

NSW Coalition of Aboriginal Peak Organisations (NSW CAPO)



NSW Coalition of Aboriginal Peaks (NSW CAPO) represents the interests of Aboriginal Community Controlled Organisations and Aboriginal Peoples of NSW. We provide a strong, independent and coordinated voice to address issues affecting Aboriginal Communities including of the social determinants of health and well-being.

NSW CAPO was founded on the idea of the strength of collective action and power in a coordinated strength-based approach that proposes considered solutions to issues identified. Part of CAPOs strength is the commitment to advocate beyond the respective sector-based interests of each organisation.

NSW CAPO member organisations are self-determining non-government Aboriginal peak bodies with boards that are elected by Aboriginal communities and/or Aboriginal organisations. CAPO member organisations are accountable to their respective memberships.

Our member organisations are advocates for Aboriginal Peoples throughout NSW.

NSW CAPO currently comprises:

- AbSec (NSW Child, Family and Community Peak Aboriginal Corporation)
- Link-up NSW (Link Up (NSW) Aboriginal Corporation)
- AHMRC of NSW (Aboriginal Health and Medical Research Council of NSW)
- ALS NSW/ACT (Aboriginal Legal Service NSW/ACT)
- NSWALC (NSW Aboriginal land Council)
- NSW AECG (NSW Aboriginal Education Consultative Group Inc.)
- FPDN (First Peoples Disability Network Australia)
- BLAQ (BLAQ – Aboriginal Corporation)
- ACHAA (Aboriginal Culture Heritage and Arts Association)

NSW CAPO uses its collective voice to advocate in the interests of Aboriginal and Torres Strait Islander in NSW focused on strength based community led solutions working constructively in partnership with NSW Government on Closing the Gap.

The NSW Closing the Gap Partnership is often acknowledged as being further advanced than partnerships in other jurisdictions. Acknowledging the Productivity Commission draft report

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provides analysis of progress across Australia with draft recommendations on the many areas that need collective improvement it is worth noting there is a number of positive examples of progress made in NSW arising from the work of the NSW Partnership which should be highlighted.

NSW CAPO notes that individual Peak Organisation members of NSW CAPO have made submissions to the Productivity Commission review responding to information requests as they relate to their sectors. NSW CAPO highlights and supports these submissions. The NSW CAPO Secretariat has compiled this submission informed by the experiences and observations across the CAPO membership and referencing inputs captured from Aboriginal communities via community engagement activities in recent years.

Leadership

Noting the information request regarding a senior leader and senior leadership group, it has been apparent that a central issue affecting progress on Closing the Gap is the need for leadership at the highest levels of government to support and drive transformation within governments. A significant barrier to progress on Closing the Gap has been the disconnect between commitments made by elected governments in signing the national agreement and the actions at departmental and agency level. Closing the Gap needs to be a central whole-of-government transformation agenda, it needs to be elevated and empowered with the portfolio and program mandate to drive whole-of-government change.

Resourcing

Noting the Information Request regarding shifting service delivery to community controlled organisations it is also important to touch on resourcing the partnership. Under the national agreement governments commit to resourcing the partnership. While some funding and resourcing has been provided to NSW CAPO, there needs to be further consideration given to what appropriate resourcing levels for Closing the Gap looks like across the board. The resourcing provided to participate in Partnerships activities relating to the governance arrangements are manifestly insufficient to also cover the work required to pursue the Closing the Gap Priority Reforms (PRs) and Socio-economic Outcomes (SEOs) more broadly.

The work required to progress work towards the PRs and SEOs meaningfully places a significant burden on the limited resources of the Peaks. There is a significant imbalance between government departments and agencies and Peaks. This impact of this is felt more greatly in the sectors which have larger number of SEOs. NSW CAPO is faced with the expectation or belief that the modest partnership resourcing for participation in the Partnership is sufficient to contend with broad portfolio of work covered by large central agencies. The imbalance is compounded when central agencies are able to resource

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Aboriginal outcomes branches and/or dedicated Closing the Gap teams larger than the resource that sits with respective Peaks.

