

**Response to the Productivity Commission's Draft Report
on the
Review of the National Agreement on Closing the Gap**

October 2023

1. Introduction

The National Health Leadership Forum (NHLF) welcomes the opportunity to respond to the Productivity Commission's Draft Report on the Review of the National Agreement on Closing the Gap.

The NHLF is a collective partnership of twelve national organisations who represent a united voice on Aboriginal and Torres Strait Islander health and wellbeing. The NHLF has expertise in health policy (including healing and mental health, and social and emotional wellbeing), program development and delivery, professional practice, workforce and research.

The NHLF was central to the establishment of the community-led Close the Gap Campaign and continues to lead the Campaign as the senior collective of Aboriginal and Torres Strait Islander health leadership.

The NHLF provides advice and direction to governments on the development and implementation of policy and program objectives that contribute to improved and equitable health and life outcomes, and the cultural well-being of Aboriginal and Torres Strait Islander people. Our vision is for the Australian health system to be free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable.

2. General Comments

The NHLF acknowledges and commends the Productivity Commission's effort in developing the Draft Report on the Review of the National Agreement on Closing the Gap (National Agreement). The Draft Report is an honest assessment of the progress of reform within Indigenous Affairs. It is an extensive document and clearly outlines what needs to be addressed in order to fully achieve outcomes across the Priority Reform areas and the targets.

The NHLF's response to the draft report is underpinned by support for the National Agreement's Priority Reforms. As stated in previous submissions to Productivity Commission, the National Agreement provides a way forward in addressing inequities experienced by Aboriginal and Torres Strait Islander peoples. But as outlined by the Productivity Commission, the National Agreement requires a significantly stronger commitment, effort, and depth of understanding by governments to fulfil its objectives. The four Priority Reforms are fundamental prerequisites for governments and their agencies to adopt innovative approaches to policy and program design, implementation, and evaluation processes that affect the lives of Aboriginal and Torres Strait Islander peoples.

The NHLF believes that lack of recognition in the Constitution for Aboriginal and Torres Strait Islander people as the First Peoples of this country, contributes to Australian laws and their application continuing to adversely discriminate based on ‘race.’ In practice, the Constitution and Australian laws have not enabled the equal enjoyment and participation of Aboriginal and Torres Strait Islander people in important social, political, and economic aspects of life. Despite past efforts of governments over many decades Aboriginal and Torres Strait Islander peoples’ participation in meaningful decision-making processes on policies and legislation that affect their lives has not been adequate to avert the health gaps. This is the result of colonisation and dispossession causing a harmful and enduring legacy of disadvantage and poor health outcomes.

If governments act on their agreed responsibilities, the National Agreement will be the key mechanism for Aboriginal and Torres Strait Islander community-controlled organisations and government to work in formalised partnership to close the gap in life outcomes between Aboriginal and Torres Strait Islander peoples and non-Indigenous Australians. The National Agreement includes an articulation of the approach and reforms required within our federated institutional governance architecture to change the current ways that government and their agencies do government business and to make and enact policies impacting Aboriginal and Torres Strait Islander peoples. Respecting and privileging Aboriginal and Torres Strait Islander peoples’ culture, knowledges, ideas, and capabilities is essential to realise the aims and intended outcomes of all four Priority Reforms. Similarly, the work of non-government and private sector entities, directly or indirectly impacting Aboriginal and Torres Strait Islander peoples, is relevant to achieving the Priority Reform outcomes.

The Priority Reforms are about governments embedding the processes and practices needed to move from passive, deficit-based models to a more sophisticated, sustainable, strengths-based, enabling models of community engagement with Aboriginal and Torres Strait Islander peoples founded upon:

1. support for Aboriginal and Torres Strait Islander leadership and organisations
2. the establishment of genuine, equitable partnerships
3. Aboriginal and Torres Strait Islander people having ownership of the actions needed to achieve their aspirations and
4. the delivery of long-term positive impact.

The NHLF supports the six recommendations proposed in the Draft Report. Additionally, in response to the issues outlined in the Draft Report, as well as the no vote outcome to the constitutional referendum, we also **recommend** the Final Report on the Review of the National Agreement on Closing the Gap includes a recommendation to establish the **independent mechanism as per clause 67**, which is already provided for and agreed to in the National Agreement.

