



Australian Government
Productivity Commission

July 2023

Review of the National Agreement on Closing the Gap

Draft report



This is a draft report prepared for further public engagement and input.
The Commission will finalise its report after these processes have taken place.

The Productivity Commission

The Productivity Commission is the Australian Government's independent research and advisory body on a range of economic, social and environmental issues affecting the welfare of Australians. Its role, expressed most simply, is to help governments make better policies, in the long-term interest of the Australian community.

The Commission's independence is underpinned by an Act of Parliament. Its processes and outputs are open to public scrutiny and are driven by concern for the wellbeing of the community as a whole.

Further information on the Productivity Commission can be obtained from the Commission's website (www.pc.gov.au).

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Opportunity for comment

The Commission thanks all participants, particularly Aboriginal and Torres Strait Islander people, for their contribution to the review, and now seeks additional input for the final report.

You are invited to examine this draft report and comment on it by written submission to the Productivity Commission, preferably in electronic format, by **Friday 6 October 2023**.

Further information on how to provide a submission is included on the review website: www.pc.gov.au/inquiries/current/closing-the-gap-review.

The Commission will prepare the final report after further submissions have been received and it will hold further discussions with participants. The Commission will forward the final report to the Joint Council on Closing the Gap in **December 2023**.

Commissioners

For the purposes of this review and draft report the Commissioners are:

Michael Brennan	Chair
Romlie Mokak	Commissioner
Natalie Siegel-Brown	Commissioner

Terms of reference

I, Josh Frydenberg, Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby request that the Productivity Commission undertake a review of progress on Closing the Gap.

Background

The goal of the National Agreement on Closing the Gap (the Agreement) is to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians. The Agreement was developed in partnership between Aboriginal and Torres Strait Islander representatives and all Australian governments and commits governments to working in full and genuine partnership with Aboriginal and Torres Strait Islander people in making policies to close the gap.

The Agreement is built around four Priority Reform outcomes and 17 socioeconomic targets (and agreement to develop two additional targets, on inland waters and community infrastructure). The socioeconomic outcomes focus on measuring the life experiences of Aboriginal and Torres Strait Islander people. The Priority Reform outcomes are:

- Strengthening and establishing formal partnerships and shared decision-making.
- Building the Aboriginal and Torres Strait Islander community-controlled sector.
- Transforming government organisations so they work better for Aboriginal and Torres Strait Islander people.
- Improving and sharing access to data and information to enable Aboriginal and Torres Strait Islander communities to make informed decisions.

Parties to the Agreement agreed that the Productivity Commission will undertake a comprehensive review of progress **every three years**. The review is to inform the ongoing implementation of the Agreement by highlighting areas of improvement and emphasising where additional effort is required to close the gap. Parties have committed to undertaking actions if the review indicates that achievement of any of the targets that are set out in the Agreement is not on track.

This review will complement the Independent Aboriginal and Torres Strait Islander led review of progress.

Scope of the review

In undertaking the review, the Productivity Commission should:

1. analyse progress on Closing the Gap against the four Priority Reform outcome areas in the Agreement;
2. analyse progress against all of the socioeconomic outcome areas in the Agreement; and
3. examine the factors affecting progress.

The Productivity Commission should provide recommendations, where relevant, to the Joint Council on Closing the Gap on potential changes to the Agreement and its targets, indicators and trajectories, and on data improvements.

In undertaking the review, the Productivity Commission should have regard to all aspects of the Agreement, consider all parties' implementation and annual reports, and draw on evaluations and other relevant evidence.

Process

The Productivity Commission is to consult broadly, particularly with Aboriginal and Torres Strait Islander people, communities and organisations, and should invite submissions and provide other options for people to engage with the review. The Productivity Commission should publicly release a draft report and provide its final report to the Joint Council on Closing the Gap by the end of 2023. The final report will also be published.

The Hon Josh Frydenberg MP

Treasurer

[Received 7 April 2022]

Disclosure of interests

The *Productivity Commission Act 1998* (Cth) specifies that where Commissioners have or acquire interests, pecuniary or otherwise, that could conflict with the proper performance of their functions they must disclose those interests.

Commissioner Mokak advised that he is a patron of Winnunga Nimmityjah Aboriginal Health and Community Services, ACT; and a board member of the Australian Institute of Health and Welfare.

Commissioner Siegel-Brown advised that she is a member of the Independent Truth and Treaty Body, Queensland; and Board Director, Ageing and Disability Advocacy Australia.

Acknowledgements

The Productivity Commission acknowledges that Aboriginal and Torres Strait Islander people are the first storytellers of this land and Traditional Owners of Country on which we now live and work. We recognise their continuing connection to lands, waters, communities and cultures. We pay our respects to Aboriginal and Torres Strait Islander cultures, and to Elders past and present.

Aboriginal and Torres Strait Islander people should be aware that this report may contain the names of people who have since passed away.

The Productivity Commission thanks members of the community as well as organisations and government agencies who have provided data and other information for use in this review.

We would particularly like to thank Aboriginal and Torres Strait Islander people and organisations, who generously shared their stories and insights with the Commission.



About the artwork – Yindyamarra ‘Connection’

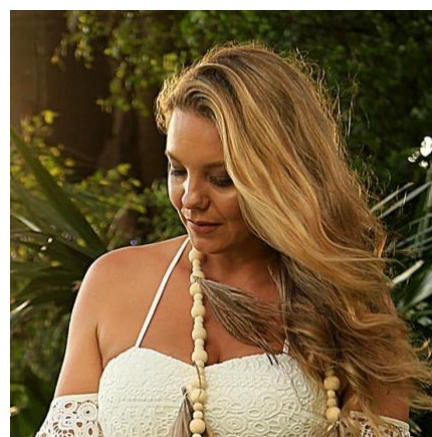
The artwork titled Yindyamarra ‘Connection’ was created for the Productivity Commission’s visual identity for the first review of progress under the National Agreement on Closing the Gap.

The artwork was created by Aboriginal artist Lani Balzan to represent all Australians and Torres Strait Islander people and the lands together. Building and making decisions together to help Close the Gap between our cultures.

Lani believes; that we can work together to help make changes by allowing all to be included in decision making. One can carry in their normal and usual way without ever making change because it works at the time. Sometimes we need to look at different ways and think outside of the box to make changes and let other voices be heard allowing many different perspectives to be viewed.

“Our Aboriginal culture has always been sacred but never embraced by majority of non-indigenous people. In previous years there was limited public education as there is today to help Close the Gap between our people and Non-Indigenous people.”

Throughout the artwork Lani has used specific elements and symbols to tell the story. Information on the elements and symbols can be found on our website.



About the artist

Lani Balzan is an Aboriginal artist and graphic designer specialising in designing Indigenous canvas art, graphic design, logo design, Reconciliation Action Plan design and document design.

Lani is a proud Aboriginal woman from the Wiradjuri people of the three-river tribe. Her family originates from Mudgee but she grew up all over Australia and lived in many different towns starting her business in the Illawarra NSW and recently relocating to Mid-North Queensland.

In 2016 Lani was announced as the 2016 NAIDOC Poster Competition winner with her artwork ‘Songlines’. This poster was used as the 2016 NAIDOC theme across the country.

Lani has been creating art Aboriginal art since 2013 and has continued success across the country. One of her biggest goals and inspirations with creating Aboriginal art is to develop a better connection to her culture and to continue to work towards reconciliation; bringing people and communities together to learn about the amazing culture we have here in Australia.

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Executive summary



In 2020, all Australian governments, along with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations, signed the National Agreement on Closing the Gap (the Agreement). They committed to mobilising all avenues available to them to achieve the objective of the Agreement – which is to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to those of all Australians’.

The Productivity Commission’s first review of the Agreement shows that governments are not adequately delivering on this commitment. Progress in implementing the Agreement’s Priority Reforms has, for the most part, been weak and reflects a business-as-usual approach to implementing policies and programs that affect the lives of Aboriginal and Torres Strait Islander people. Current implementation raises questions about whether governments have fully grasped the scale of change required to their systems, operations and ways of working to deliver the unprecedented shift they have committed to.

It is too easy to find examples of government decisions that contradict commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people’s priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. This is particularly obvious in youth justice systems.

Without stronger accountability for its implementation across all government organisations, the Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people.

The Agreement sits within an evolving landscape

The landscape in which the Agreement sits today is fundamentally different to that which existed at the time it was signed in 2020, and indeed during the time of its predecessor, the National Indigenous Reform Agreement. The Agreement is now one of several key commitments made by governments to improve the lives of Aboriginal and Torres Strait Islander people. This includes a legislated Indigenous Voice to Parliament in South Australia, legislated Treaty and Truth telling processes in Victoria and Queensland, and the upcoming referendum to change the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice. These initiatives may result in new decision-making and accountability structures that could provide a further catalyst for changes to the way governments work with Aboriginal and Torres Strait Islander people. But, regardless of the outcomes of these processes, governments still have a responsibility to implement what they committed to in the Agreement. Into the future, consideration will need to be given to how the Agreement complements and can be strengthened by this architecture.

It is clear from the Commission’s engagement across the country that there is strong support for the Agreement’s Priority Reforms. They are seen as prerequisites for governments adopting a fundamentally new way of developing and implementing policies and programs that affect the lives of Aboriginal and Torres Strait Islander people.

The Agreement’s reforms have not been prioritised by governments

The central pillars of the Agreement are its four Priority Reforms.

- Priority Reform 1 – Formal partnerships and shared decision-making
- Priority Reform 2 – Building the community-controlled sector
- Priority Reform 3 – Transforming government organisations
- Priority Reform 4 – Shared access to data and information at a regional level.

These reforms are aimed at accelerating improvements in life outcomes for Aboriginal and Torres Strait Islander people (measured against 17 socio-economic outcomes). They are supported by a range of mechanisms to drive change, including commitments to develop place-based partnerships, policy partnerships

and plans for strengthening key sectors (initially covering the priority policy areas of justice, social and emotional wellbeing, health, housing, early childhood care and development, disability and languages).

Although there are pockets of good practice, overall progress against the Priority Reforms has been slow, uncoordinated and piecemeal. Despite over 2,000 initiatives being listed in governments' first implementation plans for Closing the Gap, many of these reflect what governments have been doing for many years. Actions often focus on the 'what' with little, if any, detail on the 'how' or the 'why'. There is, for the most part, no strategic approach that explains (and provides evidence for) how the initiatives that governments have identified will achieve the fundamental transformation envisaged in the Agreement. This makes it near impossible for Aboriginal and Torres Strait Islander people, and the broader Australian community, to use these plans to hold governments to account.

The commitment to shared decision-making is rarely achieved in practice

The Agreement commits governments to building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments (Priority Reform 1). Partnerships – place-based partnerships and policy partnerships – are the key mechanism used in the Agreement to achieve this.

Some governments have demonstrated a willingness to partner and share decision-making in some circumstances, however this is not observed more widely and, in some instances, there is contradictory practice. Governments are not yet sufficiently investing in partnerships or enacting the sharing of power that needs to occur if decisions are to be made jointly. There appears to be an assumption that 'governments know best', which is contrary to the principle of shared decision-making in the Agreement. Too many government agencies are implementing versions of shared decision-making that involve consulting with Aboriginal and Torres Strait Islander people on a pre-determined solution, rather than collaborating on the problem and co-designing a solution.

- Policy partnerships (relating to justice, social and emotional wellbeing, housing, early childhood care and development, and Aboriginal and Torres Strait Islander languages) currently function as forums for discussion, with little if any authority for shared decision-making on significant policy matters.
- Place-based partnerships under the Agreement are in their very early stages, but governments appear to have been willing to be guided by Aboriginal and Torres Strait Islander organisations and communities in the selection of locations. This is a necessary first step for the future viability and progress of the partnerships.

The elements of shared decision-making articulated in Priority Reform 1 do not appear to have been adopted in wider practice, beyond formal partnerships. This is despite the recognition that shared decision-making is essential to building trust and paving the way for implementation of all of the Priority Reforms.

Government policy doesn't reflect the value of the community-controlled sector

Governments have acknowledged that in a broad range of service delivery areas, Aboriginal and Torres Strait Islander community-controlled services generally achieve better results for Aboriginal and Torres Strait Islander people, and so they have agreed that more services should be delivered by Aboriginal community-controlled organisations (ACCOS) (Priority Reform 2). But they have taken few tangible steps to strengthen the various sectors to increase the proportion of services delivered by ACCOS.

The Commission heard from a number of ACCOS that they are sometimes treated as passive recipients of government funding, and that governments do not recognise that ACCOS are critical partners in delivering government services tailored to the priorities of their communities. This may be a symptom of unequal

bargaining power with government agencies, and a government approach to contracting that does not appreciate the knowledge that ACCOs bring to developing service models and solutions that are culturally safe and suited to communities. The Commission heard that where services are being shifted from mainstream service providers to ACCOs, governments often rigidly apply generic, pre-existing models of service and program design, instead of allowing ACCOs to design services and measure outcomes in ways that best suit their communities.

- In most jurisdictions, it is unclear how much funding is allocated to ACCOs and non-Indigenous, non-government organisations (NGOs), as most governments (with the exception of the NSW and ACT Governments) have not published their expenditure reviews (and some have not undertaken them). But we have heard that funding is continuing to go to NGOs and government service providers when it could be going to ACCOs. This could in part be addressed through changes to commissioning processes and contracting, to ensure that only service providers with the capability to provide culturally safe services are selected.
- Some governments (including Victoria, New South Wales, South Australia and Western Australia) are planning or piloting reforms to how they commission the services of ACCOs. But it remains to be seen if these reforms will be translated into lasting and widespread changes. Improvements to funding and contracting of ACCOs – including more flexible and longer-term contracts that cover the full costs of services, and reduced reporting burdens – are also needed.

The transformation of government organisations has barely begun

The Agreement requires systemic and structural transformation of mainstream government agencies and institutions to ensure they are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund (Priority Reform 3).

There is a stark absence of whole of government or organisation-level strategies for driving and delivering transformation in line with Priority Reform 3. We are yet to identify a government organisation that has articulated a clear vision for what transformation looks like, adopted a strategy to achieve that vision, and tracked the impact of actions within the organisation (and in the services that it funds) toward that vision.

Some government organisations are engaging in self-assessment exercises to understand what transformation is needed. But transformation can only be realised by drawing on the experiences and perspective of those who governments serve – in this case, Aboriginal and Torres Strait Islander people – and working together with this knowledge to develop a strategy. Without external perspectives government agencies will not be able to overcome any ‘blind spots’ relating to institutional racism, cultural safety and unconscious bias.

Governments’ efforts to date have largely focused on small-scale, individual actions (such as cultural capability training and workforce strategies to increase public sector employment of Aboriginal and Torres Strait Islander people) rather than system-level changes to policies and practices (although some positive changes to Cabinet and Budget processes have been implemented in several jurisdictions, including in the Australian, NSW and NT Governments).

There has been limited progress on putting in place an independent mechanism that will support, monitor and report on the transformation of government organisations in most jurisdictions.

Governments are not enabling Aboriginal- and Torres Strait Islander-led data

Priority Reform 4 requires governments to implement large-scale changes to data systems and practices to enable Aboriginal and Torres Strait Islander people to participate in decision-making about data and to use

data for their own purposes. Governments have made little progress on enacting these changes – Aboriginal and Torres Strait Islander organisations are continuing to report difficulties accessing government-held data, and often the data that is collected by government agencies does not reflect the realities of, or hold meaning for, Aboriginal and Torres Strait Islander people. As an illustration, the data held by government is often not able to be disaggregated at a local scale, and state- or territory-level data does not reflect what is happening within communities.

One of the reasons why there has been limited progress in implementing large-scale changes to data systems and practices in line with Priority Reform 4 could be that there is not a shared understanding of what Priority Reform 4 is trying to achieve. The Commission heard that Aboriginal and Torres Strait Islander people view Indigenous data sovereignty as the purpose of Priority Reform 4, but this is not clearly reflected in the text of the Agreement, nor in many governments' statements of what they are doing (in implementation plans, for example). Without clarity on this, there is unlikely to be meaningful and sustained progress on Priority Reform 4.

- The community data projects (a commitment under the Agreement) are behind schedule, and it is too early to assess their progress. But a promising sign is that governments are looking to Aboriginal and Torres Strait Islander partners to set priorities in many of these projects.

Performance reporting provides only a partial picture of progress

The Agreement specifies performance monitoring and public reporting arrangements to support transparency and public accountability for progress against socio-economic outcomes and the Priority Reforms. However, there are significant challenges in the design and implementation of these arrangements.

- Even though the Priority Reforms are the foundation of the Agreement, no data is being reported on the agreed targets or supporting indicators for the Priority Reforms. These are critical gaps in data.
- Progress towards socio-economic outcomes is measured against national-level targets, with no indication of how jurisdictions should be held to account for their contribution.

Data still needs to be reported for all of the targets under the Priority Reforms, four of the 19 socio-economic targets, 143 supporting indicators and 129 data development items. The scale of the data development task means that it is unlikely that all of these will be developed within 10 years of the commencement of the Agreement (that is, by 2030). Improved governance arrangements and careful prioritisation of data development efforts are needed.

Stronger accountability mechanisms are needed to drive change

Despite the range of accountability mechanisms in the Agreement, the Commission's assessment is that they are not sufficient to influence the type of change envisaged in the Agreement. The existing mechanisms lack 'bite' – they are not sufficiently independent, do not contain timely and appropriate consequences for failure, obscure the individual responsibilities of each party and are not informed by high-quality evaluation.

Aboriginal and Torres Strait Islander bodies could shine a spotlight

In recent years, Aboriginal and Torres Strait Islander bodies have been established in jurisdictions across Australia, and others are proposed or are being developed. They include the proposed Voice to the Australian Parliament and Government, state and territory Aboriginal and Torres Strait Islander representative bodies, Voices to State Parliaments, Treaty processes, and justice commissions. Each of these bodies will (or could) have a role to play in holding governments to account for actions affecting Aboriginal and Torres Strait Islander people. Similarly, the independent mechanism may be positioned to

shine a spotlight on good and bad practices under the Agreement and advocate for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people, though its role may need to expand beyond Priority Reform 3 to include the Agreement in its entirety.

Clearer responsibilities for driving action within the public sector

Governments have not been delivering on their commitments to improve how the public sector designs and delivers policies and services that reflect the priorities and needs of Aboriginal and Torres Strait Islander people. They now need to establish stronger mechanisms so that they are held accountable for making changes from within. It is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – these principles reflect essential capabilities and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments.

The Commission is proposing several ways of embedding responsibilities for driving action within the public sector. These are:

- designating a senior leader or leadership group to drive change throughout the public sector in each jurisdiction
- embedding responsibility for doing the work to improve the public sector's relationship with Aboriginal and Torres Strait Islander people into the core employment requirements, and performance assessments, of all public sector CEOs, executives and employees
- ensuring that central agencies lead the changes to Cabinet, Budget, funding and contracting processes that are needed to deliver the outcomes of the Agreement
- establishing or enhancing sector-specific accountability mechanisms (such as Aboriginal and Torres Strait Islander Children's Commissioner roles).

Publishing meaningful implementation plans, reports and documents

Implementation plans and annual reports need to be documents that drive improved outcomes for Aboriginal and Torres Strait Islander people. To make them more useful, governments need to work more closely with Aboriginal and Torres Strait Islander partners. They need to agree on what actions are the most substantive and critical to achieving the objectives of the Agreement and how they will be implemented, and articulate these in their implementation plans and annual reports.

Greater transparency is also needed so that the Australian community can hold governments to account. Governments should publish the stocktakes, partnership agreements and other documents that have been developed under the Agreement.

Opportunity to respond to this draft report

The Commission is requesting further information on a range of issues and feedback on its draft recommendations. These can be found starting on page 8.

The views put forward in this draft report and accompanying information papers are not our final views. The Commission would like to hear from Aboriginal and Torres Strait Islander people and organisations, governments and the broader community on the content of the draft report and information papers, which will be taken into account before we finalise them. Submissions and brief comments are welcome by **6 October 2023**.

The Commission will also be conducting a further round of engagements with Aboriginal and Torres Strait Islander people, organisations and communities, as well as more targeted engagement with government agencies across jurisdictions.

The final report will be provided to the Joint Council on Closing the Gap by the end of 2023.

A guide to this draft report and accompanying information papers

This draft report (which includes an assessment of progress against the key commitments in the Agreement that can be found in the attachment to this paper) is supported by seven information papers available on the Commission's website (www.pc.gov.au/inquiries/current/closing-the-gap-review). These papers provide further detail (including case studies) on each of the main topics covered in this report. The information papers cover:

- the context and origins of the Agreement and the approach the Commission has taken to conduct the review, including who we engaged with (information paper 1)
- an assessment of progress against each of the four Priority Reforms in the Agreement (information papers 2-5)
- an assessment of the Agreement's performance reporting approach (information paper 6)
- the Commission's suggestions for embedding and strengthening accountability for implementing the Agreement (information paper 7).

These papers are complementary to this draft report. It is not necessary for you to read these papers to understand where the Commission has arrived at in its review or what our draft recommendations are.

Information requests and draft recommendations

The Commission is seeking further information on the matters outlined in the information requests below. We are also seeking feedback on the draft recommendations. In particular:

- Are the draft recommendations comprehensive? Does anything need to be added or removed from them?
- If implemented, will the draft recommendations be effective? How could they be made more effective?
- What else is underway that should be taken into account in making these recommendations?

Priority Reforms



Information request 1 Effectiveness of policy partnerships

The Commission is seeking further information on the effectiveness of the structure and governance arrangements for the Justice Policy Partnership and other policy partnerships established under the National Agreement on Closing the Gap.

- Are adequate support structures (such as resourcing and sufficient timeframes to provide views) in place to enable the participation of Aboriginal and Torres Strait Islander people and organisations? What else would help to support participation?
- How do policy partnerships build accountability into their structure and governance?
- Are the policy partnerships the right mechanism to address change across the five sectors? Are there other mechanisms that would be more effective?



Information request 2 Shifting service delivery to Aboriginal community-controlled organisations (ACCOs)

The Commission is seeking further information on:

- examples of good practice in transferring service delivery from mainstream organisations to ACCOs
- the risks to the sustainability of ACCOs from simply 'lifting and shifting' mainstream services into ACCO delivery
- putting obligations for governments into service delivery contracts, such as requirements for governments to provide data to ACCOs to enable them to design and deliver services that best meet the priorities and needs of service users
- the extent to which, in transferring service delivery from mainstream organisations to ACCOs, governments are reforming the way that services are contracted, funded, delivered, reported against and evaluated.



Information request 3 Transformation of government organisations

There is some information on how government organisations are implementing Priority Reform 3 in Closing the Gap implementation plans, annual reports and other public-facing documents, but this information is largely inadequate to understand whether government organisations have grappled with the nature and scale of change required.

The Commission is seeking additional information from government organisations on how they are implementing Priority Reform 3.

- What work have government organisations done to understand the systemic and structural changes that they need to make to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people?
- How have government organisations sought to address institutionalised racism?
- How have government organisations changed their organisational cultures and priorities to align with the principles of Priority Reform 3?
- How have these changes been reflected in government organisations' structures, operations and decision-making?
- What overarching changes need to occur at the whole-of-government level to ensure that changes within government organisations are not isolated activities?
- What role should truth-telling play in implementing Priority Reform 3?

The Commission has a strong preference that this information be provided by individual government organisations as public submissions to this review.



Information request 4 Indigenous data sovereignty and Priority Reform 4

What are the substantive differences between the way Priority Reform 4 is currently described in the National Agreement on Closing the Gap and an explicit reference to Indigenous data sovereignty as the objective of Priority Reform 4?

If the Agreement had Indigenous data sovereignty as the explicit objective of Priority Reform 4, what would governments have to do differently compared to what they have already committed to?



Information request 5

Legislative and policy change to support Priority Reform 4

What, if any, legislative or policy barriers are preventing governments from sharing data with Aboriginal and Torres Strait Islander people and organisations, or giving Aboriginal and Torres Strait Islander people more control over how data about them is governed?

What changes are needed to overcome these barriers, and what would be the costs and benefits of these changes?

Tracking progress



Draft recommendation 1

Appointing an organisation to lead data development under the Agreement

Responsibility for data development under the Agreement is currently split across multiple working groups and organisations, including the Productivity Commission. Without stronger data governance arrangements, there is a risk that the most important data to tracking progress under the Agreement will not be prioritised and developed.

An organisation or entity with dedicated resourcing and staffing to lead data development should be appointed. It should have the technical and cultural capability, resourcing and authority to lead this work and engage data custodians and Aboriginal and Torres Strait Islander organisations and communities in the development of appropriate solutions. There are many possible options for the organisation, including an independent research centre, government department, independent government agency, or a unit within a department or agency.

The chosen organisation's responsibilities should include leading work with parties to the Agreement to:

- develop a shared understanding and explicitly articulate **a conceptual logic underpinning the performance monitoring approach**. This should connect key reform actions and outputs under the Priority Reforms to the resulting intermediate outcomes intended to drive improvements in Aboriginal and Torres Strait Islander life outcomes. Intermediate outcomes should include common drivers of change across the socio-economic outcomes, where appropriate
- identify the most **critical indicators of change** under the Agreement and prioritise them for data development, following the conceptual logic
- determine the most **appropriate level of geographic data disaggregation** to hold jurisdictions to account for progress at a regional level, balancing community needs and data limitations
- coordinate and **develop solutions for indicators without data** with data custodians and Aboriginal and Torres Strait Islander organisations and communities.

**Information request 6****Characteristics of the organisation to lead data development under the Agreement**

If an organisation (such as an independent research centre, government department, independent government agency or a unit within a department or agency) were appointed to lead data development work to track progress under the Agreement (as per draft recommendation 1):

- What governance structure would ensure it has the authority and capability to deliver?
- What capabilities, skills or attributes should the organisation's leadership and staff have?
- How might it apply principles of Indigenous data sovereignty and governance in data development?

**Information request 7****Performance reporting tools – dashboard and annual data compilation report**

The Commission is seeking further information on how the performance reporting tools in the Agreement (namely the dashboard and annual data compilation report (ADCR)) are currently being used and how they could be improved.

- Who are the intended audiences for the dashboard and ADCR?
- How well do the dashboard and ADCR meet the needs of their intended audiences?
- Are there features or types of supporting information that should be included in the dashboard or ADCR to support the use and interpretation of the data?
- What information should the Agreement's performance reporting focus on providing relative to other reporting frameworks and tools (for example, the Aboriginal and Torres Strait Islander Health Performance Framework)?
- Is there a need for additional reporting tools to support the intended purposes of monitoring performance against the Agreement?



Information request 8

Quality of implementation plans and annual reports

Clauses 108 and 118 of the Agreement include clear criteria on how implementation plans and annual reports should be prepared and what they should include. This includes that implementation plans:

- are whole-of-government plans
- are developed and delivered in partnership with Aboriginal and Torres Strait Islander partners
- set out how existing policies and programs will be aligned to the Agreement
- set out actions to achieve the Priority Reforms, socio-economic outcomes and targets
- include information on funding and timeframes for actions.

The plans must also demonstrate the parties' commitment to undertake all actions in a way that takes full account of and promotes the cultures of Aboriginal and Torres Strait Islander people.