Unlike for-profit corporations and large non-Aboriginal Non-Government Organizations (NGOs), Aboriginal Community Controlled Peaks and Aboriginal Community Controlled Organisations generally run lean organizations and tend to have flat organisational structures and without 'extra capacity' factored into operations. Peaks and ACCOs remain strongly committed to progressing work on Closing the Gap and will continue to spread resources, however this is not a sustainable approach. Therefore as well as considering transferring service delivery to ACCOs there is a need to rethink the adequacy of resourcing of the partnership. There is a need for resourcing arrangements to consider the volume of work that is associated with each of the Socio-economic Outcome areas. Effectively 'resourcing the partnership' needs to consider resourcing for Secretariat functions to support participation in Governance arrangements and resourcing for the work associated with progressing work at agency level including proportionality relating to the breadth of work and the associated size of government departments.

Effectiveness of policy partnerships

NSW CAPO Secretariat acknowledges that the ALS (NSW/ACT) and NATSILS may have provided responses to the specifics relating to the Justice Policy Partnership.

NSW CAPO does however want to note issues with the current governance arrangements of Policy Partnerships. NSW CAPO has found it challenging as a Jurisdictional Peak to have limited visibility of deliberations of the Policy Partnerships. The governance arrangements provide for a representative from Jurisdictional Governments and Representatives from the Coalition of Peaks however this doesn't always translate to an open flow of information from Policy Partnerships to Jurisdictional Peaks. Up to this point visibility of the work of Policy Partnerships is via updates to formal meetings. Where CAPO has made enquiries and requested updates in the past the governance arrangements have seemingly prevented sharing of information and updates outside of the formal processes.

The Governance arrangements may need strengthening to address potential disconnects between deliberations in National Policy Partnerships and activities occurring at

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Jurisdictional level. It has been shared with NSW CAPO during informal conversations that some of the positions being proposed in national Policy Partnership meetings might face blockages at the Jurisdictional level. A potential solution is the exploring Jurisdictional level Policy Partnerships, NSW CAPO has started to float this as an option for NSW to address a number of issues including progressing work and seeking opportunities for alignment of activities.

Considering the issues raised above it is challenging to provide commentary on how Policy Partnerships build accountability into their structure and governance, except to say that clarity on expectations and accountability for policy partnerships is needed and essential for the policy partnerships to address change.

In relation to the question of whether policy partnerships are the right mechanism to address change across the sectors, it may be too early to be able to fully and properly assess this. NSW CAPO feels based on challenges mentioned above that there could be enhancements to increase the effectiveness of Policy Partnerships. NSW CAPO has suggested the need for an extension of the Policy Partnerships at a Jurisdictional Level to improve direct linkages of the work done nationally to the work being done at jurisdictional level. While governance arrangements may vary between jurisdictions and approaches to implementation may vary a commitment to including an policy partnership approach in jurisdictions may help to achieve the desired joined up approach of the national policy partnerships. Jurisdictional policy partnership approaches may also provide greater visibility and improved flow through of information the policy partnerships to jurisdictional peaks and jurisdictional partnerships.

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

NSW CAPO notes submissions by member organisations such as AbSec, ALS (NSW/ACT) which may also respond to Information Request 2. NSW CAPO provides additional commentary based on discussions and consideration across sectors. In shifting service delivery to ACCOs consideration needs to be given to the risk posed to ACCOs in 'lifting and shifting' services without inclusion of accompanying resources for 'scaling up' organisations operational capacity related to HR, finance, reporting and evaluation among others.

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Contracting and funding arrangements often do not factor transfer of associated funding for operational and/or administrative costs associated with delivering expanded or additional services.

The Priority Reforms should be embedded in the approach to contracting, guidance for governments that provides clarity on expectations and requirements would be very helpful. Building in requirements on providing government held data would be helpful and it is critical that this extend to returning sovereignty to communities over data governments hold about Aboriginal communities to enable ACCOs to use data for other purposes.

