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The implementation of Indigenous crime and justice policies and programs in Australia: issues and challenges

Judy Putt and Jessica Yamaguchi*

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Introduction

To identify and consider issues related to the implementation of Indigenous policies and programs is not an easy task. It assumes a degree of knowledge about what has been implemented and the challenges that have been encountered. However, such accounts are not typically in the public domain and instead, for the most part, there are two kinds of narratives about what has been done. The first is found in policy, strategy and program documents that outline purpose and intent, and the second, in published reviews or evaluations that tell us how well a particular program or initiative has gone. Although these evaluations may summarise how a program was implemented, they may lack detail and instead focus on measures of success.

The implementation story, however, is a vital one. So much so that a whole discipline has emerged devoted to the issues – implementation science – but primarily in the health and education sectors of social services (eg Fogarty International Centre (FIC) nd). To apply such science requires sufficient evidence of what is demonstrably effective and then seeing what may influence its translation or adoption in a range of contexts. Here in Australia, although there is a growing body of evidence on Indigenous programs and services, policy makers are still

at a stage where it is usual to refer to emerging or promising practice (eg Day et al. 2013; Standing Committee of Attorneys-General Working Group (SCAG) 2010a). This paper therefore outlines the principles that underpin this practice and seeks to identify the factors that may facilitate or hinder the application of these principles during implementation.

This paper begins with a section on issues that can emerge when implementing any policy or program. These relate to what are termed internal and external factors, and the fidelity with which the original plan or design was followed. The next section outlines key policies and strategies that aim to address Indigenous crime and justice issues, and the constellation of initiatives that have been funded and implemented across jurisdictions and services, and within communities. Drawing on program theory (Funnell and Rogers 2011), there are themes common to many of these programs which act as a basic theory of change that informs the way programs are designed and how they should be implemented.

To demonstrate and illustrate the issues encountered when policies and programs are operationalised, four key initiatives are considered in more detail: policing measures introduced under the Northern Territory Emergency

Response (NTER); night or community patrols; Aboriginal sentencing courts; and men's behaviour change programs. For each initiative, there is a summary of how different and complex forms have developed over time and in a range of contexts, and of evaluation findings that relate to implementation issues. In doing so, the aim is to highlight specific and unique implementation issues that should be considered as part of realising any Indigenous policy or program.

The final section describes a range of strategies that could be adopted to improve the implementation of Indigenous crime and justice policies and programs. These strategies are based on lessons learnt from this material, program and policy theory (eg Funnell and Rogers 2011; Hill and Hupe 2005) and implementation guidelines (eg Australian National Audit Office (ANAO) 2006). The theoretical and practical factors are brought together in a framework which can be used to evaluate and increase the successful implementation across a range of programs.

Implementation issues

There are a number of ways to approach implementation, as a process and as a factor that affects the delivery and outcomes from a program or policy. The implementation process

has been described as involving stages that occur over two to four years, and include exploration and adoption, installation, initial implementation, full implementation, innovation and sustainability (Fixsen et al. 2005). Research into implementation is found in evaluation studies and increasingly comprises its own area of expertise. Most notably in the health sector, implementation science investigates the factors that affect, impede or improve the implementation of proven interventions in different or wider settings.

In an ideal world, the development of policies and the design and planning of programs are informed by a solid evidence base and strong theoretical basis. However, although major policies are underpinned by theories of change that affect the design and aims, these are not always spelt out. Program logics seek to capture the sequence of change by mapping and identifying the inputs (resources), activities or mechanisms (outputs), and expected short-term and longer term outcomes. These too are frequently not done at the outset.

In much social policy, there are broad imprecise objectives for a program or policy to satisfy multiple stakeholders and to respond to different priorities (Walker and Forrester 2002). Due to a paucity of evidence of what works in what settings, a contract or tendering process seeks to elicit project proposals that address both the broad policy or program objectives and suit or address local needs.

Where there is an evidence base for an intervention, implementation of it through a program can be influenced by what has been termed the five main dimensions of program integrity: adherence; dosage; quality of delivery; participant responsiveness; and program differentiation (Duerden and Witt 2012). The last factor, program differentiation, identifies program components in order to ascertain their unique contributions to the outcomes, which is not dissimilar to the emphasis in realistic evaluation on the specific mechanisms that produce results in specific circumstances and contexts (Pawson and Tilley 1997).

