

A submission to the Productivity Commission on the Review on the National Agreement on Closing the Gap Draft Report

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Introduction

On 23 August 2019 before the National Agreement on Closing the Gap (henceforth the National Agreement) was signed, I questioned the value of an Indigenous Evaluation Strategy and its capacity to accurately assess the disadvantage experienced by Indigenous Australians today.¹

My main concern was that by focusing on targets set by statistical social indicators, the evaluation could be useful for measuring sameness between an estimated abstract sub-population Indigenous Australians and another sub-population non-Indigenous Australians (irrespective of the fact that many households, families, and communities have Indigenous and non-Indigenous members). But it would be of limited value in dealing with situations where Indigenous people either aspire to live differently or must because of their circumstances dictated by locational and historical circumstances. I suggested that a new policy framework, not a new evaluation framework, is what is most urgently needed.

In July 2020, the National Agreement between all Australian governments (including representation from local governments) and an alliance called the Coalition of Peak Aboriginal and Torres Strait Islander Community-Controlled Organisations (henceforth the Coalition of Peaks) was signed. This 53-page agreement is highly aspirational and looks to fundamentally alter the policy approach by all governments to address Indigenous disadvantage. Unfortunately, the National Agreement is not legally-binding on any signatory party, hence making compliance voluntary rather than mandatory; and having no sanctions on parties for non-compliance.

The codesign of a National Agreement with an Indigenous representative body now comprising 80 peak organisations with nation-wide coverage and their members is unprecedented in Australia. It emerged at a particular historical moment after an earlier Closing the Gap framework had been developed by the Australian government and co-signed by state and territory governments operating as the Council of Australian Governments, without any Indigenous representation. Labelled the National Indigenous Reform Agreement (NIRA) on Closing the Gap it ran from 2008 to 2018, set out to achieve seven modest targets at the national level between Indigenous and other Australians and failed at both the national and sub-national levels to meet all but two of its goals. The reasons for its failure can be debated, I have argued elsewhere that it was conceptually flawed from the outset despite its positive intent to reduce socioeconomic disparities between Indigenous and other Australians; and its implementation was also likely wanting. I will not analyse that complex history here.

¹ My submission is available at <https://www.pc.gov.au/inquiries/completed/indigenous-evaluation/submissions#initial>.

The National Agreement negotiated between the end of 2018 and mid 2020 needs to be seen in this context. Mandated annual reports to the Australian parliament between 2009 and 2018 regularly documented that NIRA was failing to achieve its targets, yet government signatories to that agreement seemed either unwilling or incapable of addressing its shortcomings. NIRA's failure can additionally be partially sheeted home to the lack of Indigenous representative participation in its development and partly to the failure of governments to be held accountable for inadequate performance or to rapidly change approach when faced by consistent reporting of failure.

A Closing the Gap 'Refresh' process was driven by the new Coalition of Peaks established as a grassroots alliance in 2018 and initially consisting of just 13 peak organisations. In the absence of a national Indigenous representative organisation (the then existing National Congress of Australia's First Peoples was unfunded by the Australian government and so struggling) the Coalition of Peaks successfully insisted that they be provided a co-designing seat at the table. Consequently, the National Agreement of 2020 is a quite different and highly aspirational policy framework. It looks to fundamentally reshape the way government policies are developed and programs are delivered to Indigenous Australians. It includes four Priority Reforms and it increases the number of targets to be met from NIRA's seven to 19 (two targets 9 and 15 have two parts). As in NIRA, the targets are set to various timeframes, most to 2030 or 2031; all are set at the national level and require subnational reporting (at state/territory and regional levels); all but two targets set modest absolute, rather than relative, outcomes goals (even though reporting of relative wellbeing is required); and while some goals are amenable to periodic statistical measurement, a number, including the Priority Reforms are not.

The National Agreement's implementation is overseen by the Joint Council on Closing the Gap with representation from the Commonwealth, state and territory governments, the Australian Local Government Association, and the Coalition of Peaks that has majority representation that cannot however be equated with majority of power. There is a heavy emphasis on implementation and independent monitoring of performance and progress in achieving both Priority Reforms and socioeconomic outcomes. Consequently, all signatories to the National Agreement are required to develop implementation plans. The Productivity Commission is identified in the National Agreement as one reviewer of its performance. It is also tasked with developing and maintaining a publicly accessible information repository or 'Dashboard' comprising data and associated supporting materials to inform the reporting on progress that must also be documented on an annual basis. The National Agreement in a radical break with recent approaches requires an Aboriginal and Torres Strait Islander-led review to follow the Productivity Commission's review. This is historically reminiscent of the review of the Aboriginal Employment Development Policy that was undertaken by the Aboriginal and Torres Strait Islander Commission (ATSIC) in 1994.

