

19 October 2023

The Productivity Commission
4 National Circuit
Barton ACT 2600

Re: Review of the National Agreement on Closing the Gap draft report

Dear Commissioners Brennan, Mokak, and Siegel-Brown

We are writing in response to the *Review of the National Agreement on Closing the Gap* draft report. We commend the Productivity Commission on preparing such a comprehensive analysis of implementation of the National Agreement thus far. The report makes a strong case for the need to do better, particularly by cautioning that the “Agreement risks becoming another broken promise to Aboriginal and Torres Strait Islander people.”¹ In acknowledging that there have been serious shortcomings in relation to both the commitment and approach to implementation by all Australian government, the report aligns with what many Aboriginal leaders, organisations and communities have been observing.

The Victorian Aboriginal Child Care Agency (VACCA) is the lead child welfare organisation in Victoria. We work holistically with children, young people, women, men, and families to ensure they have the necessary supports to heal and thrive. In addition to our work supporting children and families, we have played a strong leadership and advocacy role in the implementation and monitoring of the National Agreement on Closing the Gap. VACCA CEO, Muriel Bamblett AO, participates regularly in the National Joint Council on Closing the Gap and as your report points out, participates less successfully on Victoria’s Closing the Gap Partnership Forum, as both the child protection sector representative and the Dhelk Dja (family violence) Aboriginal governance forum. We offer the following observations on progress in Victoria based on this expertise.

Draft Recommendation 1: Appointing an organisation to lead data development under the Agreement

We agree with the Productivity Commission’s finding that without “stronger data governance arrangements, there is a risk that the most important data to tracking progress under the Agreement will not be prioritised and developed.”² Whilst the draft report states that this could be led by a number of different organisations, VACCA contends that it must be Aboriginal-led and accountable to the Aboriginal community. However our experience is that the sector has limited capacity or skill set to do this due to chronic under investment in data analysis, research or evaluation amongst ACCOs.

Transparent data will allow for greater accountability across sectors, assisting with monitoring and reporting on outcomes. Aboriginal peoples and ACCOs must have access to, and the capability to use, locally relevant data and information to set and monitor the implementation of efforts to close the gap, to progress priority reforms and to build our own evidence base.

¹ The Productivity Commission. (2023). *Review of the National Agreement on Closing the Gap*, p. 2

² Ibid, p. 10

We know the data is available however it is not shared. At March 2023 hearings held by the Yoorrook Justice Commission on injustices in the criminal justice and child protections systems and in their September 2023 report, we saw government provide for the first time a number of data sets and data points that have not been previously shared with the ACCO sector even after numerous requests, one example of this is data on the number of individuals incarcerated who are living with disability.

If the Victorian Government continues to withhold data and control over what information is collected, how it is stored and where it is used, it contravenes their stated commitment to Aboriginal self-determination and data sovereignty. This is further exemplified by the fact that while VACCA has the opportunity to view highly valuable data about Aboriginal children and families from the Aboriginal Children's Forum (ACF), this data is restricted to only being shared internally for ACF members, ownership does not sit with the member ACCOs, the data is inconsistently presented with no trend analysis and mainstream accountability is excluded. All of this and more is inconsistent with the intentions of Aboriginal data sovereignty. Similarly, we have had to operate with minimal access to other data across the relevant sectors which is essential for measuring progress against the National Agreement, including targets relating to family violence and education. The ability to correlate data across sectors is essential as no one person is homogenous. In addition to have the skill set to analyse our own service data, together with government data would be invaluable to developing and redeveloping services and programs to achieve better outcomes for clients.

As highlighted, in Victoria we have a siloed approach to data sharing and shared decision-making. For example, the Department of Health has provided health funded ACCHOs with a data lake that includes a range of public health data not freely available to the public, but all other ACCOs are unable to access it. Data sovereignty and access to data should not be designed to give access, and by default, power to some at the expense of others. Health and wellbeing are central to all Close the Gap targets and all ACCOs should be afforded an equal playing field.

Data must also assist in achieving mainstream accountability including all governments and mainstream or universal services that provide services to Aboriginal people. This will also assist in service design and enabling people choice; but also help to address cultural safety concerns and help inform shared decision making, building the capacity of the ACCO sector, funding reform and ultimately the transition of Aboriginal resources and decision making to Aboriginal hands.