So far, in transferring service delivery from mainstream organisations to ACCOs the extent to which governments are reforming the way that services are contracted, funded, delivered, reported against and evaluated is limited. It's important to acknowledge that there are pockets of positive change driven by committed teams and individuals seeking to actively embed the intent of Priority Reform 2. The approach taken to formulating new policy proposals and associated business cases for the 2022 NSW Budget is a positive example. Also the approach to the drafting of the funding agreement between the Department of Premier and Cabinet and NSW CAPO including simplification of requirements to reduce duplicative reporting burden while maintaining elements required for audit and acquittal is positive progress.

The pockets of progress are unfortunately outweighed by experiences of Peaks and other ACCOs in dealing with other departments. Attempts by Peaks and ACCOs to seek to embed the intent of the Priority Reforms during negotiations on funding agreements have been met with resistance related to 'standard/core contracting arrangements'.

There is a paradox in how governments engage with Closing the Gap. On the one hand departments will highlight need to be provided with guidance that sets clear expectations and advice on approaches while on the other hand being resistant to that advice and guidance coming from a branch or Secretariat in a 'junior' agency.

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Transformation of government organisations

Acknowledging that the Commission has expressed a strong preference that this information be provided by individual government organisations CAPO Secretariat Implementation of Priority Reform 3 remains a challenge, there is pockets of progress being made though a key challenge lies in there not being an agency with clear mandated responsibility to lead on implementation of all elements of Priority Reform 3. In the NSW CTG governance arrangements the public sector lead for Priority Reform 3. It was covered in our early discussions on work required for implementation that the Office of Public Service Commissioner (PSC) can lead on matters relating to the Public Sector workforce however the PSC doesn't have the mandate to lead and coordinate the implementation of all other whole of government activities to address commitments under Priority Reform 3.

In NSW the PSC is leading a number of initiatives that relate to public sector employment that sit within the remit of roles and responsibilities of the Public Service Commissioner. There is also pockets of similar work being undertaken by individual agencies on cultural capability and eliminating racism. While the PSC can lead, coordinate and provide oversight for the elements of Priority Reform 3 that fall within it's remit there remains a need for broader coordination at whole-of-government level.

There is a sense that committed individuals drive work within the agencies where there is active change to operations. For this work to not be isolated and dependent on personalities to drive it there needs to be central mandated portfolio and program approach. Without a coordinated centrally led approach, that provides clear guidance and sets clear expectations on action required to address institutionalised racism and transforming structures and cultures progress will continue to be isolated to pockets of work within agencies that are committed to progressing change.

Truth-telling in implementing Priority Reform 3 could play a role in contextualising the need for and impact of transformation from an abstract concept for people that have never experienced racism and are not able to easily recognise the negative impacts of systemic issues on Aboriginal and Torres Strait Islander people.

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Indigenous data sovereignty and Priority Reform 4

NSW CAPO notes that the NSW CAPO Priority Reform 4 Project Team has provided Responses to Information Request 4 and CAPO representatives have also provide verbal responses to this information request at the virtual round table meeting facilitated by the Productivity Commission.

There is now more than enough collective understanding and agreement on the definition of Indigenous Data Sovereignty and Indigenous Data Governance for there to be explicit reference to these in how Priority Reform 4 is described and referenced. The substantive differences between how the Priority Reform 4 is described and an explicit reference is jurisdictions and agencies can choose to actively avoid efforts to pursue Indigenous Data Sovereignty under Priority Reform 4 as it currently described.

In the NSW partnership we have taken the approach to put Indigenous Data Sovereignty at the heart of the work in Priority Reform 4 which was informed by what Aboriginal communities and organisations had intended in calling for the development of Priority Reform 4.

If the Agreement had Indigenous Data Sovereignty as the explicit objective of Priority Reform 4 governments would need to more directly engage in undertaking the analysis and transformational work required to fully implement the intent of the reforms. Currently governments can restrict the focus or their work to data sharing. Governments would need to demonstrate and commit to a much higher level of ambition in reform and transformation approaches and would need to work more in partnership with Peaks counterparts to map out a longer term transformation plan.

Legislative and policy change to support Priority Reform 4

NSW CAPO notes that the NSW CAPO Project Team has provided Responses to Information Request 5 and CAPO representatives have also provide verbal responses to this information request at the virtual round table meeting facilitated by the Productivity Commission.