The requirement for the current review by the Productivity Commission is dictated by the National Agreement; its scope was set by then Treasurer Josh Frydenberg in April 2022. In undertaking the review, the Productivity Commission is required to:

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.

Personal background, approach, and disclosures

I am an economist and an anthropologist and have spent much of my career since 1977 focusing on policy research looking to address Indigenous disadvantage.

Since I first worked in this area and in my earliest published work, I have held a strong view that there is a need to conceptually distinguish various Indigenous populations: the national population and then various sub-national populations that better reflect the diversity of Indigenous circumstances.

The national Indigenous population has been self-identifying in the five-yearly census since 1971 and over the last 50 years has grown from just over 115,000 to a recent estimate from the 2021 Census of just under one million (983,700) or by a factor of nine times.

There are several Indigenous populations that can be disaggregated at subnational levels. An obvious disaggregation is by state and territory. For example, it is estimated that the Indigenous population of the NT makes up over 30 per cent of its population compared to just 1 per cent in Victoria. Another disaggregation can be undertaken by remoteness. It is estimated that in 2021, 15 per cent of the Indigenous population (about 150,000 people) lived in remote and very remote Australia (covering 86% of the continent) compared to 85 per cent in the remaining 14 per cent. The most relevant sub-population is the sum of the Indigenous people who live in discrete Indigenous communities, so defined by the ABS because each has an Indigenous population proportion of more than 50 per cent. These communities number about 1,000, have small and fluid populations, and are mainly located in remote and very remote Australia; they pose an enduring challenge to standard Australian modes of service delivery.

In terms of my own research, I have focused on discrete communities in remote Australia utilising participant observation and primary data collection methods. But I have also looked at the national picture, deploying secondary data collected in official surveys and the five yearly census. These are vastly different populations with quite different levels of disadvantage and need. An emerging issue that policy makers struggle to comprehend is that even if social indicators for the national Indigenous population are to improve, social indicators for Indigenous populations in discrete communities may be in decline, as they are documented to be at present. Policy making and implementation is incapable of addressing this escalating issue of remote neglect, much of that neglect a result of inappropriate program design and implementation and shifts in funding allocations in the last two decades.

As this submission is primarily directed to the Productivity Commission, I should disclose previous engagements. In 2002 when the Director of the Centre for Aboriginal Economic Policy Research at ANU I provided some advice on the development of the Overcoming Indigenous Disadvantage reporting undertaken from 2003 to 2020. And in 2012 I was publicly critical of the Productivity Commission's *Indigenous Expenditure Report 2011* mainly

because of what I regarded as poor communications in the public sphere of what the estimates of expenditures mean and subsequent and enduring inaccurate media representations of the level of estimated expenditure by Australian governments on Indigenous citizens that continues today. In 2019, as noted above I provided an early submission on the Indigenous Evaluation Strategy. And in 2021 and 2022 I assisted the Productivity Commission in its study and report on Aboriginal and Torres Strait Islander Visual Arts and Crafts.

In this submission I look to raise some broadly based concerns about this review strategy alongside elements of the National Agreement, to make comment on some of the Draft Report's recommendations and to end with some constructive recommendations for the Productivity Commission (and the Joint Council) to consider.

I note that I am engaging with this important review process late. I was not aware of the earliest review paper published by the Productivity Commission in July 2022 and so missed subscribing to the review process and did not provide a submission before the release of the Draft Report. I have only engaged with this important process in the last week or so after brief discussions with the Productivity Commission. My focus is very much on the Draft Report released on 26 July 2023 although I can see that this report in turn is heavily influenced by serious consultations undertaken in the second half of 2022 and the thorough *Review Paper 3: What we have heard to date — first phase of engagement* released on 9 February 2023 that informs much of the Draft Report's overarching observations and recommendations.

The views expressed in this submission are mine alone and are not to be associated with any of the companies where I am a non-executive director.

The Productivity Commission's Draft Report

The Productivity Commission's Draft Report was released in July 2023 alongside two other events of significance.