Annual reports should demonstrate how efforts, investment and actions are aligned and support the achievement of Closing the Gap goals.

Jurisdictions are not consistently preparing implementation plans and annual reports that meet these criteria. Current implementation plans list hundreds of piecemeal actions with, for the most part, no explanation of how the agreed actions are expected to result in the desired change. Annual reports do not include all the actions in implementation plans so there is no way to track progress or judge success or failure.

The Commission is seeking further information on how to improve the quality of governments' implementation plans and annual reports, and what is needed for governments to prepare the plans and reports according to the agreed criteria. Could this include a function for an external group (such as the independent mechanism) to assess adherence to the criteria?

A growing role for Aboriginal and Torres Strait Islander bodies in holding governments to account



Information request 9

Independent mechanism in the broader landscape

The Agreement provides for an independent mechanism that will drive accountability by supporting, monitoring and reporting on governments' transformations. But new and emerging Aboriginal and Torres Strait Islander bodies (such as the proposed Voice to the Australian Parliament and Government, state and territory representative bodies, a Voice to State Parliaments, Treaty processes, and justice commissions) will (or could) also have a role to play in accountability more broadly. With this in mind the Commission is seeking further information on the future role and functions of the independent mechanism.

- What are the essential features of the independent mechanism?
- What levers should the independent mechanism have to enable it to hold governments to account?
- Should the independent mechanism have a broader role – beyond Priority Reform 3 – so that it can drive accountability for progress towards all of the Priority Reforms in the Agreement?
- How could the independent mechanism improve the timeliness of accountability?
- How should the independent mechanism be situated with respect to the new and emerging Aboriginal and Torres Strait Islander bodies (such as the proposed Voice to the Australian Parliament and Government, state and territory representative bodies, Voices to State Parliaments, treaty processes, and justice commissions)? Is a stand-alone independent mechanism still required?
- What role should the independent mechanism play in reviewing and/or approving Closing the Gap implementation plans and annual reports?

Assigning clearer responsibilities and accountability for driving action within the public sector



Draft recommendation 2

Designating a senior leader or leadership group to drive jurisdiction-wide change

In each jurisdiction, a senior leader (such as the Secretary of the Prime Minister's, Premier's or Chief Minister's department, or the Public Sector Commissioner) or a leadership group with a wide span of influence (such as the Secretaries Board or another senior leadership group) should be tasked with promoting and embedding changes to public sector systems and culture. The objective of this task would be to identify and eliminate institutional racism, and to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people, throughout the public sector.

At a minimum, this should include supporting the change with:

- continuous, consistent communication
- role modelling and reinforcement
- encouragement and support for desired behaviours
- relevant tools and skills-building.



Information request 10

Senior leader or leadership group to drive change in the public sector

Which senior leader or leadership group should be tasked with promoting and embedding changes to public sector systems and culture, in order to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people and to eliminate institutional racism throughout the public sector?

- What tasks should they be assigned (see draft recommendation 2)?
- What would be the advantages and disadvantages of your preferred leader or leadership group?
- What particular skills or attributes would they need in order to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people throughout the public sector?
- How would the role, powers and functions of this leader or leadership group need to change in order for them to succeed in this specific role?
- How could this leader or leadership group drive accountability right through the public sector, including operationally on the ground?



Draft recommendation 3

Embed responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements

The Queensland Government has recently implemented legislation which requires public sector CEOs, executives and employees to enhance their cultural capability and support the state government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples.

The Australian, territory and other state governments should ensure that the employment requirements of all public sector CEOs, executives and employees require them to continually demonstrate how they have sought to:

- improve their cultural capability
- develop relationships with Aboriginal and Torres Strait Islander people
- identify and eliminate institutional racism
- support the principles outlined in the National Agreement on Closing the Gap.

These requirements should flow through into the performance agreements and KPIs of CEOs, executives and employees, with the strongest requirements placed on CEOs and executives.



Draft recommendation 4

Central agencies leading changes to Cabinet, Budget, funding and contracting processes

The Australian, state and territory governments should ensure that whole-of-government processes actively drive changes to deliver the outcomes of the National Agreement on Closing the Gap.

- At a minimum, this will require central agencies to review Cabinet, Budget, funding and contracting arrangements to ensure that they support the Agreement and its Priority Reforms.
- In many cases, this will require changes to Cabinet, Budget, funding and contracting arrangements to better support the Agreement, as well as guidance for agencies about best-practice approaches.



Information request 11 Sector-specific accountability mechanisms

The Commission is seeking further information on how well sector-specific accountability mechanisms (such as sector regulators, complaints commissioners and ombudsmen) are working for Aboriginal and Torres Islander people.

- What makes these sector-specific accountability mechanisms effective or ineffective?
- How could they contribute to enhancing accountability for outcomes under the National Agreement on Closing the Gap?
- How can dedicated Aboriginal and Torres Strait Islander accountability mechanisms (such as Aboriginal and Torres Strait Islander Children's Commissioner roles) help to improve accountability to Aboriginal and Torres Strait Islander people?

Improving transparency about actions taken to implement the Agreement



Draft recommendation 5 Include a statement on Closing the Gap in government agencies' annual reports

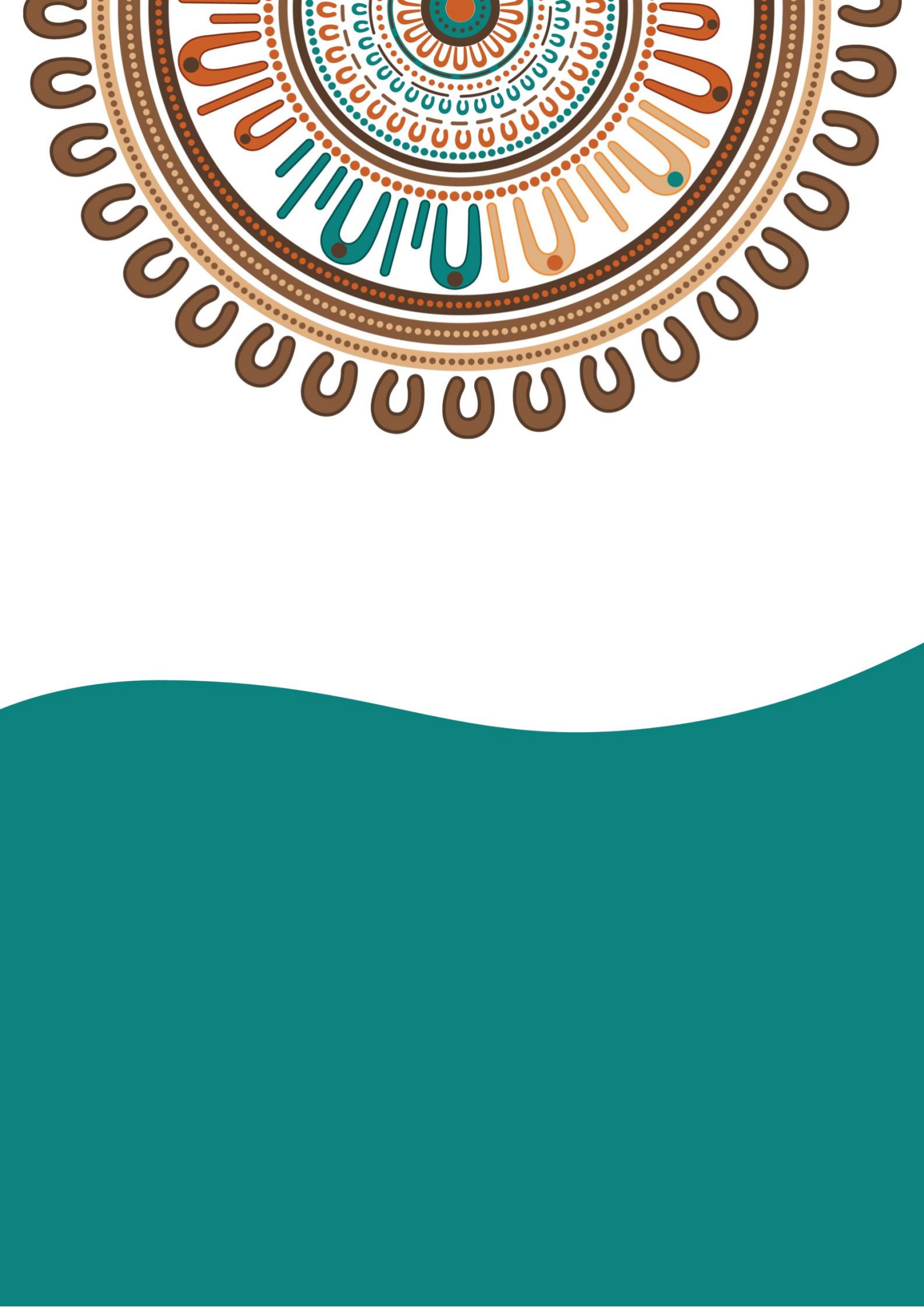
The Australian, state and territory governments each have legislation or rules that require government agencies to prepare annual reports containing certain specified information. They should amend the relevant legislation or rules to include a requirement for every agency to include a statement in its annual report on the substantive activities it undertook to implement the Agreement's Priority Reforms and the demonstrated outcomes of those activities.



Draft recommendation 6 Publish all the documents developed under the Agreement

To improve transparency and make it easier to assess progress, the Australian, state and territory governments should make public all of the outputs that are developed under the Agreement. This includes:

- partnership stocktakes
- partnership agreements
- expenditure reviews
- evaluations.

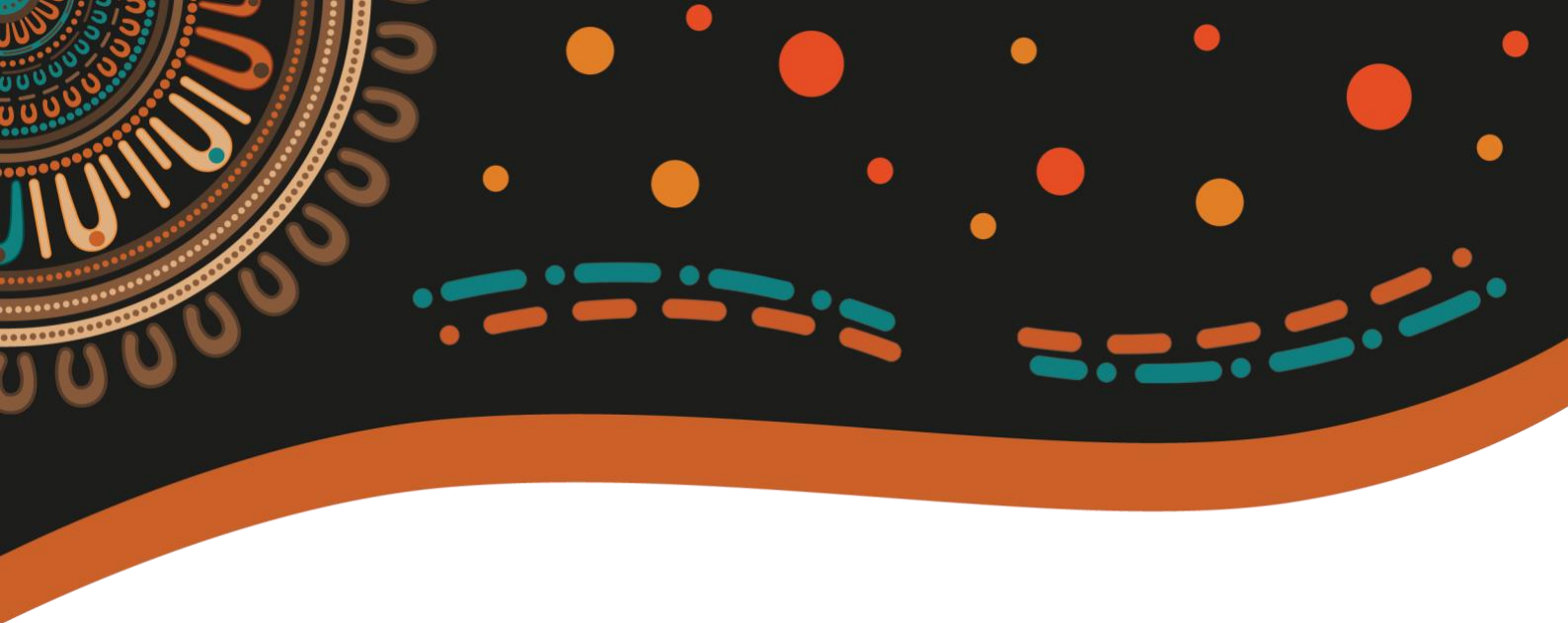


Review of the National Agreement on Closing the Gap

Draft report







1. The role of the National Agreement on Closing the Gap

In 2020, all Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations (the Coalition of Peaks) signed the National Agreement on Closing the Gap. This Agreement is unlike other national agreements. It is the first that includes a non-government party as a signatory – the Coalition of Peaks – and is ambitious in the scale of change required. It calls for an unprecedented, structural shift in the way governments work with Aboriginal and Torres Strait Islander people to drive better outcomes.

In signing the Agreement, governments made a commitment – to Aboriginal and Torres Strait Islander people, to the Coalition of Peaks, to each other and to the nation – to ‘a fundamentally new way of developing and implementing policies and programs that impact on the lives of Aboriginal and Torres Strait Islander people’ and to do so in a way that ‘takes full account of, promotes, and does not diminish in any way, the cultures of Aboriginal and Torres Strait Islander people’. They also agreed to report on their progress to a new council with representation from governments and the Coalition of Peaks – the Joint Council on Closing the Gap (Joint Council).

Four Priority Reforms: the central pillars of the Agreement

The objective of the Agreement is ‘to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians’. This is a complex and multifaceted objective that requires concerted effort to strengthen outcomes important to the rights, wellbeing and quality of life of Aboriginal and Torres Strait Islander people. This is reflected in the 17 socio-economic outcomes identified in the Agreement, including in the areas of health, education, employment, housing, safety and strength in culture and language.

To accelerate achievement of these socio-economic outcomes, parties agreed to four Priority Reforms relating to the way governments work with Aboriginal and Torres Strait Islander people, organisations and communities. The Priority Reforms represent a new way of working for governments and set the Agreement apart from its predecessor – the National Indigenous Reform Agreement (NIRA) – which largely focused on setting targets for socio-economic outcomes. A key lesson from the NIRA was that when presented in isolation, socio-economic targets can problematise Aboriginal and Torres Strait Islander people, rather than

the structures and systems that are driving these outcomes. It is these structures and systems which need to change to achieve improvements in life outcomes. This is the focus of the Priority Reforms.

- **Priority Reform 1 – Formal partnerships and shared decision-making.** ‘Aboriginal and Torres Strait Islander people are empowered to share decision-making authority with governments to accelerate policy and place-based progress on Closing the Gap through formal partnership agreements’.
- **Priority Reform 2 – Building the community-controlled sector.** ‘There is a strong and sustainable Aboriginal and Torres Strait Islander community-controlled sector delivering high-quality services to meet the needs of Aboriginal and Torres Strait Islander people across the country’.
- **Priority Reform 3 – Transforming government organisations.** ‘Governments, their organisations and their institutions are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people, including through the services they fund’.
- **Priority Reform 4 – Shared access to data and information at a regional level.** ‘Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development’.

Although these reforms are described as a new approach in the way governments work, they are not new ideas – most of what has been committed to reflects what many Aboriginal and Torres Strait Islander people have been saying for a long time. Further, some aspects of the reforms have been committed to by governments in the past, but only partially implemented or abandoned following changes in governments and shifts in policy. This has contributed to the existing level of distrust in government as well as a sense of fatigue and burden on already-stretched resources of Aboriginal and Torres Strait Islander organisations, communities and peak groups. These groups are continually called on by governments to provide advice and perspectives on a broad range of policy issues but are often not given sufficient time or resources to do so meaningfully.

The Priority Reforms are aimed at accelerating changes in life outcomes for Aboriginal and Torres Strait Islander people

The Agreement aims to improve life outcomes through changes in the relationship between governments and Aboriginal and Torres Strait Islander people that enable greater self-determination. The Priority Reforms describe how the Agreement will bring about these changes. Although the Agreement does not explicitly set out a logic describing how the Priority Reforms will drive changes in outcomes, a partial logic can be derived from its elements.

In short, the Priority Reforms are expected to improve the socio-economic outcomes through the centring of Aboriginal and Torres Strait Islander perspectives and knowledges in policies and programs. The Priority Reforms will promote greater recognition of Aboriginal and Torres Strait Islander cultures. This recognition will reinforce efforts to strengthen Aboriginal and Torres Strait Islander leadership in the design and delivery of policies and programs through shared decision-making, Aboriginal and Torres Strait Islander community control and access to data. This will lead to more culturally safe and responsive policies and programs. As a result, Aboriginal and Torres Strait Islander people will be able to access better quality and more culturally relevant services. This will reduce barriers to participation in social and economic activities and lead to improved socio-economic outcomes. Note that this represents the Commission’s understanding of the partial logic and should be tested and further developed by parties to the Agreement.

While the Agreement outlines the key building blocks of the reforms and their objectives, it has not explicitly linked them in a way that would support a shared understanding of the intended change. This risks contributing to a siloed policy response and insufficient investment in the government transformation necessary to improve outcomes for Aboriginal and Torres Strait Islander people (box 1).



Box 1 – The conceptual logic linking Priority Reforms with outcomes needs to be explicitly articulated and applied

The Agreement outlines the key building blocks of the reform effort (including a statement of the objective, the desired outcomes, a commitment to prioritising Aboriginal and Torres Strait Islander cultures, and an agreed set of Priority Reforms). However, it does not set out a conceptual logic linking them that would support a shared understanding of the intended change. In particular, the Agreement does not describe how the Priority Reforms interact or how they will contribute to improved socio-economic outcomes.

As a result, a clear logic is not applied to the Agreement's performance monitoring approach. The large number of targets, supporting indicators and data development items (over 300) for the Priority Reforms and socio-economic outcomes are listed in two separate tables at the back of the Agreement and defined within their siloed outcome domain, without a clear or consistent rationale for why some have been included and others excluded. This obscures the relationships between the reforms, cultural determinants, and socio-economic outcomes.

It is also reflected in governments' plans for implementing the Agreement, which are meant to set out how governments will transform the way they are working to accelerate improved life outcomes for Aboriginal and Torres Strait Islander people. Much like a roadmap, the community should expect to see a clear strategy logically connecting the actions that governments will take in their implementation plans to how they will actually achieve the change to which they have committed under the Agreement.

There are several potential consequences of this lack of logic and strategic approach.

- It can result in ad hoc or insufficient investment in the transformative change necessary to shift ways of working that are needed to improve outcomes for Aboriginal and Torres Strait Islander people. Without a change of view, governments' efforts to address socio-economic outcomes will continue to draw on non-Indigenous framing of policy solutions, resulting in little change in outcomes and an increased likelihood of wasted government and community resources.
- It can hinder a prioritisation of effort and lead to short-termism. Policy efforts that target actions or outcomes that are perceived as more achievable (or seen as 'low hanging fruit') but may be unlikely to produce significant change in outcomes may be prioritised instead.
- It contributes to a siloed policy response, hindering broader progress in improving life outcomes by not making trade-offs, interdependencies and common drivers clear. For example, policy responses to reduce family violence might aim to increase the reporting, arrest and conviction of offenders. However, this could have the unintended consequence of increasing incarceration, overcrowding and homelessness, further undermining individual and community wellbeing.

These issues make it hard for Aboriginal and Torres Strait Islander organisations and communities, as well as the broader Australian community, to understand whether governments are moving beyond a business-as-usual approach and to hold governments to account for meeting their commitments.

The Agreement sits within an evolving landscape

Much has changed since the Agreement was signed in 2020, and the Agreement is one of several key commitments made by governments to improve the lives of Aboriginal and Torres Strait Islander people. The Australian Government has initiated a referendum to change the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice. Several jurisdictions have established or commenced Voice, Treaty or Truth telling processes (box 2).



Box 2 – Broader government commitments to improve the lives of Aboriginal and Torres Strait Islander people

Aboriginal and Torres Strait Islander people have thrived for tens of thousands of years with strong cultures, knowledges and lore. Since colonisation, Aboriginal and Torres Strait Islander people have continued to assert sovereignty and self-determination, including greater representation in decision-making on issues that impact on their lives.

The denial of the sovereignty of Aboriginal and Torres Strait Islander people since colonisation has impeded Indigenous self-determination as government policies have continually sought to control the lives of Aboriginal and Torres Strait Islander people. The negative impacts of this have been acknowledged by various governments over time, with commitments to improve. For the most part, these efforts have not led to substantial or enduring improvement to how governments work.

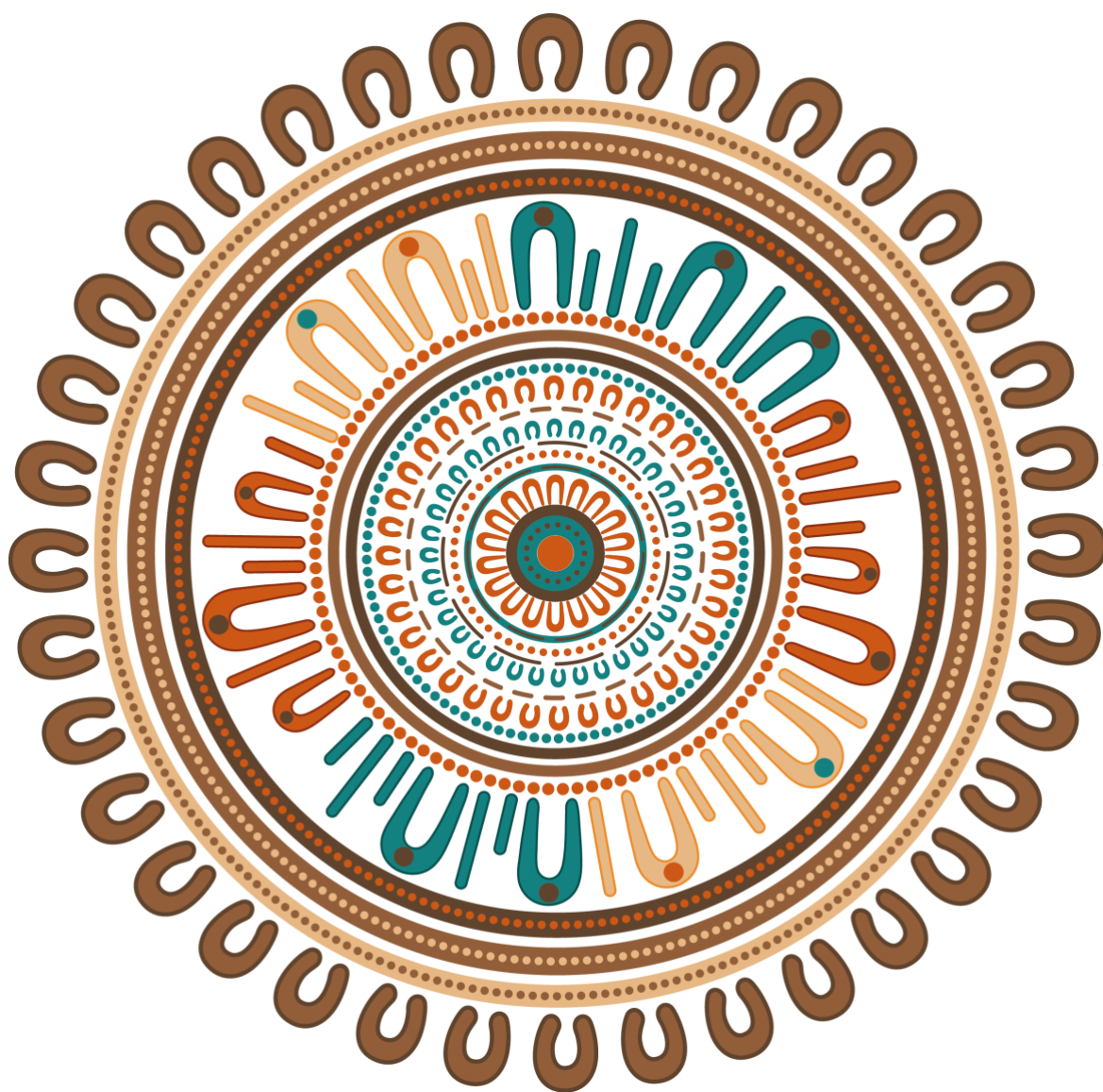
While self-determination means different things to different people, the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) explains the principle of self-determination as requiring that ‘... Indigenous peoples be involved in decisions that affect them, including the design, delivery and evaluation of government policies and programs’ (AIATSIS 2019, p. 5). These principles are also contained within the Priority Reforms.

The Australian Government also endorsed the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), of which self-determination is a central feature. UNDRIP has become one of the most important instruments for Indigenous rights at the international level, and was the product of over two decades of discussions at the United Nations. It sets out a framework for States to take actions to ‘truly recognise Indigenous peoples’ rights to self-determination, participation in decision-making, respect for and promotion of culture, and equality and non-discrimination’. This includes control over cultural traditions, customs and expressions. Although the Australian Government endorsed UNDRIP in 2009, there has been some criticism about the extent to which its obligations have translated to Australian domestic policies.

More recently, governments have stepped up their efforts to improve how they work with Aboriginal and Torres Strait Islander people to design policies that affect their lives. In addition to signing the National Agreement on Closing the Gap, several jurisdictions (Victoria, Queensland, the Northern Territory and the ACT) have commenced processes to facilitate Treaty negotiations and the South Australian Government has passed legislation to establish a First Nations Voice. The Australian Government has committed to implementing the Uluru Statement from the Heart in full, including holding a referendum on a Voice in its first term. The Voice would be an independent and permanent advisory body. It would give advice to the Australian Parliament and Government on matters that affect the lives of Aboriginal and Torres Strait Islander people (Australian Government 2023a).

These initiatives may establish new decision-making and accountability structures that could provide a further catalyst for changes to the way governments work with Aboriginal and Torres Strait Islander people. But, regardless of the outcomes of these processes, governments will still be responsible for adopting a fundamentally new way of developing and implementing policies and programs that affect Aboriginal and Torres Strait Islander people, as they have committed to do in the Agreement.

It may be necessary for the Agreement to be amended over time to reflect the evolving landscape and to reinforce governments' commitments to implement the Priority Reforms. These reforms reflect long-standing objectives of Aboriginal and Torres Strait Islander people to shape the actions of governments, and our engagements in this review have shown that there is strong support for the Priority Reforms.







2. Assessing progress towards the Priority Reforms

The Commission has been tasked with reviewing progress towards the objectives and outcomes of the Agreement every three years (in addition to its role in producing the Closing the Gap Dashboard and Annual Data Compilation Report). This is the first such review. It is an opportunity to highlight where governments are changing (or failing to change) the way they operate, where outcomes are improving or worsening for Aboriginal and Torres Strait Islander people, and where additional effort is needed.

