issues and principles for Indigenous Australian communities’ (Discussion Paper No 250, Centre for Aboriginal Economic Policy Research, Australian National University, 2003) 10.

²⁶ Cornell, ‘Indigenous Peoples, Poverty and Self-Determination in Australia, New Zealand, Canada and the United States’, above.; Stephen Cornell and Joseph P Kalt, ‘Where’s the Glue? Institutional and Cultural Foundations of American Indian Economic Development’ (2000) 29 *Journal of Socio-Economics* 443; Stephen Cornell and Joseph P Kalt, ‘Where Does Economic Development Really Come From? Constitutional Rule Among the Contemporary Sioux and Apache’ (1995) 33 *Economic Inquiry* 402; Stephen Cornell, Catherine Curtis, Miriam Jorgensen, ‘The Concept of Governance and its Implications for First Nations’ (Joint Occasional Papers on Native Affairs No. 2004-02, Harvard Project on American Indian Economic Development, 2004); Jorgensen, *Rebuilding Native Nations*, Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007); Miriam Jorgensen, ‘History’s Lessons for HUD and Tribes’ (Joint Occasional Papers on Native Affairs No 2004-01, Harvard Project on American Indian Economic Development, 2004).

²⁷ Alyce S Adams, Andrew J Lee and Michael Lipsky, ‘Governmental Services and Programs: Meeting Citizens’ Needs’ in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007) 223.

²⁸ The Indigenous Community Governance Project (‘ICGP’) was a partnership between the Centre for Aboriginal Economic Policy Research (‘CAEPR’) and Reconciliation Australia, which undertook research over five years on Indigenous community governance with participating Indigenous communities, regional Indigenous

The North American and Australian research similarly identified that 'Indigenous skills, abilities, knowledge and leadership are mobilised and most effectively exercised when initiatives are Indigenous-driven, towards Indigenous goals'.³⁰ Simply put, Australian and North American research similarly identifies that Indigenous skills, abilities, knowledge and leadership are most effectively mobilised and exercised when initiatives are Indigenous-driven, towards Indigenous goals; where Indigenous people 'call the shots'.³¹ Where Indigenous people are driving the agenda and making decisions about future direction, capacity can be productively released and mobilised,³² and greater risk and accountability fosters improved decision making based on previous experience.³³ Importantly, the research emphasises that the 'fundamental challenge of economic development and social progress is a *political* challenge' where the 'ultimate focus is self-determination and governance'.³⁴

organisations, and leaders across Australia. The ICGP was established to understand the effectiveness of different forms of governance and their consequences for Indigenous policy, service delivery, self-determination and socioeconomic development, and designed to 'explore the diverse conditions and attributes of Australian Indigenous community governance arrangements, elucidate culturally based foundations of Indigenous governance and extricate broad universal principles of what constitutes effective, legitimate Indigenous governance, identifying transferable lessons to contribute to policy formulation': Diane Smith, 'Researching Australian Indigenous Governance: A Methodological and Conceptual Framework' (Working Paper No 29/2005, Centre for Aboriginal Economic Policy Research, Australian National University, 2005), 1-4. For the ICGP research findings, see Janet Hunt et al, *Contested Governance: Culture, power and institutions in Indigenous Australia*, (Research Monograph No 29, Centre for Aboriginal Economic Policy Research, Australian National University, 2008) (*Contested Governance*); Janet Hunt and Diane Smith, 'Indigenous Community Governance Project: Year Two Research Findings' (Working Paper No 36/2007, Centre for Aboriginal Economic Policy Research, Australian National University, 2007) ('ICGP: Year Two Findings'); Janet Hunt and Diane Smith, 'Building Indigenous community governance in Australia: Preliminary research findings' (Working Paper No 31/2006, Centre for Aboriginal Economic Policy Research, Australian National University, 2006) ('ICGP: Preliminary Findings'). See also Janet Hunt and Diane Smith, 'Understanding and Engaging with Indigenous Governance: – Research Evidence and Possibilities for Engaging with Australian Governments' (2011) 14(2-3) *Journal of Australian Indigenous Issues* 30.

²⁹ Hunt and Smith, 'Understanding and Engaging with Indigenous Governance', above n 28.. See also Hunt and Smith, 'ICGP: Preliminary Findings' above n 28; Hunt and Smith, 'ICGP: Year Two Findings', above n 28; Janet Hunt et al, *Contested Governance*, above, n 28.

³⁰ Hunt and Smith, 'ICGP: Year Two Findings', above n 28, 34.

³¹ Hunt and Smith, 'ICGP: Year Two Findings', above n 28, 34; Cornell and Kalt, Two Approaches, above n 24, 19-22.

³² Hunt and Smith, 'ICGP: Year Two Findings', above n 28, 29-30.

³³ Cornell and Kalt, Two Approaches, above n 24, 21.

³⁴ Miriam Jorgensen, 'Starting Points' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007) 1, 1.

3.5 Five Elements of Nation Building³⁵

The research concludes that there are five characteristics that are almost always present in strong and vibrant Indigenous communities that are focussed on achieving sustainable futures and collective wellbeing.

Self-governing	The nation makes the decisions about issues that affect it. The nation exercises genuine decision-making authority.
Effective governing bodies	Governing bodies create mechanisms and structures that implement decisions effectively and efficiently.
Cultural match	Governing bodies 'match' the nation's contemporary political culture, values and norms. That is, their methods of decision making and implementing those decisions are legitimate in the eyes of the Indigenous nation that they serve.
Public spirited leadership	Public-spirited, community-focused leadership puts the nation ahead of individual interest or family-only concerns.
Sustainable strategic planning	Proactive and strategic decision making plans for sustainable futures and collective wellbeing. Strategic decision making about how, when and where to assert rights and authority.

3.5.1 The community makes the decisions

Australian and North American evidence demonstrates that, when Indigenous communities determine their own priorities and make their own decisions for their communities (not just for their corporations and organisations), the results are better. They consistently out-perform external decision makers in areas ranging from law enforcement, to natural resource management, economic development, health care, and social service provision. When non-Indigenous governments or other external bodies try to administer Indigenous resources or run programs for Indigenous communities (regardless of good intentions) they are less effective than Indigenous peoples running these programs or enterprises for themselves.

³⁵ The following is taken from a draft facilitation tool created by Miriam Jorgensen, Alison Vivian, Debbie Evans, Donna Murray and Damein Bell. To explore the five elements in more detail, see Cornell and Kalt, Two Approaches, above n 24.