The first was the latest update to the Closing the Gap Information Repository Dashboard on 15 June 2023 and then the release of the third Annual Data Compilation Report on 12 July 2023. Both these reports are comprehensive and provide detailed reporting on early progress in Closing the Gap mainly using 2021 Census data collected just a year after the signing of the National Agreement but lacking data useful for evaluation of several targets. So, alongside the Draft Report, one must simultaneously engage with the extraordinarily multilayered online Dashboard and the summary Annual Compilation Report to inform comprehensive interpretation of Draft Report findings.

The second has been the national focus and debate on a proposed addition to the Australian Constitution to embed an Indigenous Voice to the Australian parliament and executive arm of government. Comment on the Draft Report is due on 6 October 2023, just a week before polling on constitutional reform that is already underway closes. During the national debate between those for and against constitutional reform there has been much focus on the issue of perceived lack of progress in Closing the Gap (reducing Indigenous disadvantage). But there has been limited engagement with the detail of the National Agreement or

acknowledgment of its co-design with the Coalition of Peaks (now representing up to 800 organisations serving as many of 500,000 clients or 50% of the estimated Indigenous population according to information on its website). There has also been considerable misunderstanding and misinformation circulated about the estimated level of expenditure by governments on Indigenous people. The Productivity Commission recently released a report on 28 September 2023 seeking to clarify the estimates made some six years ago now in the *Indigenous Expenditure Report 2017* (estimating 2015–16 expenditures) and how they should be correctly interpreted.

The Productivity Commission has been required in its terms of reference to analysing progress on Closing the Gap against the four Priority Reform outcome areas and all the socioeconomic outcome areas and targets in the National Agreement and examine the factors affecting progress.

In the Draft Report the emphasis is on the Priority Reforms perhaps because the other reporting instruments noted above provide all available information on progress in meeting targets. It is also likely because the four Priority Reform Areas are seen as the central pillars of the National Agreement designed to fundamentally alter existing institutional arrangements to empower Indigenous Australians and their community-controlled organisations to better deliver services and so ensure the achievement of improved socioeconomic outcomes. The four areas are Priority Reform 1 – Formal partnerships and shared decision-making; Priority Reform 2 – Building the community-controlled sector; Priority Reform 3 – Transforming government organisations; and Priority Reform 4 – Shared access to data and information at a regional level. Unfortunately, in my view, in the National Agreement (at clause 17) these are referred to as outcomes (hence amenable to measurement) rather than as ‘principles’ to ensure better delivery of services.

Alongside these Priority Reforms there are 17 outcome areas with 19 targets identified in the National Agreement with two of these targets added since its signing in 2020. As noted earlier while all the targets, bar two, are defined in absolute terms at the national level, the Productivity Commission is also required in the National Agreement to report on outcomes for sub-populations (by state/territory and by remoteness), to estimate a projected track for each targets to predict if it will be met; and to calculate relative Indigenous outcomes in target areas against the non-Indigenous population.

To date just after three years and often with limited data from 2021, four targets are on track, ten are not on track, and for five there is insufficient data to make any definitive contemporary statement or prediction. In absolute terms of the ten that are not on track, only three are moving in a negative direction nationally. These outcomes after three years of the National Agreement are summarised in infographics and tables in various published reports.

In all this it is important to bear in mind that the carefully predicted statistical track is to meet the targets not to eliminate disparity between Indigenous and other Australians.

The main issue that is highlighted in the Draft Report is the lack of progress in implementing the Priority Reforms that are viewed in the National Agreement as key drivers of

socioeconomic outcomes and the difficulty in measuring progress to outcomes achievement in these areas.

This strikes me as unsurprising on at least two grounds.

If one goes to the Dashboard, the forms of output and outcome measures proposed for each Priority Reform seem unrelated to the target. I will not rehearse them all but just provide one proposed outcomes example from each.

- **Priority Reform 1** Formal partnerships and shared decision making: Key outcome indicator — Proportion of Aboriginal and Torres Strait Islander people reporting they are able to have a say in their community on issues important to them.
- **Priority Reform 2** Building the community-controlled sector: Key outcome indicator — Proportion of Aboriginal and Torres Strait Islander people reporting they are able to have a say in their community on issues important to them.
- **Priority Reform 3** Transforming government organisations: Key outcome indicator — Proportion of Aboriginal and Torres Strait Islander people reporting experiences of racism.
- **Priority Reform 4** Shared access to data at the regional level. Key output indicator as there is no outcome indicator: Number of comprehensive regional data profiles created.

