

Submission to the Productivity Commission Review of the National Agreement on Closing the Gap

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The following submission responds to the proposals outlined in the Commission's *Review Paper 2: Proposed approach and invitation to engage with the review* dated October 2022.

A core role of the Productivity Commission is to provide advice on economic matters to the Australian Government. As noted on your website, the Commission is **independent**, adopts **transparent processes**, and adopts a **community wide perspective**. I suspect that it was these core elements of the Commission's *modus operandi* that made it an attractive entity to undertake the review of the National Agreement on Closing the Gap ('the Agreement').

In the submission below, I address a number of distinct yet related issues, including the Commission's proposed approach to the review, the nature of the Priority Reforms, and the importance of assessing the adequacy of governments' financial investment in 'closing the gap'.

The Commission's proposed approach

It is my submission that the starting point for the proposed review of the Agreement must be the Objectives of the National Agreement. These are laid out in paragraphs 15 and 16 of the Agreement:

15. *The objective of this Agreement is to overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians.*

16. *The Parties commit to mobilising all avenues and opportunities available to them to meet the objective of this Agreement. [emphasis added].*

The former Treasurer in requesting the review noted that the parties to the Agreement had agreed that the Productivity Commission 'will undertake a **comprehensive review** of progress every three years' [emphasis added]. Refer also to paragraphs 121 to 124 of the Agreement. In particular, paragraph 121 of the Agreement states that the 'comprehensive review of progress':

will provide an analysis of progress on Closing the Gap against the priority reforms, targets, indicators and trajectories, and examine the factors contributing to progress, including by drawing on evaluation and other evidence.

Accordingly, it is my submission that the Commission should adopt a macro or wholistic approach to assessing progress, in effect bringing to bear the considerable analytic capabilities available to the Commission to ask the question: **Is this Agreement, including the current approach to implementation, capable of meeting the objective stated explicitly in paragraph 15 of the Agreement?** To put the question more succinctly: **Is the current operation of this Agreement fit for purpose?**

Such a 'comprehensive review' would go well beyond what is currently proposed in section 2 of *Review Paper 2*. In my contention, the approach proposed in section 2 is based on a micro or partial analysis focussed on identifying positive changes (whether or not they are material contributions to reducing social and economic inequality) rather than asking upfront: will this Agreement, and the implementation mechanisms built into it, lead to a material reduction in economic and social

inequality? Or more succinctly: Is the operation of the Agreement overall fit for purpose? In contrast to my preferred approach, the Commission's proposed approach accepts the Agreement as a given, assumes that the task is to ensure it has a positive impact, no matter how incremental, and then seeks to assess whether there are any obvious flaws that require attention, or any incremental progress that can be identified. It is my contention that this proposed approach is both too conservative, and bound to reinforce the status quo. In other words, it will not assess the Agreement's capacity to address entrenched Indigenous inequality within an acceptable timeframe.

So for example, in section 2 of *Review Paper 2*, **in relation to the Priority Reforms**, the proposed approach is (a) to 'assess progress against the specific commitments in the Agreement' and (b) 'by assessing the broad range of actions governments are taking, as set out in the Implementation Plans.' In relation to (a), the specific commitments are explicitly listed as supporting the core reforms, that is, they are not the reforms themselves. In relation to (b), the proposed approach only focusses on what Governments are doing, or perhaps more accurately, what they say they are doing. This ignores the potentially more significant actions and initiatives that may be necessary to meet the Agreement's objectives laid out in paragraph 15, but which are not being done by governments. Similar arguments might be made in relation to the other Priority Reforms.

Similarly, I submit that **the proposed approach in relation to the Implementation Plans** required by the Agreement is inadequate and conceptually flawed.

Paragraphs 104 and 105 state:

104. The Parties commit to implementing this Agreement and aligning relevant policies and programs to the Agreement.

105. The Parties will each develop their own Implementation Plan(s) to support achievement of the Agreement's objectives and outcomes.

Subsequent paragraphs stipulate the contents of the various implementation plans. The focus on implementation within the Agreement is a core element of the Agreement, and thus an assessment of their efficacy and effectiveness must be a core element of any comprehensive and thorough review.

It is clear to even the most cursory observer that there is a disconnect between the intent of the Agreement to provide an account of what is being done by the parties to implement the agreed provisions, and the reality, which is that the various state and territory jurisdictions (and perhaps others) have included a grab bag of every minor initiative and action that they can lay their hands on, with minimal contextual analysis and rationale. Even the Commission comes close to admitting this when it notes that:

Preliminary analysis...indicates that there are over 2000 individual action plans listed in jurisdictions Implementation Plans. It is not feasible to assess each of the actions in detail, so the Commission plans to use case studies to help understand what governments are doing...