The interest in how the program is delivered and follows its own design or logic has also been called the fidelity of the implementation, that is whether what was put in place was what was intended. There can be a range of issues, such as workforce skills and capacity, insufficient funding, poor governance and so forth that may adversely affect implementation.

External factors to the program or policy can also impact on their implementation, ranging from macrostructural factors such as legislative change, other parallel policy reforms or economic downturns to more place-based factors associated with the context or client group. It has been stressed that these are sometimes difficult to identify and even more difficult to measure, but need to be considered at the outset and in an evaluation, as what is being implemented occurs in an 'open-system' and not the controlled environment of a scientific experiment (see Wadsworth 2010).

Australian Indigenous policies and programs

In Australia, across jurisdictions, a constellation of strategies and policies seek to address socioeconomic disadvantages experienced by communities and individuals (mainstream social policy) along with specific strategies to close the gap in key socioeconomic indicators between the Indigenous and non-Indigenous population. In the law and justice domain, the National Indigenous Law and Justice Framework (2009-2015) (SCAG 2010a) comprises five interrelated goals. These include comprehensively addressing the justice needs of Aboriginal and Torres Strait Islander peoples and reducing their over-representation as defendants, offenders and victims, and to ensure Indigenous people feel safe and are safe. The diversity and volume of programs and strategies that currently exist that contribute to these objectives are illustrated by the range of programs and initiatives listed in the separate appendix (SCAG 2010b).

The mechanisms for implementation and to realise these objectives include:

state-based Indigenous Justice Agreements (see Allison and Cunneen 2013); funding streams for Indigenous programs, recruitment and training policies; consultation and engagement strategies; and monitoring and review activities at an aggregate and program level. Broadly speaking, it is evident in statements about the purpose of these approaches that there are core elements that are: seen as integral to how programs and initiatives are implemented and should also be outcomes of all this activity. These core elements are aimed at bringing about change at all levels - government, the non-government sector, communities and individuals – and include:

- social justice objectives;
- cultural appropriateness and competence;
- capacity building and partnerships; and
- community engagement and local ownership.

As these elements have become increasingly part of program design and delivery, various good practice guides and reviews have been produced to assist such processes, such as those for cultural competence (eg Farrelly and Carlson 2011) and with community engagement (eg Hunt 2013a; Hunt 2013b).

Despite these laudatory goals, from the literature it is apparent there are many challenges associated with bringing about widespread and systemic change. Some of these relate to how government does business – such as inadequate resourcing, short and competitive funding cycles, accountability measures and hierarchical lines of performance reporting, workforce cultures and organisational silos – while others relate to aspects of the environment in which programs and initiatives operate. These include: the diversity of contexts; the diversity among and between Indigenous communities; overstretched services; high workforce turnover; weak governance and poor local capacity; and community and family politics.

Examples of crime and justice programs

To have a more detailed account and understanding of the implementation issues, a review was undertaken of published evaluations and research of a range of initiatives with an explicit crime and/or justice focus. The selection represents a cross-section based on funding and provider arrangements, the target group and setting, and their position within crime and justice service provision. There is also a sufficient body of published material to draw on. The selection is:

- Remote policing (eg Australian Institute of Criminology (AIC) 2011, Pilkington 2009, Young et al. 2013);
- Night or community patrols (eg ANAO 2011; Cooper et al. 2013; Closing the Gap Clearinghouse (CtGC) 2013; Taylor-Walker 2010);
- Aboriginal sentencing courts (eg Cultural and Indigenous Research Centre Australia (CIRCA) 2013; Marchetti 2009; Morgan and Louis 2010); and
- Men's behavior change programs (eg Day, Nakata and Howells 2008; Macklin and Gilbert 2011; Vlasis 2014).

This paper draws out the specific implementation lessons in relation to each of these initiatives, beginning with policing in remote Indigenous communities. A joint and complex initiative that included multiple programs and legislative change aimed at improving the health, employment, education and safety of Aboriginal residents in remote communities in the Northern Territory, the NTER resulted in funding for a significant increase in the police presence across the remote areas of the NT. Policing itself did not necessarily change, rather the police presence with the building or improvements in police facilities and the posting of police in some remote communities where there had been none before. Surveys showed the majority of community members and local service providers felt safer than three years previously

and this was more marked where a police presence had been established. However, there were variations in community attitudes and perceptions due to the context in which the change was implemented - the size and the location of the community - and in the delivery of the service as well as the style and degree of community policing adopted by the local police (AIC 2011; Pilkington 2009). A subsequent trial of community engagement police officers revealed additional lessons for individual practice and organisational change (Young et al 2013). From an implementation perspective, the experience demonstrates how expectations should be calibrated to align with context and how delivery can vary considerably among practitioners.