There is clearly need for more consideration of the logical link between targets and outcomes.

Even if the links between the targets and outcomes were clearly established, they would be extraordinarily difficult to measure in any objective or rigorous manner that would be agreed by all parties to the National Agreement even if using a purpose-built survey instrument. This is certainly clear from a social sciences perspective.

Consequently, the latest Annual Compilation of Data Report July 2023 indicates that three years after the National Agreement was signed, progress on the development of measures is slow. The report identifies five phases for developing measurement approaches. Across the four Priority Reforms, phase 1 (agreement on approach) has been completed, phase two (agreement on measurement content and computation) is in progress, and consequently phases 3 to 5 (developing data collection instruments, collecting data and reporting data) have not started.

It is unclear just how negotiations over data collection to reflect such complex administrative arrangements (bar Priority Reform 4 that has a quantitative output measure) are being negotiated, overseen by the Joint Council on Closing the Gap. The Joint Council communiques issued after each of their twice-yearly meetings do not go into such detail.

In relation to these four Priority Reform Areas, the Draft Report provides details on key commitments made by parties to the National Agreement, agreed timing, current progress, issues and barriers to implementation and assessment. I will not rehearse in any detail the Draft Report's reporting on lack of progress, it identifies 18 key commitments each referring

to a clause in the National Agreement, a significant number of the agreed timeframes for action have already passed and there is no indication of when or if they will be implemented which raises questions about the value of the National Agreement.

The Draft Report's findings are also influenced by its consultations summarised in *Review Paper 3: What we have heard to date* and by 32 initial submissions. Its four key findings on the four Priority Reform areas are brutally frank:

- **On Priority Reform 1** Formal partnerships and shared decision making: The commitment to shared decision-making is rarely achieved in practice.
- **Priority Reform 2** Building the community-controlled sector: Government policy does not reflect the value of the community-controlled sector.
- **Priority Reform 3** Transforming government organisations: The transformation of government organisations has barely begun.
- **Priority Reform 4** Shared access to data at the regional level. Governments are not enabling Aboriginal and Torres Strait Islander-led data.

It is hard to know how to interpret such lack of progress and implementation. Is it that the tasks on hand are too difficult for the signatories to comply? Is there are reluctance to convert the evident goodwill in signing the National Agreement into reporting action and associated accountability? Is it because the National Agreement is not legally enforceable and there are no sanctions for non-compliance? Or is it just that the information required is not available and too difficult or expensive to collect?

There are substantive issues that are embedded in the Draft Report behind the above frank assessment that do warrant comment. Let me focus on just three.

The Draft Report notes that there is no clear explication of a policy logic either for each of the Priority Reforms or the relationship between the Priority Reforms as the foundations for the more effective delivery of socioeconomic outcomes. In other words, when and if metrics are developed for assessing Priority Reform outcomes in each area, it is unclear how they might individually or collectively be causally linked (or even correlated) with improved socioeconomic outcomes. This goes back to my earlier comment that the Priority Reforms should not have been labelled outcomes to be somehow measured during the life of the National Agreement or at its conclusion; they are principles agreed by all signatories to the National Agreement. It is unclear why none of the parties to the National Agreement or the Productivity Commission have raised this as an issue.

The 17 outcome areas and current 19 targets on the other hand are more amenable to statistical measurement of performance, although a number will be reliant on data from the five-yearly census in which case 2031 targets will only have one more measurement point (2026) before completion. What is more concerning is that the 19 targets each lacks an explicit policy logic. It is unclear why the targets differ and add to the earlier seven targets of COAG's NIRA (school attendance and early educational outcomes have disappeared). Indeed, at the national level some the targets are in conflict. For example, the meeting of targets 15A and 15B, more land (on track) and sea (not on track) rights, that will likely result in inverse impacts on targets 7 (youth engagement in employment, education, and training to

increase to 67 per cent by 2031 that is not on track) and 8 (increasing the proportion of adult employed to 62 per cent by 2031 that is currently on track). All the targets that are most amenable to statistical measurement, especially targets 1 to 9, look arbitrary and reflect I suspect what was regarded as realistic at the national level to avoid repeating NIRA's much publicised failure.