Whichever entity is chosen as the data lead, it must be independent and have no conflict of interest to ensure free, fair, and equitable access to data, its analysis and use by any interested ACCO partner.

Information Request 2: Shifting service delivery to Aboriginal Community-Controlled Organisations (ACCOs) (p. 8)

Priority Reform 2 commits governments to strengthening the ACCO sector to ensure we have the necessary resources to deliver quality, holistic and culturally safe services to Aboriginal peoples. Yet, thus far we have failed to see meaningful whole-of-government action toward this commitment and we would agree with the draft report's finding that "current actions are not supporting ACCOs to thrive."³ The National Agreement is meant to support the transfer of resources from both mainstream community service organisations and governments to ACCOs delivering child and family services.

³ Ibid, p. 40

However we have failed to see significant change in this regard, which only further disadvantages Aboriginal children, young people and their families.

An example of this is in the ongoing discrepancy in the proportional expenditure on early help funding ACCOs receive to deliver culturally safe, holistic supports that prevent child removal. For example, ACCOs continue to only receive 16% of funding to family and parenting services, even though Aboriginal children represent 29% of all children in out-of-home care.⁴ Whilst funding to ACCOs in the child and family welfare space has increased, these reforms have predominantly focussed on the out-of-home care sector, ignoring the failings of the child protection system as a whole. The Victorian Government has failed to embed its commitment to self-determination in the early help sector, and there is an urgent need to address the disparity in investment in these programs for ACCOs.

In addition, actions identified in the 2023 State budget under the banner of Close the Gap and labelled as “reform” are in essence small discrete projects, some that are still pilots and do not meet the sectors aspirations for long term funding. While funding to implement projects is slated, the subsequent release has been staged by the relevant department so that change is incremental and too slow to achieve rapid change. In addition, funding is based on arbitrary targets set by that Department. This is due to shortsighted budgetary processes and relies on new funds, where it should be the transfer of existing funds in line with the transfer of decision making. To achieve the commitments of the past Premier and Minister, funding reform must address the Government's procedures to allow the transfer of services and resources. It is currently not designed to do that and there appears to be a lack of appetite to do so. We have had promising conversations at Deputy Secretary level of a “lift and shift” as it comes to certain child protection functions but the reality of being able to do this does not appear to match the commitment. That being said, many policy and procedural changes could easily occur without a significant or any budget impost however this work, shared decision making, is not currently a workplan area.

When resources are shifted, ACCOs are required by governments to compete for service delivery, or partner with a mainstream organisation. Rarely will an ACCO led initiative/submission beat out one led by a mainstream provider. It is perceived that as there are dedicated funding streams for Aboriginal service delivery in many sectors they should not compete in open grant or funding streams, yet mainstream organisations compete in the Aboriginal funding space regularly as they employ or have an Aboriginal team. Organisation scale is also a big consideration, yet ACCOs will never be able to compete if they do not have investment to build scale and evidence that Aboriginal approaches are effective. Similarly, ACCOs have been forced to compete so often that partnerships between ACCOs are sadly uncommon. ACCOs are more adept at partnering between sectors like child protection and legal for example but less likely within a sector for service delivery.

Information Request 8: Quality of Implementation Plans and Annual Reports (p. 12)

VACCA agrees with the draft report's assertion that current Victorian implementation plan and annual reports are not meeting the criteria set out in the National Agreement. The finding that implementation plans contain “piecemeal actions” with little consideration of how they will achieve needed change is reflective of the situation in Victoria. However, this could be seen as a generous reflection, as many of these actions have not progressed and higher level strategies are used to justify outcomes, yet were written before the National Agreement and do not reference Close the Gap or the National Agreement.

⁴ DFFH. (2020). Data Pack ACF September 2023. (Unpublished data).

A good example of this under the Department of Education where the Marrung Aboriginal Education Plan, which was developed in 2016, is often reported as a catch-all for all activities.

There is clearly a need to improve the quality of implementation plans and annual reports. In the 2022 Victorian Aboriginal Affairs Framework (VAAF) report, the government indicated that the approach to developing the next implementation plan would be reviewed during the second half of 2023.⁵ However, at the time of writing, the previous Minister for Treaty and First Peoples indicated a preference to “roll over” the current plan to 2025, contravening the NIRA. While there is still no planning underway for the next phase of Closing the Gap, it is our understanding that the new minister intends to comply more rigorously with the NIRA and work in true shared decision-making style to develop a new plan for Victoria.