Indigenous self-determination works for two main reasons. Firstly, when the development strategy rests in Indigenous hands, it better reflects the interests, values, vision and concerns of the Indigenous group that will be affected by the strategy, and not those of non-Indigenous government bureaucrats, funders or other external bodies. The nation can focus on what its citizens think is important.

Secondly, self-government increases accountability to the nation. When decision makers have to face the consequences of their decisions – positive or negative – the quality of decisions improves.

3.5.2 The community creates efficient and effective decision-making institutions

Quality decision-making is a necessary but insufficient prerequisite for self-determination, which cannot be achieved without institutional capacity. Effective governing requires an Indigenous nation/community to have the practical capacity to implement decisions and strategic plans — to ‘take action, carry out functions, and respond to opportunities and challenges’.³⁶

Culturally legitimate, and practically effective institutions or bureaucracy that translate decision into action are critically important to identify and bring into effect nation-identified aspirations. These institutions and mechanisms must be considered ‘legitimate’ by their constituencies. The term has two key aspects, ‘cultural match’ and practical capability, and is complex and multifaceted, measured against a range of potential criteria, including ‘cultural match’, practical capability, and internal and external accountability and which differ according to the priorities of the party undertaking the assessment.

Culturally appropriate institutions won’t be legitimate if they are unable to deliver practical outcomes. For example, community confidence is likely to be eroded if a governing institution fails to adhere to reporting or acquittal requirements. As a consequence the institution may

³⁶ Hunt and Smith, ‘ICGP Preliminary Findings’, above n 28, 21.

not be able to take advantage of funding opportunities or to deliver other practical outcomes.³⁷

3.5.3 The decision-making institutions have ‘cultural match’

The second element of legitimacy – cultural match – is relevant because governance is not culturally neutral. The Australian and North American research found that governance structures and mechanisms should embody Indigenous peoples’ own values, norms and views about how authority and leadership should be exercised, providing legitimacy with those that they purport to serve.³⁸

The legacies of colonisation and the diverse aims and ambitions of Indigenous peoples complicate cultural legitimacy. For example, pre-invasion practices and governance systems might not be adequate or appropriate to meet contemporary demands. Therefore, the requirement for cultural legitimacy is not a call to replicate pre-colonial forms of organisation and governing. While cultural legitimacy arguably has tended to be treated as a historical artefact in Australia, the relevant focus is on governing arrangements that embody *contemporary* Indigenous notions of appropriate form and organisation.³⁹

Form and process are equally important, leading Smith to comment on the process of ‘Indigenous choice’ where an Indigenously controlled process of fashioning new governance tools can itself be a source of legitimacy.⁴⁰ Hunt and Smith observe that this process is fundamental to legitimacy, such that means may be more important than the ends.⁴¹

³⁷ Ibid 24.

³⁸ Hunt and Smith, ICGP Preliminary Findings, above n 28, 14; Hunt and Smith, ‘ICGP: Year Two Findings’, above n 28, 27; Cornell and Kalt, Two Approaches, above n 24, 24-25.

³⁹ Cornell and Kalt, Two Approaches, above n 24, 25.

⁴⁰ Diane E Smith, ‘From Gove to Governance: Reshaping Indigenous Governance in the Northern Territory’ (Working Paper No 265, Centre for Aboriginal Economic Policy Research, Australian National University, 2004) 27; Stephen Cornell, ‘Remaking the Tools of Governance: Colonial Legacies, Indigenous Solutions’ in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007) (Remaking the Tools) 57, 73.

⁴¹ Hunt and Smith, ICGP Preliminary Findings, above n 28, 16.

3.5.4 The community fosters public spirited, community focussed leadership

The research emphasises the central role of public-spirited leaders who can act as agents of change. Such leaders act as *nation builders*.⁴²

Successful leaders frequently operate at an inter-cultural interface. They are members of nations, who must lead their people, but they must also negotiate with non-Indigenous governments or outsiders. This means that they are subject to different – Indigenous and non-Indigenous – criteria with respect to their leadership. This complex set of demands may not be readily understood or seen by members of a nation, or outsiders. Nation builders are accountable to different measurements of ‘success’. These leaders face the challenge of establishing the strategic foundations for sustained development and enhanced community welfare and balancing family and community obligations. They must ensure financial and program compliance within their nation’s governance institutions and undertake advocacy and resistance- in itself a delicate exercise in balance.

3.5.5 Strategic and proactive planning is focussed on sustainable futures

Genuine Indigenous self-governance requires an Indigenous nation to be strategic and to be predisposed to long-term decision-making. The opposite of this approach, as Cornell and Kalt articulate, is short-term and opportunistic decision making that is driven by external funding opportunities. Genuine Indigenous self-governance/self-determination requires proactive, long-term and systemic decision making. Such decision-making is capable of transitioning a nation from a narrow ‘problem’ focus to a broader ‘societal’ focus.⁴³ The nation building approach is strategic and with a view to meeting long-term objectives, rather than reactive and opportunistic. A nation building approach takes a wide lens focus, rather than myopically focussing on small gains. This is not easily achieved in practice. It requires decision making that is ‘hard-nosed’ and uncompromisingly assesses whether that decision coheres with long term priorities and concerns.⁴⁴ Of course, this requires a nation to have a solid vision and set of priorities established to guide decision-making.

⁴² Manley A Begay et al, 'Rebuilding Native Nations: What Do Leaders Do?' in Miriam Jorgensen (ed), *Rebuilding Native Nations: Strategies for Governance and Development* (University of Arizona Press, 2007) 275ff; Hunt and Smith, 'ICGP: Year Two Findings', above n 28, 8-12.

⁴³ Cornell and Kalt, *Two Approaches*, above n 24, 26.

⁴⁴ Ibid.

3.5.6 Some conclusions on successful nation building

A thriving ('successful') Indigenous nation/community is one working toward and meeting the goals its members together have set for themselves.