Such trade-offs reflect in some measure my earlier concerns in submission to the Indigenous Evaluation Strategy that highlighted trade-offs between the dominance of a paradigm of sameness in most statistical social indicators (and public and political discourse) and the aspiration of many Indigenous people to live differently. This is especially the case for remote living people who might enjoy native title rights and interests as special citizens (given that such rights and interests are not available to other Australians) that do not in themselves reduced their extremely high socioeconomic disadvantage.

It is surprising that the Productivity Commission has made no comments on this salient issue. It just generates the Dashboard as if targets are independent of each other. It reflects the unexplained decision to focus this review on four the Priority Reform 'outcome' areas (term of reference 1) rather than all the socioeconomic outcome areas (term of reference 2).

Much of the emphasis in the Priority Reforms understandably, given the Coalition of Peaks involvement in co-design, asserts the right of Indigenous Australians to engage with governments differently, to build a community-controlled sector for service delivery, to ensure government organisations are sensitive to cultural difference and so do not act in a discriminatory manner and for Indigenous aspirations at community and regional levels to be clearly documented with information generated at those levels reflecting local and regional needs and priorities. And yet almost all the socioeconomic indicators outlined in the National Agreement emphasise sameness and national outcomes not community or regional outcomes. There is an enduring tension here that is beginning to emerge and that can be demonstrated with the recent addition of Target 9B as permitted under the National Agreement.

The original target 9 (now 9A) aimed to increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88 per cent by 2031. This is a national target for the national Indigenous population.

The new target 9B agreed by the Joint Council in 2022 aims to ensure that by 2031, all Aboriginal and Torres Strait Islander households:

- i. within discrete Aboriginal or Torres Strait Islander communities receive essential services that meet or exceed the relevant jurisdictional standard
- ii. in or near to a town receive essential services that meet or exceed the same standard as applies generally within the town (including if the household might be classified for other purposes as a part of a discrete settlement such as a 'town camp' or 'town-based reserve').

While all other 18 targets are articulated at the national level, this one recent target very differently focuses on Indigenous households in discrete Aboriginal and Torres Strait Islander communities, even within white-majority urban centres like Alice Springs. This is also a target that is seeking total equality of outcomes as is appropriate for all Australian citizens irrespective of ethnicity. This is a case where people who live differently in discrete Indigenous communities should be treated the same. It can be contrasted with Target 15 where people who at least notionally are treated the same aspire to be treated differently as special citizens with native title rights and interests. (Coincidentally, data on this target is updated in real time by the National Native Title Tribunal as each registered claim is determined.)

The Draft Report refers at places to the issue of assessing needs and priorities at the community and regional level; and the need for the development of local Indigenous metrics to assess success. This reflects an abiding tension in the National Agreement to simultaneously demonstrate success in meeting the needs and priorities of the national Indigenous population, while at the same time meeting the needs and priorities at community and regional levels. It is difficult to know how this tension can be resolved unless targets are revised to reflect interstate, remoteness, and other variations (including land tenure target 15 and flourishing of Indigenous languages target 16) that are all reported.

The main strategy to capture community and regional needs and priorities is reflected in agreed action being undertaken under Priority Reform 4 to 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 information on the Closing the Gap outcome areas.

Six localities have been selected, presumably nominated by Indigenous members of the Joint Council representing state and territory interests, but the logic for their selection is unclear: two are large discrete Indigenous communities Maningrida and Doomadgee (of few of similar size and remoteness Australia-wide) and four are regions (with the East Kimberley also an Empowered Community region).

Such selection of a small number of sites highlights the urgent need for comprehensive information community-by-community as provided in the Community Housing and Infrastructure Needs Survey (CHINS) commissioned by the Aboriginal and Torres Strait Islander Commission (ATSIC) and last undertaken by the Australian Bureau of Statistics in 2006. Such needs analysis systematically informed ATSIC's Community Housing and Infrastructure Program dismantled in 2006.

The final issue that I want to highlight from the Draft Report that is linked to both needs and priorities and output and outcomes is expenditure. It seems self-evident that to gain any understanding of both service delivery and housing and infrastructure outcomes it is essential to quantify inputs, with how effectively these inputs are utilised being separate effectiveness of targeting and delivery issues.

The National Agreement at clause 113 required Government parties to review and identify current spending on Aboriginal and Torres Strait Islander programs and services to identify

reprioritisation opportunities to Aboriginal and Torres Strait Islander organisations, particularly to community-controlled organisations by July 2022—that is over a year ago.