The Draft Report (page 5) states the National Agreement provides for an independent mechanism, yet “[e]ven 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.” The NHLF supports this assessment and reiterates the need for an additional recommendation to expedite the work for an independent mechanism to drive accountability.

The NHLF submission responds to the following information requests (with particular focus on no. 9) that require most attention and action to expedite reforms across government: -

- 1: Effectiveness of Policy Partnerships
- 2: Shifting service delivery to Aboriginal community-controlled organisations (ACCOs).
- 3: Transformation of government organisations
- 7: Performance reporting tools – dashboard and annual data compilation report, and 8 Quality of implementation plans and annual report. Combined response.
- 9: Independent accountability mechanism
- 10: Senior leader or leadership group to drive change in the public sector
- 11: Sector-specific accountability mechanism

This submission will not response to the information requests 4, 5, or 6 as the Productivity Commission has undertaken additional consultations with experts regarding Indigenous data sovereignty.

3. Priority Reforms

3.1. Information Request 1: Effectiveness of Policy Partnerships

As noted in the Draft Report (page 10) the National Agreement lacks “a conceptual logic underpinning the performance monitoring approach”, and as a result we are seeing a perpetuation by jurisdictions, and their agencies, focussing on the administration of targets not outcomes. The result being a continued disconnect and siloing effect (Draft Report p 21) within policy responses, and within the structures of federal financial relations, budgetary processes, and grant processes. An independent accountability mechanism could address the misalignment between the National Agreement and functions of government.

From a health perspective, there is a need to have a partnership with all governments to monitor key national health policies to ensure all stakeholders are responsible for their actions and inactions. The National Aboriginal and Torres Strait Islander Health Plan 2021-2031 (National Health Plan) and the National Aboriginal and Torres Strait Islander Health Workforce Strategic Framework 2021-2031 (National Health Workforce Plan) were respectively launched in December 2021 and March 2022. Both plans provide a way forward to address the health disparities between non-Indigenous Australians and First Nations Australians. The Health Plan was launched with an

undertaking by the Australian Government to develop an accountability framework. The National Health Workforce Plan was launched with an undertaking by all governments to develop a monitoring and accountability framework. Yet in both cases, the undertaking has not come to fruition. This is despite the need for accountability for both plans being reiterated by the community stakeholders attending the Health Ministers' Aboriginal and Torres Strait Islander Health Roundtable in October 2022.

The NHLF is concerned that the development of the monitoring and accountability frameworks have not progressed. The Australian Government Department of Health and Aged Care has recently indicated their intention to establish a First Nations Health Governance Group to take up this work. However, despite some undertaking by jurisdictions at the 2022 Aboriginal and Torres Strait Islander Health Roundtable, there remains a lack of willingness to engage with external stakeholders regarding monitoring and accountability for these key national health policies. For health outcomes to change, there must be shared accountability and responsibility in partnership arrangements to negate the practice whereby recommendations are frequently made but often shelved by government.

3.2. Information Request 2: Shifting service delivery to Aboriginal community-controlled organisations (ACCOs).

The NHLF welcomes the transfer of responsibility of health programs to Aboriginal and Torres Strait Islander community-controlled organisations (ACCOs) where they are best placed to do so. This transfer of responsibility demonstrates a positive shift in government thinking about best practice service delivery for Aboriginal peoples. However, we are concerned that the 'lifting and shifting' of services to ACCOs runs the risk of history repeating itself. It is essential that any transferal of services to ACCOs must, in all cases, include the appropriate transferal of funding and resources to support service success. The shifting of service delivery to ACCO's must not reduce governments' accountabilities. For example, the National Health Workforce Plan includes Aboriginal community-controlled organisations allocated responsibility as a lead or partner for activities, but were not given additional financial resources nor support, and yet are at fault for not making progress. The role of government in reforms and policy partnerships is to help create the conditions necessary for ACCOs to succeed/thrive in their roles instead of creating roadblocks and hampering their growth and development.