Research suggests that, in general, thriving Indigenous nations have followed a similar pathway—and that Indigenous nations struggling to set, work toward, and meet their own goals typically have not followed, or been prevented from following, this pathway:

- ***Self-governing Matters.*** When Indigenous nations make their own decisions about what development approaches to take, they consistently out-perform external decision makers—on matters as diverse as natural resource management, economic development, health care, and social service provision.
- ***Governing bodies Matter.*** Assertions of sovereignty must be backed by capable bodies and mechanisms of self governance. A nation does this as it adopts a stable governing system and then protects that with fair and independent mechanisms for dispute resolution, efficient administration, and systems that separate politics from day-to-day business and program management.
- ***Culture Matters.*** Successful nations stand on the shoulders of legitimate, culturally grounded values and norms about appropriate distribution of responsibility and authority; ie of self-government. Indigenous societies are diverse; each nation must equip itself with a governing structure, economic system, policies, and procedures that fit its own contemporary culture.
- ***A Strategic Orientation Matters.*** When nations—their citizens and their leaders—are looking down the long road, thinking about what it will take to sustain their people as a cultural and political entity into future generations, they can assess current opportunities as helpful—or not—for the future they are trying to build.
- ***Leadership Matters.*** Nation building requires leaders who introduce new knowledge

and experiences, challenge assumptions, and propose change. Such leaders—whether elected, community, or spiritual—convince people that things can be different and inspire them to take action.

3.6 Nation Building in Australia

A number of Aboriginal and Torres Strait Islander nations, including the Gunditjmarra People and Ngarrindjeri Nation, have begun to establish decision-making processes, mechanisms and structures that suit the values and norms of their community. Some started by exercising responsibility for matters such as language, citizenship, cultural heritage or caring for Country and are building from there to exercise authority over other matters.

3.6.1 Two case studies from south eastern Australia

The emerging governing institutions of the Gunditjmarra People and Ngarrindjeri Nation are markedly different in structure, in large part because each emerged in different political – Gunditjmarra, Ngarrindjeri and non-Indigenous – and cultural contexts. However, the Gunditjmarra People and Ngarrindjeri Nation exhibit many similarities in the strategies and principles that underpin their governing. Crucially, their current governing bodies and institutions did not emerge by happenstance but were established as Elders and leaders understood the need for institutional forms to support their governing ambitions. Careful consideration was given to appropriate structure.

Case Study 1: The Gunditjmarra Full Group

The Gunditjmarra People has not as yet established, or undertaken processes to establish, a formal contemporary ‘government’ or governing system. However, for almost 20 years, it has made widely accepted decisions through a monthly community meeting: the ‘Full Group’ meeting. The Full Group meeting is open to all Gunditjmarra people and follows the tradition of consensus decision-making set by previous community wide decision making models including that of the Kerrup Jmara Elders Aboriginal Corporation and its governance model of 27 family representatives.

Today, it is a forum for deliberation and decision-making on a variety of topics. It currently operates under the auspices of Gunditj Mirring Traditional Owners Aboriginal Corporation. Gunditj Mirring takes responsibility for issues related to Country and culture, Traditional Owner business, native title and cultural heritage and implements the decisions of the Full Group. Senior Gunditj Mirring office bearers have stressed that their role is to implement the instructions of the Full Group meeting; they are not themselves significant decision-makers.

Certainly, Elders, leaders and other respected persons are respected decision makers in relation to particular events or Country, but the Full Group meeting is the primary decision-maker for issues that affect the community as a whole. It also undertakes a judicial function where 'wrongdoing' by Gunditjmarra people in relation to matters of culture or Country is deliberated. Penalties are imposed with the expectation of compliance.

Three of the most prominent features of decision-making at the Full Group meeting are transparency, accountability and free, prior and informed consent. There is an expectation that Gunditjmarra will adhere to these principles and comply with the deliberative processes that are clearly spelled out and widely known. External parties seeking to enter into partnerships are also expected to conform to the processes.

Issues are thoroughly canvassed and members freely express their opinions, at times, forcefully. Process is crucial to ensuring that when decisions are made, they represent broad acceptance by the community. Once made, decisions are not revisited unless a change of circumstances requires that decisions are reassessed and renewed. Such a change of circumstances might include a change in funding, government policy or when a great length of time has passed since a decision was made.

Over many years, as the number of decisions have increased and they have become more technical and difficult, a consensus style process as currently framed has consequently become more difficult. A current challenge faced by the Gunditjmarra is determining how decision-making may be streamlined without losing the non-negotiable elements of transparency, accountability and free prior and informed consent.

Case Study 2: The Ngarrindjeri Nation

Discussions about contemporary Ngarrindjeri governance typically begin with the Kumarangk (Hindmarsh Island) Bridge crisis,⁴⁵ described as ‘one of the most complex and bitterly litigated racial conflicts in Australian history’.⁴⁶ Some Ngarrindjeri women sought protection under state and federal cultural heritage legislation for lands and waters that they claimed were culturally and spiritually significant. Their attempt to protect Country resulted in Federal Court and High Court litigation, the Hindmarsh Island Royal Commission, and specific Commonwealth legislation to suspend both heritage protection legislation and the operation of the *Racial Discrimination Act 1975* (Cth). Accusations of lying and fabrication caused deep and bitter divisions within the Ngarrindjeri Nation, and opened ‘huge rifts in the professions of anthropology and history’.⁴⁷

Ngarrindjeri leaders and their advisers describe the ‘hard lessons’ learned from the Kumarangk Bridge crisis and the ease with which governments and developers caused division within the community. The crisis was the impetus for a group of senior Ngarrindjeri Elders, leaders⁴⁸ and advisers⁴⁹ to develop a strategy for a ‘sustainable future for the Ngarrindjeri Nation on Ngarrindjeri Yarluwar-Ruwe’.⁵⁰

Ngarrindjeri leaders strategised that their ambitions for planning, co-ordination and capacity-building would best be achieved through regional governance.⁵¹ A regional governing

⁴⁵ For a detailed overview of the crisis, see Margaret Simons, *The Meeting of the Waters: The Hindmarsh Island Affair* (Hodder Headline Australia, 2003). For discussion of how the crisis impacted upon Ngarrindjeri strategic approaches, see Steve Hemming, Daryle Rigney and Shaun Berg, ‘Ngarrindjeri Futures: Negotiation, Governance and Environmental Management’, 104-109. See also Tom Trevor and Steve Hemming, ‘Conversation: Kungun Ngarrindjeri Yunnan – Listen to Ngarrindjeri People Talking’ in Gus Worby and Lester-Irabinna Rigney (eds), *Sharing Spaces: Indigenous and Non-Indigenous Responses to Story, Country and Rights* (API Network, 2006) 295.

⁴⁶ David Nason, ‘Apology to Ngarrindjeri women’, *The Australian* (online), 5 July 2010 <<http://www.theaustralian.com.au/business/legal-affairs/apology-to-ngarrindjeri-women/story-e6frg97x-1225887766435>>.

⁴⁷ Simons, above n45, 13.

⁴⁸ In particular George and Tom Trevor and Matt Rigney.