The use of the annual Victorian Government Aboriginal Affairs Report (VGAAR) as the reporting mechanism is grossly flawed. The VGAAR does not have the same indicators, domains, enablers, or measurement scales. It also is heavily reliant on department self-reporting of what has or has not worked. In 2023 there was little to no consultation with the ACCO sector or Close the Gap Forum representatives on the accuracy of the report.

VACCA supports the Productivity Commission’s proposition that an independent mechanism be established to oversee quality of implementation plans and annual reports. Victoria’s agreement has a partner to do this through the Aboriginal Executive Council (AEC), however this was defunded. While Victoria has a Koorie Caucus for Close the Gap, the strength of the AEC was that it looked at all Aboriginal Affairs issues and was a partner with the Secretaries Leadership Group (SLG). The loss of relationship between the AEC and the SLG we believe explains the general lack of understanding of Secretaries and their Ministers around their responsibilities under the National Agreement over the last 3 years.

The Victorian Government have a preference for a mechanism to sit under the umbrella of the First People’s Assembly of Victoria, however monitoring Close the Gap is not currently one of their intended functions. Ideas relating to Assembly have a PAEC type function could be promising as would be a smaller Independent Premier/Minister’s Advisory Group that can report to Cabinet.

While the role has now ended, Victoria’s *Family Violence Reform Implementation Monitor (FVRIM)* is a potential example of this type of mechanism as well. The FVRIM was established in 2016 following release of the Royal Commission into Family Violence, and was responsible for monitoring and reviewing how effective the government and its agencies were in implementing reform recommendations of the Royal Commission. It tabled a report to the Victorian Parliament each year, outlining the progress of the Victorian Government in implementing this reform agenda, and also undertook evaluations of areas of concern which it identified through consultation and discussion with key stakeholders.⁶ Most importantly, in its reporting, the FVRIM provided recommendations to the government on how to address areas where reform was lagging.

One of the strengths of the FVRIM was that it received submissions from and undertook consultations with key stakeholders, including the service sector to develop its understanding of how reforms were progressing. One of its failings though was its lack of understanding of the ACCO sector and the need of Aboriginal peoples and while the Victorian Government’s position is that all Royal Commission

⁵ Victorian Government. (2023). Victorian Government Aboriginal Affairs Framework report, p. 14.

⁶ Victorian Government. (2023). *Family Violence Reform Implementation Monitor*. Retrieved from:

recommendations have now been implemented, the success of these measures for Aboriginal services and people are debatable.

Draft Recommendation 4: Central Agencies Leading Changes to Cabinet, Budget, Funding and Contracting Process (p. 14)

The Victorian Government has a longstanding promise to improve its budgets processes to ensure Aboriginal community involvement. For example, the Victorian Aboriginal Affairs Framework (VAAF) 2018 – 2023, has a commitment to “ensure future State Budget bids reflect the voice and priorities of Aboriginal communities, including through engagement and consultation.”⁷ Despite this commitment, in its response to the Yoorrook Justice Commission, the Victorian Government acknowledged that the State Budget process does not currently have a mechanism which allows for Aboriginal community decision-making on budget priorities and outcomes.⁸ This is despite that fact that ACCOs in Victoria have raised concerns about a lack of transparency and shared decision-making in ensuring the needs of the Aboriginal community are reflected in Victoria’s future planning.

VACCA notes that the draft report states that “the Victorian Government is implementing a suite of reforms to the way funding is provided to ACCOs, including longer term funding contracts, a pooled outcomes-based funding model and a reduction to onerous reporting and accountability processes, including consolidating multiple funding reports to the one department.”⁹ Our observation has been that progress on funding reform has not been systematically pursued across Departments and ACCO sectors with reform restricted to ACCOs participating in a Department of Premier and Cabinet led funding reform pilot. Furthermore, ACCOs have consistently advocated for funding to be aligned with Aboriginal population growth, with a lack of infrastructure and increasing service demand limiting the growth of ACCOs.¹⁰ To alleviate these pressures, Infrastructure Victoria recommended that the government develop a statewide ACCO infrastructure plan, although this has yet to be implemented.¹¹