The Commission has focused this first review of progress on the Priority Reforms, reflecting the importance of the reforms in driving improvements in socio-economic outcomes. In undertaking this assessment, we have focused on whether the commitments in the Agreement have been met, or are on track to be met, for each Priority Reform. This involves more than assessing whether specific outputs have been delivered as agreed – such as the development and publication of expenditure stocktakes, engagement plans, and the establishment of formal partnerships – and focuses on whether governments are upholding the spirit and intent of the Agreement by adopting its principles.

In undertaking the assessment, the Commission has sought to centre the experiences and perspectives of Aboriginal and Torres Strait Islander people in this review. As the people at the centre of the Agreement, it is imperative that governments listen to Aboriginal and Torres Strait Islander people to understand whether governments actions are making any difference (box 3).



Box 3 – Centring the perspectives of Aboriginal and Torres Strait Islander people

The Agreement states that ‘when Aboriginal and Torres Strait Islander people have a genuine say in the design and delivery of services that affect them, better life outcomes are achieved’. Consistent with this, the Commission has aimed to centre Aboriginal and Torres Strait Islander people’s perspectives, priorities and knowledges by:

- engaging widely with Aboriginal and Torres Strait Islander people, communities and organisations
- publishing what we have heard through engagements
- drawing on submissions from Aboriginal and Torres Strait Islander people and organisations
- using case studies.



Box 3 – Centring the perspectives of Aboriginal and Torres Strait Islander people

Engaging widely

The Commission has held face-to-face meetings in major cities, regional and remote areas as well as online meetings. Of a total of 186 meetings, 121 were with Aboriginal and Torres Strait Islander organisations. Four virtual roundtable meetings were held with Aboriginal and Torres Strait Islander organisations working in justice, health, community services and education, and housing.

Acknowledging what we have heard

As part of our engagement approach (Review Paper 1), the Commission committed to the principle of reciprocity with our information, including by providing feedback to Aboriginal and Torres Strait Islander people. In February 2023, the Commission published a summary of what we heard in meetings held in the second half of 2022 (PC 2023b). We propose to update this in time for our final report.

Drawing on submissions

Submissions are a key source of information informing our work. Of the 32 submissions we have received so far, 15 were from Aboriginal and Torres Strait Islander people and organisations.

Using case studies

The Commission has used case studies throughout the report and information papers, which reflect a range of experiences and perspectives from Aboriginal and Torres Strait Islander people.

We also looked to governments' implementation plans and annual reports (among other sources of information) in addition to speaking to governments and submitting information requests (The Commission received responses to its written information requests from all jurisdictions other than the Tasmanian and Western Australian Governments, and received partial responses from the ACT and Victorian Governments).

Implementation plans are meant to set out how governments will transform the way they are working to accelerate improved life outcomes for Aboriginal and Torres Strait Islander people. However, despite thousands of initiatives being listed in governments' implementation plans (over 2000), actions often focused on the 'what' with little, if any, detail on the 'how' or the 'why' (box 4). There is, for the most part, no strategic approach or 'theory of change' that explains how the initiatives that governments have identified are linked to the Closing the Gap objectives, reforms or outcomes. And where a link is identified, in many cases it is tenuous. Further, governments' annual reports are difficult to reconcile against their implementation plans. This makes it near impossible for the community to use these plans and reports to assess progress and to hold governments to account for their actions to enact the Priority Reforms.

The Commission's overall preliminary assessment of progress against the Agreement is therefore based on a judgement, drawing on the information and evidence that was available and what we heard through our engagements. We are seeking further information in a number of areas (which are highlighted throughout this paper) to complete our assessment of progress and final report by the end of December 2023.



Box 4 – Government implementation plans and annual reports are not fulfilling their intended purpose

The Agreement commits the parties to develop rigorous implementation plans that set out the actions they will take to achieve the Priority Reforms and socio-economic outcomes and to report on their progress in annual public reports. The implementation plans are meant to ensure that Aboriginal and Torres Strait Islander people know what governments are doing to move beyond a business-as-usual approach and can monitor their progress. However, we heard from numerous participants that the first implementation plans fell significantly short of this purpose. For example:

[Implementation Plans are] lists of actions and activities, devoid of clear strategy and aspiration. ... At the end of five years, we will have multiple Implementation Plans listing in excess of ten thousand initiatives and actions. What is the point of preparing these documents if no-one will be able to read and absorb them? If one wished to design a process guaranteed to resist close analysis and inspection, one could hardly do better than the current miasma of bureaucratic gobbledegook that passes for serious policy aimed at closing the gap. (Michael Dillon, sub. 5, p. 3)

Significant weaknesses that are common across the first implementation plans include that they:

- **give little indication that they were developed in partnership.** While all governments reasserted their commitment to working in partnership, most jurisdictional plans did not demonstrate that they were the product of a genuine partnership process. Only five of the nine first implementation plans included a foreword or opening statement from Aboriginal and Torres Strait Islander partners and two included a co-signed statement. But some partners indicated their involvement had been limited to providing input into a consultation process. Both NSW CAPO and the Queensland Aboriginal and Torres Strait Islander Coalition noted that the New South Wales and Queensland Governments had improved their partnership approach in their second implementation plans.
- **fail to set out a whole-of-government strategy that reflects the depth and scale of change that is required.** The plans provide little explanation of what issues and barriers the proposed actions are meant to address and how they are collectively envisioned to create the conditions for change. It is difficult to see whether most governments or their agencies have contemplated the ambition to which they have committed under the Agreement, and then worked backwards to determine what actions would feasibly achieve this. There is also little consideration of the interdependencies across the socio-economic outcome areas. Individual actions are assigned to lead departments, but the plans do not establish how the Agreement will be embedded by all government departments, agencies and statutory bodies. For example, only 19 of the 189 Australian Government entities and companies are referred to in the Australian Government's actions table (Department of Finance 2023; NIAA 2023a).
- **lack transparency about how actions will be delivered.** Details on the funding and timeframes for actions in most jurisdictional plans are often missing or vague. For example, 'new' initiatives are frequently listed as being delivered within existing funding or resourcing, while deliverable timeframes are often indicated as 'on-going'. Moreover, most plans do not specify key milestones or what steps will be taken to deliver each action or point to where this information can be found.

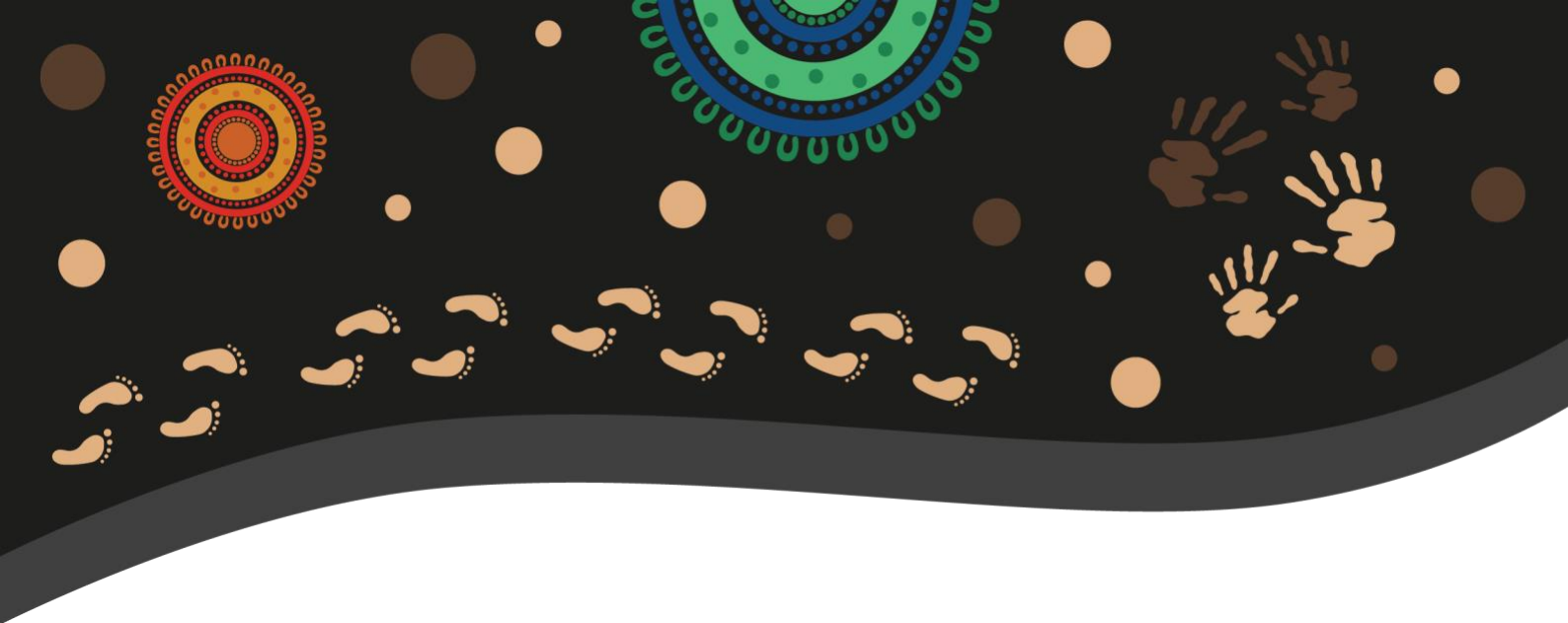
Governments' annual reports are difficult to reconcile against their implementation plans, which undermines their purpose as an accountability mechanism. Most only report on a subset of the actions that each government committed to, yet they also include updates on actions that were not listed in the



Box 4 – Government implementation plans and annual reports are not fulfilling their intended purpose

plans. Descriptions of progress are generally high level or incomplete, and most do not indicate whether actions are on track to be delivered as planned. Similarly, most do not discuss delivery risks or issues and how they are being addressed. By and large, the annual reports focus on listing activities that have been undertaken, while giving significantly less attention to describing what has not been delivered as planned and areas where there has been little progress. As the Coalition of Peaks stated:

While intending to outline how governments are implementing and progressing the National Agreement, these documents are often continuing traditional government practices of highlighting selected achievements while neglecting systemic issues that limit progress. (sub. 25, p. 3)



3. Priority Reform 1: Shared decision-making

Priority Reform 1 commits governments to 'building and strengthening structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap'. The Agreement identifies 'strong partnerships' as the key mechanism for achieving Priority Reform 1 and commits governments to establishing five new policy partnerships and six new place-based partnerships that respond to local priorities.

Partnerships are a familiar tool for governments and Aboriginal and Torres Strait Islander people; many have been used in the past and are in place today. They take a range of forms including:

- high-level partnerships between national, state and territory governments and the corresponding coalition of Aboriginal and Torres Strait Islander peak organisations in the relevant jurisdiction, such as the Coalition of Peaks, the South Australian Aboriginal Community Controlled Network, and the Coalition of Aboriginal Peak Organisations in New South Wales
- place-based partnerships, which focus on the priorities of a specific location or region like the Murdi Paaki Regional Assembly or Empowered Communities
- thematic partnerships that focus on a coordinated approach in a priority sector like the Aboriginal Children's Forum in Victoria or the Western Australia Aboriginal Health Partnership Forum and Northern Territory Aboriginal Health Forum.

Some of these types of arrangements have succeeded in building trust and progressing the priorities of communities. But others have done little to bridge mistrust (and some exacerbated it) and most have fallen short of embedding shared decision-making in a sustained way.

The Agreement is an attempt to overcome the challenges of the past using a new approach to 'set out a future where policy making that impacts on the lives of Aboriginal and Torres Strait Islander people is done in full and genuine partnership'. Although the Agreement does not define what a 'full and genuine' partnership is, the inclusion of these terms could be seen as a way of distinguishing the new approach to partnerships from past approaches. Parties have recognised that strong partnerships must include some critical elements, including that they are supported by a formal agreement, that they are accountable and representative, and that they involve shared decision-making.

But ultimately, success comes down to the intent of the parties involved and their willingness and commitment to work collaboratively and take concrete actions to share decision-making power.

There are some signs of governments working in partnership ...

Governments are taking small steps to change the business-as-usual approach to relationships and engagement, with some now more willing to partner, trial new approaches and engage in shared decision-making. This appears to be especially true when legislation or agreements mandate this approach (such as the legislation and frameworks underpinning the Treaty process in Victoria (box 5)) or when there are compelling drivers in the form of crises like the COVID-19 pandemic (box 6).



Box 5 – What rebalancing of power can look like – Victoria’s Treaty process

Treaty is seen as the embodiment of Aboriginal self-determination – it provides a path to negotiate the transfer of power and resources for Aboriginal people to control matters which impact their lives (Victorian Government 2022).

Victoria’s roadmap to Treaty is set out in the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic) (Treaty Act) (Victorian Government 2023a). It commits the Victorian Government to establish processes and enablers to develop and negotiate Treaties. It also outlines the role of the Aboriginal Representative Body, which is, ‘to represent the diversity of traditional owners and Aboriginal Victorians in negotiating with the State’ (Treaty Act 2018, subsection 10(1)). The First Peoples’ Assembly of Victoria is the democratically elected representative body for Traditional Owners and First Peoples living in Victoria, and was declared by the Minister to be the Aboriginal Representative Body.

Four Treaty elements were successfully negotiated by First Peoples’ Assembly of Victoria and the State for future Treaty discussions. These elements are essential to facilitating shared decision-making and supporting equal standing between Aboriginal Victorians, including Traditional Owners, and the State.

- **Dispute Resolution Process** (signed Feb 2021). The interim dispute resolution process sets out the parties to handle any conflicts that may arise during the negotiation of the Treaty elements. It indicates a commitment and focus from both Parties to develop relationships which will endure conflict.
- **Treaty Authority Agreement** (enacted by the Victorian Parliament in August 2022). The Treaty Authority is a novel legal entity created by agreement under the Treaty Authority Agreement to be the independent umpire for future Treaty negotiations. The *Treaty Authority and Other Treaty Elements Act 2022* (Vic) (‘Treaty Authority Act’) facilitates the Treaty Authority’s establishment by permitting certain logistics such as hiring independent staff and leasing an office and so on, which ensures it has a similar level of independence as a Royal Commission (First Peoples’ Assembly, pers. comm., 4 July 2023). The First Peoples’ Assembly was strong in its view that the Treaty Authority should not be confined by western centric structures led by government’s priorities, but that ‘it should be mob deciding who mob are’ (First Peoples’ Assembly, pers. comm., 4 July 2023). This represents a significant shift of power back to Aboriginal and Torres Strait Islander people.
- **The Treaty Negotiation Framework** (signed October 2022). The Framework sets out the rules and expectations for negotiating and enforcing treaties. Aboriginal lore, law and cultural authority are also recognised, though not codified, in this Framework, which allows for these to be used as key elements in future Treaty-making. Significantly, the Framework does not prescribe a rigid understanding of what



Box 5 – What rebalancing of power can look like – Victoria’s Treaty process

individual Treaty experiences and expectations should look like, instead it dictates that those entering into Treaty are able to make decisions that align most with their individual goals.

- **Self Determination Fund** (signed October 2022). The Self-Determination Fund is a First Peoples’ controlled financial resource that supports Aboriginal and Torres Strait Islander people to have equal standing with the State in Treaty negotiations as well as build future wealth and prosperity. This fund is independent from the State.

The Treaty Act dictates that all of these Treaty elements must be developed and finalised through ‘agreement’ between the parties – the importance of the wording ‘by agreement’ should not be understated. First Peoples’ Assembly told the Commission that this wording supported equal standing between parties and meant that shared decision-making was embedded at every step, otherwise, the State would not be in line with the Treaty Act. Due to the legislation, the government does not hold the power to make unilateral decisions (First Peoples’ Assembly, pers. comm., 4 July 2023).

Although Treaty negotiations have not started, the Treaty elements are noteworthy given how they were negotiated to meet the interests of both parties. It remains to be seen how they will work in practice. Both the First Peoples’ Assembly and Victorian Government have acknowledged that although the Treaty Act was central to legislating shared decision-making, there was significant political will which was essential to progressing Treaty in Victoria (First Peoples’ Assembly, pers. comm., 4 July 2023 and the Victorian Government, pers. comms., 5 July 2023). The Assembly also told the Commission that ‘Treaty exemplifies a shift to a collaborative approach for governments framed by continual open discussions towards the goal of sharing decision-making’ (First Peoples’ Assembly, pers. comm., 4 July 2023).

Successful shared decision-making has also been achieved where Aboriginal and Torres Strait Islander groups have pushed or incentivised governments to ‘come to the table’ either through convening or co-investment, thereby changing the dynamic of top-down, government-led initiatives. For instance, Wungening Aboriginal Corporation was able to expand its services to women and families facing domestic violence through a joint venture between the WA Department for Child Protection and Family Support, the Housing Authority, Lotterywest and the Indigenous Land and Sea Corporation in 2017 (WA Government 2017). Similarly, the Anindilyakwa Land Council signed a local decision making agreement with the Northern Territory Government in 2018 (ALC 2018). It has used mining royalties in addition to government funds to invest in sectors like housing, education and justice to meet the priorities of traditional owners and communities, though challenges still remain with accessing relevant data.



Box 6 – Shared decision-making in response to the COVID-19 crisis

In March 2020, the Australian Government convened the Aboriginal and Torres Strait Islander Advisory Group on COVID-19 (the taskforce) to protect Aboriginal and Torres Strait Islander people, who were identified early on to be a high-risk population due to the high burden of disease and inadequate infrastructure and services in Aboriginal and Torres Strait Islander communities (Department of Health 2020, pp. 8–9). The taskforce was co-chaired by the Australian Government Department of Health and the National Aboriginal Community Controlled Health Organisation (NACCHO) and comprised senior government representatives from state and territory public health teams, public health medical officers, the Australian Indigenous Doctors' Association, the National Indigenous Australians Agency (NIAA) and communicable disease experts (Aboriginal and Torres Strait Islander Advisory Group on COVID-19 2020, p. 1).

The taskforce jointly developed a management plan and met twice a week in 2020 with extra meetings taking place where required, demonstrating a willingness and commitment to share knowledge and decision-making. This commitment is emphasised in the management plan, which stated that:

Responses [to COVID-19] must be centred on Aboriginal and Torres Strait Islander people's perspectives and ways of living and developed and implemented with culture as a core underlying positive determinant ... These responses should be co-developed, and co-designed with Aboriginal and Torres Strait Islander people, enabling them to contribute and fully participate in shared decision-making. (Department of Health 2020, p. 6).

This specialised and collaborative response has been described as a 'reversal of the gap' in which Aboriginal and Torres Strait Islander people had better outcomes than non-Indigenous people and better outcomes than Indigenous peoples globally (Stanley et al. 2021, p. 1854). It stands in contrast to the government's response to the 2009 swine flu outbreak, which was a one-size-fits-all approach that did not recognise the higher risk level in Aboriginal and Torres Strait Islander communities, and because of this, had a disproportionate negative impact on communities (Crooks, Casey and Ward 2020, p. 3).

As well as a national response, there were a range of jurisdiction specific partnerships and shared decision-making arrangements. Several Aboriginal Community Controlled Health Organisations (ACCHOs) told the Commission that there was a more genuine commitment to collaboration and shared decision-making during the height of the COVID-19 pandemic. Aboriginal and Torres Strait Islander health professionals echoed this sentiment. For example, Winnunga Nimmityjah Aboriginal Health and Community Services (Winnunga) – the ACT's sole Aboriginal community-controlled health service – described open and quick communication with both the ACT and Australian Governments during the pandemic. Winnunga was trusted to make decisions for the community and was provided with extra funding for activities such as COVID-19 testing and supporting people who were required to isolate.

However, these substantial changes to the way government interacted with Winnunga did not continue. As the urgency of the COVID-19 pandemic receded, there was a return to business-as-usual. This came with the added expectation of managing the same level and amount of care that was provided during the early stages of the COVID-19 pandemic, but with previous funding arrangements and reduced communication with government (Julie Tongs – CEO Winnunga, pers comm., 23 June 2023).

... but shared decision-making is rarely achieved

The above examples highlight pockets of success. But overall, the Commission's engagements with over 120 Aboriginal and Torres Strait Islander organisations have not identified systemic change in when and how decisions are made, indicating limited progress in governments sharing decision-making. This is exemplified by Aboriginal Peak Organisations NT which said that:

Despite many years of the National Agreement and predecessor COAG Agreements, government agencies are still resistant to change that promotes Aboriginal self-determination in principle and practice ... We remain optimistic that eventually we will see change, however the reality is that we see very little to no desire for an equal balance of power with Aboriginal organisations. (sub. 10, p. 3)

A large number of partnerships were in place before the commencement of the Agreement. Parties committed to undertake a stocktake and review of these partnerships and to strengthen them in line with the strong partnership elements. This work is still underway (it is not required to be completed until the end of 2023), but the partnership stocktakes published so far do not reveal much about the health or effectiveness of existing partnerships.

For new partnerships under the Agreement, it remains to be seen what the outcomes will be. Both the policy partnerships and the place-based partnerships are in the early stages of development, and progress has been slow.

Partnership stocktakes and reviews do not reveal if shared decision-making is being achieved

Only three jurisdictions have published stocktakes and reviews of their existing partnerships – Queensland, Victoria and the Australian Government. Each has taken a different approach to assessing their partnerships (and do not always use assessment criteria that are consistent with the strong partnership elements). For the most part, governments have assessed their partnerships as meeting the strong partnership elements. However, none provide public information on what process was used to assess their partnerships, and importantly, whether and how Aboriginal and Torres Strait Islander partners participated in the assessment.

This lack of information means that it is not possible for the Commission to assess the quality of the partnerships and whether the principle of shared decision-making is being achieved.

Progress on the policy partnerships has been slow, with the justice partnership in place the longest

The Agreement provides for five policy partnerships to be established, for the purpose of working on five discrete policy areas. They are:

- justice (adult and youth incarceration)
- social and emotional wellbeing (mental health)
- housing
- early childhood care and development
- Aboriginal and Torres Strait Islander languages.

The justice policy partnership (JPP) has been established the longest. The remaining policy partnerships were established in late 2022 and are in their very early stages. As a result, the Commission's assessment has focused on the JPP for this draft report.

The JPP was established in 2021, with the signing of the *Agreement to Implement the Justice Policy Partnership*. This agreement is a high-level document that sets out the objectives, roles and responsibilities and governance arrangements supporting it. It aims to establish a mechanism for the parties to develop a joined-up approach to Aboriginal and Torres Strait Islander justice policy, with a focus on reducing adult and youth incarceration.

The primary function of the JPP is to make recommendations to reduce over-incarceration. More specific actions, responsibilities and timeframes are set out in the JPP work plan, which includes 11 actions covering preparation of reports (an annual report, a 3-year strategic plan and a second work plan), identification and reviews of partnerships across the justice sector, and engaging with data programs. So far, only two of the 11 actions have been implemented. These relate to the approval of the JPP's annual report and the inclusion of updates from the Closing the Gap Partnership Working Group as a standing agenda item.

Views on the effectiveness of the JPP are varied. Some members expressed support for the process, noting that it was still in its infancy but that a number of priority areas have been agreed, including bail, policing, minimum age of criminal responsibility and youth justice. Others raised concerns relating to:

- the focus and scope of work to date, with the JPP acting more like a forum for updates and to discuss priorities, rather than an opportunity to jointly develop and agree on clear actions and responsibilities for reducing incarceration. That is not to say the discussions are unwarranted, given they may be necessary to overcome what has been longstanding mistrust between Aboriginal and Torres Strait Islander communities and the justice system
- the time and resources involved for some Aboriginal and Torres Strait Islander independent members and even member organisations – for example, they have been asked to review very lengthy documents with very little time, and to attend long meetings that involve updates on work, rather than discussion of actions to progress outcomes. Some government representatives have also found deadlines challenging to meet
- insufficient representation of Aboriginal and Torres Strait Islander people with lived experience in the justice system
- the inconsistency between the objective of the JPP and actions taken by some jurisdictions, such as the introduction of stronger bail laws (discussed further below).

At this stage it is unclear if, and how, the JPP will contribute to substantial policy changes to reduce adult and youth incarceration. The Commission is seeking additional information on the JPP, and whether the structure and governance arrangements supporting the policy partnerships need to be strengthened to deliver better outcomes (**information request 1**).

The place-based partnerships are in the very early stages of development

All locations have been selected for place-based partnerships: Maningrida (Northern Territory), the western suburbs of Adelaide (South Australia), Tamworth (New South Wales), Doomadgee (Queensland), East Kimberley (Western Australia) and Gippsland (Victoria).

The place-based partnerships are still in their infancy, with selected locations currently working through the documentation and resourcing for the partnerships. Establishing the place-based partnerships has taken time. This is partly due to circumstances outside the control of the parties involved. The COVID-19 pandemic meant that community engagement was harder to facilitate, and in South Australia and Western Australia, state elections meant that some decisions were delayed or had to be reconfirmed with a new government.

The process for selecting locations has differed by jurisdiction but overall it appears that governments have been led by Aboriginal and Torres Strait Islander peak groups and communities to select locations that

communities have advocated for. Funding has been committed by governments for some of the partnerships and is being negotiated for others.

Better engagement with Aboriginal and Torres Strait Islander people is needed

The Agreement commits government organisations to transform their engagement practices with Aboriginal and Torres Strait Islander people and to engage fully and transparently, in a way that enables Aboriginal and Torres Strait Islander people to have a leadership role in the design and conduct of engagements and to understand how feedback has been taken into account in government decisions. Engagement is also a key element in developing full and genuine partnerships and shared decision-making with Aboriginal and Torres Strait Islander people. The Agreement acknowledges that shared decision-making requires engagement with a wide variety of groups of Aboriginal and Torres Strait Islander people, including women, young people, elders, and Aboriginal and Torres Strait Islander people with a disability (box 7).



Box 7 – Voices that are rarely sought need to be heard and understood

Many Aboriginal and Torres Strait Islander organisations told us that some voices are not being heard and need stronger representation, in particular:

- people in remote regions that are far away from key decision-making (including Homelands as distinct from discrete communities)
- people with disability
- people in incarceration and youth detention
- children and young people, particularly those in care systems
- women's voices, as often only men have a 'seat at the table'
- Stolen Generations' survivors and descendants
- Aboriginal and Torres Strait Islander LGBTQI+ community
- Torres Strait Islander people.

The Commission was told that there needs to be space for grass roots organisations to have their voices heard and that regional representation is needed to ensure regional priorities are being heard. Several organisations highlighted that the organisations that governments choose to work with can sometimes be seen as 'creatures of government' by the community they claim to represent, and that national bodies are sometimes empowered at the expense of regional or state bodies.

Government engagement helps to test ideas about policy, programs and services with the lived experience and perspectives of those that are impacted by these. But the level of engagement needs to be commensurate with the impact that a policy or program is expected to have, and the capacity of governments to understand and articulate the priorities or knowledges of Aboriginal and Torres Strait Islander people. Government engagement with Aboriginal and Torres Strait Islander people has not always benefited from the knowledges and practices that have survived for tens of thousands of years and has not been responsive to the diverse priorities and needs of Aboriginal and Torres Strait Islander people across Australia.

Aboriginal and Torres Strait Islander organisations told the Commission that governments are taking some steps to change how they are engaging with Aboriginal and Torres Strait Islander people, organisations and

communities in the design and delivery of policies and programs (box 9 in section 8). Despite pockets of change, the Commission heard many examples of consultation that did not go far enough. Words like ‘co-design’ and ‘partnership’ are frequently used but often turn out to be empty promises with little practical effect (Community First Development, sub. 9, p. 10).