⁴⁹ Ngarrindjeri leadership has been advised over the long term by an informal think tank including, among others, Daryle Rigney, Steve Hemming and Shaun Berg. It has been instrumental in developing strategies for engagement with non-Indigenous governments and others. It later evolved into the Ngarrindjeri Governance Working Party and later again into the currently operating NRA Policy, Planning and Research Unit based at Flinders University.

⁵⁰ Steve Hemming and Daryle Rigney, ‘Unsettling sustainability: Ngarrindjeri political literacies, strategies of engagement and transformation’ (2008) 22(6) *Continuum: Journal of Media and Cultural Studies* 757, 764.

⁵¹ Ibid 767.

institution would provide a central entity to work for the interests of all Ngarrindjeri. A key lesson from the Kumarangk crisis was the necessity of ‘speaking with one voice’⁵² in order to evade the ‘divide and rule’ strategies used by developers and non-Indigenous governments with devastating effect. Creating the NRA to develop Ngarrindjeri policy, devise strategies, and embody a philosophical position about what it means to be Ngarrindjeri, was integral to the Ngarrindjeri’s governance ambitions and the NRA was established in April 2007.

The final structure of the NRA was agreed after several models were proposed at numerous community meetings. Structures that were based on the lakinyeri and that would replicate the Nation Tendi or family based models were proposed but it was decided to structure the NRA as a coalition of Ngarrindjeri organisations and individual members.

3.6.2 Indigenous nation building is not corporate governance

‘Indigenous governance’ is often a contentious term in Australia, where there can be a tendency to narrowly focus on corporate governance principles, management and compliance, and where a limited conception of Indigenous self-determination emphasises service delivery, community consultation and organisational governance.

Instead, the research demonstrates the criticality of Indigenous political governance engaging with the exercise of Indigenous jurisdiction (substantive decision-making power and control), and the construction of Indigenous communities as collective political actors within the Australian system. As Sullivan observes, it is crucial to ‘distinguish between management and governance’ and that a ‘developmental or service delivery organisation should not be conflated with an institution of self-government.’⁵³

Nation building sees a shift in focus from the community organisation to the community; from a service delivery population to community members and from accountability to external funders or non-Indigenous governments to the community. This approach sees community organisations as tools of the community, used to facilitate community identified goals. This

⁵² Trevorrow and Hemming, above n 45.

⁵³ Patrick Sullivan, ‘Indigenous Governance: The Harvard Project, Australian Aboriginal Organisations and Cultural Subsidiarity’ (Working Paper No 4/2007, Desert Knowledge CRC, 2007) 15.

separation allows the organisation to concentrate on its statutory and constitutional obligations as service provider and ensure that it achieves its obligations.

The table below demonstrates the shift from organisational management to collective self-governing.⁵⁴



Corporate 'governance' Organisational management	Political governance Collective self-governing
Service population/clients	Self-defined constituency/citizens
Corporate board or organisation leaders make decisions for clients	Legitimate 'political' body makes decisions for the collective
Focus on 'programs' and service delivery	Focus on creation of public value for citizens/community
Leaders authorised by outsiders	Leaders authorised by the community
Scope of responsibility set by external parties	Scope of responsibility set by nation/governing body/citizens
Accountability to non-Indigenous government and/or funders	Accountability to community/nation
Dispute resolution mechanisms determined by outsiders	Dispute resolution mechanisms determined by governing body or community
Australian governments view their interactions as government-to-organisation	Australian governments view their interactions as government-to-government

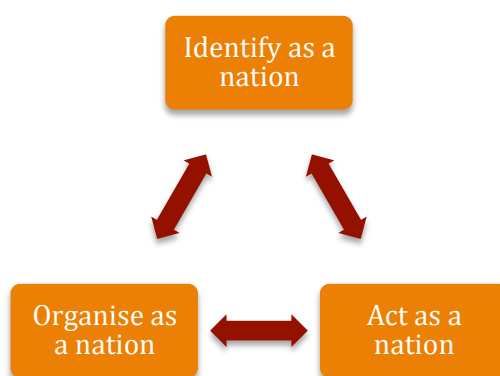
It is also important to observe that effective organisational management and community governing are not mutually exclusive. Communities must have mechanisms to make and implement decisions and community organisations must operate efficiently to deliver the services that communities need.

⁵⁴ This table has been created by Miriam Jorgensen and Alison Vivian. The distinction between corporate governance (organisational management) and political governance (community self-governing) will be explored in a forthcoming paper: Miriam Jorgensen & Alison Vivian, 'Challenging Indigenous Australia Inc: Indigenous Community Political Governance'.

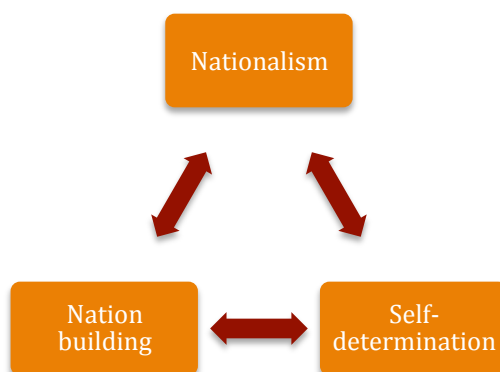
3.6.3 A theoretical framework for nation-building: Identify→Organise→Act⁵⁵

If competent, effective and culturally legitimate self-governing is a prerequisite for Indigenous nations to achieve their aspirations, then it would be profitable for Indigenous nations to begin the work of creating competent, effective and culturally legitimate governing bodies.

An international Indigenous nation (re)building framework is under development that has the potential to provide a framework for nation building audit and planning. The framework suggests that three core processes often exist:



The three phases also may be represented by the vectors:⁵⁶



⁵⁵ The following section is taken from a draft facilitation tool created by Miriam Jorgensen, Alison Vivian, Debbie Evans, Donna Murray and Damein Bell. For a more detailed review of this framework, see Stephen Cornell, Steve Cornell, 'Processes of Native Nationhood: The Indigenous Politics of Self-Government' (2015) 6(4) *The International Indigenous Policy Journal*.

⁵⁶ Miriam Jorgensen builds on the 'Identify-Organise-Act' framework with this conceptualisation.

While these phases may be sequential (Identify→ Organise→ Act), they are certainly iterative and interdependent. They may take place simultaneously or in different sequences depending on external circumstances, and on the capacity of the nation concerned. For example, organising or acting as a nation may cause people to reflect upon their identity as a citizen of an Indigenous nation. Acting as a nation may cause citizens to reflect on whether the nation's organisation continues to embody the community's preferences. The relevant question might be, does the way the nation is organised (if at all) fit with what citizens think is legitimate representation? Is the nation organised according to the nation's values?