Additionally, it is often the case that funding arrangements such as the provision of recurrent core funding provided to ACCOs excludes CPI increases to account for inflationary pressures. This is particularly the case in high-inflation environments, as we are currently experiencing, which

compounds the fact that this funding already does not cover the full cost of providing services/programs. This leaves ACCOs in a tenuous position where they are required to find alternative sources of funding to ensure the continued delivery of services/programs at the scale and standard required.

Whilst it is important that, where there is an ACCO that can provide a service they should be first to receive funding (rather than a mainstream non-Indigenous organisation), it is also important that the mainstream service system is held to account in delivering culturally safe services. There is an urgent need for a mechanism to ensure that mainstream services in receipt of government funding are adhering to the principles of the National Agreement. An independent accountability authority for the National Agreement would provide some security around ensuring answerability of both mainstream services and government agencies.

3.3. Information Request 3: Transformation of government organisations

Noting that this information request is directed at government organisations, the NHLF would like nonetheless to make the following comment. The NHLF does not believe government organisations understand the expectations of the Priority Reforms. There are likely to be several factors that inhibit change within agencies such as a risk-averse institutional culture when it comes to challenging accepted practise and established norms. Its institutions are inclined to be opaque rather than transparent, and act to control decision-making to favour political preferences. Institutions are reluctant to genuinely empower external stakeholders in decision making despite their knowledge and expertise. The culture of Australia's public sector must change to one that respects the insights and expertise of the Aboriginal and Torres Strait Islander non-government sector who know what is happening on the ground. They are a key resource for ensuring best policy outcomes. For transformational change to occur within agencies, the process needs to be supported with resources and in time; without which there will be no change in behaviour or practice.

Successful change also requires a less risk-averse culture that is more trusting of ACCOs. A trusting relationship takes time and willingness to negotiate and compromise. Thus, parts of any government department expected to develop and maintain shared-power relations with ACCOs, must have the delegation for the appropriate negotiations.

The transformational change sought from governments and their respective agencies is to change current internal policies and procedures to align and adhere to the principle of 'nothing about us without us.' This means that bureaucracies and the community create a working environment to foster shared understanding of the problems, and a joint approach to solving them. To create an enduring commitment and understanding to work together to form consensus, power must be shared between all parties, and the voices of Aboriginal and Torres Strait Islander parties are

privileged hold equal weight. The key for the National Agreement outcomes to be successful is to align actions against national policies/strategies, while ensuring programs and services are delivered at a local level through a cultural lens.

3.4. Combined response for Information requests 7: Performance reporting tools – dashboard and annual data compilation report and 8: Quality of implementation plans and annual report.

The National Agreement requires 10 (all jurisdictions plus coalition of peaks) implementation plans and annual reports, which are not linked and therefore hinder coordinated effort to achieve the objectives. The separation by jurisdiction hinders openness and public understanding of what the agreement is trying to achieve. The annual reporting process concentrates on individual funded activities, including the inputs and outputs from grant funding, rather than providing an overall narrative around what jurisdictions are doing to Close the Gap.

As the Draft Report (p20) notes the lack of an overall conceptual logic for the National Agreement. Thus, each Implementation Plan has created a piecemeal approach for each target and their assigned funding. It appears the implementation plans, and resulting annual reports, have focussed on collating all expenditure even loosely aligned to each target without a linking narrative around the social determinants of health. An independent oversight body would be in a better position to address these deficiencies.

The dashboard and the annual data compilation report (ADCR) appears primarily intended for the use of governments rather than for communities or the public, these are not user-friendly tools. Fact sheets or information sheets about programs and outcomes would be beneficial additions to information sharing and public and/or community access, rather than just a focus on target outcomes. There needs to be greater accountability, which could be addressed by including information from each government organisation/department stating what they are doing to support the reform priorities and include that in the annual data compilation report.