The Commission heard that engagements can still feel tokenistic, as if they are being conducted to tick a box when the particular policy or program has already been decided upon. This was often demonstrated by the timing of engagement, with governments engaging too late in the policy or program development cycle, giving unrealistic timeframes for meaningful community input, and providing limited transparency on how input has shaped policy decisions. For example, the South Australian Aboriginal Community Controlled Organisation Network noted some of these characteristics in the development of the South Australian Government’s Aboriginal Housing Strategy 2021–2031.

Despite the impact of COVID-19 restrictions at the time, the engagement was scheduled for completion in under five months, following an extension on the original timeframe. ... The strategy outlines the community stakeholders consulted and acknowledges their ‘assistance’. ... the views expressed in the consultation have not been made publicly available. This lack of transparency is inconsistent with the established criteria for self-determination and obligations under the [National Agreement on Closing the Gap] and UNDRIP. In the absence of full transparency, there can be no indication that adequate weight was given to the views expressed. (SAACCON 2022, p. 8)

The Aboriginal Health Council of Western Australia Social Services Committee (sub. 22, p. 2) noted that even in the context of processes within the Agreement, governments failed to respect timelines and deliverables and expected the Coalition of Peaks to make up for lost time through reduced consultation and engagement. This was particularly evident in how many governments developed their first implementation plans (box 4).

Some more fundamental changes are being enacted by governments to enshrine engagement with Aboriginal and Torres Strait Islander people in the policy-making process. This includes strengthening Budget and Cabinet frameworks to elevate consideration of impacts on Aboriginal and Torres Strait Islander people in all new policies (discussed later under Priority Reform 3, in section 5), as well as Aboriginal and Torres Strait Islander bodies in several jurisdictions that can make representations to governments and the executive (discussed further in section 8).

Partnerships should be resourced as long-term investments

Adequate funding and time are required to support Aboriginal and Torres Strait Islander people to be partners with governments. The Agreement acknowledges this and notes that funding should allow Aboriginal and Torres Strait Islander parties to strengthen their governance arrangements, engage independent policy advice, meet independently of governments and engage with affected communities.

Despite this commitment, many organisations noted that lack of time and resourcing were impeding their ability to participate in partnerships on equal footing with governments. The Commission was told that Aboriginal and Torres Strait Islander people want to set the priorities and provide input but they need funding support for this to happen. Without it, the number and frequency of meetings means that many cannot adequately participate as it takes them away from their core service delivery work for too long without replacement. In relation to the burden on peak organisations, the Coalition of Peaks indicated that the majority of peaks are not yet receiving appropriate, dedicated and secure funding to ensure they can act as accountable partners and fulfil their roles under the Agreement. They further noted that in some instances where funding has been provided ‘the terms of the funding arrangements have not necessarily met the spirit of the National Agreement’, pointing to instances of short-term funding, which has been allowed to lapse or has under-estimated salaries and overheads’ (sub. 25, attachment 1, p. 9).

Similarly, with respect to the NT Aboriginal Justice Agreement, Aboriginal Peak Organisations NT said that no funding has been provided to the groups supporting the partnership – such as sitting fees, travel, consultation, interpretive services or training – to implement the actions assigned to them in the implementation plans. These actions include developing pre-sentencing reports for the community courts and providing culturally safe mediation (sub. 10, pp. 3-4).

Combined with insufficient timeframes for engagement, the risk of inadequate funding is that partnership processes may be viewed as disingenuous by Aboriginal and Torres Strait Islander groups and communities and reduce their capacity and willingness to participate. This will significantly limit the effectiveness of partnerships in improving outcomes for Aboriginal and Torres Strait Islander people.

At this stage, the Commission does not have sufficient information on what funding has been provided to Aboriginal and Torres Strait Islander organisations to participate in the partnerships established under the Agreement. Greater transparency on this would inform assessment of the adequacy of funding.

Governments need to relinquish some control over policy and funding decisions

Despite many existing and new partnerships, and governments' commitments to strengthen these, the Commission heard from Aboriginal and Torres Strait Islander people that they have seen little tangible change in when and how government decisions that affect their lives are made. Indeed, partnerships are a familiar and easily quantifiable mechanism, but it appears that governments are often viewing partnerships as an output, rather than using them to empower shared decision-making.

There may be various reasons for this, including risk aversion on the part of government staff, short timeframes for policy and program development, high workloads, insufficient cultural capability and differing expectations about what partnership means in practice. Readiness may also be a contributing factor. As noted by the South Australian government, the pace at which one party can move, is, in part, dependent on the ability of the other party to reform at the speed and scale required (sub. 28, p. 2).

There may also be a reluctance by governments to relinquish their control over policy and funding decisions. The Agreement itself highlights the imbalance of power as it relates to funding. It states that shared decision-making is where (among other things) 'relevant funding for programs and services align with jointly agreed community priorities, noting governments retain responsibility for funding decisions'. However, this clause need not be seen as precluding *all* funding decisions from being made by ACCOs or other Aboriginal and Torres Strait Islander organisations. Governments ultimately retain authority for making decisions about the quantum and mix of spending across the range of public goods and services that it provides to the community, including for health, education, infrastructure, and so on. But beyond this, there is significant scope for funding decisions to be made by others. This could involve ACCOs making decisions about how to best direct a given amount of government funding to meet local needs (or on a larger scale, regional needs). It could also involve individual ACCOs making decisions about how to allocate funding across the range of services they provide, through long-term flexible funding contracts with governments.

For meaningful progress to be made on Priority Reform 1, governments need to trust that by relinquishing some control they are contributing to better outcomes for Aboriginal and Torres Strait Islander people. Priority Reform 3 can support this shift in view, through transformative change within governments that enables a deeper understanding and increased value of the knowledge, skills and expertise of Aboriginal and Torres Strait Islander organisations and their ability to deliver better outcomes.





4. Priority Reform 2: Strengthening the community-controlled sector

Priority Reform 2 commits governments to strengthening the community-controlled sector to deliver high-quality, holistic and culturally safe services to Aboriginal and Torres Strait Islander people. All parties to the Agreement have agreed that community control is an act of self-determination and that services delivered by community-controlled organisations generally achieve better results and are often preferred over mainstream services (box 8).



Box 8 – The benefits and value of the community-controlled sector

Priority Reform 2 affirms that Aboriginal and Torres Strait Islander community control is an act of **self-determination**. This has intrinsic value as a human right recognised under the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP). Self-determination can also have extrinsic benefits through better and more informed decision-making. Community control, as a particular example of self-determination, can lead to decisions and service designs that are made with more information about and involvement of the people who use those services, accounting for the differences in need, preference, and culture between communities.

Priority Reform 2 also affirms that Aboriginal and Torres Strait Islander community-controlled services **lead to better service outcomes** for Aboriginal and Torres Strait Islander people. ACCOs are well-placed to design and deliver culturally safe and effective services. This is in part because ACCOs employ more Aboriginal and Torres Strait Islander people, have greater cultural expertise, skills and knowledge, and have stronger ties to the community.

This would suggest that government service outcomes for Aboriginal and Torres Strait Islander people and communities can benefit substantially from the involvement of ACCOs. For instance, there is a growing body of evidence that ACCOs can improve outcomes for Aboriginal and Torres Strait Islander people, particularly regarding health services (Panaretto et al. 2014; Pearson et al. 2020). Cultural expertise is embodied in how ACCOs design and deliver services, which is underpinned by an understanding of Indigenous wellbeing (which encompasses social, spiritual, cultural and community elements) and a more holistic model of care (Osborne, Baum and Brown 2013; SNAICC 2012).



Box 8 – The benefits and value of the community-controlled sector

From an economic perspective, more effectively designed and delivered human services present a more efficient use of private and public resources. This in turn can have broader economic implications, particularly for services that are fundamental to further social and economic participation. Human services such as health care underpin economic and social participation (PC 2017b) and disadvantage and poverty can reduce people's ability to find work or to invest in their education and skills (PC 2018). More effective provision of such services can not only improve the wellbeing of individuals but also that of whole communities – particularly where publicly funded services and infrastructure play a more central role (for instance, due to geographic remoteness and thin markets).

The Agreement commits parties to building the ACCO sector in line with four 'strong sector elements', which aim to allow ACCOs to have:

- sustained capacity building and investment
- a dedicated Aboriginal and Torres Strait Islander workforce
- support from a peak body, governed by a majority Aboriginal and Torres Strait Islander board
- a reliable and consistent funding model that suits the types of services required by communities.

Under the Agreement, two key mechanisms for achieving Priority Reform 2 are sector strengthening plans (SSPs), which identify measures to build the capability of specific sectors, and increasing the proportion of services delivered by Aboriginal and Torres Strait Islander organisations. There has been *some* progress against these two mechanisms. The first four SSPs have been delivered. On funding, reviews of ACCO expenditure have only been completed in full by three governments. Beyond this, there has been progress in some jurisdictions in moving toward commissioning and funding approaches that prioritise ACCOs, with varying success.

Current actions are not supporting ACCOs to thrive

ACCOs have knowledge and expertise to lead service design and delivery, yet they are not sufficiently valued in decision-making

Making the most of ACCOs' expertise and connections to community requires governments to use policy making and commissioning approaches that enable ACCOs to design and deliver services that best suit their communities.

The Commission heard from a number of ACCOs during engagements that they are often perceived by governments as charities, or passive recipients of funding, rather than essential business partners in delivering outcomes for governments and the community. This can mean that ACCOs are not treated as equals during decision-making, and that key opportunities are missed for governments to learn from the knowledges and community understanding that ACCOs have to develop better policy and service design and, importantly, to transform (as envisaged by Priority Reform 3).

The Commission also heard that when services have been 'lifted and shifted' from the non-Indigenous service sector into the ACCO sector, the approach has not always enabled ACCOs to design services and key performance indicators that align with Aboriginal and Torres Strait Islander community priorities, needs and measures of success. This approach was described by some ACCOs as forcing 'square pegs into round

holes'. This reveals a lack of government understanding of the knowledge and expertise that ACCOs possess, and risks delivering the same unsuccessful outcomes, or at worst, causing harm to the community.

A number of ACCOs noted the problems arising from government agencies imposing models of service design and associated performance indicators that do not reflect Aboriginal and Torres Strait Islander notions of wellbeing and measures of success. Such concerns were raised across jurisdictions and with respect to a broad range of services, including child protection, primary health care, early intervention and prevention, and adult literacy.

The shift towards ACCOs providing more services has been patchy

ACCOs and other Aboriginal and Torres Strait Islander organisations told us that some funding is being redirected from mainstream organisations to ACCOs, and that the Agreement has allowed some peak organisations to grow with more funding. But the demand for culturally safe services is still not being met. For instance, the Aboriginal Family Legal Service WA highlighted where a shift in funding had occurred, newly funded services quickly reached capacity, demonstrating significant unmet demand for culturally safe services (sub. 7, p. 7).

Not all services will be delivered by Aboriginal and Torres Strait Islander organisations in all places. Indeed, in some cases, non-Indigenous NGOs have been able to deliver culturally safe services, and some Aboriginal and Torres Strait Islander communities may choose to maintain longstanding relationships with non-Indigenous NGOs that are able to deliver culturally safe services. However, in many cases, we heard frustration about the pace of change. Overall, governments' responses to the Agreement have been described as 'lethargic' (KALACC, sub. 23, p. 10). For example, the Commission heard of instances where non-Indigenous NGOs or governments themselves are in competition with ACCOs to deliver services.

Transitions of service provision from non-Indigenous service providers to ACCOs could be facilitated through funding arrangements that include both a succession plan and resourcing for skills transfer and strengthening of capacity (PC 2020a, p. 21). In these instances, governments have a crucial role to play in ensuring that, where appropriate, contracts with NGOs include KPIs about transferring service delivery to an ACCO within an agreed timeframe.

Improving commissioning and grant guidelines to reflect Priority Reform 2 at both the agency and whole-of-government level could also be a useful lever in creating momentum in transforming how agencies approach funding and commissioning. Outcomes will also be determined by the actions of grant and contracting decision makers, demonstrating a link between Priority Reforms 2 and 3. The structural and behavioural changes that Priority Reform 3 requires are vital to driving progress in strengthening the Aboriginal and Torres Strait Islander community-controlled sector.

Approaches to contracting ACCOs need to change

The overwhelming message the Commission heard from ACCOs during engagements for this review was the need for ACCOs to have more control over the design and delivery of services so they can meet community needs and respond to changing priorities.

To support this, governments need to move away from transactional forms of contracting of community services that focus on narrow problem solving, towards fostering a broader understanding of the wellbeing of Aboriginal and Torres Strait Islander people. This requires government agencies to work collaboratively with ACCOs and communities to define service and program outcomes and to ensure that ACCOs have a secure base through appropriate funding.

Ensuring ACCOs have a secure base through appropriate funding enables ACCOs to:

- develop strategic plans and plan service delivery over the long term, building trust with the community
- invest in infrastructure such as buildings, equipment and information technology, ensuring ACCOs can operate effectively and efficiently
- attract and retain skilled staff, including professionals, who are critical to delivering high-quality services
- provide holistic and culturally safe services, tailored to the needs of the community. For example, reliable funding enables an ACCO to provide wrap-around services and address the social and emotional wellbeing of clients and their families.

In contrast, short, insecure and inflexible funding contracts limit operational planning and flexibility – but the Commission heard from a number of ACCOs that these continue to be aspects of their funding relationship with many government agencies. We heard that funding contracts continue to be too short (much less than 5 years) and do not cover the full cost of providing services, such as funding for transportation costs to deliver health services and remote service delivery. Government funding also often does not cover investment in infrastructure and capital works that are needed to effectively deliver – or improve – services. And funding that is tightly prescribed to a given program often does not cover the essential administration, management, and infrastructure costs that allow the ACCO to operate.

The Commission, and others, have previously made recommendations for improvements to contracting with ACCOs by adopting a relational approach to contracting, extending contract terms, and ensuring that funding covers the full costs of providing relevant services (see, for example, PC 2017b, 2020b). Setting default human services contract lengths to at least seven years would strengthen the community-controlled sector, increase certainty in the funding process, and free up ACCO resources to focus on service delivery. In addition to extending the length of contracts, the Commission has previously recommended that funding agencies allow sufficient time (a default of three months) for providers to prepare considered funding applications, including the development of integrated bids across related services; to publish a rolling schedule of upcoming grants and tenders over (at least) the next twelve months; and to notify providers of the outcome of grant and tender processes in a timely manner.

Some government agencies have made moves in these directions. For example, from 1 July 2023 – once the current funding agreements with health ACCOs expire – the Australian Government will move to rolling four-year agreements (NACCHO 2022). The Victorian Government is implementing a suite of reforms to the way funding is provided to ACCOs, including longer term funding contracts, a pooled outcomes-based funding model and a reduction to onerous reporting and accountability processes, including consolidating multiple funding reports to the one department. Other governments (including Western Australia, South Australia and New South Wales) are developing strategies or approaches to improve the way they commission and fund ACCOs (NSW Government 2022b, p. 34; SA Government 2021, p. 23; WA Government 2021, p. 26). But it remains to be seen whether these initiatives will translate into lasting and widespread changes.

During the Commission's engagements, many Aboriginal and Torres Strait Islander organisations said that the funding they receive does not cover the full cost of providing services, such as funding for transportation costs to deliver health services and remote service delivery. Government funding often does not cover investment in infrastructure and capital works that are needed to effectively deliver – or improve – services. And funding that is tightly prescribed to a given program often does not cover the essential administration, management, and infrastructure costs that allow the ACCO to operate.

The move towards more relational contracting needs to accelerate

In the context of improving outcomes for Aboriginal and Torres Strait Islander people, shifting towards relational contracting is of crucial importance. This shift would involve greater collaboration between purchasers (governments), providers, and clients (Aboriginal and Torres Strait Islander communities), to jointly assess progress and service outcomes, and to identify opportunities to improve performance.

Relational contracting could lead to improvements in assessing need, designing programs, selecting providers, and conducting monitoring and evaluation. If contracting were more relational and commissioning more aligned to shared decision-making, governments would be able to better learn from ACCOs the most effective ways to deliver services for Aboriginal and Torres Strait Islander people. This would help both governments and ACCOs to achieve their mutual aims. Governments could write more contracts that enable ACCOs to deliver the services that the ACCO considers necessary, rather than coming to ACCOs with a fixed idea of what service delivery should reflect.

Several governments, including those in Western Australia, South Australia, New South Wales and the ACT, have signalled the desire to move towards a more relational approach to delivering all community services, by publishing strategies or guidelines to assist agencies in the switch. But these are in the early stages of development, and until all funding and contracting arrangements for Aboriginal and Torres Strait Islander people adopt a relational approach, the full benefits of ACCOs' approach to service delivery will not be realised, and services for Aboriginal and Torres Strait Islander people will fall short.

The Commission is seeking further information on the factors that are important in transferring service delivery from mainstream government and non-government organisations to ACCOs, and examples of good practice in doing so. An area of particular focus is the potential to put obligations for governments into service delivery contracts, such as requirements for governments to provide data to ACCOs to enable them to design and deliver services that best meet the priorities and needs of service users (**information request 2**).

Sector strengthening plans could be made more effective

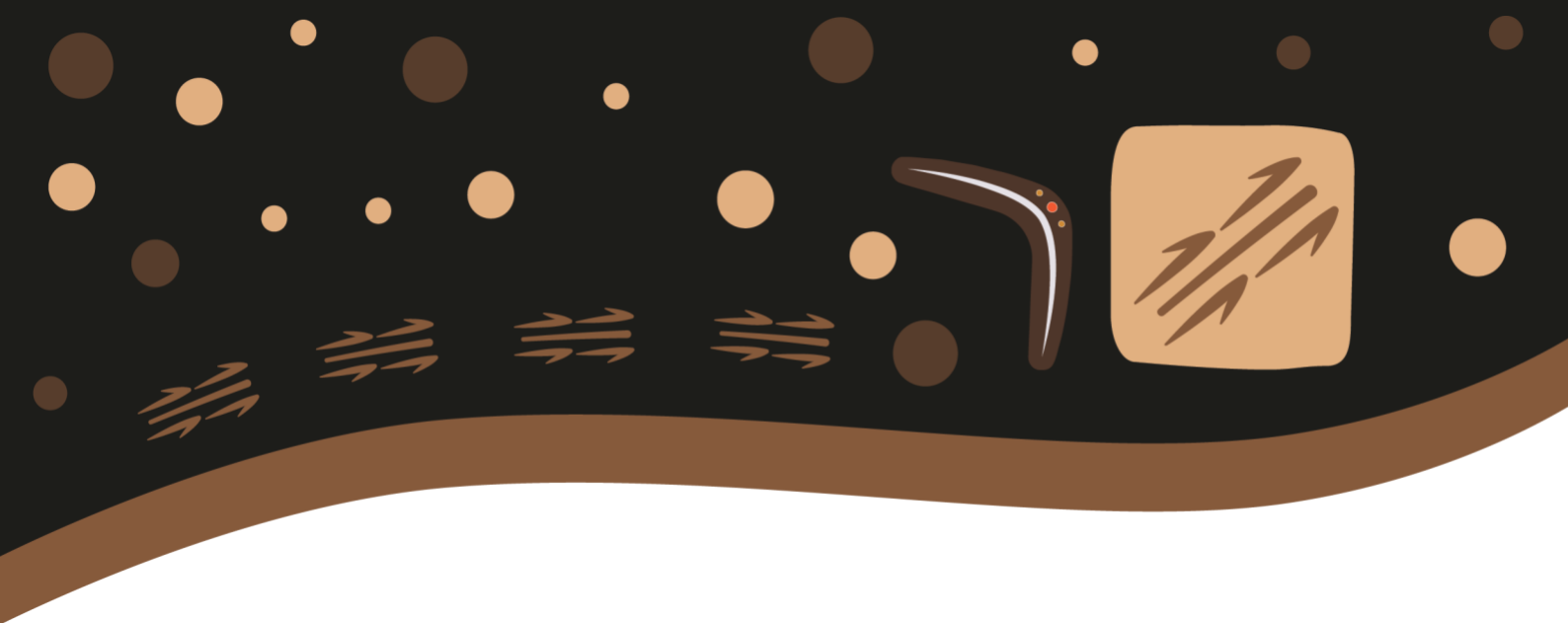
A key question for SSPs is whether they promote transformation, short-term change, or business-as-usual. In some cases, actions listed in the SSPs are 'achieved' with reference to programs or practices that existed prior to the Agreement. This calls into question whether the actions are specified sufficiently to push government parties toward more transformative reforms.

SSPs require strong accountability mechanisms to ensure commitments have been followed through, and actions are implemented. Currently, many actions in the SSPs are defined only at a high level, often without concrete timeframes, responsibilities, and resourcing. This leaves a heavy reliance on further development of details for the agreed actions, policy partnerships that are equally early in their development, and for the Joint Council review of annual reports to ensure progress. However, the annual reporting process has been imperfect as a mechanism for transparency and accountability of SSP actions.

Moreover, a clearer conceptual logic would improve the Joint Council's ability to assess whether the SSPs are leading to genuine progress. It would also help efforts to understand the importance of listed actions and to design their implementation. The initial round of SSPs do not articulate a clear conceptual logic of how the listed actions will improve outcomes for Aboriginal and Torres Strait Islander people.

Furthermore, the effectiveness of the SSPs will depend in part on the strength of partnerships – not only in their development, but also as part of promoting ongoing accountability and alignment with policy partnerships.





5. Priority Reform 3: Transforming government organisations

Priority Reform 3 commits governments to systemic and structural transformation of mainstream government agencies and institutions to ensure that governments are accountable for Closing the Gap and are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. This commitment applies to government organisations without exception. This entails transforming the ways of working of over 2.4 million public sector workers across federal, state, territory and local government organisations. Priority Reform 3 also applies to the service providers and other entities that governments fund, amounting to billions of dollars annually. This is a major commitment that requires a commensurate response.

Transformation requires deep and enduring change to how government organisations work

The Agreement provides guidance on some aspects of what transformation of government organisations must include, in the form of six transformation elements – these require governments to identify and eliminate racism; embed and practice meaningful cultural safety; deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people; increase accountability through transparent funding allocations; support Aboriginal and Torres Strait Islander cultures; and improve engagement with Aboriginal and Torres Strait Islander people. But the transformation committed to under Priority Reform 3 requires much more than piecemeal policies and programs aligned to individual transformation elements.

Priority Reform 3 requires organisations to deeply examine their own systems, structures and operations in order to tackle institutionalised racism, and to change their approach to decision-making, which has largely failed to reflect the priorities, cultures and knowledges of Aboriginal and Torres Strait Islander people.

Transformation of this kind involve deep and enduring changes to the culture, systems and processes of government organisations and to the behaviours and incentives that motivate their staff and leadership. This can only be realised by drawing on the experiences and perspectives of those who governments serve – in this case, Aboriginal and Torres Strait Islander people – and working together with this knowledge to develop a strategy that sets out what transformation is needed and the pathways and actions to achieve it.

There is an absence of system-level strategies to transform government

Among the hundreds of actions that governments are pursuing there is no clear strategy for transformation that underpins the individual actions — governments have not deeply examined their systems, structures and operations in the way the Agreement requires.

Transformation across government organisations will inevitably vary, but the first step for any organisation implementing Priority Reform 3 is assessing how their current ways of working align with Priority Reform 3 and the Agreement more broadly. It appears that very few government organisations have taken this first step.

Self-assessment is a legitimate part of that exercise, and this is happening in some jurisdictions and organisations (the Commission is aware of the findings of a self-assessment workshop undertaken by Australian Government organisations but these have not been made publicly available). However, self-assessment is not sufficient: it leaves organisations exposed to any ‘blind spots’ they have relating to institutional racism, cultural safety and other aspects of Priority Reform 3. And self-assessment — clearly — cannot reflect the perspectives and priorities of the Aboriginal and Torres Strait Islander people, organisations and communities that government organisations serve and work with. Progressing Priority Reform 3 requires that government organisations subject their systems and operations to this type of feedback.

Governments have committed to transforming their organisations so that they are free of institutionalised racism and in doing so, to challenge unconscious bias in their organisations. By definition, unconscious bias cannot be identified by organisations themselves. The areas where transformation is most needed, and the blind spots that organisations’ assessments are most likely to miss, can only be identified by Aboriginal and Torres Strait Islander people.

Looking across the government organisations responsible for the five policy priority areas identified in the Agreement — justice, social and emotional wellbeing, housing, early childhood care and development, and Aboriginal and Torres Strait Islander languages — it appears that only a very small number of organisations are pursuing strategies that if implemented, could entail something like the organisational transformation envisaged under Priority Reform 3. One example of a strategy is Queensland’s First Nations Health Equity reforms (box 9). Looking beyond the organisations responsible for the five policy priority areas, the Queensland Department of Environment and Science’s Gurra Gurra Framework has been highlighted as demonstrating improvement in how governments operate (box 9).

The impact of such changes comes down to how well they are implemented and whether they result in ongoing changes. The Commission will be undertaking further work for the final report, to understand whether any of the emerging examples of system-level transformation are generating sustained improvements in the way governments are working with Aboriginal and Torres Strait Islander people.



Box 9 – Emerging examples of system-level transformation change

First Nations Health Equity (Queensland Health)

In response to a report that found all Queensland Hospital and Health Services (HHSs) rated very high to extremely high on a measure of institutional racism against Aboriginal and Torres Strait Islander people (Marrie 2017, p. 17), the Queensland Government undertook a health equity reform agenda. These reforms included amendments to the *Hospital and Health Boards Act 2011* (Qld) in 2020 (and its associated Regulation in 2021), which are aimed at driving health equity, eliminating institutional racism across the public health system and achieving life expectancy parity for Aboriginal and Torres Strait Islander people by 2031 (Queensland Health 2021, p. 1). In response to this, the Queensland Aboriginal and Islander Health Council (QAIHC) noted that:

For the first time in Queensland's history, a legislative document acknowledges, verbalises and addresses institutional racism and the inequity of health experienced by Aboriginal and Torres Strait Islander peoples since colonisation. (QAIHC 2022, p. 2)

The new legislation requires each HHS to deliver a Health Equity Strategy in partnership with Aboriginal and Torres Strait Islander people. HHS boards are also now required to have at least one member who identifies as Aboriginal and/or Torres Strait Islander.

In its November 2022 position statement on 'Institutional Racism in the Queensland Public Health System', the QAIHC noted that further attention is required to tackle institutional racism, which 'continues to be viewed as the largest barrier to achieving health equity and better health outcomes for Aboriginal and Torres Strait Islander peoples and therefore to Closing the Gap' (QAIHC 2022, p. 2).

Gurra Gurra Framework (Queensland Department of Environment and Science)

The Gurra Gurra Framework was developed to reframe the Queensland Department of Environment and Science's (DES) relationships with Aboriginal and Torres Strait Islander people 'by holding Country and people at the centre' of its work (QDES 2020, p. 9). 'Gurra Gurra' means 'everything' in the language of the Kooma people, whose Country lies in southern inland Queensland (QDES 2020, p. 2).