Acting as a nation may also influence the interactions that nations have with non-Indigenous governments. This in turn may raise points of benchmarks to assess whether the nation's organisation allows it to take advantage of nation-to-nation relationships and opportunities as they arise.

Success builds upon success and building capacity to represent the citizenry and provide the services that the citizenry desires may result in increased jurisdiction and/or increased service delivery functions.

In doing the work today of creating self-sustaining governing bodies, the IOA framework can be helpful to conduct governance audit and provide a planning framework:

Identifying as a nation: Who is the self in self-government?

The first phase occurs through dialogue that captures the idea of the collective self: the 'self' in 'self-government'. Where are the boundaries around 'we' and 'us' drawn?

For some Australian Indigenous nations, identifying the self will be relatively simple. Some nations have been able to maintain an identity that predates invasion. For others, however, where Indigenous peoples and communities experienced relocation and dispossession and where Indigenous decision-making bodies have been disrupted and undermined, the collective self may not be readily identifiable.

Key questions include: What might the appropriate basis of nationhood be? What social unit – family, clan, nation, town – makes sense to those who are part of it and provides an adequate basis for effective organisation? What bonds hold the group together as a collective?

Organising as a nation: *What structures will they put into place to govern? How will decisions be made?*

The second phase involves the creation or revitalisation of institutions, rules and protocols through which the nation can advance its goals.

Notably, organisational structures that form the foundation for action can take a variety of forms—because various Indigenous communities may have different political cultures and because organisation, while self-determined, also forms in response to community-specific opportunities and constraints.

Importantly, as noted above, forms of organisation are also likely to change over time in response to changing environments and opportunities.

Acting as a nation:

The final phase, acting as a nation, involves self-determined action in pursuit of national aspirations.

4. Indigenous health determinants

Health as a fundamental human right, is recognised in the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights and numerous other international conventions, declarations, agencies, and goals. While good health is the right of every individual, it is also acknowledged to be an essential component of community development that is vital to a nation's economic growth and internal stability. Along with the conventional discussions about health as a social justice outcome, it is now accepted that better health outcomes play a crucial role in reducing poverty.⁵⁷

Although good health is a universal right, perhaps the most frequently used description for health outcomes for Aboriginal and Torres Strait Islander people is that there is a 'crisis'. Despite large expenditure and numerous policies and programs adopting different approaches, each year the Closing the Gap report documents persistent inequality between Aboriginal and Torres Strait Islander people and non-Indigenous people in life expectancy, child mortality, morbidity and other health outcomes.

4.1 Social determinants of health

Inequalities in health arise from inequalities in society. Small differences in society result in small health inequalities; large differences result in large health inequalities.⁵⁸

The path to accomplishing and maintaining good health and wellbeing cannot be considered in isolation from the broader determinants that combine to positively or negatively impact on individuals and communities, in particular socioeconomic factors.

It has been settled for decades that the root causes of good health cannot be limited to the individual traits of people or prevention of disease alone. As early as 1948 when it was established, the World Health Organisation stated in its constitution that:⁵⁹

⁵⁷ World Health Organisation, 'Trade, foreign policy, diplomacy and health' <<http://www.who.int/trade/glossary/story046/en/>>.

⁵⁸ Michael Marmot, 'Social determinants and the health of Indigenous Australians' (2011) 194(10) *Medical Journal of Australia* 512, 512. (Footnote omitted.)

Health is a state of complete physical, social and mental wellbeing, and not merely the absence of disease or infirmity.

The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.

...

Governments have a responsibility for the health of their peoples which can be fulfilled only by the provision of adequate health and social measures.

When considering the health outcomes for all people, social factors that are root causes of poor health are labelled the social determinants of health. They include:⁶⁰

- ***Income and social status*** – higher income and social status are linked to better health. The greater the gap between the richest and poorest people, the greater the differences in health.
- ***Education*** – low education levels are linked with poor health, more stress and lower self-confidence.
- ***Physical environment*** – safe water and clean air, healthy workplaces, safe houses, communities and roads all contribute to good health. Employment and working conditions – people in employment are healthier, particularly those who have more control over their working conditions
- ***Social support networks*** – greater support from families, friends and communities is linked to better health. Culture - customs and traditions, and the beliefs of the family and community all affect health.
- ***Genetics*** – inheritance plays a part in determining lifespan, healthiness and the likelihood of developing certain illnesses. Personal behaviour and coping skills – balanced eating, keeping active, smoking, drinking, and how we deal with life's stresses and challenges all affect health.

⁵⁹ World Health Organisation, 'Constitution of the World Health Organization' <http://www.who.int/governance/eb/who_constitution_en.pdf>.

⁶⁰ World Health Organisation, 'The determinants of health' <<http://www.who.int/hia/evidence/doh/en/>>.

- **Health services** – access and use of services that prevent and treat disease influences health
- **Gender** – men and women suffer from different types of diseases at different ages.

The impact of social determinants of health is well defined, researched and there is broad consensus of the significant affect that they have on *all* individuals.⁶¹ However, there is increasing recognition that Indigenous specific social, spiritual and cultural determinants of health are not sufficiently understood as contributing to or undermining good health for Indigenous peoples. Therefore, as currently configured, crucial considerations in policy and program attempts to ‘close the gap’ may not be present in existing health policy considerations.

4.2 Inadequacy of conventional social determinants of health

Among other health commentators and analysts, King, Smith and Gracey observe that Indigenous peoples do not limit their understanding of health and wellbeing to physical health or wellbeing but instead engage with all elements of life: the physical, emotional, mental and spiritual as inextricably woven together to support a healthy community.⁶² This broad conception of health and wellbeing suggests that individual social determinants outlined above will be inadequate to encompass community-centred understandings of wellbeing. Commentators and analysts have identified a range of inadequacies of the social determinants of health framework as it applies to the health outcomes of Indigenous people and communities, including that the framework:

- does not typically include *social* determinants that are particularly relevant for Indigenous people including systemic racism, social exclusion, dispossession, marginalisation;

⁶¹ Lowitja Institute, ‘The Lowitja Institute – cultural determinants roundtable. Background Paper’ <<https://www.lowitja.org.au/sites/default/files/docs/Cultural-Determinants-Roundtable-Background-Paper.pdf>>

⁶² Malcolm King, Alexandra Smith and Michael Gracey, ‘Indigenous health part 2: the underlying causes of the health gap’ (2009) 374 *The Lancet* 76, 76.