The NHLF endorses the Draft Report (page 69) finding that current accountability mechanisms lack ‘bite.’ Current implementation plans and annual reports contradict the Priority Reforms by failing to uphold governments’ commitment to fundamentally changing systems and structures for First Nations peoples. The impact from a lack of genuine accountability is compounded by the continuation of the siloing effect within many Closing the Gap implementation plans and reports. Current implementation plans and annual reporting processes do not provide an overall narrative

around what, why and how. The focus is on individual funded activities and targets, including the inputs and outputs from grant funding rather than providing an overall narrative on the aim and outcomes sought from the National Agreement. Overall, the implementation plans need to be overhauled. The reporting process should include a requirement to explain and outline how funded programs support the reforms and what tangible changes were made.

One important improvement would be use of factsheets to provide stronger accountability on the actions of all jurisdictions. The aim of the factsheets would be to outline which jurisdictions have made the greatest and least effort on a year-on-year basis or over a longer period, and which indicators/supporting indicators have not been developed, etc. The factsheets could also cover each socioeconomic outcome area, by jurisdiction, which include key initiatives and whether funding to each initiative has increased or decreased in the most recent data year. If governments truly embraced change and moved away from the current budgetary practices and constraints, the factsheets could be the vehicle for transparency and accountability of public expenditure on programs over a longer period. Additionally, the Aboriginal and Torres Strait Islander Health Performance Framework (ATSIHPF) is not as well-known publicly and can be confusing to navigate, it might be worthwhile for the data from the ATSIHPF to be replicated in the CTG dashboard to improve accessibility and convenience for community data users. However, without an overhaul of the existing reporting arrangements, introducing factsheets would be pointless.

The NHLF endorses the Close the Gap Alliance submission, which provides a substantial response to this information request, and information request 9, detailing the elements required to improve the quality of implementation plans and annual reporting. This submission also highlights the important role of evaluation in the development of policy and implementation plan, and the monitoring of progress and outcomes. As the Close the Gap Alliance states in their submission the

“... evaluation stage of policy life cycles is a critical point at which policymakers can listen to the impacts and meaningfully engage with the real experiences of well-intended policies. Genuinely designed implementation plans will necessitate action and intervention from regular evaluation and measurement. Government has not yet achieved this status of implementation plan and reporting for Closing the Gap.”

3.5. Information Request 9: Independent accountability mechanism

“... 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.” (p21)

The NHLF members and their own networks have seen how government agencies implement their own discretionary versions of partnerships and shared decision-making, which perpetuates the practice of consultation with Aboriginal and Torres Strait Islander peoples on pre-determined solution/s, rather than collaborating on the problem and co-designing the solution. Consequently, the NHLF supports the establishment of an independent body, with federal, state and territory government involvement, which minimises agency discretion in interpretation of the Priority Reforms and the measurements of the effects of their actions on each priority reform and target outcome area.

As discussed in Draft Report (page 73) an independent body must have a legislated basis (similarly to the GST distribution arrangements) to prevent and ensure future Australian Governments do not dismantle the body without state, territory, and external stakeholder agreement. The governance structure must include government and non-government sectors.

The body must include Senate oversight and reporting to all governments and parliaments; have clear deliverables with priorities and agreed resources. The role for this independent authority would be twofold, to oversee:

1. priority reform 3 Priority Reform Three – Transforming Government Organisations
2. the National Agreements implementation plans and remaining Priority Reforms areas.

In the **first role**, the independent body would oversee the internal tangible actions in government agencies/departments to meet the Priority Reforms. This could take the form of change management plans as an internal method to change focus and workings in each department. This process would then feed into performance review and accountability by the independent body.

In the **second role** the independent body must have the authority to assess, review and make recommendations regarding implementation and performance. The body should also be able to endorse and/or advise on the implementation strategies – their practicality, appropriateness and feasibility, timelines, and measures of success/outcomes.

Overall, the independent body must be able to

- endorse and/or advise on governments' implementation strategies – their practicality, appropriateness and feasibility, timelines, and measures of success/outcomes.
- monitor public services, NGO sector and community-controlled sectors on their obligations, responsibilities, capacity and performance.
- monitor the performance of agencies, their actions and outcomes, including requesting information and updates at any given time.

All key portfolios that directly impact on Aboriginal and Torres Strait Islander wellbeing – through the implementation of the Priority Reforms and the pursuit of the socioeconomic outcome area targets – must be within the remit of the Body.