If the feasibility of assessing the nine jurisdictional Implementation Plans is beyond the Commission, what does this say about the likelihood that Indigenous citizens, Indigenous advocacy groups, or even the public at large will be able to understand what governments are doing, or more saliently, what governments are not doing? Moreover, this issue is exacerbated insofar as most if not all jurisdictions have decided (apparently with the consent of the Joint Council) to develop and publish annual Implementation Plans. These plans arrive at different times, in different formats, and will constitute an ever-changing kaleidoscope of colour and movement resisting any serious attempt to

analyse them or even summarise them. They are not in fact Implementation Plans (which could, if they existed, be set down in five pages of text), but are lists of actions and activities, devoid of clear strategy and aspiration. At the end of five years, we will have multiple Implementation Plans listing in excess of ten thousand initiatives and actions. What is the point of preparing these documents if no-one will be able to read and absorb them? If one wished to design a process guaranteed to resist close analysis and inspection, one could hardly do better than the current miasma of bureaucratic gobbledegook that passes for serious policy aimed at closing the gap.

It is my contention that unless these fundamental flaws in the way the agreement is being managed/implemented by jurisdictions are remedied, they will result in the progressive erosion and ultimate disintegration of the Agreement as an effective mechanism for substantive policy reform.

The deliberate bureaucratic obfuscation¹ implicit in the approaches adopted by the states and territories, and accepted by the Commonwealth, is **a fundamental risk to the viability of the National Agreement as an effective tool for addressing ‘the entrenched inequality’ facing Indigenous Australians**, and to its capacity to perform its assigned role within the public policy domain. If these arrangements are left in place, the Agreement will in practice become unfit for purpose. A consequence would be that the Agreement’s innate potential to constitute a mechanism for major national policy reform and driver of greater economic and social equality for Indigenous citizens would be transformed into a fig leaf that merely serves to cover ongoing policy stagnation and regression and the concomitant ongoing exclusion of Indigenous citizens from an equitable share of the nation’s prosperity.

The Commission’s proposed approach in section 2 of *Review Paper 2* is to primarily rely on **case studies to assess the effectiveness of the Agreement** in advancing the Priority Reforms. Again, this is conceptually flawed insofar as it ignores the potentially extensive domain of government inaction (as opposed to the proposed focus on government actions). While there is a legitimate place for case studies, particularly to illustrate analytic insights and conclusions, **case studies do not represent a robust analytical tool for assessing the effectiveness the various jurisdictional implementation plans** (and more importantly the actual government strategies that lie submerged beneath these plans).

Instead of the Commission’s proposed approach to assessing jurisdictional implementation of the structural Priority Reforms, I would suggest that the review team adopt an approach along the following lines:

- ❖ Invite each jurisdiction to provide a short five page summary of the tangible actions taken since the Agreement took effect to implement the Priority Reforms (see discussion above related to the reforms and not merely the supporting actions).
- ❖ Follow up with a structured interview to request further information and/or documentation.
- ❖ Engage an independent analyst to critically assess each jurisdiction’s written and oral submissions not merely in terms of what they have done, but what might be done.

¹ I use the term ‘deliberate obfuscation’ advisedly without specific evidence beyond my own extensive experience within state and federal bureaucratic structures. I did consider whether it might be mere bureaucratic negligence, but too many eyes have been involved in oversighting the development of this policy architecture for the consequences to be anything but deliberate. See Dillon (2021a) for much stronger evidence that the previous National Indigenous Reform Agreement was subject to a ‘methodical and purposive strategy of dismantling...’. The motivation for the deliberate obfuscation associated with the current so called Implementation Plans can only be surmised. See the discussion below on financial investment levels for one potential explanation.

- ❖ Undertake a comparative analysis of the various jurisdictions responses to identify common shortcomings or successes, and in particular, to identify any innovations in particular jurisdictions that might be implemented more generally.

I would add that the process outlined above could also be used to elicit a short and focussed statement from each jurisdiction of their approach to implementation of the Agreement over (say) the next five years. Similarly, it could be used to request and obtain succinct and comprehensive information from each jurisdiction on the levels of ongoing and new financial investment directed to closing the gap (see discussion below).