- does not value *spiritual* and *cultural* determinants of health, including connection to Country and community, language, ceremony, all living things, ancestors etc;
- does not understand health and wellness as that of the body, mind, heart and spirit;
- does not sufficiently recognise the impact of injury to Aboriginal people, their families and their communities caused by undermining of self-determination and sovereign rights, and loss of land and of environment, language, ceremony;
- implicitly is grounded in addressing deficit, rather than adopting a strengths based cultural determinants approach; and
- has been developed almost entirely in Euro-cultural contexts and focuses on the individual rather than the community.

Sherwood and Edwards identify that a high impact shortcoming of current health policy and praxis approaches in Indigenous health is their linear nature that does not encompass the interconnectedness of all things for Indigenous people and peoples. As they observe, health practices and knowledge are compartmentalised, illustrated by the funding of Aboriginal health projects by mainstream health systems ‘according to body parts and diseases’.⁶³

Rainie *et al* similarly describe the phenomenon as:⁶⁴

Social determinant + Social determinant + Social determinant \leftrightarrow Health

The result is, as King, Smith and Gracey observe, the ‘isolation of symptomatic issues – addiction, suicide, foetal alcohol syndrome, poor housing and unemployment – followed by the design of stand alone programs to try to manage each issue separately.’⁶⁵ While the rhetoric of Indigenous health policy, funding and praxis might be to acknowledge Indigenous ways of defining health, the reality is that policy and strategies continue to use compartmentalised models in addressing the Indigenous health crisis.⁶⁶

⁶³ Juanita Sherwood and Tahnia Edwards, ‘Decolonisation: A critical step for improving Aboriginal health’ (2006) 22(2) *Contemporary Nurse* 178, 181.

⁶⁴ Stephanie Carroll Rainie, Jessica Black, Stephen Cornell, Angela Gonzales, Miriam Jorgensen, Lynn Palmanteer-Holder, Jennifer Schultz, Michele Suina and Nicolette Teufel-Shone, ‘Reclaiming Indigenous Health in the US: Moving Beyond the Social Determinants of Health’ (Draft, on file with authors).

⁶⁵ King, Smith and Gracey, above n 63, 83.

⁶⁶ Sherwood and Edwards, above n 65, 181.

In calling for a more holistic approach to Indigenous conceptions of health and wellbeing, Rainie *et al* propose an alternative approach involving three categories of determinant:⁶⁷

1. Broad determinants of health that affect Indigenous and non-Indigenous communities;
2. Determinants of health that are shared among Indigenous communities or among communities in a certain geography or of a certain culture;
3. Unique determinants of health evident in one or a few Indigenous or other communities.

4.3 Indigenous concepts of health and wellbeing

The common theme from Indigenous peoples and people is the interconnectedness of spiritual, cultural, social, emotional and physical determinants essential to the well being of person, community and Country. This is captured in the National Aboriginal Community Controlled Health Organisation definition of 'Aboriginal health'. Aboriginal health is:

... not just the physical wellbeing of an individual but refers to the social, emotional and cultural wellbeing of the whole Community in which each individual is able to achieve their full potential as a human being thereby bringing about the total wellbeing of their Community.

It is a whole of life view and includes the cyclical concept of life-death-life.

Similarly, the United Nations Permanent Forum on Indigenous Issues defines health as follows:⁶⁸

Indigenous Peoples' concept of health and survival is both a collective and individual inter-generational continuum encompassing a holistic perspective incorporating four distinct shared dimensions of life. These dimensions are the spiritual, the intellectual, physical and emotional. Linking these four fundamental dimensions, health and survival manifests itself on multiple levels where the past, present and future co-exist simultaneously.

Most recently, the UN Declaration on the Rights of Indigenous Peoples reinforces the right to health for Indigenous individuals and peoples, placing the right within a network of social,

⁶⁷ Rainie et al, above n 66.

⁶⁸ Committee on Indigenous Health. *The Geneva Declaration on the Health and Survival of Indigenous Peoples*. New York, NY: United Nations Permanent Forum on Indigenous Issues; May 1 2002 cited in Rainie et al, above n 66.

cultural, and economic factors. In particular, the Declaration on the Rights of Indigenous Peoples contains the following that are specifically related to Indigenous health:

Article 21

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

Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.
2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

In contrasting the Indigenous perspective of health from the social determinants of health framework is that it reflects a deficit viewpoint that does not promote a strength-based perspective demonstrated through emphasis on cultural determinants of health. Professor Ngiare Brown stresses the linkage between strong connections to culture and country and building stronger individual and collective identities, self-esteem and resilience, as well as conventional social determinants such as education, economic stability and community safety.⁶⁹

A further failing of the social determinants of health framework is that it is de-contextualised in time and spiritual space.⁷⁰ By contrast, health determinants should incorporate Indigenous knowledges that merge intergenerational roles and responsibilities into the community's vision, history and spiritual space, including relations with ancestors and those yet born as well as the land.⁷¹

⁶⁹ Lowitja Institute, above n61.

⁷⁰ Rainie et al, above n 66.

⁷¹ Ibid.

Finally, it is not possible to conceive of Indigenous health determinants without appreciating the inseparable connection between wellbeing and Country. A study over ten years in the Northern Territory showed that death rates on homelands were 40 to 50 per cent less than the average for adults. There is also significant benefit from being culturally connected to country.⁷² Durie explains:

The relationship between people and the environment also forms an important foundation for the organization of indigenous knowledge, the categorization of life experiences, and the shaping of attitudes and patterns of thinking. Because human identity is regarded as an extension of the environment, there is an element of inseparability between people and the natural world.

By implication, concern about the health standards of indigenous peoples needs to take into account the broader perspectives of a world view that has been seriously fractured. Alienation of people from their environment – from the natural world – may be as closely linked to the host of health problems that beset Indigenous peoples as the more familiar life-style risks of modern living.⁷³

This inextricable link is illustrated by a Ngarrindjeri Elder's lament about damage done to Ngarrindjeri Country:

Ngarrindjeri concern for Country

The land and waters is a living body.

We the Ngarrindjeri people are a part of its existence.

The land and waters must be healthy for the Ngarrindjeri people to be healthy.

We are hurting for our Country.

The Land is dying, the River is dying, the Kurangk (Coorong) is dying and the Murray Mouth is closing.

What does the future hold for us?