With regards to governments' portfolio agencies, accountability should include the following:

- Executives must attend accountability sessions face-to-face in parliamentary forums.
- There must be clear consequences for agency/department heads in the non-performance of their obligations under the National Agreement to Closing the Gap.
- Legislative change to ensure agencies and their senior executive are held to account for their agency's practices and performance.
- Mandatory Reporting in all annual reports.

The proposed independent mechanism must have appropriate authority to ensure agencies are delivering on the National Agreement and to drive transformational change across the Australian Public Service and state and territory public sectors.

3.6. Information request 10 Senior leader or leadership group to drive change in the public sector.

Racism is an ongoing and pervasive experience in Australian politics and society. The referendum 'debate' highlighted more than ever the underpinning of racism in Australian society. However, Aboriginal and Torres Strait Islander peoples' experiences of racism are unique, stemming from historical and contemporary forms of colonisation, dispossession, and assimilation.

There would need to be more than one leader in each public service to model the behavioural and attitudinal change required to foster a culturally safe environment for those that work within public services and for those on the receiving end of legislation, policy, programs, and services. Culturally safe environments are necessary if we are to see government agencies embracing the Priority Reforms and what they are aiming to achieve.

Whilst the NHLF supports draft recommendation 2 (Designating a senior leader or leadership group to drive jurisdiction-wide change) the NHLF is of the view that this leadership and performance must be embedded into the respective jurisdictional public service legislation to hold the leadership to account for their actions. There must be accountabilities for failure, particularly wilful disregard of obligations and responsibilities.

3.7. Information Request 11: Sector-specific accountability mechanism

As raised in point 3.6, racism has profound impact on communities as well as individuals. The work of sector regulators, complaints commissions and ombudsmen etc. is on an individual level rather than a whole-of-organisation bases. These sector responses, work on a deficit approach, tending to the personal and single issues rather than influence organisational behavioural nor are they about improving knowledge about the intersection between organisational culture and the cultural determinants of health. Nevertheless, they remain an important means for accountability and provide agency to individuals and investigation to malpractice.

4. Concluding Comments

Overall, the aspirations of the National Agreement on Closing the Gap are essential, and those who led its development and entered into the agreement should be commended. But the structures around the agreement prevent the aspirations succeeding. The ultimate outcome sought from the Priority Reforms is to change the way governments do their business. This means bureaucrats must take a step back to allow communities to identify the challenges they are facing, and the solutions needed and must then partner with Aboriginal and Torres Strait Islander organisations and communities to implement the necessary work. The Priority Reforms set the pre-conditions to improving socio-economic conditions and driving generational change for First Nations peoples across Australia.

The NHLF is of the view that government must be held more accountable towards the National Agreement and whether they are “taking on a new approach to address systemic, daily racism, and promote cultural safety and transfer power and resources to communities.” This is a key tenet of

the National Agreement's approach towards closing the gap - all four Priority Reforms require meaningful change management, including: internal cultural safety assessments and response plans. Genuine partnerships and shared decision-making require the bureaucracy to step back from their ways of knowing, being and doing, and work with community to develop a shared approach that includes communities' own ways of delivering services.

A post referendum environment has increased the politicking around Indigenous affairs for the benefit of politicians' own self-interest, and political parties' quest for power, to the detriment of Aboriginal and Torres Strait Islander peoples. The no vote did not necessarily or automatically mean the public gave politicians, political parties, or governments permission to walk back from agreements and agreed actions. This is a dangerous interpretation that will only cause harm to Aboriginal and Torres Strait Islander peoples and communities.

Consequently, the NHLF reiterates its support recommendations that will improve transparency, accountability, and performance across our public services and thereby improve implementation of the National Agreement. More importantly, though, these recommendations will contribute to a fundamental change within our public sectors, by ensuring that cultural safety becomes the norm so that Aboriginal and Torres Strait Islander peoples experience high quality, culturally safe public services at all levels and in all spaces. These recommendations must not be watered down.

Finally, the NHLF membership are part of the Indigenous Leadership Group for the community-led Close the Gap Campaign, and therefore endorse and support the submission made by the Close the Gap Campaign Alliance.