The Gurra Gurra Framework was developed through 'mob-centred design' and is underpinned by First Nations terms of reference, meaning that it 'seeks to understand and respect the diversity of First Nations cultures across [Queensland], the collectivist nature of decision-making, the importance of Elders and other knowledge keepers, and the primacy of relationships and connection to Country above all things' (QDES 2020, p. 6).

Annika Davis, a Torres Strait Islander woman (sub. 27, p. 2), noted the Gurra Gurra Framework as an example 'of governments doing better than they have in the past' and that it 'put traditional owner groups and communities and ranger groups at the heart of decision-making. That involved leadership inside the Department.' And the General Manager of the Wuthathi Aboriginal Corporation noted the Framework is:

an opportunity to reframe the Government's relationship with Indigenous First Nations through new place-based relational contracting and funding arrangements. ... We appreciate the commitment from the Director General ... [of DES] ... for his Department to work with us in what we hope will be a more holistic and integrated way, to reflect the intent of the Gurra Gurra framework. (Turnour 2022, p. 2)

At the policy and program development level, there are some positive changes being made to Cabinet and budget processes to improve assessment of the impacts of policy changes on Aboriginal and Torres Strait Islander people (box 10).



Box 10 – Some jurisdictions have changed their Cabinet and Budget processes to reflect the National Agreement

The Australian Government updated its Cabinet Handbook in 2022. The handbook now notes that the Government is committed to ‘early, meaningful consultation’ with the NIAA (DPMC 2022, p. 7), which is also developing a First Nations Impact Assessments Framework (NIAA 2023b). The Framework will ‘support Australian Public Service agencies to assess the implementation of the Priority Reforms in the development of new policies and programs, and effectively consider the impact on Aboriginal and Torres Strait Islander people’ (Australian Government 2023b, p. 25).

NSW Treasury worked in partnership with NSW CAPO to develop a framework for evaluating Closing the Gap proposals for the 2022-23 Budget to decide what policies and programs should be funded: ‘This framework balances NSW Treasury’s standard evidence-based requirements and economic impact considerations with culturally appropriate principles developed by Aboriginal peak bodies’ (NSW Government 2022a, p. 56).

The NT Government has amended its Cabinet process to include a Closing the Gap impact statement. The change requires all cabinet submissions to demonstrate how proposals align with and support the National Agreement, and how agencies have engaged with Aboriginal people during the development of the proposal. The Department of the Chief Minister and Cabinet has developed guidance and training resources to support adoption of these new requirements (NT Government 2022, p. 47).

The effectiveness of these sort of changes is yet to be determined and is difficult to assess (requirements for regulatory impact analysis have not prevented poor policy being made in the past). Because they are tools for executive government deliberation there is generally little transparency around the quality of assessments made, the degree of compliance, or the weight they are given in decision-making.

These tools are meant to guide agencies to make better informed policy decisions but their value can quickly diminish if they are seen by agencies as a compliance obligation. This can occur if arrangements are not fit-for-purpose to the policy development cycle, if there is limited oversight on compliance, or if participants fail to see improved engagement or policy outcomes in decisions made by governments.

Overall, the actions that government are pursuing under Priority Reform 3 do not appear to be part of an overarching strategy, or part of a plan to assess how deep or wide changes within organisations need to be. It is difficult to see whether most governments or their agencies have fully grasped the scale of change required to deliver the unprecedented shift in their systems, operations and ways of working, as they have committed to do under the Agreement.

Governments are mainly pursuing piecemeal changes

Governments are pursuing hundreds of actions that align to the six transformation elements to varying degrees and have varying relevance to the task of organisational transformation. It is unclear how these actions will amount to the organisation-wide transformation that Priority Reform 3 calls for, and the Commission is seeking additional information from government organisations to better understand this (**information request 3**).

Perhaps most conspicuously, governments' efforts include employing more Aboriginal and Torres Strait Islander people and offering cultural capability training. Efforts to identify and eliminate racism have been narrowly focused on employment initiatives.

The Agreement requires governments to identify and call out institutional racism, discrimination and unconscious bias. It also requires governments to implement 'system-focused efforts to address disproportionate outcomes and overrepresentation of Aboriginal and Torres Strait Islander people by addressing features of systems that cultivate institutionalised racism'.

During engagements, and through submissions, the Commission heard from many Aboriginal and Torres Strait Islander people that racism and institutional racism remains a serious and widespread problem, particularly in the criminal justice, child protection and health systems. For instance, the National Health Leadership Forum submitted that 'Institutional racism and the multi-generational experiences of trauma and dislocation continue to have real impacts on the lives of Aboriginal and Torres Strait Islander people. This inhibits widespread improvements in health and wellbeing' (sub. 19, p. 7). And Aboriginal Family Legal Service WA submitted that 'In Western Australia, the criminal justice and child protection systems continue to perpetrate institutionalised racism and discrimination against Aboriginal people every day' (sub. 7, p. 7).

The most common way in which governments appear to be trying to address racism is through employment programs. Engagement conducted by the Coalition of Peaks to inform the Agreement noted support for increasing employment of Aboriginal and Torres Strait Islander people in government as a means of identifying and eliminating racism. Some jurisdictions and specific government organisations have targets for overall Aboriginal and Torres Strait Islander employment or employment at particular levels. Some of these targets are being met, some are not: by 2021 there were 130 Aboriginal and Torres Strait Islander senior leaders in the NSW Public Service, exceeding the 2025 target (NSW Public Service Commission 2022, p. 4). The Australian Public Service (APS) is not on track to meet its target of having 3% of leadership positions filled by Aboriginal and Torres Strait Islander people by 2024 (APSC 2022, p. 24; Australian Government 2020, p. 14).

Employing more Aboriginal and Torres Strait Islander people in the public sector can enhance its understanding and appreciation of Aboriginal and Torres Strait Islander culture, history, knowledge and skills. However, it does not directly address racism or unconscious bias. And Aboriginal and Torres Strait Islander people employed in the public sector should not have to bear the burden of calling out racism.

Despite their potential benefits, employment programs will not achieve the structural changes that are necessary to eliminate institutional racism. This requires system-focused efforts, and while some work is underway, these efforts are not well advanced across most governments. For example, the ACT Public Service Framework for Addressing Systemic Racism has been under development since 2020 and was originally expected to be finalised in 2021 (ACT Government 2021, p. 19, 2022, p. 23).

Cultural safety is largely being pursued through training but this is insufficient to drive the necessary changes

The Agreement requires government organisations to ‘embed high-quality, meaningful approaches to promoting cultural safety, recognising Aboriginal and Torres Strait Islander people’s strength in their identity as a critical protective factor’.

Cultural safety is defined in the Agreement but it is not a new concept. The definition of cultural safety provided in the Agreement makes it clear that the presence or absence of cultural safety depends on people’s experiences.

Cultural safety is about overcoming the power imbalances of places, people and policies that occur between the majority non-Indigenous position and the minority Aboriginal and Torres Strait Islander person so that there is no assault, challenge or denial of the Aboriginal and Torres Strait Islander person’s identity, of who they are and what they need. Cultural safety is met through actions from the majority position which recognise, respect, and nurture the unique cultural identity of Aboriginal and Torres Strait Islander people. Only the Aboriginal and Torres Strait Islander person who is recipient of a service or interaction can determine whether it is culturally safe. (section 12)

The most discernible way that government organisations are addressing cultural safety is through the rollout of cultural capability training or similar initiatives. Despite its popularity there is relatively little high-quality evidence on the effectiveness of such training in leading to behavioural change, and it appears that very little work is being undertaken or planned by government organisations to evaluate the effectiveness of the training they are funding. An exception is work being done by Aboriginal Affairs New South Wales, in conjunction with the NSW Aboriginal Education Consultative Group to deliver a new Connecting to Country training program to early childhood educators, that will be evaluated from 2024 (NSW Government 2021, p. 28).

NACCHO has previously noted that good practice cultural safety training ‘is not simply about imparting knowledge, but engaging participants in critical self-reflection regarding personal and organisational values and practices’ (NACCHO 2011, p. 29). Training that imparts knowledge can be an important part of truth telling but when it engages participants in critical reflection it can lead to ‘cultural humility’ which is an important step towards becoming a culturally safe employee (Gray et al. 2020, p. 280).

Training can play a role in improving government organisations but the experience of Aboriginal and Torres Strait Islander people and organisations (and the available academic research) demonstrates that while training is often necessary, it is rarely sufficient to drive cultural change (Bainbridge et al. 2015, p. 3). More promising initiatives include those that represent meaningful efforts to value Aboriginal and Torres Strait Islander culture and knowledge (box 11).



Box 11 – Valuing Aboriginal and Torres Strait Islander culture and knowledge in land and sea management

One policy area where governments have been developing stronger relationships with Aboriginal and Torres Strait Islander people is land and sea management. This recognises the expertise developed over tens of thousands of years by Aboriginal and Torres Strait Islander people caring for Country.

Budj Bim Rangers – two-way learning and partnerships

For decades, the Budj Bim Rangers have managed the Gunditjmara homelands and waters of south-western Victoria with sustained funding from the Working on Country and Indigenous Protected Areas programs (Putnis et al. 2021, pp. 44–45). Senior leaders have sought to build robust partnerships – including through formal agreements – that weave Aboriginal knowledge, values and aspirations with the science and land management expertise of other agencies and researchers to achieve positive results. This has included:

- UNESCO World Heritage Listing for the Budj Bim Cultural Landscape, one of the world’s most extensive and oldest aquaculture systems, in 2019.
- Working with government agency partners during the 2019 fires to protect world heritage listed aquaculture channels, some that were first constructed at least 6,600 years ago.

Banbai rangers – building practical relationships on the ground

The Banbai rangers have looked after Country in the Wattleridge and Tarriwa Kurrkun Indigenous Protected Areas in New South Wales (Putnis et al. 2021, pp. 76–77). This includes the Kukra rock art site that has been dated between 40,000–50,000 years old. Following the 2019–2020 bushfire season, public perceptions changed in the region and across the nation, with agencies and landowners reaching out to the Banbai rangers to conduct traditional fire management burns. There are plans for the Banbai rangers to collaborate with other land managers and partners to lead an early season burn to protect wetlands of international importance (Ramsar listed) and associated communities within Little Llangothlin Nature Reserve.

West Arnhem Land Fire Abatement (WALFA) project

WALFA is a partnership between Aboriginal ranger groups, industry and governments, established in 2006, to develop an innovative technique of abating greenhouse gases produced in wildfires through a combination of traditional and modern fire management techniques. To date, this project has abated more than 1.7 million tonnes of greenhouse gases with excess abatement marketed through the Aboriginal-owned, not-for-profit company ALFA (NT) Ltd. (Putnis et al. 2021, pp. 35–36). In addition, these fire management methods have contributed to decreases in the total area burnt across all project areas and ecological research also suggests that they are likely to be favourable for biodiversity (Ansell et al. 2020 cited by; Indigenous Carbon Industry Network 2020, p. 20).

Services funded by governments, but delivered by NGOs, also need to transform

Priority Reform 3 also commits governments to ensuring that all services they fund are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. This captures a wide range of services (such as medical services, childcare, and employment services) and amounts to tens of billions of dollars of expenditure every year. Governments have funded many non-Indigenous organisations to deliver some of these services on governments' behalf.

Governments' implementation plans and annual reports suggest that they have done little or no work to ensure that Priority Reform 3 is realised through the services they fund. The Commission's engagements also bear this out, including engagements with some government representatives.

A number of non-government, non-Indigenous organisations have indicated understanding of, and commitment to, Priority Reform 3 and taken some action towards its implementation. But they also suggested that the impetus rests with the organisations themselves, and can vary, because it is not a requirement (funded or otherwise) of governments (headspace, sub. 18, pp. 9, 11, 14; Annika David, sub. 27, p. 4).

One of the most immediate ways to implement this requirement is through government contracts and grant agreements. Requirements could be included for tendering organisations to demonstrate efforts and achievements towards transformation as a requirement of being awarded a government contract. For example, the South Australian Government submitted that:

To ensure the transformation of services that government funds, requirements could be imposed in contracts and grant agreements for funded providers to report on how they are achieving the transformational elements at clause 59 of the National Agreement. (sub. 28, p. 9)

Such requirements will only be workable if government organisations are capable of evaluating other organisations' achievement of the transformation elements and Priority Reform 3 more broadly. And as noted above, this can only be done by working with Aboriginal and Torres Strait Islander people who use these services. This will be a challenge where government organisations have not implemented Priority Reform 3 themselves (but better guidance from central agencies about contracts and grants could help with this – **draft recommendation 4**). Even if government organisations implement Priority Reform 3 in their own operations, assessments of whether it is being realised through the services they fund needs to be done transparently.

Governments are unlikely to meet their commitment on an independent mechanism

Recognising that government organisations cannot be relied on to transform without external scrutiny, the Agreement includes a commitment that governments will each identify, develop or strengthen an independent mechanism to 'support, monitor, and report on the transformation of mainstream agencies and institutions' by 2023.

There has been very little progress on the establishment of independent mechanisms and it is likely that most jurisdictions will not have a mechanism in place at the end of 2023. There is potential for the role of the independent mechanism to evolve to support enhanced accountability – this is discussed in section 8.



6. Priority Reform 4: Aboriginal- and Torres Strait Islander-led data

Governments have committed to share data and change how they collect and use data to better meet the needs of Aboriginal and Torres Strait Islander people, and to enable Aboriginal and Torres Strait Islander people to use data to serve self-determined purposes. This includes establishing partnerships with Aboriginal and Torres Strait Islander people to improve the collection, management and use of data, providing Aboriginal and Torres Strait Islander people with the data and information on which decisions are made, collecting, handling and reporting data at sufficient levels of disaggregation, and building the capacity of Aboriginal and Torres Strait Islander organisations and communities to collect and use data.

Governments have also committed to establishing community data projects in up to six locations by 2023.

The implications of Indigenous data sovereignty for Priority Reform 4 need to be clarified to achieve progress

Although Priority Reform 4 does not explicitly mention Indigenous data sovereignty (box 12), the Commission heard that many Aboriginal and Torres Strait Islander people considered Priority Reform 4 to be about Indigenous data sovereignty. Some governments have also emphasised the role of Indigenous data sovereignty in their approach to implementing Priority Reform 4, or made commitments relating to it (box 13).

There are overlaps between the commitments of the Agreement under Priority Reform 4 and the concept of Indigenous data sovereignty, but the Agreement does not explicitly commit governments to working towards achieving Indigenous data sovereignty, nor set out how it is relevant.

This lack of clarity is perhaps one reason that governments' implementation plans largely lack the ambition to change how Aboriginal and Torres Strait Islander people's data is managed across governments. Governments' implementation plans have so far included a range of actions loosely related to improving data and how data-related activities are undertaken. But they generally do not set out how these jointly contribute to an overarching goal. Unless there is clarity on what Priority Reform 4 is trying to achieve, there is unlikely to be sustained progress, beyond possibly more sharing of existing government-held data and incremental improvements to the quality of this data. The Commission is seeking further information to better understand the differences between Indigenous data sovereignty and Priority Reform 4 as currently described in the Agreement (**information request 4**).



Box 12 – What is Indigenous data sovereignty?

Indigenous data sovereignty ‘derives from the inherent right of indigenous peoples to govern [their] peoples, countries (including lands, waters and sky) and resources, as set out in the United Nations Declaration on the Rights of Indigenous Peoples’ (Te Mana Raraunga, USIDSN, and Maiam nayri Wingara 2019, p. 1). Historically, indigenous peoples have been excluded from the processes that determine what data governments collect about them, and why and how (Maiam nayri Wingara 2022, p. 3). The Indigenous data sovereignty movement is a global movement borne out of the desire to protect against the misuse of data about indigenous peoples, and to ensure that indigenous peoples are the primary beneficiaries of their data (Walter and Carroll 2020, p. 11).

In Australia, Indigenous data sovereignty has been defined as the right of Indigenous people to exercise ownership over Indigenous data. Ownership can be expressed through creation, collection, access, analysis, interpretation, management, dissemination and reuse. Indigenous data refers to information or knowledge about or affecting Indigenous peoples, either collectively or individually (Maiam nayri Wingara 2023).

Indigenous data sovereignty is expressed through Indigenous data governance, defined as Indigenous people ‘autonomously [deciding] what, how and why Indigenous data are collected, accessed and used’ (Maiam nayri Wingara 2023). Indigenous data governance can take many different forms – examples in Australia include the data governance arrangements as part of the Maranguka Justice Reinvestment Project and the Mayi Kuwayu study.

Data governance under the Maranguka Justice Reinvestment project

The Maranguka Justice Reinvestment project is an Aboriginal-led justice reinvestment project in Bourke, New South Wales, aimed at addressing persistent high crime and incarceration rates. The collection and use of detailed local data underpins decision-making within the project. The project has established an Indigenous data governance structure, which aims to ensure Indigenous data sovereignty and leadership engagement. It centralises data requests and collection to ensure accountability can be upheld. The structure includes the Palimaa Data Platform, which automates data access and sharing from 15 contributors, including NSW Government departments and services operating in Bourke (Maranguka Community Hub, Kowa, and Seer Data & Analytics nd).

Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing

Mayi Kuwayu is a survey developed to ensure that measures to assess social determinants of health are not solely based on European academic opinion, but capture the breadth of shared cultural attributes that are important to understanding Aboriginal and Torres Strait Islander people’s health and wellbeing. It is led, developed, conducted, and governed by Aboriginal and Torres Strait Islander people. Mayi Kuwayu’s governance group includes peak Aboriginal and Torres Strait Islander health and research groups. Its data governance processes are overseen by an all-Indigenous data governance committee, which applies Maiam nayri Wingara Indigenous data sovereignty principles to assess data use requests, along with continued engagement with communities in the implementation of the questionnaire, and the analysis, interpretation, and dissemination of data collected (Bourke et al. 2022).



Box 13 – What commitments have governments made in relation to Indigenous data sovereignty?

Governments have considered and made commitments to Indigenous data sovereignty to varying degrees in their implementation plans.

- One government – the NSW Government – has explicitly emphasised the importance of Indigenous data sovereignty in its approach to Priority Reform 4. Its first implementation plan states that ‘achievement of Priority Reform 4 rests upon a shared sound understanding of the crucial role that Aboriginal and Torres Strait Islander data sovereignty plays, and adoption of robust data governance protocols and principles’ (p. 32). Its second implementation plan also commits the NSW Government to developing a roadmap that sets out a shared understanding of what Indigenous data sovereignty and governance means in New South Wales, and developing a model to implement the principles of Indigenous data sovereignty and governance in practice (pp. 51–52).
- Some governments have made commitments relating to Indigenous data sovereignty, and/or noted or alluded to its relevance in implementation plans. For example:
 - the Victorian Government’s implementation plan sets out an action by the Department of Land, Water and Planning to ‘explore what Indigenous data sovereignty, as committed to in the Government’s Self-Determination Reform Framework, means to Traditional Owners within Victoria in relation to [the Department of Environment, Land, Water and Planning]’ (p. 91)
 - the Australian Government’s second implementation plan contains a general commitment to ‘meaningful change in relation to Indigenous data sovereignty and Indigenous data governance, and working with other levels of government, and other sectors and entities, to make practical changes’ (p. 30)
 - the WA Government’s implementation plan does not explicitly mention Indigenous data sovereignty, but states that Priority Reform 4 ‘involves sharing government-held data – as well as supporting the capacity of Aboriginal organisations and communities to collect, manage and use data themselves. This acknowledges that historically, governments have held information about Aboriginal people without sharing it – and this must change in order to further empower Aboriginal people to make and participate in decisions about their futures’ (p. 33)
 - the Queensland Government’s second implementation plan notes the development of a First Nations Health Equity monitoring and evaluation framework, which ‘will be underpinned by the principles of Aboriginal and Torres Strait Islander data sovereignty’ (p. 11).
- Other governments have not publicly acknowledged the relevance of Indigenous data sovereignty to Priority Reform 4 at all. For example, the SA, Tasmanian, NT and ACT Governments’ implementation plans make no mention of Indigenous data sovereignty.

Sources: ACT Government (2021); Australian Government (2021, 2023b); NSW Government (2021, 2022b); NT Government (2021); Queensland Government (2021, 2023); SA Government (2021); Tasmanian Government (2022); Victorian Government (2021); WA Government (2021).

There has been little progress on Priority Reform 4

Overall, there have been no large-scale changes in the way governments share data, undertake data-related activities, or interact with Aboriginal and Torres Strait Islander people on data-related issues.

The few changes that have been made have largely been about increasing the sharing of existing data held by governments. For example, governments have worked on presenting data in more accessible formats, such as dashboards, and have been undertaking activities to make it easier for Aboriginal and Torres Strait Islander people to find out what data governments hold (box 14).



Box 14 – How are governments sharing more data?

Being more transparent about what data governments hold

Several governments have developed, or are developing, ways to make it easier for Aboriginal and Torres Strait Islander people to know what data governments hold. For example, open data websites in most states and territories allow users to search for datasets by government agency and topic, among other things. The NSW Government is also establishing a data connector service to take data requests and co-ordinate responses across government. And agencies are engaging directly with Aboriginal and Torres Strait Islander people through individual initiatives (such as the community data projects) about what relevant data government holds.

Presenting data through visual tools

Governments have developed a range of visual tools to present the data they hold. One example is the Regional Insights for Indigenous Communities dashboard, a publicly available online dashboard developed by the Australian Institute of Health and Welfare which brings together data from existing datasets about socio-economic indicators relating to Aboriginal and Torres Strait Islander people and communities. Users can view the data by scrolling in and out of a map of Australia, or using a list format.

Not much has been done to rebalance the power between governments and Aboriginal and Torres Strait Islander people over the collection, management and use of data about Aboriginal and Torres Strait Islander people. We heard that data that is collected by government agencies is often framed in a way that is not meaningful to Aboriginal and Torres Strait Islander people – for example, the key performance indicators required to be used for government-funded programs and services can fail to reflect measures that Aboriginal and Torres Strait Islander people consider important in judging success. The way outcomes are measured for performance monitoring under the Agreement can also be inconsistent with Aboriginal and Torres Strait Islander people's views of wellbeing. For example, we heard that culture is central to Aboriginal and Torres Strait Islander people's life outcomes, but this is not reflected in the indicators across the Agreement's socio-economic outcomes. We also heard from a number of ACCOs providing health services that the data they collect is not considered credible by government agencies.

Governments need to do more work with Aboriginal and Torres Strait Islander organisations to jointly build capability to collect data that meets the priorities and needs of Aboriginal and Torres Strait Islander people and communities, and to use this data to make better informed policy decisions.

More effort to share existing data is needed

Even though most of the activity on Priority Reform 4 has been about sharing existing government data, the activity in this area is not enough. The Commission heard that governments remain reluctant to share the data they hold. For example:

- an Aboriginal foster care agency said that the relevant government agency in its jurisdiction would not share child protection files with it so that it could effectively undertake its work in kin and foster care. This is despite the organisation receiving government funding to deliver these services
- an ACCO that provides alcohol and drug support and family and justice services said that governments don't share the data they hold in relation to justice. As a result, this organisation is unable to ascertain whether its justice reinvestment programs are working.

Governments' reluctance to share data does not appear to be driven by specific impediments in law or policy – rather, there is a general attitude of risk aversion, likely due to misinterpretation of what the (complex) legislation governing data sharing requires, and concern about what the data will be used for (PC 2017a, pp. 137, 140–141).

Governments need to be more open to understanding why Aboriginal and Torres Strait Islander people want access to the data they hold, and to exploring how this data could be provided in a way that respects privacy and upholds the trust of the Australian community. To support the attitude change required, governments need to not only declare that they are taking a different approach, but support officials to understand what this looks like in practice and why it is important. This could take the form of internal guidelines (which could demonstrate what change looks like) and training about obligations under the Agreement.

If necessary, data sharing legislation and policy could also be amended to support cultural change – for example, to make it clear that perceived barriers to data sharing (such as conservative interpretations of legislation) are not acceptable reasons not to provide data to Aboriginal and Torres Strait Islander people. Changing legislation and policy to support cultural change is consistent with the purpose of data sharing legislation that has been enacted in various jurisdictions (including New South Wales, Victoria and South Australia) in recent years. However, this legislation has largely aimed to promote data sharing between government agencies, not between governments and NGOs. Exceptions to this are the South Australian scheme, which allows the Minister to make a data sharing agreement with certain non-government entities, including those that have been engaged by the SA Government to provide services on behalf of the government, and the Australian Government's Data Availability and Transparency Scheme, which allows data sharing with universities.

The Commission is seeking information on what, if any, legislative and policy barriers there are to governments sharing more data with Aboriginal and Torres Strait Islander organisations and communities, or giving Aboriginal and Torres Strait Islander people more control over data, and what changes are needed to overcome these barriers (**information request 5**).

Governments need to transform how they conceive of data

In order to improve the collection, management and use of data, governments need to transform the ways in which they use data to inform policies affecting Aboriginal and Torres Strait Islander people.

Government organisations are generally familiar with making decisions about what data to collect, how data should be designed and how it should be used to inform policy. In the case of policies affecting Aboriginal

and Torres Strait Islander people, however, the logic underpinning these decisions is not always appropriate. This is because:

... statistics are human artifacts ... Their reality emerges ... via the social, racial and cultural standpoint of their creators. (Walter and Carroll 2020, p. 2)

Aboriginal and Torres Strait Islander people can have different standpoints to non-Indigenous Australians, leading to different ideas about what and how data should be used to inform policy. Using data in ways that aligns with Aboriginal and Torres Strait Islander people's world views can lead to policies that are more likely to result in positive outcomes, because this embeds concepts and logic that make most sense to those affected by the policies.

Governments have done little work to understand how Aboriginal and Torres Strait Islander people conceive of data to inform policy. In many cases, data is still seen as 'just data', with no acknowledgement that its creation and use arises out of (often unstated) assumptions about what data is relevant. This can lead to data framing Aboriginal and Torres Strait Islander people as 'a problem to be solved' (Kukutai and Walter 2015, p. 322), without acknowledging the strengths that Aboriginal and Torres Strait Islander people's culture and knowledges can bring to identifying potential solutions.

To understand what Aboriginal and Torres Strait Islander people consider most appropriate and meaningful in collecting, managing and using data, governments must engage with Aboriginal and Torres Strait Islander people to understand what Indigenous data sovereignty looks like in practice. Some governments have done this in relation to specific policy areas (for example, the Victorian Government has committed to exploring what Indigenous data sovereignty means to Traditional Owners within Victoria in relation to the Department of Environment, Land, Water and Planning, and has commenced community engagement as part of developing an Indigenous data sovereignty policy (Victorian Government 2023b, p. 33). But no jurisdiction other than New South Wales has sought to gain a broad understanding of what Indigenous data sovereignty means across the jurisdiction.

Understanding what Indigenous data sovereignty looks like in practice is the first step. Governments then need to transform their data systems and allow greater opportunity for Aboriginal and Torres Strait Islander people to exercise agency over data activities, to inform effective policy.