The *Aboriginal Funding Reform Pilot Project*, which was initiated by the Victorian Government with the purpose of reforming the current funding environment for ACCOs made a series of recommendations for structural and legislative reform. The project’s final report, which was completed in November 2019, found that the broad discretion to Ministers’ and their delegated authorities provided for in the *Financial Management Act 1994* (Vic) means that even departmental policies and processes that are designed to promote Aboriginal participation in funding decision-making can be overridden with no rationale required. This leaves ACCOs reliant on the political will of the government of the day to support Aboriginal self-determination and participation in funding decision-making, a notion which itself runs contrary to self-determination and the government’s commitment to “prioritise the transfer of

⁷ Victorian Government. (2018). *Victorian Aboriginal Affairs Framework 2018-2023*, p.26. Retrieved from: <https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-09/VAAF%20FINAL.pdf>

⁸ The Victorian Government. (2023). *Victorian Government submission to the Yoorrook Justice Commission*, p. 27. Retrieved from: <https://yoorrookjusticecommission.org.au/wp-content/uploads/2023/04/DPC.0005.0001.0002-20230317-Victorian-Government-Criminal-Justice-and-Child-Protection-State-Submission-to-the-Yoorrook-Justice-Commission.pdf>

⁹ The Productivity Commission. (2023), p. 42

¹⁰ VACCA. (2021). *Submission to Victoria’s Draft 30-Year Infrastructure Strategy*. Retrieved from: [VACCA InfrastructureStrategy Submission Feb21.pdf](#)

¹¹ Infrastructure Victoria. (2012). *Victoria’s Infrastructure Strategy 2021-2051*. Retrieved from: [Victoria's infrastructure strategy - Infrastructure Victoria](#)

decision-¹²]. Very few of these recommendations, particularly those related to reforming the *Financial Management Act 1994* (Vic), have been acted upon.

The Victorian Government has not pursued or implemented a number of systemic reforms from its 2021-2023 Closing the Gap Implementation Plan including:

- Working towards a strong and sustainable Aboriginal workforce that experience wage parity through aligning workforce costs in State Budget business case development with current Victorian Public Service remuneration standards
- ACCOs that deliver common services have a dedicated, flexible, reliable and consistent funding model developed in consultation with the relevant (ACCO) peak body

Other examples from Victoria's 2021-2023 Closing the Gap Implementation Plan of commitments to systemic reform that have not been actioned include the following:

- Under Priority Reform Three Transforming Government Organisations, clause 59 of the National Agreement, Victoria committed to establishing an anti-racism taskforce which will identify and eliminate racism through a statewide anti-racism strategy
- Implementing recommendations from Infrastructure Victoria's 30 Year Draft Infrastructure Strategy that the State plan for and undertake long term investment in ACCO infrastructure that is fit for purpose and accommodates the service breadth of ACCOs
- Resourcing ACCOs for their cultural programs, community, sport and recreation activities and roles in community development
- Systemic funding reforms that align with Aboriginal self-determination and provide maximum flexibility to respond to local community priorities
- Supporting and resourcing ACCOs to transition to carbon neutral service operations, and
- Alignment of the State Budget development process, service planning and funding with the high level of Aboriginal population growth in Victoria and Regional variations

We support the Productivity Commission's recommendation that funding decisions be reviewed to ensure they align with the Agreement, however we think it could be strengthened to embed stronger accountability and responsibility on the government. For example, the Productivity Commission could recommend that Australian governments work with Aboriginal governance structures and ACCOs in each jurisdiction to develop annual federal/state budget priorities and bids for progressing implementation of Closing the Gap reforms. In practice, this should include:

- Resourcing for ACCOs (research, policy and program development functions) to enable the preparation of detailed budget proposals;
- Agreement that Victoria's portfolio based *Shared Aboriginal Governance Structures*, established to enable genuine shared decision making, jointly set priorities early in the budget process;
- Iterative engagement with ACCOs and Aboriginal governance mechanisms with opportunities to contribute to the detail of budget bids;
- Transparency regarding budget program planning and any budget bids being developed by Departments at the request of Ministers;
- Shared decision-making regarding budget priorities including transparent and open evidence to Ministers where consensus on priorities has not been achieved.

¹² Victorian Government. (2018). *Victorian Aboriginal Affairs Framework 2018-2023*, p.24. Retrieved from <https://www.aboriginalvictoria.vic.gov.au/sites/default/files/2019-09/VAAF%20FINAL.pdf>



We welcome the opportunity to discuss this feedback further. For more information, please get in touch with Sarah Gafforini, Director, Office of the CEO at

Yours faithfully,

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CEO, VACCA