The Draft Report notes that only NSW and the ACT have publicly released their expenditure reviews. It is mainly because of the absence of such up-to-date information that nationally significant debates about the level and composition of estimated expenditure on Indigenous people have needed to rely on the dated *Indigenous Expenditure Report 2017*. It is unfortunate that just as the National Agreement was being negotiated this reporting series that began in 2011 ended. What is clear is that having a clear understanding of the estimated division of expenditure between Indigenous-specific programs and mainstream programs and between Commonwealth and state and territory expenditures are essential elements in any assessment of how need is to be underwritten and how measures to reduce Indigenous disadvantage are being financially met. Of especial importance is the extra needs of Indigenous Australians due not just to historical legacy but also to current location of residence (remoteness) and the demographic composition of the population (youth dependency) as well as the extra costs of remote delivery of services and infrastructure.

The Draft Report's recommendations

While not privy to the negotiation of the National Agreement, I sense that it reflects in large measure a frustration articulated by the Coalition of Peaks at the absence of governments' accountability. Despite regular reporting over a decade to the Australian parliament that NIRA was failing to meet its modest national targets, there was no correcting response. And so, perhaps to appease this frustration the National Agreement has created an evaluation behemoth. This reflects in my view a conflation of evaluation with accountability. And the Productivity Commission with a long track record in this policy space extended back over 20 years now has been identified in the Agreement as the appropriate body to participate in what I have termed in the past 'evaluation fetishism'. This evaluation culture is escalating in part because the Agreement and the terms of reference for its review look not just to evaluate outcomes, but also to evaluate the processes embedded in the four Priority Reforms.

In December 2015, a past chairman of the Productivity Commission Peter Harris warned of the dangers of escalating evaluations. In the preface to the comprehensive *National Indigenous Reform Agreement Performance Assessment 2014–15* he stated: 'Our report advocates two main changes in approach — a much greater emphasis on policy evaluation (knowing more about what works and why is the key to designing policies that achieve positive outcomes for Aboriginal and Torres Strait Islander Australians) and rationalising the current extensive and overlapping reporting on Indigenous outcomes and disadvantage'.

Unfortunately, the parties to the National Agreement have not heeded this sound advice. And so, the Productivity Commission is required to produce detailed (and expensive) report after report carefully documenting the nation's failure to properly address Indigenous disadvantage. But it is not asked to address the first order issue: Is the National Agreement a sound basis for policy formation? And will valorising notions of statistical improvements at the national level for Indigenous populations as state-defined statistical subjects generate positive wellbeing outcomes for First Nations people in all their diversity?

I am concerned that some of the contradictions and tensions in the National Agreement will see it fail to achieve its important Priority Reforms and modest socioeconomic targets over its ten-year (initial) life. I recognise that a great deal of work has been invested in negotiating the National Agreement and its numerous actions at national and subnational levels with associated outputs and outcomes evaluations to be undertaken by both the Productivity Commission and an Aboriginal and Torres Strait Islander led review, with the latter a welcome prospect if it can capture the diversity of Indigenous circumstances. But it also has a downside as this latter review will be based on advice from the Coalition of Peaks, a key member on the Joint Council and a co-designer and signatory to the National Agreement.

The National Agreement needs to grapple with several foundational issues. One is that it is too complicated, and most signatories are unwilling or unable to meet their implementation and reporting commitments in a timely manner. The setting of national targets prior to receiving subnational, community and regional input on needs and priorities forecloses opportunity to respond even if these are eventually properly documented. As an element here the tensions and contradictions embedded in the now 19 targets need to be urgently addressed by the Joint Council. The Productivity Commission should be able to assist in such an exercise, as might other more independent players with a wider skill set in the social sciences and more grounded experience.

Reconciling the tensions between the need for sameness as Australian citizens and difference as special citizens is far from straightforward. Similarly, there are conceptual and delivery challenges in reconciling meeting national goals for the national Indigenous population and different goals for sub-national populations often informed by distinct norms and values that are different from those of mainstream Australians. I say this as someone who struggled to straddle these tensions in directing a university-based centre initially established in 1990 to make policy recommendations to the Australian government on eliminating socioeconomic inequality between Indigenous and other Australians while respecting and accommodating the aspirations of those who seek to live differently.

The Draft Report makes six draft recommendations for possible change focusing on Priority Reforms processes. I will comment briefly on four.