More support is needed to strengthen data capability in Aboriginal and Torres Strait Islander organisations

Many Aboriginal and Torres Strait Islander people and organisations are already working innovatively in collecting and using data – as an example, the Mayi Kuwayu study (box 12) conceptualises Aboriginal and Torres Strait Islander health and wellbeing in a way that has not been done before in official government statistics. However, many organisations are constrained by a lack of resources to employ data analysts, create data systems and access training. Some data capability is being built through program partnerships, such as those established through the Australian Government's *Connected Beginnings* program, where agencies are supporting Aboriginal and Torres Strait Islander people to refine research questions, and locate and obtain the data. However, this is occurring at a very small scale.

More support for data capability could take a number of forms, including collaboration through program partnerships, staff secondments from government agencies to Aboriginal and Torres Strait Islander organisations and vice versa, and the provision of funding for organisations to employ data analysts. Governments need to engage with Aboriginal and Torres Strait Islander organisations on what supports they would find most valuable, and work with them to implement these.

The community data projects are behind schedule, but offer promise

The requirement for parties to establish community data projects in up to six locations in Australia by 2023 is unlikely to be met.

All locations for the community data projects have been selected. These are: Blacktown City Council local government area (Blacktown LGA), New South Wales; Doomadgee, Queensland; the Kimberley, Western Australia; the western suburbs of Adelaide, South Australia; Maningrida, Northern Territory; and Gippsland, Victoria.

None of the projects are progressed enough to make them likely to be fully established by the end of 2023. The Blacktown LGA and Kimberley projects are the most advanced – community workshops have been held for the Blacktown LGA project, to determine the community's aspirations for, and the topic and scope of, the project. A scoping report was also finalised for the Kimberley project in December 2022, which proposed a pilot. The remainder of the projects are in the very early stages of community engagement.

The sources of delay have been specific to each project. For example, in South Australia, the project was delayed because the SA Government and the South Australian Aboriginal Community Controlled Organisation Network (SAACCON), the Aboriginal peak organisation in South Australia, had first focused on developing its partnership agreement. A number of issues also remain unresolved, such as to what extent organisations participating in the projects will continue to have control over the data they upload to the data portal supporting each project, which has been developed by the Australian Institute of Health and Welfare.

Although the projects are unlikely to meet the timeline set, their progress looks to be promising, both in terms of embodying the requirements of the Agreement, and allowing governments to gain a deeper understanding of what success under Priority Reform 4 looks like. For example, governments have generally looked to Aboriginal and Torres Strait Islander partners or communities to lead and set the direction of projects. Governments are also allowing time for communities to come together to define the topic and scope of the projects, which is crucial for their success – projects must be 'owned' by the community, for the benefit of the community. A number of governments noted that they were looking to their community data projects to glean lessons for what the implementation of Priority Reform 4 might look like more broadly.





7. Tracking progress towards outcomes

The Agreement sets out a performance monitoring approach to determine if governments' actions are making a difference. This framework is intended to support public accountability and drive effort to improve socioeconomic outcomes.

The effectiveness of the Agreement's performance monitoring approach depends on its ability to direct attention to areas where greater effort is needed (and where success has been achieved) and to inform decision-making. It can best achieve this when developed in partnership with Aboriginal and Torres Strait Islander people, so that their perspectives and knowledges are central to all aspects of performance monitoring, including defining objectives and logics, developing the measurement approach, and managing data collection and reporting (PC 2020c, pp. 10–11).

The Agreement's performance monitoring approach was developed in partnership with the Coalition of Peaks and incorporates elements recognised as central to improved outcomes for Aboriginal and Torres Strait Islander people, such as the foundational importance of self-determination and recognition of Aboriginal and Torres Strait Islander cultures. These are reflected in the Priority Reform indicators, the addition of two outcomes on connection to land and waters, and culture and languages, and some supporting indicators on culturally appropriate services and practices. However, a number of issues in the design and implementation of the approach undermine its ability to support the transformative change required of governments and public accountability for that change.

The Agreement does not support a shared understanding of how to hold jurisdictions to account for progress

Government parties to the Agreement are jointly accountable for a set of 23 national targets that monitor progress against the Priority Reforms and socio-economic outcomes. However, the Agreement does not describe how jurisdictions will be held to account for their contribution to these targets. It simply specifies that 'targets are designed to be met at the national level, while recognising that starting points, past trends and local circumstances differ so jurisdictional outcomes may vary' (clause 83). As a result, there is no agreed approach for determining whether each jurisdiction has made acceptable progress, and the Commission's review revealed diverse perspectives on how to best do this.

The Commission currently evaluates national progress for each target as on or off track against a linear trend to the target year. Target indicators are then disaggregated by jurisdiction and progress for each state and territory is assessed against baseline as improving, worsening, or not changing. This approach is currently under independent review, with the goal of identifying options for measuring jurisdictional contribution to

meeting the national targets (PC 2023a, p. 35). In the meantime, some jurisdictions have self-assessed whether they are on or off track to meet the targets in their annual reports (Queensland and Tasmania).

Some review participants highlighted areas that they saw as missing from the targets (such as supporting cultural expression and the Aboriginal and Torres Strait Islander business sector) and raised concerns about how well the targets reflect the scope and intent of the outcomes that they are intended to measure. In some jurisdictions (ACT, New South Wales, and Victoria), governments and Aboriginal and Torres Strait Islander partners have adopted additional targets, goals or measures in their implementation plans that go beyond the Agreement. This has allowed them to respond to the priority areas that Aboriginal and Torres Strait Islander people have identified as important in their jurisdictions. Where they are found to be effective in driving effort, these jurisdiction-specific targets have the potential to be formally adopted by all parties as new or replacement targets in the Agreement.

Many participants in the review also questioned the value of jurisdiction-level data alone, arguing that further geographic disaggregation was necessary to hold jurisdictions to account for equitable progress across regions. These points were often enmeshed with the need to recognise community diversity and self-determination. For example, the Torres Shire Council noted the wide discrepancy in outcomes between the Torres Shire and the rest of Queensland and argued that regional autonomy in the co-design and evaluation of programs is fundamental to change (box 15).



Box 15 – Focusing at the jurisdictional level can obscure regional priorities and needs: an example in the Torres Strait

The Torres Shire Council is a local government area located in Far North Queensland covering large sections of the Torres Strait and the northern tip of the Cape York Peninsula. Statistics provided by the Torres Shire Council, drawing on Queensland Regional Profiles data, showed that while people in the region have similar rates of educational attainment relative to Queensland, they also experience much lower incomes, higher unemployment and higher rates of homelessness. The Council described the unique conditions faced by the region: the entire region is classified as very remote, compared to just 1% of Queensland as a whole, and this is reflected in the high cost of living and challenges accessing key infrastructure and services, such as internet access and post-primary education. While some challenges such as high transport costs particularly impact the region, disparities in outcomes are the result of policy choices.

The Council noted that there are over 30 state and federal agencies on Thursday Island providing government services, crowding out local delivery and jobs. The impact of mainland-driven policy is two-fold. First, policy priorities of the region will not always align with state priorities. For example, mainland government organisations offer non-local staff subsidised housing, an offer not extended to local staff. While this addresses recruitment difficulties, it does not resolve the broader issue of housing availability and affordability and even exacerbates it. Second, it denies local organisations the opportunity to design services attuned to the cultures and languages of the Torres Strait and northern Peninsula, where statistics show a significant majority of people speak a language other than English at home, with multiple Indigenous languages represented, compared to less than 15% of Queenslanders.

The Torres Shire Council has asked the Queensland Government Statistician's Office to produce an annual report card compiling statistics for the region relative to the rest of Queensland and Australia to



Box 15 – Focusing at the jurisdictional level can obscure regional priorities and needs: an example in the Torres Strait

direct local effort and monitor progress to parity. They note that this level of data aligns with the proposal for a regional voice and emphasise that:

For too long, policy makers and governments have over-complicated the root cause of policy and program failures affecting First Nations people [...] Council submits that the root cause is the absence of Indigenous agency, Indigenous policy design and Indigenous program control (p. 3).

Source: Torres Shire Council (sub. 6).

Regional disaggregation of national target indicators is consistent with the objectives of Priority Reform 4 but largely requires additional data development work. It also risks being at odds with community priorities if not developed in partnership. While some data, particularly data derived from the five-yearly census, are publicly available at smaller geographic levels, smaller populations could make trends more volatile and harder to interpret (ABS, sub. 1, p. 3). Determining the appropriate level of disaggregation will require further engagement with data custodians and Aboriginal and Torres Strait Islander communities and organisations.

Critical gaps in data for Priority Reforms and culturally appropriate indicators risk reinforcing business-as-usual

As most existing national data has been developed to inform government priorities largely based on non-Indigenous understandings of progress, the Agreement requires significant data development to reflect Aboriginal and Torres Strait Islander people's perspectives. However, without a shared understanding of the purpose and conceptual logic of the Agreement's performance reporting framework, the Agreement has identified an overwhelming number of indicators for development and reporting, most of which are not currently reported. There are reporting gaps for all four Priority Reform targets, four of the 19 socio-economic targets, 143 supporting indicators, and 129 data development items. The large number of indicators obscures the data most critical to informing change. Unless the indicators that are most representative of change are identified and prioritised, there is a risk that data development will produce a dataset that partially answers many questions but fails to answer those that are most critical for monitoring progress against the Agreement.

The most critical data gap identified by participants in the review is the lack of any systematic data on the Priority Reforms. The monitoring framework for the Priority Reforms was introduced to hold governments to account for the structural changes necessary to advance socio-economic outcomes. Many review participants argued that monitoring socio-economic targets in isolation risks attributing deficits to Aboriginal and Torres Strait Islander people or siloing effort within policy sectors rather than elevating attention to common structural drivers (Queensland Family and Child Commission, sub. 8, p. 2; Lowitja Institute, sub. 15, p. 7; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 1). Regarding progress to date, the Coalition of Peaks noted that 'while the Priority Reforms are designed to change the way governments work with our communities and organisations, there tends to be over-emphasis on achieving the socio-economic outcomes in isolation, or simply completing the listed partnership actions' (sub. 25, p. 2). Some indicator data on the Priority Reforms could be collected through other commitments in the Agreement, such as the partnership stocktakes for Priority Reform 1 or the expenditure reviews for Priority Reform 2 (if these were consistently reported and collated across jurisdictions). However, this is not a substitute for the further conceptual work needed to develop the measurement approach for all of the Priority Reforms.

A second significant gap is in the identification of culturally appropriate indicators. The Agreement prioritises culture in performance monitoring through the addition of two new socio-economic outcomes (outcome 15 on land and waters and outcome 16 on culture and languages) and a commitment to identifying contextual information on the cultural determinants of wellbeing to aid reporting. However, as the Australian Council of TESOL Associations put it, the current approach is ‘inconsistent, sporadic, tokenistic and inadequate’ because it fails to recognise the centrality of cultural determinants like language across the Priority Reforms and socio-economic outcomes (sub. 11, p. 11). This criticism was echoed by many participants (including the Torres Shire Council, sub. 6, p. 1; Translational Research in Indigenous Language Ecologies Collective, sub. 20, p. 2; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 2; Annika David, sub. 27, p. 2). For example, Kimberley Aboriginal Law and Cultural Centre has drawn attention to the lack of representation of culture:

... First Nations arts and culture remain peripheral to the Closing the Gap Agenda. We hear language like ‘strong Aboriginal and Torres Strait Islander cultures are fundamental to improved life outcomes for Aboriginal and Torres Strait Islander people.’ But there are very few, if any, tangible policies and programs around implementing support for culture. (KALACC, sub. 23, p. 9)

A measurement approach recognising cultural determinants might define supporting indicators across outcomes that capture culturally relevant responses, such as access to culturally appropriate services. It also requires re-evaluating some targets and indicators in terms of their cultural appropriateness and expanding the scope of the indicators reflected in some outcomes. For example, indicators drawing on the Australian Early Development Census or the National Assessment Program-Literacy and Numeracy have been identified by some submissions as not valuing Aboriginal and Torres Strait Islander languages, knowledges and child-rearing practices (Australian Education Union, sub. 3, pp. 4-5; Australian Council of TESOL Associations, sub. 11, pp. 15-16; Translational Research in Indigenous Language Ecologies Collective, sub. 20, pp. 4-5). Review participants also said a broader understanding of culture needed to be recognised. For example, outcome 16 on culture and languages only includes indicators on languages, which ignores other aspects of flourishing cultures such as cultural expression and the arts, spiritual beliefs and practices, and traditional knowledge and healing (Kimberley Aboriginal Law and Cultural Centre, sub. 23, pp. 6-7; Federation of Victorian Traditional Owner Corporations, sub. 24, p. 5). Prioritising culture across the performance framework will require clarifying the conceptual logic and elevating these indicators as a priority for data development.

These issues with the measurement approach and large data gaps significantly limit the extent to which performance reporting can enable public accountability and drive jurisdictional effort. This includes how the public dashboard and annual data compilation report are designed and the information they provide. The Commission is seeking further information to understand how the Agreement’s performance reporting tools are currently being used and how they could be improved (**information request 7**).

Responsibilities for data development need to be clarified

The Agreement’s data governance arrangements assume that indicators that do not fall under the ‘data development’ category in the performance framework can be specified and compiled based on existing data collections. Responsibilities were divided based on the anticipated work required: the Productivity Commission would lead work specifying, compiling and reporting on existing data with the Partnership Working Group, while the Data and Reporting Working Group (DRWG) would coordinate new data development through the data development plan (DDP). In reality, many of the indicators that were assumed to have existing data sources do not exist, are not routinely collected, or have been found to be unsuitable. Coordination of data development could be consolidated under the DRWG through the DDP, but DDP development and implementation has been delayed and is still in its initial stages.

In effect this has meant that responsibility for developing the measures required to report on the Priority Reforms and the four socio-economic targets and many supporting indicators without existing data was not formally established. Recognising the need for greater cultural and technical expertise, the Partnership Working Group has recently engaged a third party to further develop the measurement approach for the Priority Reforms (PC 2023a, p. 17). However, the governance arrangements for developing the socio-economic targets and supporting indicators without suitable data remain unclear.

Without a holistic approach, the accountabilities and costs of data development are at risk of being obscured across multiple working groups, data custodians and action owners, with different priorities. Consolidating responsibility for coordinating all new data development under one organisation and one DDP with routine monitoring would provide visibility of all actions, action owners and timeframes and ensure high priority items falling outside the original scope of the DDP are addressed. This could support a more strategic data development approach, clearer processes and accountabilities, and opportunities for the development of new data products.

Stronger data governance arrangements are needed. An organisation or entity with dedicated resourcing and staffing to lead data development should be appointed (**draft recommendation 1**).

This organisation should have the technical and cultural capability, resourcing and authority to lead this work and engage data custodians and Aboriginal and Torres Strait Islander organisations and communities in the development of appropriate solutions.

Its responsibilities should include:

- leading work with parties to the Agreement to articulate the conceptual logic underpinning the performance monitoring approach
- identifying the most critical indicators of change and prioritising them for data development
- determining the most appropriate level of geographic data disaggregation required to hold jurisdictions to account for the regional distribution of progress
- coordinating and developing solutions for indicators without data.

We are seeking information on the appropriate characteristics of this organisation, including who should lead it, how it should be governed, what capabilities it would require, and how it might apply principles of Indigenous data sovereignty and governance in data development (**information request 6**).





8. Embedding responsibility and accountability

Governments are not consistently adhering to – and are sometimes disregarding – the Agreement

As the previous sections demonstrated, governments have made varying levels of progress towards each of the Priority Reforms, socioeconomic outcomes and associated actions outlined in the Agreement. But the overall picture is that governments' current piecemeal actions will not deliver the fundamental transformation they have committed to, and Aboriginal and Torres Strait Islander people are not seeing the types of actions or understanding that will bring about real change.

The wide gap between governments' rhetoric and action appears to stem, in part, from a failure by governments to fully grasp the nature and scale of the change required to fulfil the Agreement. Despite some pockets of good practice, many parts of government are still operating in what amounts to a variation of business-as-usual, where their actions to implement the Agreement are simply tweaks of, or actions overlayed onto, existing systems, rather than root-and-branch transformations. Implementation plans and annual reports provide an incomplete picture of what governments are doing or not doing (box 4), and the Commission has not been able to conduct a detailed examination of what is happening inside every government organisation. However, based on the available information it is the Commission's assessment that the changes being made are not yet leading to improvements that are noticeable and meaningful for Aboriginal and Torres Strait Islander people.

The absence of improvement is exacerbated by the lack of conceptual logic linking the myriad of small actions governments have listed in their implementation plans (some of which were already underway before the Agreement) with the large-scale, transformational change they have committed to under the Agreement.

It remains too easy to find examples of governments making decisions that contradict their commitments in the Agreement, that do not reflect Aboriginal and Torres Strait Islander people's priorities and perspectives and that exacerbate, rather than remedy, disadvantage and discrimination. Among other examples described in information paper 7:

- The Queensland Government made changes to bail laws that will mean more Aboriginal and Torres Strait Islander young people are incarcerated for longer periods of time. This is in the context of Queensland having one of the highest rates of Aboriginal and Torres Strait Islander young people in detention (40.9 per 10,000 young people aged 10-17 years were in detention in Queensland on an average day in 2021-22, compared to 22.3 per 10,000 nationally) (PC 2023a).

- IBAC (the Victorian independent broad-based anti-corruption commission) last year identified ‘concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people ... Victoria Police has considerable work to do to ensure that it investigates complaints and serious incidents involving Aboriginal people thoroughly and impartially’ (IBAC 2022, pp. 8, 80).

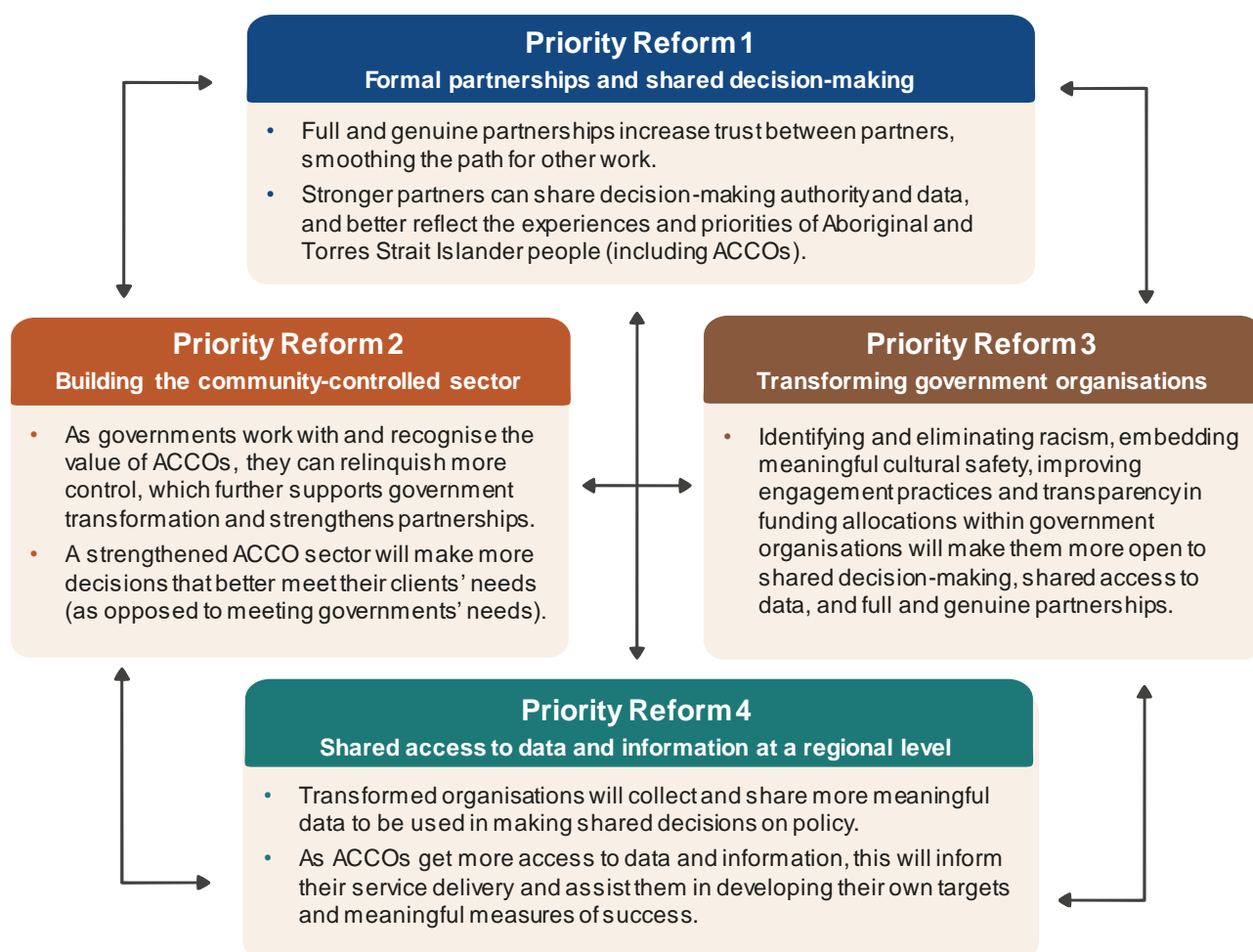
The shortcomings of current accountability mechanisms mean that these types of decisions could continue to go unchecked – changes are needed to strengthen governments’ accountability to Aboriginal and Torres Strait Islander people and to drive more meaningful, effective and widespread action across government organisations. These changes are the focus of the remainder of this report.

Changes are needed to increase understanding of, and accountability for delivering, agreed reforms

The Priority Reforms need to progress together

Each Priority Reform supports, and is supported by, the other Priority Reforms, with the ultimate aim of accelerating improvements in the lives of Aboriginal and Torres Strait Islander people (figure 1). But this interconnection is not explicitly recognised in the Agreement.

Figure 1 – The Priority Reforms are closely interconnected



Interconnection adds difficulty and complexity to the reform task, and means that slow progress towards one of the Priority Reforms can stifle progress towards the other Priority Reforms. In particular, Priority Reform 3 is more than a complement for the other Priority Reforms, it is a critical prerequisite.

Interdependencies can also impede progress towards the outcomes envisaged in the Agreement. For example, in drawing attention to decline in outcomes for school readiness, adult incarceration, suicide, and children in out-of-home care since the signing of the Agreement, the Close the Gap campaign pointed out that ‘a decline across any target area will only make the work to improving all outcomes more difficult’ (sub. 17, p. 1). The interconnection between the Priority Reforms can also make it much harder to hold any person or organisation accountable for progress on any particular reform element.

Existing accountability mechanisms lack bite

While the Agreement includes a suite of accountability mechanisms, there are significant deficiencies in them. As discussed above, these accountability mechanisms do not include all relevant government organisations and do not provide clarity about how governments’ actions are (or should be) linked to outcomes (information paper 6). In addition, they:

- are not sufficiently independent
- do not contain timely and appropriate consequences for failure
- are not informed by high-quality evaluation.

There is no independent oversight

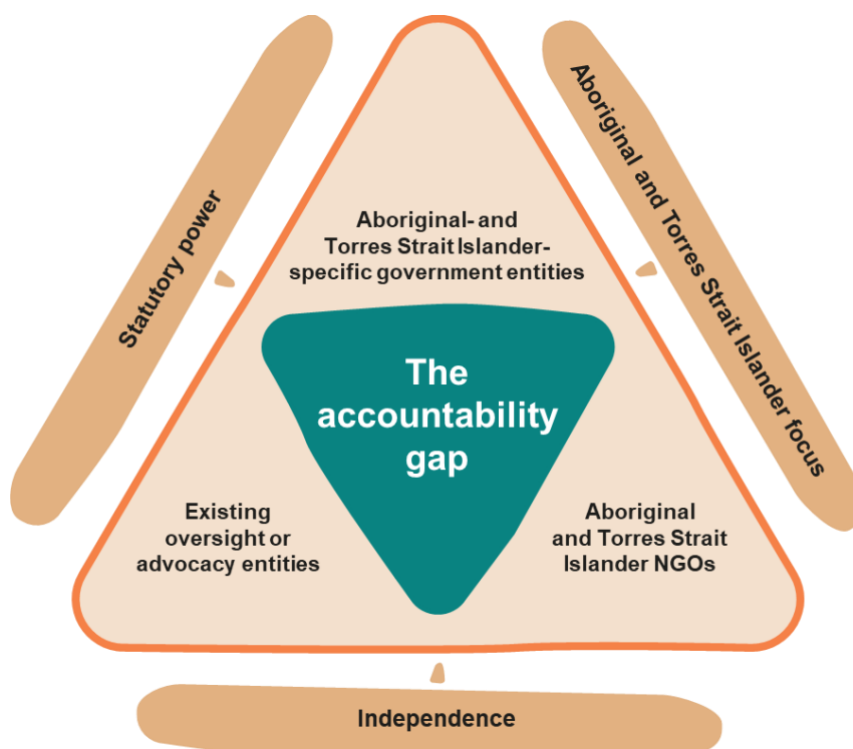
The Agreement provides that the Joint Council is responsible for ongoing administration and oversight of this Agreement (clause 139). But as the parties to the Agreement comprise the membership of Joint Council, this ‘oversight’ has little effect – the parties are simply reporting to themselves.

This is the antithesis of effective practice, in which oversight bodies that have a greater degree of independence operate with more objectivity and transparency, as the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS) pointed out.

A strong and transparent accountability framework is fundamental to keep discretionary decision makers focussed on securing the best outcomes for Aboriginal people. AIATSIS submits that this will be better facilitated through a dedicated entity with statutory powers and independence from the government of the day. (Strelein and Hassing 2018, p. 1)

Independent oversight is also essential for addressing the gap at the intersection of existing accountability mechanisms. The gap arises because some existing accountability mechanisms are independent of government, some have statutory power, some focus specifically on matters relating to Aboriginal and Torres Strait Islander people and communities, and some have dual features (such as Aboriginal and Torres Strait Islander NGOs, which focus on Aboriginal and Torres Strait Islander matters and are, as the names suggests, independent of government). But no existing accountability mechanisms have all three – independence, statutory power and an Aboriginal and Torres Strait Islander focus (figure 2).

Figure 2 – An accountability gap



Source: adapted from WADPC (2018, p. 6).

There are no consequences for failure

As it currently stands, governments do not face timely or appropriate consequences for failure to meet the commitments they made in the Agreement. Decision-makers have not faced negative repercussions (timely or otherwise) for poor decisions, or for the continuation of similar practices that exacerbate, rather than remedy, disadvantage and discrimination.

Where governments have behaved in ways that were contrary to the Agreement – for example, by imposing a program or service in a community without meaningfully engaging with that community, or by giving Aboriginal and Torres Strait Islander people and organisations too little time to meaningfully respond to a request for consultation – the people, organisations and communities have no way to hold governments to account. The Agreement does not provide any recourse, and does not stop the program being implemented or the decision being made without meaningful input from Aboriginal and Torres Strait Islander people.

The Commission has previously noted ‘government agencies must not only be ‘called’ to account; they must also be ‘held’ to account. Accountability is incomplete without effective consequences or sanctions’ (PC 2012, p. 239).