Shared accountability

In relation to the issue of shared accountability dealt with in paras. 102 and 103 of the Agreement, I wish to provide the Review with my own perspective which clearly differs from that which was agreed between the parties.²

Those paragraphs state [emphasis added]:

*102. The Commonwealth, states and territories share accountability for the implementation of this Agreement **and are jointly accountable** for the outcomes and targets under this Agreement. The Government Parties commit to working together to improve outcomes in every area of this Agreement.*

*103. **This approach reflects the roles and responsibilities** as set out under the previous National Indigenous Reform Agreement, and specified in respective National Agreements, National Partnerships and other relevant bilateral agreements.*

My own perspective (having been involved tangentially in the administration of the previous NIRA) is that the notion of joint accountability does not accurately/fully describe the relationships between the Commonwealth and state and territory jurisdictions. The Commonwealth was the paramount funder under NIRA and thus had a significant incentive to take a more robust oversight role in relation to the implementation of key National Partnership Agreements (eg the NPA on Remote Indigenous Housing). Thus, despite paragraph 103, paragraph 102 represents an explicit stepping back from an overarching Commonwealth role in, at the very least, ensuring that the Agreement is operating in a coordinated and complementary way, and ideally, in ensuring that the states and territories are indeed working to ensure the Agreement is operating effectively.

The realpolitik of Commonwealth / state relations is that the Commonwealth has financial leverage that the states do not, and to the extent that under-investment is one contributor to addressing the objectives of the Agreement laid out in paragraph 15, the Commonwealth has the capacity to use that leverage to incentivise greater investment by particular jurisdictions. Accordingly, it is my submission that the review should consider recommending that the parties revise paragraphs 102 and 103 to reflect more accurately both the history of NIRA, and the current comparative financial powers of the Commonwealth and the states and territories.

² While it may appear presumptuous to question the terms of a negotiated Agreement, I note that the very fact that it is negotiated (and thus subject to compromise) between unequal parties and that as a result it often appears to lack sufficient rationale or legitimacy. In such circumstances, the terms of the Agreement deserve to be questioned, including by a 'comprehensive review'. See Dillon (2021b) for a discussion of power imbalance amongst the parties.

The current drafting of para.102 in particular is disingenuous as it provides a mechanism that justifies the Commonwealth standing back and arguing that particular issues are for the states and territories to address, notwithstanding that there is invariably a history and a current capacity for the Commonwealth to contribute either financially or in policy terms to solving the most important and significant national policy challenges. To name just one example, the Commonwealth's complete withdrawal from funding Indigenous housing (except in the NT where it has landlord responsibilities) is a significant case in point.

The nature of the Priority Reforms

The Commission's *Review Paper 2* notes that the 'Priority Reforms represent a new way of working for governments and set the Agreement apart from its predecessor.' The inclusion of the Priority Reforms were clearly intended to address the structural constraints and challenges that have over recent decades constrained substantive progress in closing the gap and addressing the deep-seated levels of economic and social inequality faced by Indigenous citizens.

Given their significance, it is important that this element of the policy architecture be effective. This requires an assessment of the extent to which the Agreement is conceptually coherent in relation to the convoluted structure and inter-relationship between Policy reform outcomes, outputs and targets. It needs to be borne in mind that the Agreement was a negotiated construct between multiple parties, and does not have a single author or a single guiding philosophy.³

My own assessment of the coherence of the relevant policy architecture related to the Priority Reforms is as follows. As the focus shifts from the highest level (outcomes) to the mundane level of specifying targets, the emphasis narrows. So to take Priority Reform Three as the example, what begins [paragraph 58] as an agreement amongst the parties to:

commit to systemic and structural transformation of mainstream government organisations to improve accountability and respond to the needs of Aboriginal and Torres Strait Islander people...

are recast and transmuted into a series of 'transformational elements [set out in paragraph 59] which are then, through an unspecified process of policy digestion, regurgitated as a single target [paragraph 81]. The rather simplistic specifications of this single target are the:

Decrease in the proportion of Aboriginal and Torres Strait Islander people who have experiences of racism.

It is an impressive feat of bureaucratic prestidigitation. In this magical world, we can measure the transformational changes within mainstream agencies to improve accountability and respond to Indigenous needs by assessing the extent to which Indigenous people experience racism in the supermarkets and sports grounds of Australia. Spelt out in these stark terms, it can be seen that the

³ One might add here that there was an inevitable and unavoidable power imbalance between the government parties and the Coalition of Peaks; see Dillon (2021b).

target (whatever its merits as a focus of policy attention⁴) is not measuring the achievement or otherwise of the priority policy reform.⁵

As a consequence of the extreme conceptual tenuousness between the high level outcome and the associated target, I suggest that (at the very least) the Commission should seek to find and recommend an alternative way to assess this Priority Reform (and similarly, consider whether the other Priority Reforms have been similarly treated).⁶ The significance of mainstream policies and programs for Indigenous citizens is growing and thus the responsiveness and accountability of mainstream agencies and institutions is of crucial significance in addressing the structural inequalities that drive Indigenous exclusion. Yes, explicit or latent racism is one element in this, but the problem is much wider and deeper than this. Moreover, to frame structural lack of responsiveness within mainstream agencies solely as racism (which is how the media will report lack of progress on this ‘target’) may well be counter-productive and inhibit agency openness to pursuing opportunities for greater responsiveness to Indigenous interests.