No doubt conscious of the challenges of reviewing the National Agreement, Draft recommendation 1 proposes the establishment of an organisation to lead data development under the Agreement. This is an important proposal, although its proposed tasks seem to extend well beyond data development to also develop: a conceptual logic underpinning the performance monitoring approach; identifying the most critical indicators of change under the Agreement and prioritising them for data development, following the conceptual logic; determining 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; and coordinating and developing solutions for indicators without data with data custodians and Aboriginal and Torres Strait Islander organisations and communities. In effect this recommendation questions if the National Agreement is fit for purpose and so looks to retrospectively reconfigure the Agreement without saying so explicitly. Establishing such an organisation will be politically fraught in the contested space of Indigenous policy

making. Perhaps without saying so explicitly, the Draft Report envisions that the bureaucratic arm of the Voice (if established) will fulfil such a role. At once this recommendation recognises that the Productivity Commission and the Joint Council might not be the appropriate bodies to manage evaluation, while still not questioning and perhaps acquiescing to the impossible maze of evaluations embedded in the National Agreement.

Draft recommendation 2 proposes designating a senior leader or leadership group to drive change in each jurisdiction. This proposal is for a senior leader or a leadership group with a wide span of influence to be tasked with promoting and embedding changes to public sector systems and culture. I just want to highlight for the Productivity Commission an earlier attempt at the Commonwealth level with the Secretaries Group and Priority Regions to instigate such change nearly 20 years ago that has been analysed by Will Sanders, an academic, and Bill Gray, a retired senior bureaucrat in 2006.² There is no evidence that such an approach was successful, perhaps because senior bureaucrats are more accountable to politicians than to the perspectives of Indigenous stakeholders. It also assumes that designated leaders have appropriate cultural competencies and the drive to institute such challenging cultural transformations.

Draft recommendation 5 proposes the inclusion of a statement on Closing the Gap in government agencies' annual reports. Specifically, it proposes that the Australian, state and territory governments each have legislation or rules that require government agencies to prepare annual reports containing a statement in annual reports on the substantive activities undertaken to implement the National Agreement's Priority Reforms and the demonstrated outcomes of those activities. This recommendation does not seem to acknowledge the difficulties in evaluating the principles embedded in the Priority Reforms as if they are quantifiable outcomes as outlined earlier. Nor does it grapple with the current absence of compliance with reporting requirements; additional reporting requirements will just exacerbate current reporting delays and failures.

Draft recommendation 6 proposes that all the documents developed under the National Agreement be published to improve transparency and make it easier to assess progress. It is important that the Australian, state and territory governments should make public all the outputs that are developed under the National Agreement. But this recommendation again overlooks the current issue of non-compliance. And it overlooks the comment above that more and more reporting does not readily translate to more and more accountability.

Concluding observations and recommendations

The National Agreement was completed in 2020 almost two years before a change in Australian government. One interpretation of the National Agreement is that it is a very progressive development because it was co-designed with input from the Coalition of Peaks, a significant move towards self-determination and co-governance. Subsequently, the Coalition of Peaks were signatories to the Agreement and are now majority members of the Joint Council that guides its implementation. Another interpretation is that the Morrison-led Australian government was a willing participant in this process because it accorded

² Sanders, W & Gray, W 2006. Views from the top: Secretaries perspectives on the new administrative arrangements in Indigenous Affairs, Discussion Paper 286, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.

favourably with its clear strategy of devolving responsibility for Indigenous affairs administration and funding to the states and territories. Such evidence of an attempt to shift responsibility was very clear in the last two annual reports on Closing the Gap under NIRA when targets were reported at the national as well as state and territory levels, an attempt to share the responsibility for failure to meet targets. It is also evident in historic information showing a growth in the proportion of estimated expenditures on Indigenous Australians by states and territories vis-à-vis the Commonwealth; and a decline in Indigenous-specific program support mainly by the Commonwealth versus a growth in mainstream funding to the states and territories.

A change of Australian government in May 2022 has seen some significant policy shifts, for example in climate, energy and environmental policies and commitments. But the only substantive change in Indigenous policy has been the new government's unswerving commitment to embed a Voice to the Australian parliament and executive arm of government in the Constitution. It is paradoxical that as the government seeks to amend the Constitution with a new s 129, a trend to allow existing powers under s 52 (xxvi) overwhelmingly conferred in the 1967 Referendum to decline has continued. In summary, the Commonwealth in the last decade has vacated its leadership role in Indigenous affairs; and the new government has not reversed this trend. This overlooks the historical reasons for conferring power with the Commonwealth; and despite the existence of the National Agreement, it seems that all parties are reluctant to fully implement its ambitious goals.