The weakness (and effective absence) of accountability mechanisms means that the implementation of the Agreement depends heavily (or solely) on individuals being motivated to ‘do the right thing’. While many individuals are motivated, this does not provide the necessary impetus for comprehensive and sustained system change.

There is too little high-quality evaluation

Evaluation is an essential component of holding governments accountable for outcomes, and identifying opportunities to improve outcomes, to support learning and adaptation or to use funds more effectively. Publishing evaluations can further enhance accountability by increasing visibility and pressure for agencies to follow up with a

management response to evaluation findings. Publishing evaluations also has many other benefits, including supporting learning, improvement and the diffusion of knowledge. But there is a lack of published evaluation of policies and programs affecting Aboriginal and Torres Strait Islander people (PC 2020c, p. 99).

Evaluations need to centre Aboriginal and Torres Strait Islander people, perspectives, priorities and knowledges if outcomes are to improve.

This is about valuing Aboriginal and Torres Strait Islander knowledges, cultural beliefs and practices, and building capability among Aboriginal and Torres Strait Islander evaluators, organisations and communities. And it is about non-Indigenous evaluators having the necessary knowledge, experience and awareness of their own biases to work in partnership with, and to draw on the knowledges of, Aboriginal and Torres Strait Islander people. (PC 2020c, p. 15)

Aboriginal and Torres Strait Islander bodies are playing a growing role in accountability

In addition to the Agreement, there are many Aboriginal and Torres Strait Islander bodies, processes and decision-making structures in place, proposed or under development, that are starting to affect the way in which governments are held to account for actions affecting Aboriginal and Torres Strait Islander people. In particular, there is potential for the proposed Voice to the Australian Parliament (as well as state and territory representative bodies), together with current treaty processes and justice commissions, to strengthen accountability for matters covered by the Agreement (box 16). But regardless of the outcomes of these processes, governments will still be responsible for adopting a fundamentally new way of developing and implementing policies and programs that affect Aboriginal and Torres Strait Islander people, as they have committed to do in the Agreement.



Box 16 – New and emerging bodies will play a role in accountability

Voice

In South Australia, legislation to provide for a First Nations Voice to Parliament was enacted in March 2023. The South Australian First Nations Voice will have several legislated functions it can use to hold the SA Government to account. And in the ACT, the Aboriginal and Torres Strait Islander Elected Body (ATSIEB) has the power to request information from the ACT Government and compel executive officers of ACT Government agencies to appear at hearings. The government is required to respond to reports on the ATSIEB's public hearings within four months of receiving those reports.

At a national level, a referendum on an Indigenous Voice to Parliament will be held before the end of 2023. The proposed Voice would be a permanent body to make representations to the Australian Parliament and the Executive Government on legislation and policy of significance to Aboriginal and Torres Strait Islander peoples. In undertaking these functions, a Voice could contribute to accountability and oversight of matters affecting Aboriginal and Torres Strait Islander people.



Box 16 – New and emerging bodies will play a role in accountability

Treaty

States and territories are at various stages of negotiating Treaties with Aboriginal and Torres Strait Islander people. Victoria, Queensland, the ACT and the Northern Territory have commenced processes to facilitate Treaty negotiations.

In Victoria, where a Treaty negotiating framework has been agreed to, it points to the ways in which a future Treaty may enhance accountability for the matters it covers. The Victorian Treaty Negotiation Framework provides that a Treaty should include a culturally appropriate process for the resolution of disputes, and envisages the creation of institutions and arrangements, such as a tribunal, that parties could use to enforce Treaty commitments. Treaty commitments may cover a very wide range of subjects across all domains of the Victorian Government's operations (First Peoples' Assembly of Victoria and the State of Victoria 2022). In both Queensland and Victoria, there is potential that, once a Treaty or Treaties are agreed, they will provide strong new avenues for enforcing governments' accountability to Aboriginal and Torres Strait Islander people in those states. And, as Treaty negotiations advance in other jurisdictions, they could likewise drive improved accountability.

Truth

Victoria established a formal truth-telling process into historical and ongoing injustices experienced by Aboriginal and Torres Strait Islander people in 2022. The Yoorrook Justice Commission is looking into past and ongoing injustices experienced by Traditional Owners and First Peoples since colonisation. Yoorrook has a clear role in delivering accountability – one of its objectives is to:

Identify Systemic Injustice which currently impedes First Peoples achieving self-determination and equality and make recommendations to address them, improve State accountability and prevent continuation or recurrence of Systemic Injustice. (Letters Patent establishing the Yoorrook Justice Commission, clause 2)

Yoorrook has a three-year term, and will deliver its final report and conclude in June 2025 (Yoorrook Justice Commission 2023). Similarly, the Truth-telling and Healing Inquiry that will be established in Queensland under the *Path to Treaty Act 2023* (Qld) will operate for three years, and will inquire into the historical and ongoing impacts of colonisation on Aboriginal and Torres Strait Islander Queenslanders.

An expanded role for the independent mechanism?

A key mechanism for accountability within the Agreement is the independent mechanism. However, there has been very little progress in establishing the independent mechanism in most jurisdictions. While a lack of progress in implementing any aspect of the Agreement is of concern, the absence of significant action in establishing the independent mechanism does provide an opportunity to reconsider its role.

The first way in which the role of the independent mechanism could be reconsidered is to expand its role beyond Priority Reform 3. An independent mechanism with a broader role would be better placed to drive accountability for progress towards all of the outcomes of the Agreement.

The independent mechanism needs to shine a spotlight

If the independent mechanism was to take a broader role, its primary role would be to hold governments to account for commitments made and the services they fund, and provide system-level advice for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people. This would help to ensure that governments understand and respond to the views, aspirations and interests of Aboriginal and Torres Strait Islander people and enable self-determination.

If the independent mechanism was clearly positioned at the centre of the accountability gap described in figure 2, it could play a key role in strengthening accountability.

The independent mechanism is likely to take different forms and names in different jurisdictions, to better fit with existing institutions in each jurisdiction. But regardless of its exact form or name, the independent mechanism should be able to shine a spotlight on good and bad practices under the Agreement and advocate for improved policies, programs and services affecting Aboriginal and Torres Strait Islander people.

Potential features of the independent mechanism or new accountability bodies

As suggested by its name, **independence** is an essential feature of the independent mechanism. A range of other features would support the effectiveness of the independent mechanism, including that it:

- be **governed and led by Aboriginal and Torres Strait Islander people**, chosen with input from Aboriginal and Torres Strait Islander people and communities
- have a **legislative basis** to guarantee its ongoing existence and the power behind its functions, and to enable it to hold governments to account
- have **sufficient guaranteed funding** so that it can build and maintain organisational capabilities, and determine its priorities without undue influence from governments
- have a **broad remit** covering all aspects of governments' relationships with Aboriginal and Torres Strait Islander people (subject to the role and remit of new and emerging Aboriginal and Torres Strait Islander bodies)
- have **full control of its work program**, so it can initiate its own inquiries, conduct its own research, benchmark performance, and review all relevant documents (such as Closing the Gap implementation plans and annual reports)
- be able to compel government agencies to provide information
- can **intervene in real time** to support Aboriginal and Torres Strait Islander people who have complaints about government agencies
- **operate with transparency**, including freedom to publish reports and findings
- **not engage in program delivery and not administer funding or programs**, so that it is never in a position of needing to pass judgement on its own actions or inaction.

In designing the details of each of these features, it will be important to consider the interaction between them. For example, a broad remit will only be sustainable if it is accompanied by sufficient funding. And the potential role of the independent mechanism in supporting the development of the Aboriginal community-controlled sector requires careful consideration, as a mandate to support a sector or organisation does not sit easily with a mandate to hold that sector or organisation to account.

Recognising the need for further guidance to inform the development of the independent mechanism, work has been commissioned through the Joint Council to provide that guidance. It is expected to be delivered to the Partnership Working Group by August 2023. The Commission is also seeking further information on the potential future role and functions of the independent mechanism (**information request 9**).

Assigning clearer responsibilities and accountability for driving action within the public sector

The new and emerging Aboriginal and Torres Strait Islander bodies will help to ensure that governments are held accountable for progress towards the outcomes of the Agreement. But it is not reasonable or appropriate to put the burden for driving change within government on newly created bodies that sit outside of government — governments must be held accountable for making changes from within.

This will necessitate the creation of better governance systems, so that accountability at the level of a jurisdiction's government affects the day-to-day actions of public sector CEOs, executives and employees in that jurisdiction. The need for improved governance and accountability was highlighted by review participants, who told us that better mechanisms are needed to ensure that senior department executives understand and engage with the Closing the Gap initiatives (PC 2023b, p. 4), and that this understanding and engagement cascades down to middle managers and staff.

The Commission is considering four potential avenues for enhancing accountabilities for driving action within the public sector. They are:

- designating a senior leader or leadership group to drive change throughout the public sector in each jurisdiction
- embedding responsibility for improving the public sector's relationship with Aboriginal and Torres Strait Islander people into the core employment requirements of all public sector CEOs, executives and employees
- ensuring that central agencies lead changes to Cabinet, Budget, funding and contracting processes
- establishing or enhancing sector-specific accountability mechanisms in key sectors.

And, as noted above, there may be benefit in putting obligations for governments into service delivery contracts, such as requirements for governments to provide data to ACCOs to enable them to design and deliver services that best meet the priorities and needs of service users. Such obligations would provide another mechanism by which Aboriginal and Torres Strait Islander people could hold governments accountable.

These new approaches to enhancing accountability within the public sector are designed to work alongside, and to complement, the Agreement and its Priority Reforms. All of the recommended changes will only be effective if they are implemented in ways that are consistent with the Agreement, and centre Aboriginal and Torres Strait Islander people and perspectives. So, for example, the new responsibilities for public sector CEOs, executives and employees should be developed in partnership with Aboriginal and Torres Strait Islander people, and should cover all of the transformation elements in Priority Reform 3. Similarly, appointing Aboriginal and Torres Strait Islander people to the senior leadership position(s) that are tasked with driving jurisdiction-wide change would strengthen those leadership position(s).

Designating a senior leader or leadership group to drive change throughout the public sector in each jurisdiction

Effective leadership is critical for driving the transformational change envisaged by the Agreement. But as it stands, no senior leader or leadership group is tasked with driving change by promoting and embedding the required changes to systems and culture throughout the public sector in each jurisdiction. This means that critical elements of successful change are absent or in short supply (box 17).



Box 17 – Critical elements of successful public sector change

- **Continuous, consistent communication.** Employees must understand what change is expected and why. This requires clear, persuasive and consistent communication from leaders and involvement from staff. Communication must be more or less continuous, not one-off.
- **Role modelling and reinforcement.** Witnessing influential leaders acting consistently with expected new behaviours helps people feel confident to take the risk associated with changing. Role models with lived experience – in this case, Aboriginal and Torres Strait Islander people – are best placed to support behaviour change.
- **Accountability, encouragement and support for desired behaviours.** Incentives and reward mechanisms (such as learning and development, performance assessment at all levels, promotions and appointments) must align with the expected behaviours and reinforce desired change.
- **Relevant tools and skills-building.** Employees must be equipped with the skills, capabilities and tools to act in new ways. Failing to do so necessarily undermines their ability to change, while building up the ability and belief of individuals to act in new ways creates positive reinforcement.

Source: Adapted from Thodey et al. (2019, pp. 82–83).

As well as leadership from above, more needs to be done to ensure that everyone who is employed in the public sector understands and implements the Agreement.

Although fundamental change must be driven from the top, it is important that it is not just top down. While they need a strong authorising environment, all public servants have a role to play in ensuring they have or acquire the knowledge and skills to play their part. (Hoffman 2022, p. 12)

This is why stronger leadership needs to be accompanied by embedding responsibility for improving cultural capability and relationships with Aboriginal and Torres Strait Islander people into public sector employment requirements (discussed below).

While the leadership gap is clear, the best option for filling the gap is not as easy to identify. There are several potential options, each with different strengths.

- The **Secretaries of the Departments of the Prime Minister, Premier or Chief Minister** have the positional authority to drive change, but may lack a deep knowledge of Aboriginal and Torres Strait Islander perspectives.
- **Secretaries Boards and other leadership groups** are similarly placed. And while each member of the group has considerable authority as an individual, the group itself often plays a coordination (rather than a decision-making) role.
- **Departments or agencies with responsibility for Aboriginal and Torres Strait Islander policy** have relevant expertise, but are often small groups within larger agencies, and may lack the necessary influence to motivate other larger agencies to do what has been committed to in the Agreement.
- In some jurisdictions, the **Public Service Commissioner** is already active in efforts to increase the cultural capability of the public service. For example the NSW Public Service Commission provide freely accessible resources designed to build cultural awareness of Aboriginal peoples past interactions with government, the diversity of Aboriginal people and culture, and significant Aboriginal events and celebrations (NSW Public Service Commission 2021). And in New Zealand, the NZ Public Service Commissioner was given new responsibilities under the *Public Service Act 2020* (NZ) to support the

implementation of the Māori–Crown provisions of the Act, supported by a Deputy Public Service Commissioner whose core focus is on system leadership for Māori–Crown relations. These examples point to a potential role for Public Sector Commissioners.

The Commission is seeking further information on which senior leader or leadership group (or which combination of leaders or groups) should be tasked with promoting and embedding changes to public sector systems and culture, in order to improve cultural capability and relationships with Aboriginal and Torres Strait Islander people throughout the public sector and to eliminate institutional racism, and how such a task might best be implemented (**draft recommendation 2 and information request 10**).

Clear responsibilities for public sector CEOs, executives and employees

In each jurisdiction across Australia, public sector CEOs, executives and employees must have certain capabilities and meet certain standards of competence, ethics and behaviour. These standards are often, but not always, prescribed in legislation. The existence of standards of performance and behaviour provide a potential mechanism for changing the incentives and motivations of public sector CEOs, executives and employees.

New Zealand has already made such a change. The *Public Service Act 2020* (NZ) explicitly recognises the role of the public service to support the Crown in its relationships with Māori under the Treaty of Waitangi, and makes chief executives of public sector agencies accountable to their Minister for upholding their responsibilities to support the Crown’s relationships with Māori.

Similar changes have recently been introduced in Queensland, drawing on the New Zealand experience (box 18).



Box 18 – Reframing the Queensland public sector’s relationship with Aboriginal and Torres Strait Islander peoples

Queensland’s *Public Sector Act 2022* (the Queensland PS Act) commenced in March 2023. It aims to ensure that the Queensland public sector is responsive to the community it serves and:

- supports the state government in reframing its relationship with Aboriginal peoples and Torres Strait Islander peoples
- ensures fairness in the employment relationship and fair treatment of its employees
- is high-performing and apolitical.

The Queensland PS Act draws on the example of New Zealand’s *Public Service Act 2020*, which:

... explicitly recognises the role of the New Zealand public service to support the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi, and places responsibilities on public service leaders to develop and maintain cultural capability and understanding of Māori perspectives. Similarly, [the *Public Sector Act 2022* (Qld)] places responsibilities on chief executives to support a reframed relationship between Aboriginal peoples and Torres Strait Islander peoples and the State. (Queensland Government 2022, p. 9)



Box 18 – Reframing the Queensland public sector’s relationship with Aboriginal and Torres Strait Islander peoples

The Queensland PS Act designates all public sector entities (including government departments, hospital and health services, Queensland Police, and most statutory offices, boards, committees, councils, bodies and other groups established under legislation) as ‘reframing entities’. Reframing entities must:

- a) recognise and honour Aboriginal peoples and Torres Strait Islander peoples as the first peoples of Queensland
- b) engage in truth-telling about the shared history of all Australians
- c) recognise the importance to Aboriginal peoples and Torres Strait Islander peoples of the right to self-determination
- d) promote cultural safety and cultural capability at all levels of the public sector
- e) work in partnership with Aboriginal peoples and Torres Strait Islander peoples to actively promote, include and act in a way that aligns with their perspectives, in particular when making decisions directly affecting them
- f) ensure the workforce and leadership of the entities are reflective of the community they serve
- g) promote a fair and inclusive public sector that supports a sense of dignity and belonging for Aboriginal peoples and Torres Strait Islander peoples
- h) support the aims, aspirations and employment needs of Aboriginal peoples and Torres Strait Islander peoples and the need for their greater involvement in the public sector.

In effect, this gives all employees of reframing entities a duty to actively promote the perspectives of Aboriginal and Torres Strait Islander peoples.

Chief executives of reframing entities have additional responsibilities, including to make a plan for developing the entity’s cultural capability, publishing the plan, conducting an annual audit of the entity’s performance as measured against the plan, and reviewing the plan annually.

The Queensland Government made clear that including requirements for cultural capability in public sector employment legislation is the start – not the end – of the journey.

‘Cultural capability’ of an entity is defined as the integration of knowledge about the experiences and aspirations of Aboriginal peoples and Torres Strait Islander peoples into the entity’s workplace standards, policies, practices and attitudes to produce improved outcomes for Aboriginal peoples and Torres Strait Islander peoples. Cultural capability and cultural safety are steps on a continuum towards the aspirational goals of ‘cultural competence’ and ‘cultural security’ respectively.

Given the current status quo in Queensland’s public sector, the [Public Sector Act] establishes a baseline for reframing entities to achieve cultural capability and therefore cultural capability has been defined. Other terms have intentionally not been defined, however as reframing entities mature on the journey to cultural competence and cultural security, there may be further opportunities to characterise these concepts as part of the entity’s operational workplace standards, policies, and practices. (Queensland Government 2022, p. 17)

While requiring all public sector CEOs, executives and employees to become culturally capable will not immediately result in cultural competence and cultural safety, it is a necessary step on that journey.

In jurisdictions other than Queensland, governments have not underpinned their commitment to 'listen to the voices and aspirations of Aboriginal and Torres Strait Islander people and change the way we work in response' (clause 19) with changes to their standards for public servants' performance and behaviour. Without an explicit instruction that puts valuing the perspectives of Aboriginal and Torres Strait Islander people on a par with other core public services values and behaviours, it is not clear how the public sector will change. It is not acceptable for government employees to treat adhering to the principles of the Agreement as optional – they are essential skills and behaviours without which governments cannot hope to deliver on their Closing the Gap commitments. Governments should therefore embed these skills and behaviours into public sector employment and performance requirements (**draft recommendation 3**).

Ensuring that central agencies drive changes to Cabinet, Budget, funding and contracting processes

In order to successfully embed each of the Priority Reforms, system-level changes are required. Examples discussed above include strengthening Budget and Cabinet frameworks to elevate consideration of impacts on Aboriginal and Torres Strait Islander people in all new policies, and by publishing strategies or guidelines to assist agencies to adopt a more relational approach to contracting. But these changes are only being undertaken in one, or occasionally a handful of, jurisdictions. Some jurisdictions have not changed any of their whole-of-government processes to better support the outcomes of the Agreement.

System-level changes can only be led by central agencies. This is because Departments of Finance or Treasuries set the rules for funding and contracting at a jurisdictional level. Treasuries also control the Budget processes through which other departments seek to obtain funding for new initiatives. And Departments of the Prime Minister, Premier or Chief Minister control the Cabinet processes through which many high-level government decisions are made. Other government departments and agencies must follow these processes, and have very little ability to shape them.

Therefore, to enable all government departments, agencies and statutory bodies to act in accordance with the Agreement, it is essential that central agencies play a leadership role in ensuring that whole-of-government processes drive changes to deliver the outcomes of the Agreement. At a minimum, this will require central agencies to review Cabinet, Budget, funding and contracting arrangements to ensure that they support the Agreement and its Priority Reforms. And in many cases, changes to Cabinet, Budget, funding and contracting arrangements to better support the Agreement will be required (**draft recommendation 4**).

Sector-specific accountability mechanisms

In addition to whole-of-government accountability mechanisms, there are numerous government authorities and regulators that are designed to provide accountability in particular sectors. They include health and community services complaints commissioners, children's commissioners and sector-specific ombudsmen. There are also close to 200 occupational regulators, whose role is to protect the safety of consumers and/or the public, and ensure a sufficient and reliable level of service quality for services delivered by people registered in those occupations.

However even where accountability mechanisms exist within a sector, there are concerns that they are not working well for Aboriginal and Torres Islander people. For instance, SNAICC pointed out that under the National Quality Framework for early childhood education and care (ECEC), 'there is no explicit requirement for ECEC services to embed culture into their curriculum raising critical questions regarding the suitability,

cultural safety and inclusivity of “mainstream” ECEC services for Aboriginal and Torres Strait Islander children and families’ (SNAICC 2023, p. 17).

Reviews of sectors covered by sector-specific accountability mechanisms have also pointed to continued failings. For example, in an Independent Review of Aboriginal Children in Out-of-Home Care in New South Wales:

The need for more accountability—and in particular, the need for there to be consequences or sanctions when [Department of Communities and Justice] staff do not comply with legislation and policy—emerged as a major theme in submissions to the Review. (Davis 2019, p. 105)

In some places, dedicated Aboriginal and Torres Strait Islander Commissioner roles are being established to improve accountability to Aboriginal and Torres Strait Islander people. We are seeking further information on how sector-specific mechanisms can work most effectively, and how they can contribute to enhancing accountability for outcomes under the National Agreement on Closing the Gap (**information request 11**).

Improving jurisdictional implementation plans and annual reports

Improving Closing the Gap implementation plans and annual reports

As noted above (box 4), we found that governments’ implementation plans collectively list hundreds of actions for each Priority Reform, some with very little relevance to the Priority Reform that action is ostensibly supporting. This makes it very difficult for members of the community, or even for non-government partners to the Agreement, to understand whether and how governments are taking meaningful action.

The problems with jurisdictional implementation plans do not appear to stem primarily from inadequacies in the Agreement. On the face of it, the agreed content of implementation plans is useful and comprehensive.

To transform Closing the Gap implementation plans and annual reports into useful documents that drive improved outcomes for Aboriginal and Torres Strait Islander people, governments need to work more closely with Aboriginal and Torres Strait Islander partners to agree actions that are substantive and critical to achieving the objectives of the Agreement. The community needs to be able to clearly see how the actions in the implementation plan will collectively lead to delivering the changes to which governments have committed under the Agreement. Further, planning is not enough – reporting annually on the outcomes of those plans is also essential even, and perhaps especially, when outcomes fall short of expectations. The Commission is seeking suggestions for how to ensure that governments’ implementation plans and annual reports substantively meet the requirements set out in the Agreement (**information request 8**). Moreover, to improve transparency and make it easier to assess progress, the Commission is recommending that governments should publish the stocktakes, workplans, evaluations and other documents that have been developed under, or are highly relevant to, the Agreement (**draft recommendation 6**).

Including information about Closing the Gap in agencies' annual reports

Government agencies are required to prepare annual reports each year. These reports must comply with relevant legislation or rules and include certain specified information, which makes them an important input for accountability. For example, in New South Wales:

The annual report is the key medium by which NSW Public Sector entities discharge their accountability to the Parliament, the Government and the public. It provides an overview of an entity's activities and financial position relating to the preceding year. (NSW Treasury 2022)

Requiring government agencies to include information about Closing the Gap in each of their annual reports would provide an important means of ensuring that every agency is making a substantive effort to implement the Priority Reforms and to track the outcomes it achieves for Aboriginal and Torres Strait Islander people. At a minimum, this should include reporting on:

- how each of the Priority Reforms have been implemented in the agency
- how the agency has contributed to relevant socio-economic outcomes
- how the agency tracks the outcomes it achieves for Aboriginal and Torres Strait Islander people
- how the agency assessed the effectiveness of each of the above actions (**draft recommendation 5**).

Statements on Closing the Gap in agencies' annual report would be a complement to, and would not replace, Closing the Gap annual reports and implementation plans (which the Commission is looking to improve and strengthen – information request 8).



Attachment – Progress against key commitments

Priority Reform 1 – Formal partnerships and shared decision-making

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Establish policy and place-based partnerships that include the strong partnership elements¹ and which respond to local priorities , unless Aboriginal and Torres Strait Islander people, communities and organisations choose not to pursue elements. (clause 35)	None	Some of the partnership elements are in place in many partnerships. (The policy and place-based partnerships are considered in further detail below.) But it is the exception rather than the norm for partnerships to include all of the partnership elements.	<ul style="list-style-type: none"> Governments struggle to share decision-making, often consulting on predetermined outcomes rather than asking Aboriginal and Torres Strait Islander people to set the agenda. Some of the partnership elements rely on implementation of other Priority Reforms (for example, access to data), so cannot be met at this stage. 	<ul style="list-style-type: none"> A partnership built on trust that fulfils the partnership elements is vastly different to asking for input (often with very short timeframes) or consulting with Aboriginal and Torres Strait Islander people on a preconceived program or activity. Transformation of governments (Priority Reform 3) will be a key enabler of partnerships and shared decision-making. Governments bear little consequence when they ignore Aboriginal and Torres Strait Islander partners and make unilateral decisions.

¹ The 'strong partnership elements' are specified in clause 32 of the Agreement. They include details relating to: who is involved in the partnership and how they are selected (clause 32a); the nature and content of the partnership agreement (clause 32b); and what constitutes (and by extension, what does not constitute) shared decision-making (clause 32c).

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Undertake a stocktake of existing partnership arrangements , and report to Joint Council. (clause 36a)	By 2022	Completed by some jurisdictions. <ul style="list-style-type: none"> Joint Council received stocktakes from most jurisdictions. Only five jurisdictions (Qld, Vic, NSW, SA and the Australian Government) have published their stocktakes. 	<ul style="list-style-type: none"> Publicly available details of the stocktake vary based on the jurisdiction. Different understandings of ‘partnership’ reduce the usefulness of the stocktakes. 	Stocktakes and reviews of existing partnerships can be a good first step towards improved partnerships. But even where they have been completed, the stocktakes and reviews have: <ul style="list-style-type: none"> not always used assessment criteria that are consistent with the strong partnership elements made a limited contribution to strengthening partnerships or embedding shared decision-making.
Jurisdictional action – Review and strengthen existing partnerships , and report to Joint Council. (clauses 36b and 36c)	By 2023	Partially completed by some jurisdictions. <ul style="list-style-type: none"> Reviews completed and published by Qld, Vic and the Australian Government. No jurisdiction has demonstrated how it has strengthened existing partnerships. 	The focus on developing new policy and place-based partnerships appears to have taken priority over reviewing and strengthening existing partnerships.	
Partnership action – Establish six new place-based partnerships . (clause 39)	Locations selected by Nov 2021. Partnerships established by 2024.	All locations selected. No formal partnerships established but not yet due. The six locations are: <ul style="list-style-type: none"> East Kimberley (WA) Maningrida (NT) Western suburbs of Adelaide (SA) Doomadgee (Qld) Tamworth (NSW) Gippsland (Vic) 	The COVID-19 pandemic caused some delays in establishing place-based partnerships. Other delays were foreseeable but understandable (such as elections in SA and WA).	Aboriginal and Torres Strait Islander organisations and communities had a role in selecting the locations for the place-based partnerships in most jurisdictions. This is necessary but not sufficient for future progress in establishing the place-based partnerships.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
<p>Partnership action – Establish policy partnerships (PPs) in five areas:</p> <ul style="list-style-type: none"> justice (adult and youth incarceration) social and emotional wellbeing (mental health) housing early childhood care and development Aboriginal and Torres Strait Islander languages. (clause 38) 	By 2022	<p>All policy partnerships ‘established’.</p> <ul style="list-style-type: none"> Justice PP established April 2021. Early childhood PP established August 2022. Social and emotional wellbeing PP established August 2022. Housing PP established December 2022. Languages PP established December 2022. <p>But parties appear premature in considering partnerships to be ‘established’. An ‘established partnership’ appears to be an agreement to set up a committee to discuss matters relating to the policy area.</p>	<ul style="list-style-type: none"> Only the three Agreements to implement are publicly accessible (justice, early childhood care and development and social and emotional wellbeing) It remains to be seen how the siloed nature of the PPs impacts their effectiveness given the strong linkages between the PP areas (for example, justice outcomes are strongly linked with housing and mental health). In the case of the Justice PP, there are concerns about insufficient representation from Aboriginal and Torres Strait Islander people with lived experience in the policy area. The Justice PP has not prevented governments from making decisions that run counter to its objectives (for example, recent changes to bail laws that run counter to the Justice PP). 	<p>It is still possible that the policy partnerships will lead to improvements in the relevant policy areas. But this will require governments to:</p> <ul style="list-style-type: none"> commit resources and attention to actions under the PPs ensure that Aboriginal and Torres Strait Islander people and organisations are sufficiently resourced to participate equally in the partnership address the current lack of accountability.