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It is clear that Jurisdictions need to consider legislative and regulatory change to remove barriers to sharing data with Aboriginal Communities. Any legislative change should be done the lens of embedding Indigenous Data Sovereignty. There is also a clear need to navigate the considerations required for accommodating Privacy legislation requirements along with other considerations.

Information request 6

Characteristics of the organisation to lead data development under the Agreement

Coordinated data development to track progress under the agreement is needed. If an organisation were appointed to lead data development it would require a governance structure that contains representatives from each of the jurisdictions and the Coalition of Peaks and Jurisdictional Peaks as a minimum. Jurisdictional representatives would need relevant decision making power and delegation to lead work at jurisdictional level to support sharing of data between the jurisdictions, the commonwealth and Aboriginal and Torres Strait Islander communities. Ideally the organisation would be an independent Aboriginal Community Controlled Organisation or independent Indigenous led research centre with associated data development expertise. would be

Principles of Indigenous Data Sovereignty (IDS) and Governance (IDG) can be applied to data development by implementing the principles of IDS as developed by the Maïam Nyari Wingara collective. These need to be applied in the establishment of governance and associate Terms of Reference as well as applied operationally. A central element would be embedding the principle that sovereignty of any data governments and researchers collect from and/or about Aboriginal and Torres Strait Islander communities remains with those communities and the data can be used for whatever purposes the respective community has. Data development work should also factor in the need for disaggregation. Noting that privacy concerns are often raised in conversations about the need for disaggregated data, this concerns need to be mitigated but should not be used as a reason to not do the associated work required.

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Establishment of governance and operational arrangements should also include processes to enable Aboriginal and Torres Strait Islander communities to opt in/out of sharing data to contribute to data development.

Quality of implementation plans and annual reports

The quality of Implementation Plans and Annual Reports will correlate with each government's approach to governance and leadership on Closing the Gap generally. If governments are not demonstrating a commitment to implementation of the Priority Reforms in the approach to Closing the Gap governance arrangements particularly Priority Reforms 1 and 3, the quality of Implementation Plans and Annual Reports will be a direct reflection. There may be a need for clearer guidance for jurisdictions to clearly articulate the specifics of what needs to be included. There may be a role for the independent accountability mechanism to add as a function to assess adherence of Implementation Plans and Annual Reports to the criteria outlined in the national agreement.

The governance arrangements and commitment to ongoing improvement in NSW has provided the enabling environment for a more comprehensive approach to Implementation Planning and regular review to improve processes. In NSW we have taken the approach of the Annual Report being a report of progress against the NSW Implementation Plan (NSWIP). This approach provides transparency on progress on work associated with implementation associated with the NSWIP however is not perfect.

A consideration for future reporting is tracking areas of Closing the Gap progress that sit outside progress associated with initiatives under the NSWIP. A challenge in reporting progress broadly is the dated nature of data available nationally. There is data collected at jurisdictional level that could contribute to reporting broader progress though there is work that needs to be done for this data to be properly accessible. Discussions in NSW Priority Reform 4 working group have explored the need for this work to be done. This also needs to be a key consideration for a nationally coordinated approach to Data Development.

Acknowledging the processes in NSW are not perfect (we regularly review and look for opportunities to improve processes), a case study of the processes used in NSW to develop

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the NSWIP and Annual Reports in over the course of drafting the 2021 and 2022-2024 Implementation Plans and Annual Reports may be helpful.

In NSW, while the 2021 Implementation Plan focussed on existing programs and was used to establish a baseline the 2022-24 Implementation Plan was developed and designed in partnership, and this is the agreed approach for future Implementation Plans.

In the overall planning for drafting the NSW Implementation Plan discussions on short, medium and longer term considerations informed design of the 2022-24 Implementation Plan. During the planning process it was resolved that projects listed in the 2022-24 NSW Implementation Plan would focus on a) initiatives that are foundational or create the enabling environment for implementation of longer term programs/projects/reforms and b) initiatives that could be delivered in relatively short time frames to demonstrate the commitment to the national agreement through tangible outcomes.