Tom Trevorrow (deceased)
Ngarrindjeri Elder, Camp Coorong, 2002.⁷⁴

It follows that an inevitable failure of the close the gap approach, as Rainie et al highlight, is that comparing Indigenous and non-Indigenous populations does not allow Indigenous nations to conceptualise appropriate metrics for determinants, health and wellbeing that resonate with the community, culture and traditions.⁷⁵ Examples of these metrics include non-human health for land and animals, data on spiritual and cultural health such as language

⁷² <http://www.amnesty.org.au/indigenous-rights/comments/26411>

⁷³ Mason Durie, 'Understanding health and illness: research at the interface between science and indigenous knowledge' (2004) 33 *International Journal of Epidemiology* 1138, 1139.

⁷⁴ Ngarrindjeri Sea Country plan, 5

⁷⁵ Rainie et al, above n 66.

and sacred sites, and indices for determinants that reflect Indigenous realities such as a collective orientation and community conceptions of wealth and jobs.⁷⁶

Brown identifies the following non exhaustive list of determinants that underpin Indigenous conceptions of health and well-being:⁷⁷

- Self-determination;
- Freedom from discrimination;
- Individual and collective rights;
- Freedom from assimilation and destruction of culture;
- Protection from removal/relocation;
- Connection to, custodianship, and utilisation of country and traditional lands;
- Reclamation, revitalisation, preservation and promotion of language and cultural practices;
- Protection and promotion of Traditional Knowledge and Indigenous Intellectual Property; and
- Understanding of lore, law and traditional roles and responsibilities.

4.5 The link between self-determination and health and wellbeing

Indigenous nations knew how to be healthy in the past, and they now have a chance to restore balance to their communities and regain their health and well-being through self-governance, self-determination, and indigenously driven public health efforts.⁷⁸

The discussion above about Indigenous conceptions of health reveals the interconnectedness of spiritual, cultural, social, emotional and physical determinants that are essential to the well being of person, community and Country. The discussion illustrates the futility of one size fits all 'solutions' to the Indigenous health 'crisis' where cultural and spiritual determinants will differ among peoples, potentially within peoples. The only possible approach that can

⁷⁶ Rainie et al, above n 66.

⁷⁷ Lowitja Institute, above n61.

⁷⁸ Harvard Project on American Indian Economic Development, above n19, 227.

incorporate the general and specific determinants required for a holistic approach, and which can honour connection to Country, community and culture is one that is community directed and enacted.

Relevantly, a central conclusion from a symposium on the social determinants of Indigenous health for the World Health Organisation's Commission on Social Determinants of Health was that the 'colonisation of Indigenous peoples was a fundamental underlying health determinant.'⁷⁹ Colonisation has a continuing impact on Indigenous health and wellbeing which requires self-determination to restore Indigenous peoples' control over their lives and destinies to bring decolonisation into effect.⁸⁰ The Symposium emphasised another fundamental health determinant, namely the disruption or severance of ties of Indigenous peoples to their land, weakening or destroying closely associated cultural practices and participation in the traditional economy, essential for wellbeing.⁸¹

That self-determination is essential to improving Indigenous health and wellbeing has broad support.⁸² Darren Dick, on behalf of the Social Justice Commissioner at the time, referred to the *1989 National Aboriginal Health Strategy*, where Indigenous peoples stated that their health status is linked to 'control over their physical environment, of dignity, of community self-esteem, and of justice.'⁸³ He noted that it was not a matter of the provision of doctors, hospitals, medicines or the absence of disease and incapacity.⁸⁴ Instead, it was accepted that an individual's perceived lack of control over their lives can contribute to a burden of chronic, unhealthy stress contributing to mental health issues, violence and substance abuse.⁸⁵

⁷⁹ Martin Mowbray, 'Social determinants and Indigenous health: The international experience and its policy implications' (Report on specially prepared documents, presentations and discussions at the International Symposium on the Social Determinants of Indigenous Health, Adelaide, 29-30 April 2007 for the Commission on Social Determinants of Health) 2.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Peter O'Mara, 'The spirit of the tent embassy: 40 years on. Indigenous self-determination is essential to health and wellbeing' (2012) 197(1) *Medical Journal of Australia* 9, 9.

⁸³ Darren Dick on behalf of Tom Calma, 'Social determinants and the health of Indigenous peoples in Australia – a human rights based approach' <<https://www.humanrights.gov.au/news/speeches/social-determinants-and-health-indigenous-peoples-australia-human-rights-based#endnote34>>.

⁸⁴ Ibid.

⁸⁵ Ibid.

Other studies demonstrate a positive link between autonomy and Indigenous health and wellbeing. In an analysis of 'what works' for programs in the key social and economic determinant areas (educational achievement; connection to family, community, country and culture; employment and income; housing; racism; interaction with government systems; criminal justice system; and health behaviours), researchers from the Closing the Gap Clearinghouse found a number of common features of successful programs that demonstrate the indicia of self-determination:⁸⁶

- Holistic approaches taking into account the full cultural, social, emotional and economic context of Indigenous peoples' lives, including the ongoing legacy of trauma, grief and loss associated with colonisation;
- Active involvement of Indigenous communities in every stage of program development and delivery to build sustainable partnerships and build capacity within Indigenous communities;
- Collaborative working relationships between government agencies and relevant community organisations;
- Acknowledgment of the interrelatedness of key determinants across multiple life domains for Indigenous people;
- Valuing Indigenous knowledge and cultural beliefs and practices necessary for positive cultural identity and social and emotional wellbeing for Indigenous Australians;
- Clear leadership and governance for programs, initiatives and interventions;
- Involvement of Indigenous people in program design, delivery and evaluation and training to build capacity; and
- Adopting a strengths based perspective which builds and develops the existing strengths, skills and capacities of Indigenous people.

⁸⁶ Kay Osborne, Fran Baum and Linsey Brown, 'What works? A review of actions addressing the social and economic determinants of Indigenous Health' (Issues paper 7 produced for the Closing the Gap Clearing House, December 2013) 2-3.

Approaches that are unsuccessful do not engage with Indigenous people, are ad hoc, do not demonstrate clear leadership or governance, do not build capacity and have short term funding.⁸⁷

In the context of health services, at a minimum, self-determination requires the participation of Aboriginal and Torres Strait Islander peoples in every layer of decision-making and active involvement in the design, delivery and control of health services.⁸⁸

King, Smith and Gracey cite studies by Chandler and Lalonde who identified that First Nation communities who were able to engender empowerment and self-control were able to generate an environment that provides their youth with a sense of self, belonging, and worth, which ultimately had an impact on levels of youth suicide.⁸⁹ Suicide rates varied among communities and communities with greater levels of self-determination had fewer suicides.⁹⁰ Similarly King et al refer to research by Kirmayer et al that found that ‘the health of the community seems to be linked to local control and cultural continuity’, and also work by Durie et al which concluded that ‘the means by which disadvantaged populations worldwide are enabled to control their destinies is crucial to self-esteem and health’.⁹¹ Durie et al continue:

Autonomy is closely linked with self-esteem and the earning of respect. Both are basic and linked. Low levels of autonomy and low self-esteem are likely to be linked to worse health.