At a more fundamental conceptual level, in relation to the Priority Reforms, there is substantive qualitative difference between the intention behind the inclusion of the Priority Reforms, and the use of the socio-economic targets. The Priority Reforms are not equivalent to the socio-economic targets either in their intended purpose as focal points for addressing systemic and structural constraints to closing the gap, nor in the nature of their operation which is not necessarily susceptible to easy or comprehensive measurement. Yet, the way in which the Agreement and the associated Commission sponsored Closing the Gap Information Repository (dashboard) seeks to operationalise them treats them as if they are merely ‘super targets’ susceptible to quantitative measurement. **It is my contention that the Priority Reforms are conceptually distinct, and are best suited to a nuanced and sophisticated qualitative analysis.** I therefore submit that the review seriously consider recommending an adjustment to the Agreement in relation to the Priority Reforms to move from the as yet unsuccessful attempt to implement conceptually inadequate quantitative targets to a more sophisticated qualitative approach.

The adequacy of Government financial investment

I don’t propose to address this issue in extensive detail here. I note that I have previously addressed these issues in two CAEPR Discussion Papers published in 2021.⁷ The commentary, analysis and

⁴ For example, see Thurber et. al. (2021) for a detailed analysis of the significant relationship between the prevalence of self-reported racial discrimination and measures of social and emotional wellbeing, culture and identity, health behaviour, and health outcomes.

⁵ Admittedly, there is additional information in relation to Priority Reform Three in Table A, paragraph 81 of the Agreement. However, the listing of indicators distinguishes between ‘supporting indicators’ and ‘output indicators’. Examination of the Commission’s Information Repository indicates that there has been minimal progress in developing data specifications except for two ‘outcome indicators’ that relate to experiences of racism and cultural safety. In relation to these, some work has been undertaken to develop measurement concepts, but these are yet to be agreed (two years after the Priority Reform was agreed and included in the Agreement).

⁶ We might note here the existence of a potential perceived conflict of interest for the Commission given its role in administering the Closing the Gap Information Repository. While I don’t give this much weight in this instance, it does raise the issue for the future as to whether the multiple roles of the Commission in this process might progressively diminish its capacity to offer independent advice to government.

⁷ Dillon (2021a); Dillon (2021b). See also Dillon (2020).

recommendations in those papers remain highly relevant to the Commission's current review exercise.

I will state however that the issue of financial investment aimed at 'closing the gap' is the unacknowledged 'elephant in the room'. Neither the former Treasurer's Terms of Reference nor the Commission's *Review Paper 2* make specific reference to the requisite funding designed to address and ameliorate the social and economic inequalities that both reflect the gap and drive its ongoing presence.

It is clear that funding alone is not the solution to addressing the social and economic inequality that permeates Indigenous Australia. Indeed, I would argue that substantive systemic policy reforms offer greater potential in this regard. Nevertheless, there are strong grounds for the view that **deep and sustained funding shortfalls are a significant contributor to ongoing poverty and social deprivation**. In the articles referenced above, I pointed out how governments have consistently avoided publishing, in an accessible and transparent form, the funding provided towards addressing the objectives that they have committed to achieving.⁸

The current Review is an opportunity to determine ongoing levels of financial investment, assess the levels of increased financial investment that flowed from the establishment of the Agreement, identify innovative ways to mitigate future outlays, and to assess objectively the levels of financial investment required to make a tangible step up towards 'closing the gap'. If the Commission fails to undertake this exercise, it will not only be a lost opportunity to assist the wider Australian community in understanding what is involved in addressing the required policy changes, but would implicitly endorse the current under-funding of the current national strategy to close the gap.

In the former Treasurer's Terms of Reference for this review, under Scope of the inquiry, he lists 'examine the factors affecting progress' as one of the Commission's tasks. It is self-evident that the extent and adequacy of government investment in closing the gap, in particular the extent of additional or new investment, is one of the most important, factors affecting progress.