Night or community patrols have a very different history, emerging as they did from locally-run and controlled innovative initiatives in a small number of Aboriginal communities (Taylor-Walker 2010). Involving local Aboriginal people in patrols in neighborhood and community settings to assist those at risk and to transport them to safer places, over time the patrols have spread and received increasing levels of government support. For example, in recent years more than 73 remote communities in the Northern Territory has been funded to run patrols, and a youth patrol program was funded in multiple sites across New South Wales. It has been argued that fidelity to the original concept has diminished with increased government funding and standards of professionalism and accountability. Recent evaluations have shown there can be ongoing challenges in sustaining community-based patrols and considerable political contestation over the purpose and management of patrols (ANAO 2011; Cooper et al. 2013). What may be regarded as good implementation practice does not always accord with local conditions because of a constant underlying tension between being responsive to the local sociocultural context and adhering to public accountable standards.

Although Aboriginal sentencing courts, like night or community patrols, are no longer in the piloting or experimental

stage, they have their own origin and history. They reflect a commitment to bring community into an institutional setting, as a complementary adjunct to mainstream courts, and involve local Aboriginal people playing a crucial role in advising on or determining the specifics of sentencing outcomes. A recent national evaluation of courts in three jurisdictions showed that at a system level there were different degrees of maturity in the implementation process that affected resourcing, and the effectiveness of management and delivery (CIRCA 2013). In several jurisdictions there is now a stabilisation of model and practice, which would suggest they should be more closely examined as case studies of how implementation can occur to bring about system change.

At the other end of the cycle of program development are behavior change programs for Indigenous men. There has been a rapid growth in the number and range of programs for Indigenous men. Most are discrete programs that are locally-generated, and with community and personal development objectives. Few have been evaluated, and importantly, few seem to comply with minimum standards of good practice for such programs that seek to reduce family and domestic violence (Vlasis 2014). Knowledge is still being accrued and debate surrounds what might constitute good practice for an Indigenous men's behavior change program. This means small scale experimental programs are being implemented as separate entities around the country, which makes them more marginal and subject to the vagaries of funding changes and less connected to the justice system and formal service delivery networks. It is therefore often not known whether programs have been implemented as intended, in a similar fashion, or whether they achieved much in the way of outcomes.

Irrespective of the type of program being evaluated, a constant refrain in the evaluation reports is the lack of data that can help answer the question as to whether they have made a difference to the key outcomes of reduced

offending and victimisation. This means that what might be assessed as effective implementation is dependent on the realisation of secondary and more immediate outcomes. Across the evaluation material there were findings of how programs had produced positive results such as:

- better engagement from participants;
- increased or recognition of skills of local people;
- improved cultural competence among practitioners;
- better coordination and communication between stakeholders and between services; and
- improved perceptions of response legitimacy.

Such positive results seem both integral to and a result of effective implementation. However, it is not easy to determine what contributed to these results and by and large, policy makers still resort to the advice found in the implementation literature on human services to try and explain how these outcomes were achieved and what aspects of the implementation process contributed to these results.

Strategies to improve implementation

A recent review of literature on family support programs warned that without a planned, purposeful and integrated strategy, interventions were not likely to produce the desired effects and that attention to how a program is implemented is as important as attending to what is implemented (Wade et al. 2012). Arguing that the creation of an environment that will foster a positive experience will result in higher quality implementation and, ultimately, more positive outcomes, a huge review of juvenile justice programs across the United States produced the following major lessons for success in the implementation of a new program: enhance readiness; build organisational capacity through administrative support;

build staff support; ensure that the site has program champion(s); provide training and technical assistance; and understand the importance of implementation fidelity (Mihalic et al. 2004). These along with other factors that are typically viewed as impinging on the implementation of policy and programs, and which result in actual change in practice, are captured in Diagram 1.

Based on their review of implementation literature in the human services, Fixsen et al. (2009) make the critical point that the 'intervention' is the practitioner, and implementing change in services involves influencing the daily practice of many and multiple types of practitioners in many locations. Therefore it is hardly surprising that their focus is on staff as the core components of implementation. They identify core components as staff recruitment, training and coaching, and performance evaluation, as well as administrative support and data systems that support decision making.