In identifying success stories from the Aboriginal community controlled health sector in Victoria, the Victorian Aboriginal Community Controlled Health Organisation and Cooperative Research Centre for Aboriginal Health observed that the flexibility of community controlled health services contributed to many positive outcomes.⁹² ACCHOs were able to build positive

⁸⁷ Ibid 3.

⁸⁸ O’Mara, above n85, 9.

⁸⁹ King, Smith and Gracey, above n 63, 82.

⁹⁰ Ibid 82.

⁹¹ Ibid.

⁹² Victorian Aboriginal Community Controlled Health Organisation and Cooperative Research Centre for Aboriginal Health, ‘Communities Working for Health and Wellbeing. Success stories from the Aboriginal community controlled health sector in Victoria’ (VACCHO and Cooperative Research Centre for Aboriginal Health, 2007).

partnerships within and between communities and with government departments and NGOs and were deliberate in building capacity within communities.

Demonstrating the link between self-determination and improved health and wellbeing can be challenging. The lack of high quality, publicly available evaluation data regarding specific health programs or interventions limits the ability to determine the success of programs or of program providers.⁹³ The difficulties are compounded by the aggregation of data.⁹⁴ While national or regional data may exist for Indigenous populations, there can be large differences in outcomes and little attention paid to why there can be such marked differences within Indigenous peoples.⁹⁵ Further, because Indigenous determinants of health are complex, interrelated and multidimensional, they are unlikely to demonstrate direct causation.⁹⁶ Thus, as currently measured, the impact of self-determination on Indigenous health and wellbeing is unlikely to lead to measurable, quantitative data.

Achieving health and wellbeing is a complicated task requiring the healing of the forces that have led to imbalance and unhealthy behaviours. Through this lens, it is the entire community that requires healing. Indigenous nations are diverse in population size, land base, history, location, and political, social and cultural structures and one model cannot fit all communities.⁹⁷ Furthermore, given that cultural, spiritual and many social determinants are community specific, they can only be determined and interpreted by the relevant communities, which can only be enabled through community control. This also entails a high degree of variation.

The diversity of communities and of Indigenous health determinants requires flexible government policies and practices and Indigenous nation-driven actions.⁹⁸ It is through a holistic framework focused on community-based conceptions of health and wellbeing that an appropriate array of health and wellness determinants for each Indigenous nation can be

⁹³ Osborne, Baum and Brown, above n 89, 3.

⁹⁴ Mowbray, above n 81, 8.

⁹⁵ Ibid.

⁹⁶ Osborne, Baum and Brown, above n 89, 3.

⁹⁷ Rainie et al, above n 66.

⁹⁸ Ibid.

realised.⁹⁹ This approach begins to represent the decolonising processes called for by Sherwood and Edwards to shift policy and praxis to health and wellness as defined by Indigenous peoples, rather than a mechanistic bio-medical approach.¹⁰⁰

Change is required because the evidence points toward the conclusion that policies of self-determination and self-governance hold the prospect of yielding an integrated path of economic improvement, restoration of communities' and individuals' sense of being in control of their own destinies, and positive expression of indigenous culture in pursuit of self-defined standards of well-being.¹⁰¹

⁹⁹ Ibid.

¹⁰⁰ Sherwood and Edwards, above n 65, 188.

¹⁰¹ Harvard Project on American Indian Economic Development, above n 19, 226.

5. Self-determination as policy

The concept of self-determination has become a cornerstone of the Indigenous rights framework. It is a right under international law and one articulated as applying to Indigenous peoples under the Declaration of the Rights of Indigenous Peoples.

But the principle is also an important guide for policy making, service delivery and program development because of the evidence that shows that inclusion of Indigenous people in those processes yields better, more effective results and outcomes. As the evidence shows, this is particularly so in relation to the contribution of the Indigenous community controlled health sector and improved Indigenous health outcomes.

Analysis of the social and cultural determinants of Indigenous health reinforce this relationship between Indigenous health and wellbeing where, at a minimum, Aboriginal and Torres Strait Islander peoples must participate in every layer of decision-making and active involvement in the design, delivery and control of health services.¹⁰² This is a necessary but not sufficient prerequisite to ensure that community specific cultural, spiritual, physical and social determinants can be included in a holistic approach to community healing.¹⁰³

If this involvement and participation of Indigenous people is a key part of self-determination in practice, the nation building process gives some insight into the ways in which Indigenous communities and nations need to be given space and capacity to engage in decision making processes.

The experience from nation building processes have highlighted that in order to build the capacity of Indigenous communities and nations and to strengthening Indigenous governance capacity, governments need to devolve power and authority. Nation building processes also highlight the need to facilitate Indigenous decision-making and for control to be given over their core institutions, goals and identity.

¹⁰² O'Mara, above n85, 9.

¹⁰³ Ibid 9.

Nation building also shows that Indigenous self-determination works for two main reasons:

- When the development strategy rests in Indigenous hands, it better reflects the interests, values, vision and concerns of the Indigenous group that will be affected by the strategy, and not those of non-Indigenous government bureaucrats, funders or other external bodies. The nation can focus on what its citizens think is important; and:
- Self-government increases accountability to the community or nation. When decision makers have to face the consequences of their decisions – positive or negative – the quality of decisions improves.

Key Questions for Strategic Planning

The above evidence above highlights some key questions for policy making when thinking about the inclusion of self-determination as a principle.

The requirement that Indigenous people be more involved as part of a self-determination approach raises the need for consideration of the following in the develop of strategic planning in policy approaches:

Processes:

- What processes and mechanisms can be put in place to facilitate participation by members of the Aboriginal community in policy making, service delivery and programs?

Capacity Building

- How is capacity developed within the Aboriginal community to ensure the capacity to participate?
- How is capacity developed within the Aboriginal community health sector to ensure the capacity to participate?
- How is capacity developed in individuals in the Aboriginal community to ensure the capacity to participate?
- How is capacity developed within the government bureaucracy to engage with the Aboriginal community?