The various projects included in the NSW Implementation Plan for the Priority Reforms all included considerations of immediate term projects needed to commence work on implementation of the Priority Reforms. These initiatives were informed by CAPO led Community Consultations and developed in partnership and co-designed to deliver outcomes aligned with community expectations.

Independent mechanism in the broader landscape

In NSW there is a project currently in progress funded under the NSW Implementation Plan exploring options for an independent government accountability mechanism being led by a NSW CAPO Project Team. The initial research in NSW goes further than current discussions nationally. The NSW project is informed by feedback captured during community consultations that outlined the range and scope of responsibilities and accountabilities.

Unfortunately the timing of the project only enables the sharing of an initial project update which provides an overview of very early stage observations arising from the first stage of the project. Initial project update presented to NSW Partnership Working Group is attached for reference.

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Aboriginal Communities want a mechanism that Aboriginal and Torres Strait Islander led, with statutory powers ensuring the ability to hold individuals and organisations to account but is independent of government. Consideration has been given to the NSW Deputy Ombudsman office and similar roles however existing statutory roles are seen as being part of, or too close to government and other concerns exist relating to lack of power to properly hold individuals and organisations accountable.

Calls for accountability mechanisms from across communities seek a broader accountability mechanism. Considering experiences to date an independent mechanism needs to have a broader role to drive accountability across all Priority Reforms. A national accountability mechanism should not merely act as a coordinating authority overseeing the jurisdictions. A national independent mechanism needs to apply the same accountability lens on the commonwealth government as jurisdictional accountability mechanisms would seek to apply to jurisdictional governments. Of the various functions the independent mechanism could fulfill the assessment of whether Implementation Plans and Annual Reports meet the criteria outlined in the national agreement could assist in improving the quality of Implementation Plans and Annual Reports.

In assessing whether a standalone independent mechanism is still required, consideration needs to be given to the primary role and function of current and emerging Aboriginal and Torres Strait Islander bodies. It may be unrealistic to expect bodies established to be advisory for example to also act as an independent accountability mechanism. The concept of true independence appears to be central to need which initial research supports. It also remains to be seen whether governments would have any appetite to legislate or regulate for emerging bodies to have the necessary statutory powers to act as a proper accountability mechanism. As it currently stands a stand-alone independent mechanism is still required.

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

One of the challenges identified in NSW is that of the existing senior leaders or senior leadership groups there is not an individual or group tasked to lead change. In early discussions it was suggested that the Office of Public Service Commissioner (PSC) could be the individual or group to take on this role.

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As referenced under response to information request 3 discussions with the Office of the Public Service Commissioner highlighted that the functions of the PSC do not provide the appropriate scope for the PSC to lead change and transformation beyond its clearly defined mandate. In NSW through consideration and deliberations NSW CAPO has identified the need for Secretary of the Premiers Department and the NSW Secretaries Board as the senior leader and/or leadership group to drive change in the public sector with direct support from the Closing the Gap Secretariat.

One of the barriers to full and proper implementation of the Closing the Gap National Agreement is sections of the public sector, seeming to take the position that existing agency Portfolio or Program mandates override commitments to Closing the Gap. CAPO understanding of public sector portfolio and program management is that it operates under parameters that require clear mandates with clearly identified sponsoring group.

Some of this resistance appears to be born out of the perception that Closing the Gap lacks authority and seen as a project within a 'junior' agency. This is despite the clear mandate for Closing the Gap National arising from the signatures of all First Ministers to the National Agreement and Partnership Agreement. It has been observed by NSW CAPO and government counterparts that some departments and agencies actively resist engaging with the commitments to change and transformation under the National Agreement by siloing certain work into dedicated Closing the Gap teams.

It has been proposed via deliberations in NSW that the Secretaries Board be engaged in discussions to explore an active role for the Secretaries Board to assist with overcoming barriers to implementation of Closing the Gap. These discussions would include topics covered in Draft Recommendation 2.

Consideration would also need to be given to role of the Secretaries Board in Closing the Gap Governance arrangements nationally and jurisdictionally. A key change to current governance arrangements that would support the Secretary and Secretaries board is the elevation of Closing the Gap and the associated Secretariats to sit as a key strategic whole-of-government branch within Prime Minister and Cabinet (PM&C) nationally and Premiers/Chief Ministers departments jurisdictionally.