Another key area to consider is good governance (Hemel and Hemel 2012). Fostering good governance is important, especially when working in partnership and when seeking to implement a broad or jurisdiction-wide strategy based on a promising small-scale pilot or demonstration project. Although Hemel and Hemel (2012) focus on crime prevention, their emphasis on building comprehensive governance has a widespread application to human services and to crime and justice systems and processes. Taking a broader definition than that found in the implementation ANAO (2006) guidelines, good governance is summarised as having five key principles: legitimacy and voice; direction and strategic vision; performance; accountability; and fairness.

Ensuring and rebuilding good governance should be integral to the six stages of implementation, as described by Fixsen et al. (2009). Arguably, with many policies and programs aimed at improving crime and justice outcomes for Indigenous people, there is too much attempted too soon, with ambitious

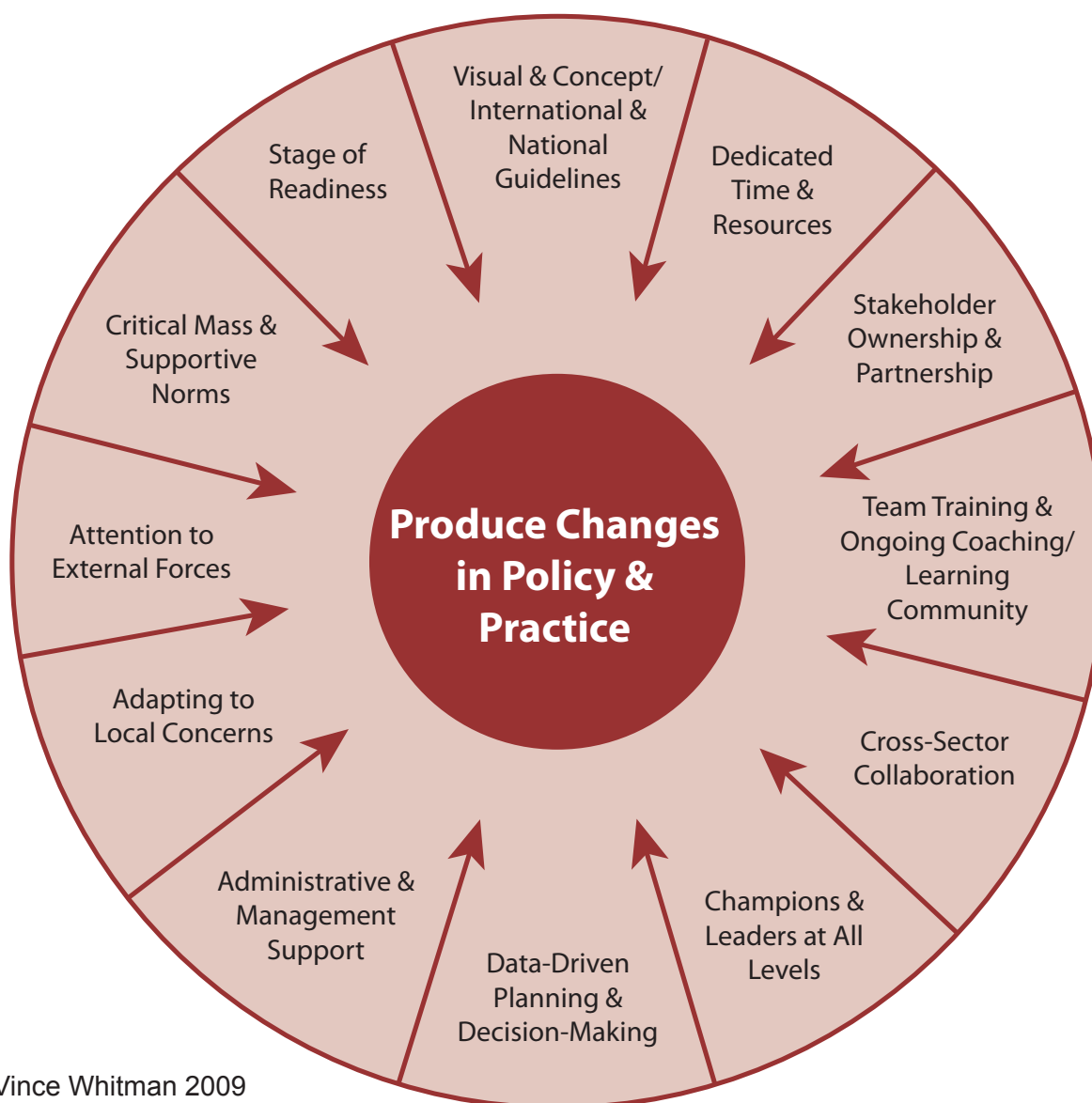
and vague objectives, and insufficient attention to both how governance will work on the ground (in many different contexts and with diverse stakeholders) and in supporting good governance as part of system change or program development. In many instances, contract management and financial accountability becomes the primary focus of the central funding body, which is a very narrowly conceived approach to governance.