I end my submission with three specific recommendations to the Productivity Commission that can hopefully be conveyed to the Commonwealth government. My aim is to recommend practical steps to address Indigenous disadvantage especially where it is most egregious rather than the National Agreement's targets.

First, there is an urgent need to re-assess the principal aim of the National Agreement, is it to address disadvantage or to eliminate disparities as suggested by the term 'Closing the Gap'. And how robust are the targets in the National Agreement and the capacity of standard social indicators and other quantitative measures to assess progress. The recent history of NIRA's Closing the Gap goals 2008–2018 indicates that even modest absolute targets are difficult to achieve. The current targets are problematic, arbitrary, some contradictory and they lack holism and an overall policy logic. Even if these targets are met, most represent measures of emerging sameness, not of difference where it is desired or sought or indeed inevitable in places like Maningrida and Doomadgee where people continue to live in remote discrete communities. It is encouraging to see the Joint Council responsive to immediate needs as demonstrated in a willingness to add targets to reflect newly identified priorities as with Target 9A. In so far as the Draft Report's recommendation 1 seeks a re-evaluation of the National Agreement, the Commonwealth should take a lead role in such a task with input from the grounded and practical experience of the Coalition of Peaks.

Second, there is a need to reinstate some version of the Community Housing and Infrastructure Needs Survey discontinued in 2006 to provide some objective assessment of Indigenous needs. Indeed, such a survey could extend beyond housing and infrastructure to undertake a comprehensive inquiry into the extent of shortfalls and to quantify the cost of

meeting such shortfalls to appropriate time limits bearing in mind that delay just perpetuates disadvantage inter-generationally.³ It is possible that the National Aboriginal and Torres Strait Islander Social Survey that seems to have declined as a priority for the ABS in the post-ATSIC era could be repurposed to rigorously quantify using robust survey methods the extent of current needs and backlogs that will need to be met if disadvantaged is to be addressed.

Third, there is an urgent need to reinstate some version of the Indigenous Expenditure Review and its estimations of the distinctions between Commonwealth and state and territory expenditures, mainstream and Indigenous-specific expenditures, expenditures by state and territories, and the basis for enhanced expenditures including higher Indigenous needs and higher costs of service delivery. In addition, it would be useful to distinguish between negative (incarceration) and positive (education) funding and between invited (language programs) and imposed (income management) expenditures at national and sub-national levels. It is acknowledged that there is frequent reference in the National Agreement and in the Draft Report on obligations on all government parties to provide expenditure reports, but this is only happening in NSW and ACT to date. As already noted, revitalised Commonwealth leadership in this area is required possibly with sanctions imposed on National Agreement partners who will not comply.

It is instructive in this regard that specialist staff focusing on Indigenous affairs in the Commonwealth Parliamentary Library have recently provided information on Indigenous-specific measures across portfolios in the Budget.⁴ Their analysis shows that less than 1 per cent of Commonwealth budget outlays specifically target programs for Indigenous Australians and that this amount has declined as a proportion of budget, in real terms and per capital over the past decade since 2012/13. In the current year it is estimated at \$5.3 billion, 0.78 per cent of the estimated Commonwealth Budget expenditure in 2023/24. Such information has been absent in recent media coverage about Indigenous expenditure.

This submission is completed a week out from the date when Australia decides on the Referendum. Irrespective of the outcome, hopefully the finalisation of the review of the National Agreement by year's end might refocus the Australian government's policy attention to the issues that have dominated recent national debate: how to address Indigenous disadvantage in all its diversity and whether the National Agreement constitutes the appropriate set of arrangements for this urgent task.

³ One model for such an exercise might be the US Commission on Civil Rights report *Broken Promises: Continuing Federal Funding Shortfalls for Native Americans* completed in 2018 and available at <https://www.usccr.gov/files/pubs/2018/12-20-Broken-Promises.pdf>

⁴ *Indigenous Affairs Budget Resources* by Sally McNicol and James Hughton available at https://www.aph.gov.au/About_Parliament/Parliamentary_departments/Parliamentary_Library/Budget/reviews/2023-24/IndigenousAffairs