To avoid any doubt NSW CAPO is advocating that Closing the Gap be decoupled from NIAA/Aboriginal Affairs and sit directly within PM&C and Premiers with reporting lines directly to the Secretaries of these Departments. The Secretariats should have the associated Portfolio/Program mandate to lead and coordinate change and transformation across government. This would provide greater empowerment to Closing the Gap

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Secretariats to continue to lead the work on Closing the Gap with clear authority. It may also help to avoid future machinery-of-government changes creating ambiguity about the significance of the commitment to Closing the Gap. NSW CAPO has advocated this position from some time. The Closing the Gap Secretariats should continue to be led by Aboriginal and Torres Strait Islander person.

An advantage of the Secretary of the Premiers Department being the senior leader is the authority that comes with the role. Similarly the Secretaries Board carries authority which is unequivocal in the context of the public sector. The role of the Secretary and Secretaries Board doesn't necessarily need to change, however a key change to current arrangements would be to have direct support from the Closing the Gap Secretariat. As referenced above the Secretariat would need the associated portfolio/program mandate with the Secretaries board becoming the 'sponsoring group'.

The Secretary as the most senior public servant, and the Secretaries Board could drive accountability right through the public sector via the authority this group carries. Existing Closing the Gap governance arrangements can be refined to factor in a clear role for the Secretaries Board and avoid creation of a additional parallel or duplicative systems or mechanisms.

Sector-specific accountability mechanisms

Sector specific accountability mechanisms could contribute to enhancing accountability for outcomes under the national agreement through application of relevant knowledge and expertise to assessment of progress on Closing the Gap. These mechanisms could have a direct linkage to the independent accountability mechanism including for referrals and escalation of issues. Sector specific mechanisms could provide support to the independent accountability mechanism reducing the need for duplication of effort. To be effective independent and sector specific mechanisms need to properly resourced and backed by the appropriate legislated powers.

NSW CAPO notes the calls from SNAICC for the establishment of a National Commissioner for Aboriginal and Torres Strait Islander children and young people.

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Standing up a National Aboriginal and Torres Strait Islander Children’s Commissioner, with the legislated power to investigate and make recommendations on issues impacting our children is the most effective action Government can take to make children safe and protect their human rights.

The NSW project on an Independent Accountability Mechanism has highlighted in its preliminary work issues that may be applicable to Sector-specific accountability mechanisms. On the question of what makes these mechanisms effective or ineffective there is a number of factors. Some mechanisms can be seen to be ineffective because they are believed to be close to government or part of government. If the mechanisms are not Aboriginal and Torres Strait Islander led and/or do not have an adequate an adequate focus on issues affecting Aboriginal and Torres Strait Islander communities or community needs, they are also considered in effective.

In addition there is strong feeling that existing mechanisms are not necessarily empowered to hold organisations and individuals to a level of accountability that matches community expectations. Communities express that there is a lack of proportionality and feel that Aboriginal and Torres Strait Islander communities carry a greater level of accountability than individuals and organisations.

This sentiment has been voiced particularly in relation to the families and children sector, there is a belief that ‘until there is real consequences for individuals and organisations that exercise poor judgement and make poor decisions, our children will continue to be removed from their families. Aboriginal families wear the fallout of bad decisions and continue the feel the impact of bad decisions but the people that make those decisions get to keep their jobs’.

As referenced in the response to the information request on Independent Mechanism there is a project underway in NSW to research options for an Independent Government Accountability Mechanism. To ensure sector-specific mechanisms are effective consideration needs to be given formally linking these to the independent government accountability mechanism. Consideration would also need to be given to ensuring legislation and regulation enables referrals between mechanisms.

A key factor in whether accountability mechanisms are effective or ineffective is whether the function supported with the appropriate statutory powers and regulatory framework. Dedicated Aboriginal and Torres Strait Islander accountability mechanisms can help to improve accountability if they are appropriately culturally informed and led, ensuring the

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strengths of our ability to understand issues impact our communities and design solutions that meet community expectations.