Tailoring implementation strategies for Indigenous programs and policies

Such generic lessons about implementation and governance are echoed in recent major evaluations of crime and justice initiatives (eg Stewart et al. 2013; CIRCA 2013) and of national Indigenous programs (eg Australian Government 2014). While many are likely to be common to any government funded, community-based program and service reforms, a number of factors seem more likely to increase the probability of success with the implementation of programs or initiatives involving Indigenous clients or communities. These include:

- Recognising and investing in the critical role of service partnerships, to ensure there are effective relationships with allied services and programs;
- Acknowledging and reducing the many challenges facing both those responsible for delivering the program (eg workloads, limited skills) and those who take a lead role as community spokespeople or guides (overstretched, representing multiple and often conflicting views);
- Broadening the scope of advocacy processes, rather than relying on a few individual champions, to build support for the program at a local level and in policy contexts;
- Being more rigorous in the design of programs including feasible monitoring frameworks, while simultaneously being less ambitious and more clear about short-term and intermediate outcomes expected from the program

Diagram 1: Implementation factors that contribute to policy and practice change



Source: Vince Whitman 2009

- Having strategies to address the uneven implementation of programs that take into account that some community and institutional settings are less tractable to, and/or less able to support, innovation and progressive change; and

- Building in responses to changes (sometimes considered through risk management strategies) – such as in funding, in key external factors, and in turnover of critical staff.

Being acutely aware of external factors and actively engaging with crime and justice stakeholders outside of the program itself seems crucial to the implementation and sustainability of

Indigenous programs and policies. So often, Indigenous programs or initiatives are introduced as pilot or demonstration projects, as niche or stand-alone projects, which are not ‘mature’ or ‘tested out’ enough to be incorporated into systems or integrated into institutions. The most obvious exception to this is in geographical regions where there is a significant Aboriginal population, most noticeably in the Northern Territory and remote regions of other jurisdictions.