Priority Reform 2 – Building the community-controlled sector

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Partnership action – Develop sector strengthening plans (SSPs). (clause 52)	By July 2021	Four sector strengthening plans have been developed, but they were delivered late and contain few tangible actions. SSPs for health and early childhood care and development sectors (ECCD, which covers both early childhood education and care, and family support and child protection) were agreed by the Joint Council in December 2021. SSPs for housing and disability were agreed in August 2022.	<ul style="list-style-type: none"> The current set of four SSPs outline close to 100 ‘actions’. These ‘actions’ are broad (for example, an ‘action’ in the ECCD SSP is to ‘identify opportunities to transfer land and building ownership to community-controlled early years services’) with no tangible actions listed (for example, no person or organisation is tasked with a stocktake of services’ current ownership/rental status). Few actions specify both additional funding and timeframes for completion. SSPs do not clearly identify who is responsible for implementing the actions (most simply list ‘all jurisdictions’ as being responsible for most listed actions). 	<ul style="list-style-type: none"> The SSPs do not contain enough detail to expect that they alone would lead to meaningful change. The actions need to be committed to with concrete timeframes, responsibilities, and resourcing; reported in a way that facilitates transparency and accountability; and reflected in the relevant policy partnership. It is not clear how the SSPs will lead to change, as they do not clearly describe the desired changes, or articulate how the listed actions will deliver those changes.
Partnership action – Identify additional sectors for SSPs . (clause 53)	By 2023	Not commenced – not yet due.	Two of the SSPs due in July 2021 were only agreed in August 2022, so the timing of new SSPs is uncertain.	Regardless of whether new SSPs are developed on time, priority should be given to enabling the implementation of the first set of SSPs.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Preference Aboriginal and Torres Strait Islander organisations in funding policies. (clause 55a)	By 2024	Underway – not yet due. <ul style="list-style-type: none"> The various plans list many initiatives (including reviews and potential changes to how governments commission/fund ACCO delivered services), but these are mostly either still in train or are not making a clear difference on the ground. New Aboriginal Procurement Policy (APP) in the NT. Updated APPs in WA and NSW. 	<ul style="list-style-type: none"> Some states still need to implement or update their grant guidelines and APPs. Issues remain with the design and implementation of funding policies. <ul style="list-style-type: none"> ACCOs are often expected to fit with government models and requirements for service delivery (including government-designed models of service delivery and government-defined KPIs), rather than the other way around. Longstanding problems with the contracting of services – such as very short funding terms, unnecessary funding conditions, funding not covering the full cost of providing services – remain widespread. 	<ul style="list-style-type: none"> Changes to grant policies and APPs are a high-level first step towards directing a larger proportion of government expenditure to Aboriginal and Torres Strait Islander organisations. But APPs only affect procurement, not contracting of human services. Despite some evidence of change, most government agencies have not yet moved beyond business as usual to change how they fund ACCOs to deliver services. Some are also piloting reforms (such as single funding models for ACCOs in Victoria) to the way funding is provided to ACCOs but it remains to be seen if these will translate into permanent changes. Progress has varied in laying the groundwork for implementing clause 55, so more work will be required in this area if commitments are to be met on time. More broadly, there are well-known improvements that can be made to contracting processes and funding approaches that governments are not consistently implementing now (for example, longer contract durations and relational approaches to contracting). Some funding issues are sector specific, such as those identified in SSPs.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Allocate a meaningful proportion of new funding initiatives to Aboriginal and Torres Strait Islander organisations. (clause 55b)	By 2024	Underway in one jurisdiction – not yet due. The Australian Government is working with the Coalition of Peaks to identify approaches to applying a ‘meaningful proportion’ of funding to ACCOs. This will inform an enduring policy and budget framework for implementation by 2024.	States and territories are unsure how to approach clause 55b and how to define a ‘meaningful proportion’.	There has been little progress under clause 55b. The Australian Government is the only jurisdiction partly pursuing action under this clause.
Jurisdictional action – Review and identify current spending and reprioritisation opportunities to Aboriginal and Torres Strait Islander organisations. (clause 113)	By July 2022	Completed by some jurisdictions – NSW, ACT, NT (partial) and Australian Governments. Only NSW and the ACT have publicly released their expenditure reviews.	<ul style="list-style-type: none"> Some jurisdictions have not yet agreed on the methodology for an expenditure review. Reviews will not be comparable between jurisdictions (because, for example, the Australian Government only includes grant funding, but NSW includes both grants and procurement). 	Governments need to develop a consistent methodology and implement regular timeframes to produce next iterations of the expenditure reports (or indeed, their first iterations). This process should be done in partnership with Aboriginal and Torres Strait Islander organisations.

Priority Reform 3 – Transforming government organisations

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Implement the transformation elements in mainstream institutions and agencies. ² (clause 59)	None	Some progress, not enough. Governments are pursuing hundreds of actions that are aligned to the six transformation elements to varying degrees. There are very few examples of government-side or organisation-level strategies for transformation of the nature and scale envisaged in the Agreement.	The transformation envisaged under Priority Reform 3 is likely beyond what most government organisations have previously attempted.	The transformation of government organisations is in its early stages. Ongoing and additional effort is required. This should be underpinned by a clear theory of change, and based on advice from external Aboriginal and Torres Strait Islander people, as they can provide a clearer perspective on the changes that government organisations need to make (and help to avoid the bias inherent in self-assessments).
Partnership action – Identify, develop or strengthen an independent mechanism that will ‘support, monitor, and report on the transformation of mainstream agencies and institutions’. (clause 67)	By 2023	Minimal progress. In NSW, a project to develop an Aboriginal-led government accountability mechanism is running to June 2024. The path to developing and implementing the independent mechanism is less clear in other jurisdictions.	The Commission has been provided with no specific information regarding barriers to setting up independent mechanisms.	There is lack of progress on the establishment of independent mechanisms. It is likely that most jurisdictions will not ‘identify, develop or strengthen’ an independent mechanism by the end of 2023, as the Agreement requires.

² The six transformation elements are: a. identify and eliminate racism; b. embed and practice meaningful cultural safety; c. deliver services in partnership with Aboriginal and Torres Strait Islander organisations, communities and people; d. increase accountability through transparent funding allocations; e. support Aboriginal and Torres Strait Islander cultures; f. improve engagement with Aboriginal and Torres Strait Islander people.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Sharing and publishing engagement approaches that give effect to the transformation elements. (clause 63)	None	Some progress. Engagement approaches and frameworks are still being developed and/or rolled out. At this stage it is difficult to assess if, and how, they will fundamentally change the ways in which governments engage with Aboriginal and Torres Strait Islander people.	We are unaware of any barriers to ‘sharing and publishing’ engagement approaches.	There is ongoing dissatisfaction on the part of Aboriginal and Torres Strait Islander organisations, which points to continued shortcomings in engagement approaches.
Jurisdictional action – Engaging with Aboriginal and Torres Strait Islander representatives ‘before, during, and after emergencies such as natural disasters and pandemics’. (clause 64)	None	Some progress. There are examples of policies and frameworks that address this commitment. The Commission is aware of positive and negative cases of engagement with Aboriginal and Torres Strait Islander people around natural disasters.	The Commission has not identified any specific barriers to delivering on this commitment beyond those described above with respect to Priority Reform 1 which calls for shared decision-making.	The examples of good practice illustrate that governments can engage with Aboriginal and Torres Strait Islander people for emergency preparedness and response. It is unclear how much good practice is driven by or indicative of systemic change in government organisations.
Transformation in the services that governments fund. Note: this is not a specific commitment in the Agreement, but an aspect of the outcome for Priority Reform 3.	None	Minimal progress. In published material and discussions with governments to date it appears that this aspect of the Agreement has not been prioritised.	Government organisations are likely to face challenges assuring themselves that the organisations they fund do so in ways that are culturally safe and responsive to the needs of Aboriginal and Torres Strait Islander people. Submissions and meetings we have held with non-government organisations indicate a desire for governments to provide greater leadership in this area.	The Agreement requires that governments are accountable for Closing the Gap ‘including through the services they fund’. Governments have not prioritised this aspect of the Agreement.

Priority Reform 4 – Shared access to data and information at a regional level

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Implement the data and information sharing elements. ³ (clause 73)	None	Limited progress. <ul style="list-style-type: none"> Governments are undertaking many activities, but these have so far not resulted in large-scale changes as called for by Priority Reform 4. Most activities have been about improving the sharing of existing data, but Aboriginal and Torres Strait Islander organisations have reported continued difficulties accessing data. Governments do not appear to have done much to change the balance of power between themselves and Aboriginal and Torres Strait Islander people over data. Governments are not providing enough support to build data capability in Aboriginal and Torres Strait Islander organisations. 	<ul style="list-style-type: none"> Government officials do not fully appreciate, or do not have the appetite to pursue, the profound change required to share more data and change how data is collected and used to inform policies and services. Some jurisdictions are waiting on lessons from the community data projects to inform their broader plans to implement Priority Reform 4. Potential lack of shared understanding of the purpose of Priority Reform 4 and how it relates to Indigenous data sovereignty may be a barrier to progress. 	<p>No government has made good progress on implementing all of the data and information sharing elements.³ And they are not yet grappling with the overarching questions of:</p> <ul style="list-style-type: none"> the systemic reforms that will be needed in order to give communities the insights they need to share decision-making with government how to incorporate community-collected data into decision-making. <p>More fundamentally, the view of many Aboriginal and Torres Strait Islander people that the purpose of Priority Reform 4 is to give effect to Indigenous data sovereignty is not reflected in the way Priority Reform 4 is articulated, nor in the conceptual logic of many government actions relating to Priority Reform 4.</p>

³ Broadly, the data and information sharing elements are:

- partnerships between Aboriginal and Torres Strait Islander representatives and government organisations to guide data improvements
- provision to Aboriginal and Torres Strait Islander communities and organisations of the same data and information on which any decisions are made
- disaggregated data for local decision-making
- support to build capability and expertise in collecting, using and interpreting data in a meaningful way.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
<p>Partnership action – Establish data projects in up to six locations across Australia to enable Aboriginal and Torres Strait Islander communities and organisations to access and use location-specific data on the Closing the Gap outcome areas. (clauses 74 and 75)</p>	By 2023	<p>All locations selected.</p> <p>They are:</p> <ul style="list-style-type: none"> • Blacktown LGA (NSW) • the Kimberley (WA) • the western suburbs of Adelaide (SA) • Doomadgee (Qld) • Maningrida (NT) • Gippsland (Vic). <p>With the exception of Blacktown LGA and parts of the Kimberley (the place-based partnership is in East Kimberley only), these locations are also the location of a place-based partnership.</p> <p>All projects are in very early stages – some have not yet selected organisational partners or topics. None are fully up and running. The Blacktown LGA and Kimberley projects are the most advanced.</p>	<p>Sharing and development of data with communities in the way envisaged by the Agreement has rarely, if ever, been done before. It is taking time for governments and Aboriginal representatives, communities and organisations to learn to work together, strengthen their relationships and come to agreement and understanding about what they want the projects to achieve.</p>	<p>The community data projects are behind schedule but progressing in a manner that is promising in most cases – governments are looking to Aboriginal and Torres Strait Islander partners to lead and set the direction of projects. That said, the Commission has heard examples of governments being unwilling to share data to support the projects.</p>

Tracking progress towards outcomes: Performance monitoring and reporting

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Government actions <ul style="list-style-type: none"> Use targets to track progress against the Priority Reforms and socio-economic outcomes (SEO) of the Agreement (clauses 78 and 79, tables A and B). Provide data for public reporting⁴ on performance through the Closing the Gap dashboard and annual data compilation report (ADCR) (clauses 88, 89, 115, 116, and 117). 	Annually	Partially completed – some targets require data development and most supporting indicators are yet to be reported on. <ul style="list-style-type: none"> The ADCR is published annually based on data from the Closing the Gap dashboard, which as of July 2023 had been updated five times since it was launched in June 2021. These both meet the specifications of the Agreement. However, all the Priority Reform targets and four of the 19 SEO targets lack data to track progress. Six SEO targets with progress assessments rely on data that is only updated every 5 years. Given challenges specifying Priority Reform data, the Partnership Working Group has engaged a third party to further develop the measurement approach (PC 2023a, p. 17). In addition to targets, there are 164 supporting indicators and many disaggregations included in the performance framework. As of July 2023, the dashboard reported against only 21 of the 	Issues with the Closing the Gap performance monitoring approach undermine its ability to support the transformative change required of governments. These include: <ul style="list-style-type: none"> insufficient centring of Aboriginal and Torres Islander perspectives and knowledges a lack of clarity about how to hold jurisdictions to account for progress towards national targets a lack of explicit conceptual logic to guide indicator selection and a shared understanding of the reforms challenges managing the trade-offs between data availability and relevance significant data gaps in areas critical to the reform, including the 	<ul style="list-style-type: none"> The performance monitoring approach is intended to drive government effort and provide public accountability for progress. However, targets are designed to be met at the national level and jurisdictions have not agreed to how much they will each contribute to achieving them. Without regional disaggregation of target data, communities cannot hold states and territories to account for the equitable distribution of progress across diverse regions. The logic linking Priority Reforms with SEOs has not been explicitly articulated or applied to the monitoring approach, with no clear or consistent rationale for the selection of indicators across outcomes. This contributes to insufficient understanding of and

⁴ Public reports should show progress to close the gap, relative to non-Indigenous Australians, and include national trajectories and state and territory contributions to progress on national targets (clauses 88 and 89). In addition to this, clause 93 calls for consideration of how targets will be disaggregated by Stolen Generation, disability, and LGBTQI+ status to ensure progress can be monitored for these groups. Clause 94 also commits the Parties to identifying appropriate contextual indicators and information on the role of the cultural determinants in Aboriginal and Torres Strait Islander health and wellbeing across target areas, to aid reporting.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
		supporting indicators. Where targets have progress assessments and data is available, data is disaggregated by jurisdiction, sex, age, disability, remoteness areas, and socioeconomic status of the locality.	Priority Reforms and cultural determinants of outcomes <ul style="list-style-type: none"> • unclear data development responsibilities and processes. 	investment in the transformative change necessary to achieve outcomes, hindering prioritisation of effort, the assessment of progress, and the ability of communities to hold governments to account. <ul style="list-style-type: none"> • There are critical data gaps, especially for the Priority Reforms and cultural determinants of outcomes. This means reporting remains focussed on socio-economic targets rather than the key factors influencing change. This risks reinforcing business-as-usual policy effort and narratives attributing problems to Aboriginal and Torres Strait Islander people, rather than government action or inaction.
Partnership action – Develop four new targets for: <ul style="list-style-type: none"> • community infrastructure • inland waters • family violence • access to information. (clause 87) 	By July 2021	Partially completed – three new targets have been agreed but require further data development. <ul style="list-style-type: none"> • The Inland Waters target has not yet been agreed. • Targets 9b, 13, and 17 have been developed, but data on progress are not available. 	There is no agreed process or lead for developing measures for new targets (where relevant data does not already exist). Responsibility for developing data for these targets is unclear, and only family violence target data is included in the data development plan.	A lead organisation or entity should be appointed to lead data development, as discussed below. In addition to this, a process for identifying actions and responsible parties for data development of new targets should be identified. The most straightforward approach would be to incorporate this into the data development plan as a priority.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
<p>Partnership action – Establish a data development plan (DDP) for data development items identified in table A and table B (clause 92). The DDP will:</p> <ul style="list-style-type: none"> • be developed in partnership and jointly agreed by all parties • prioritise data development actions over the life of the Agreement • outline clear timeframes for actions to be delivered and which party will be responsible for each action • be reviewed by Joint Council at the same time as it reviews the three-yearly reviews, at which time Joint Council may consider changes to the plan. 	By July 2022	<p>Partially completed –responsible parties and delivery timeframes for data development actions have not been identified.</p> <ul style="list-style-type: none"> • The DDP was endorsed by Joint Council in August 2022 and covered some specified features. It defined a set of guiding principles and criteria for prioritisation of data development and estimation of broad time frames within which development should commence (short, medium, and long-term). • However, it did not specify clear timeframes for data development actions to be delivered or identify responsible parties. • The Data and Reporting Working Group (DRWG) is developing a traffic light report to monitor data development, which includes actions and action owners. It is expected for review by Joint Council by the end of 2023. 	<ul style="list-style-type: none"> • The scope of the data development task is immense. There are 123 data development items in the DDP. This does not include the data development required for Priority Reform and most socio-economic indicators found to lack appropriate data. The work required to develop items in the DDP includes conceptual work, harmonising data definitions and collection methods, and disaggregating existing data. • The DDP prioritises data development by centrality to the Priority Reforms and socio-economic outcomes, the type of work to be completed, and whether work is already planned or underway. However, it does not describe the criteria for assessing centrality. Without criteria or a conceptual logic to draw from in the Agreement, it is difficult to determine how the centrality assessment was made, or even how it should be made. 	<ul style="list-style-type: none"> • Responsibility for new data development is split across multiple working groups and organisations without clear accountabilities. • Data governance arrangements could be improved by consolidating responsibility for coordinating new data development under one organisation or entity. This organisation should have the resourcing and capability to engage data custodians and Aboriginal and Torres Strait Islander organisations and communities in developing appropriate solutions. • As most existing data has been developed to inform government priorities, significant data development is required to reflect Aboriginal and Torres Strait Islander perspectives. Unless critical indicators of change under the Agreement are identified and prioritised for development according to an agreed conceptual logic, data development is at risk of producing a fragmented and diffuse dataset that struggles to present a coherent account of progress.

Implementation plans and annual reports

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Prepare jurisdictional implementation plans with certain specified features. ⁵ (clause 108)	By July 2022	Completed, but low quality. Second implementation plans completed by NSW, Qld and the Australian Government show signs of improvement. Key weaknesses found in most implementation plans are that they: <ul style="list-style-type: none"> do not outline whether and how they were developed in partnership with Aboriginal and Torres Strait Islander people do not include sufficient detail on significant actions, and instead contain many actions that have little, if any, link to the Priority Reforms, socio-economic outcomes and their targets do not articulate a whole-of-government strategy or theory of change do not explain how jurisdictions will work with local governments. 	The Joint Council is responsible for monitoring implementation of the Agreement, including against their implementation plans. But as the Joint Council is comprised of relevant Ministers and representatives of the Coalition of Peaks, jurisdictions are contributors to monitoring their own performance. This element of ‘marking your own homework’ with no other oversight may be contributing to the poor quality of implementation plans.	On the face of it, the agreed content of implementation plans is useful and comprehensive. But in practice, implementation plans do not consistently contain agreed elements. The weaknesses of current implementation plans make it very hard for the community to hold

⁵ Governments have agreed that their implementation plans will:

- be whole-of-government plans, covering government agencies and statutory bodies be developed and delivered in partnership between governments, the Coalition of Peaks, and other Aboriginal and Torres Strait Islander partners
- set out how existing policies and programs will be aligned to the Agreement
- set out actions to achieve the Priority Reforms and partnership actions
- set out actions to achieve the agreed outcomes and targets
- for transparency, include information on funding and timeframes for actions
- include the approach to annual reporting, including when they will release their public report.
- include information on how the states and territories will work with local government to implement this Agreement.

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
		<p>In addition, in many cases:</p> <ul style="list-style-type: none"> • details about funding and timeframes for actions are missing or vague • Some plans only list a responsible Minister against each action but not a responsible agency, none of the plans assign a responsible official or statutory office holder. • statutory agencies that should be making changes in support of the Agreement are not included in the plans. 		governments accountable for the actions set out in the plans, or for their inaction.
Jurisdictional action – Report on partnerships in annual reports. ⁶ (clause 37)	Annually	<p>Completed by five jurisdictions but with variable quality.</p> <ul style="list-style-type: none"> • Vic and the Australian Government included partnership stocktakes in their annual reports • Qld included some preliminary findings from its detailed partnership stocktake but did not report against each partnership. • NSW and SA included information on the number of partnerships but did not detail whether they met the partnership elements. • ACT, NT, Tas, and WA did not provide information on their number of partnerships. 	<ul style="list-style-type: none"> • Annual reports do not provide comprehensive information on the activities being undertaken in each jurisdiction to progress the Priority Reforms and the socioeconomic outcomes. • Moreover, most jurisdictions' annual reports do not track the actions listed in their implementation plans. • There is significant variation in the type and level of detail of information that each jurisdiction provides in their annual reports. • The annual reports focus on highlighting achievements and listing what activities have been undertaken. Significantly less attention is given to describing what has 	<ul style="list-style-type: none"> • Annual reports are providing a degree of visibility on jurisdictions' actions. But the effectiveness of annual reports is reduced by the large number of small and/or unrelated actions included in jurisdictions' implementation plans. The variability across the annual reports suggests that there is a need for more detailed guidance on their purpose and minimum requirements.
Jurisdictional action – Report on actions to strengthen the community-controlled sector in annual reports. (clause 47)	Annually	<p>Completed in full by three jurisdictions, partially by others.</p> <ul style="list-style-type: none"> • All jurisdictions included actions to strengthen the community-controlled sector in annual reports. • Only WA, Qld and the Australian Government reported against each of their sector strengthening plan actions, and only for the health and early childhood care and development sectors. 		

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Report on action to undertake and meet the transformation elements in annual reports. (clause 65)	Annually	Completed but with variable quality. <ul style="list-style-type: none"> NSW, NT and Vic reported on actions against each of the transformation elements. ACT, SA, Tas and WA reported on key initiatives and actions but did not explicitly link them to individual transformation elements. Qld provided a high-level description of its Reconciliation Action Plan but did not report on specific actions. 	<ul style="list-style-type: none"> not been delivered or areas where there has been little progress Some jurisdictions are reporting whether they are individually on- or off-track to meet the targets, however the parties are yet to agree on how much they each need to contribute to achieve the national-level targets The annual reports give little account of how the Aboriginal and Torres Strait Islander partners view the progress that has been made in their jurisdictions Jurisdictions are still completing their funding stocktakes and are not yet able to report Joint Council has a role to review jurisdictions' annual reports. However, this task may be unachievable in practice for the Joint Council given the different approaches jurisdictions have taken, and the sheer number of actions. 	<ul style="list-style-type: none"> Without a commitment to jurisdictional specific contributions for each target and a common assessment methodology, the inclusion of self-assessments of progress against the targets in the annual reports is potentially misleading and undermines the independence of progress assessment. In the absence of broader accountability measures, annual reports are not an effective accountability tool.
Jurisdictional action – Include information on action taken to improve access to data and information by Aboriginal and Torres Strait Islander people and organisations in annual reports. (clause 73)	Annually	Completed in full by two jurisdictions, partially by others. <ul style="list-style-type: none"> Annual reports from NSW and the NT included updates on each of the Priority Reform 4 actions listed in their respective implementation plans. Other jurisdictions provide some information on Priority Reform 4 in annual reports, but it is incomplete. 		

⁶ 'Annual reports' refers to the annual public reports developed in accordance with clauses 118 and 119 of the Agreement (and not to annual reports prepared for the purposes of the *Corporations Act 2001* (Cwlth) or jurisdictions' financial managements acts).

Key commitments	Agreed timing	Current progress	Issues and barriers to implementation	Assessment
Jurisdictional action – Prepare annual reports consistently with the dashboard and ADCR, demonstrate alignment with achieving Closing the Gap goals and list the number of ACCOs that have been allocated funding. (clause 118)	Annually	Completed partially by all jurisdictions. <ul style="list-style-type: none"> Reporting on the progress made in implementing each action is not always comprehensive. Most jurisdictions report on progress for a subset of the actions included in implementation plans. Many jurisdictions' annual reports include progress on actions that are not included in their implementation plans. Annual reports from Qld, Tas, NSW and the ACT include their own assessments of whether they are 'on-track' to meet targets, which is inconsistent with the ADCR's national assessment approach. No jurisdictions' annual report provides a complete list of the number of ACCOs that have been funded. 		
Australian Local Government Association (ALGA) action – Prepare an implementation plan with certain specified features. (clause 109)	By July 2022	Completed. Given the diversity of the 537 local councils, the ALGA implementation plan is necessarily high level. But it does not clearly articulate how Closing the Gap will inform ALGA's other work.	<ul style="list-style-type: none"> While ALGA is a government party to the Agreement, it is not attempting to undertake all of the actions that governments have agreed to (for example, develop an independent mechanism). ALGA members rely on support and authority from, and are limited by progress made by, state and territory governments. 	<ul style="list-style-type: none"> There is little visibility of local governments' actions. The concerns expressed in relation to Priority Reform 3 (about governments only attempting incremental rather than transformational change) also apply to ALGA.

Abbreviations

Acronym	Definition
ABS	Australian Bureau of Statistics
ACCHO	Aboriginal community-controlled health organisation
ACCO	Aboriginal community-controlled organisation
ACF	Aboriginal Children's Forum
ADCR	Annual data compilation report
AEDC	Australian early development census
AIATSIS	Australian Institute of Aboriginal and Torres Strait Islander Studies
AIHW	Australian Institute of Health and Welfare
ALGA	Australian Local Government Association
APP	Aboriginal Procurement Policy
APS	Australian Public Service
ATO	Australian Taxation Office
ATSIC	Aboriginal and Torres Strait Islander Commission
ATSIEB	Aboriginal and Torres Strait Islander Elected Body (ACT)
COAG	Council of Australian Governments
DDP	Data development plan
DRWG	Data and Reporting Working Group
DSS	Department of Social Services
EC	Empowered Communities
ECCD	Early childhood care and development
ECEC	Early childhood education and care
ECPP	Early childhood policy partnership
HHS	Hospital and Health Service
JPP	Justice Policy Partnership
KPI	Key Performance Indicators
MBS	Medicare Benefits Schedule
NDIS	National Disability Insurance Scheme
NGO	Non-Government Organisations
NIAA	National Indigenous Australian Agency
NIRA	National Indigenous Reform Agreement
PP	Policy partnership
SSP	Sector Strengthening Plan

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