Conclusion and summary

The current Review is the core element in a process leading to a decisive juncture in the nation's 15 year project to address the systemically entrenched inequality facing Indigenous citizens. It is already apparent to close observers, but not widely acknowledged or recognised, that **the implementation of the current National Agreement on Closing the Gap is inexorably reverting to the *status quo ante***. Without proactive action, the nation will continue to meander aimlessly around this issue, while governments and policymakers focus more on rationalising the indefensible than on finding solutions. It goes without saying that in such circumstances the cost in diminished and shortened life opportunities for innumerable Indigenous citizens will continue to be enormous.

The thrust of my submission is built on the opportunity that this Review represents to get the 'closing the gap' process on track, and to grasp the potential opportunities implicit in the National Agreement negotiated in 2020. Yet to do this, the Commission will need to approach this exercise

⁸ This is inexorably bound up with the absence of any programmatic strategy linked directly to particular targets or sets of targets (a problem that predates the current National Agreement). This is a fundamental conceptual flaw in the current Agreement, but one I have not raised in this submission beyond noting it here. Nevertheless, the absence of programs directed to targets is no excuse for not indicating the funding that has been allocated albeit notionally or mere generally.

with a focus on first principles and pragmatic problem solving, along with the zeal to mobilise ‘all avenues and opportunities’ to address entrenched Indigenous inequality. Unfortunately, this focus and zeal appears to be missing in the documentation so far provided by the Commission regarding its proposed approach to the Review.

My core contention is that the Review should focus on the objective of the National Agreement to reverse the entrenched inequality that permeates the lives of the majority of the nation’s Indigenous citizens. This is an aspiration that governments have committed and recommitted to addressing over the past fifteen years.

The fundamental question to be asked is thus: will the implementation of the National Agreement as currently operating make a substantive impact on changing this situation for the better. All my experience tells me that the current approaches, best characterised as permeated by endemic bureaucratic sludge, will make not one jot of difference.

The Agreement negotiated with the Coalition of Peaks by governments is internally inconsistent, conceptually flawed, and the mechanisms putatively designed to ensure that implementation is transparent and accountable are unworkable. These defects can be remedied, but require hard-headed analysis aimed at persuading policymakers to make the necessary changes. This is the task and opportunity for the Commission in the conduct of the current Review.

Getting the National Agreement to work is necessary but not sufficient for closing the gap. Governments must also play their part in legislating institutional changes and in funding key services. However, if the Agreement is working effectively, the pressure on governments to make the inevitably difficult decisions required will at least be in the public domain. It is for this reason that it is crucially important that this Review address the hard issues, and ensure that key elements of the Agreement’s operation are made fully transparent.

This submission argues that the Review should adopt a wholistic approach to assessing the operations of the National Agreement. It should be a truly comprehensive review. It should revisit the way the four Priority Reforms are conceptualised to ensure that they are not able to remain unaddressed or indirectly subverted. Importantly, it argues that the Implementation Plan processes built into the Agreement must be overhauled, as they represent a direct risk to the success of the entire process. The submission argues that the Commonwealth should be encouraged to take a more prominent role in accepting responsibility for the success of the Closing the Gap process, akin to first amongst equals, rather than stepping back and blaming shortfalls and failures on errant states and territories. After all, this must be a national priority. The 1967 Referendum was passed to ensure that the Commonwealth was able to step up in just these sorts of circumstances.

And finally, my submission argues that the Review should assess both the levels of ongoing and new expenditure by governments, and perhaps most importantly, should provide an estimate of the financial investments required to close the gap over the next decade or two. Without such an estimate, the community at large are left in the dark, forever thinking that the incessant tinkering around the edges by governments are in fact contributing to closing the gap, whereas in fact mere tinkering contributes to and sustains the maintenance of the *status quo*.

Of course, any estimate of the cost will seem enormous. But nowhere else in the public policy domain do we set out to make a significant systemic change without providing some measure of the projected cost. Moreover, identifying the likely costs may well encourage governments to pursue alternative institutional reforms. Governments have committed to the task; why won’t they estimate what it will cost? The Australian public deserves to have a considered estimate of the medium term

cost of fixing this entrenched inequality. It also deserves to have much clearer data on the levels of financial commitment made by governments.

While the estimated cost will be substantial, so too are the costs of not closing the gap; costs that will continue to fall regressively on the most disadvantaged segments of the Australian community. Beyond the economic and financial costs, the intangible cost of failure for the nation will be enormous in terms of lost life opportunities, lost social cohesion, and ultimately in the loss of national self-esteem.

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