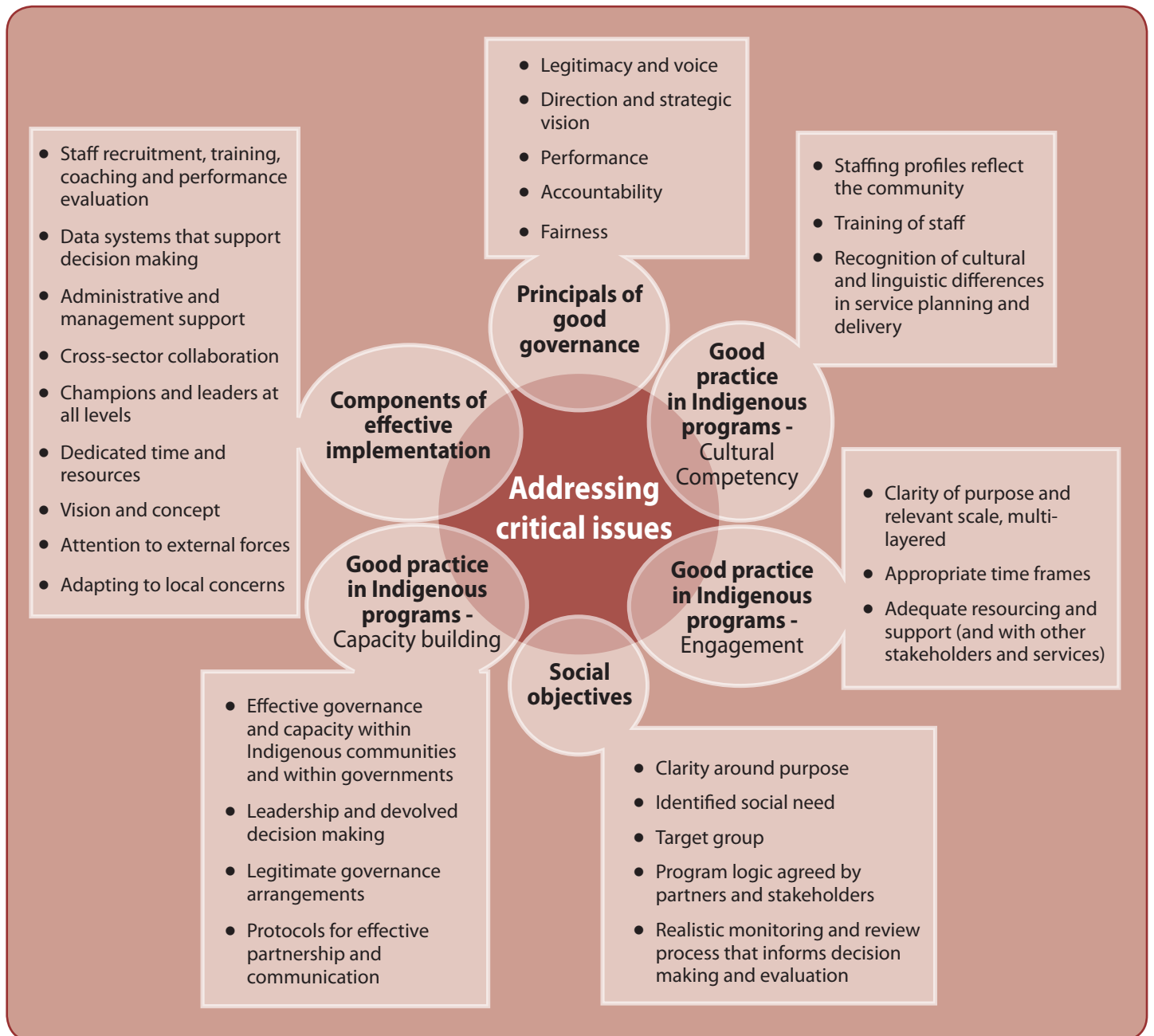
The framework developed by the authors at Diagram 2 aims to show how the principles of good governance and the components of effective implementation can help guide the

development and implementation of programs and policies. However, in addition, these need to be aligned with and complement facets of good practice that have been identified as improving the design of programs that work in and with Indigenous communities, and that increase the likelihood that important secondary objectives are achieved. Once critical issues of implementation are better addressed, and there is the actual collection and use of program data to monitor and review progress, it will be possible to look more closely in the longer term at whether overall goals of reducing offending and victimisation have occurred.

Diagram 2: Framework for addressing critical issues when implementing Indigenous programs and policies

Critical Implementation Issues for Indigenous Programs and Policies

- Unrealistic expectations
- Unclear theory of change and lack of program logic
- Organisations not ready to change
- Community not ready to change
- Lack of skills and capacity at the local level
- Short funding time-frames
- Lack of support and guidance from the centre
- Insufficient attention to how governance will work between the centre and local, and between partners



Conclusion

Based on the material reviewed for this paper, a preliminary conclusion is that there is a lack of sustained championing of systemic change, and that weak organisational and community 'readiness' undermines the implementation of broadly defined policy objectives and programs. This paper identifies theoretical principles along with practical factors that will be relevant for policy makers and practitioners who are responsible for implementing or evaluating Indigenous justice programs. The principles and practical factors are brought together in the framework outlined in Diagram 2. In an ideal world, with increased investment in planning and management, and guided by the framework, then there is more likely to be optimal implementation of programs and policies. However, there are always trade-offs and compromises in the real world, and a more realistic appreciation of how to work towards goals and a re-calibration of expectations should be reflected in the narratives and accounts of programs and policies.

There are many experienced Indigenous and non-Indigenous practitioners – in communities, in government policy, and in program delivery and management (often in the non-government sector) – who have worked to build and consolidate approaches that involve Indigenous people (as brokers, clients, champions, decision makers) in crime and justice programs. In addition, substantial efforts have been made to make systems, processes and practice more attuned to the needs and values of Indigenous peoples and communities. However, the evidence of actual change is elusive and the over-representation of Indigenous people in the criminal justice system continues, for the most part, undiminished. Rigour in application and implementation needs to be matched by rigour in assessing outcomes. One way forward is to have hubs of implementation expertise and experience which can be called up to: assist, promote, mentor and guide the expansion or trialing of programs; and to facilitate communication and

agreement between and within both the local implementation level and the program centre.

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